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February 22, 1993

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

Prairie Island Nuclear Generation Plant  
Docket No. 50-282 and 50-306  
License No. DPR-42 and DPR-60

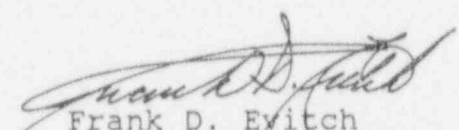
Reply to a Notice of Violation Contained in NRC Region III  
Letter, dated January 26, 1994.

Subject: Notice of Violation and Proposed Imposition of  
Civil Penalty and Demand For Information (U.S.  
Department of Labor Case No. 93-ERA-12).

Pursuant to the provisions on page 4, paragraph 4, of the  
above referenced Letter, I am responding to the Notice of  
Violation, within the thirty days of the date of the above  
letter dated January 26, 1994. My response is included as  
attachment A to this letter.

Please contact Frank D. Evitch, at (612) 388-3602, residence  
or (612) 388-1121 extension 5298 business, if you have any  
questions, or wish further information concerning this  
matter.

Sincerely,



Frank D. Evitch  
Superintendent Security  
Prairie Island Nuclear Generating Plant

c: Regional Administrator III NRC  
Senior Resident Inspector, Prairie Island NRC

Attachment: A - Reply to Notice of Violation

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Reply to Notice of Violation  
Docket Number's 50-282 and 50-306

INTRODUCTION

Corrective action and program resolution/response are the responsibility of the licensee. Nothing within this response should be construed as a response/commitment on behalf of the licensee.

The following Response to the Violation is associated with the implied involvement of Frank D. Evitch in the process that centered on Ms. Susan Yule's termination. An Administrative Law Judge (ALJ) determined that the termination of Ms. Yule was associated, in-part, to her engagement in protected activities.

The preponderance of error/guilt in this case is found within the ALJ report. NRC actions associated with initiation of a violation, imposition of civil penalties and potential civil action against individuals are based upon the context of the ALJ report. This response will indicate to some extent that the conclusions made by the ALJ were flawed and lacked foundation based on physical evidence or testimony. Instead it appeared that the ALJ relied solely upon the testimony of a disgruntled employee, which at best is prejudicial against certain individuals and/or companies.

This response includes the applicable excerpts from the U.S. Department of Labor Administrative Law Judge's issued Recommended Decision and Order, (June 24, 1993), in DOL Case 93-ERA-12 which found that Ms. Yule's discharge was an unlawful act of retaliation for engaging in protected activities. These 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.

Additionally, the NRC Region III letter of January 26, 1994, which was enclosed with the Notice of Violation, stated that NSP Management (Security) personnel were aware of Ms. Yule's protected activities and put pressure on her employer, Burns International Security, to remove her. I can not speak for others, yet for myself and acting as the Superintendent Security Prairie Island, this implication/statement is being

categorically denied. Individuals knowledgeable of the programs/processes in place within the Security Department at Prairie Island, readily note the variety of means available for submitting concerns/suggestion for problem resolution and that constructive criticism and a questioning attitude are expectations of employment and highly encouraged versus discouraged. We believe we have a highly successful program as a result of this allowance for employee involvement.

RESPONSE TO NOTICE OF VIOLATION

ALJ REPORT - Page 8

"At some point in time, Ms. Yule was told that Rolly Conklin, the NSP Superintendent of Security, had labeled her a "troublemaker." (T. at 305-306.) In March 1992, at her first meeting with Frank Evitch, Rolly Conklin's replacement, he told her, "There are sure a lot of people around here that are concerned about you. Your name always comes up in our meetings." (T. at 307.)

RESPONSE

My first encounter with Ms. Yule was in March of 1992. There was no meeting involved, rather a brief passing with casual words exchanged. The circumstances of this event occurred when I was about to enter the Security Building with the intent of exiting the Protected Area (PA) at the end of a work day. A female Security Officer, smoking a cigarette, was standing outside the Security Building by the PA exit door. As I approached, the Officer stepped forward, extended her hand stating, "Hello, you must be Frank Evitch the new Security Superintendent." "I'm Sue Yule, President of the Union." "Maybe you've heard of me." I shook the Officer's hand, and commented that I was Frank Evitch, and further stated to her, that I was glad to meet her and in fact had heard her name mentioned as being the President of the local Guard Association. The entire encounter was cordial and lasted but a few moments.

At no time during this encounter were meetings discussed, nor the concern people may have about her. At the time of this first encounter I was employed with NSP for less than two (2) weeks. As yet I had attended no meetings, was working as an understudy to Rolly Conklin, spent the majority of time in a room reading/reviewing Plan/Procedure commitments and had limited contact with personnel who may have wanted to comment about Ms. Yule. Prior to this encounter with Ms. Yule I heard her name mentioned one time during my indoctrination process. The intent of mentioning her name at that time was part of the process to identify key personnel within the security organization with who I may need to interact with in the future. No negative nor positive comments were made in regards to Ms. Yule when her name was mentioned.

I recall this encounter quite well, since it did involve my initial contact with a key individual within the Security Force Organization. Additionally, I am in the habit of maintaining a personal daily journal in which I make notes of activities which transpire through out the work day. This journal is referenced for events such as this. I find that there is some bases in Ms. Yule's reference to what I may have said, yet the conclusion drawn within the ALJ report is definitely out of context with what was said or intended.

ALJ REPORT - Page 9

In July or August of 1992, a trainee guard told Steve Vold, a security guard, that Lt. Majeski had walked away from the badge issue area while on duty, leaving it unattended for about a minute. (T. at 73-75.) The badge issue area is the point where entry is made into the protected area of the plant and is staffed at all times. (T. at 76, 199, 278-79; RX-15 at p. 2.) Being afraid to raise the issue directly with management, Steve Vold reported the incident to Ms. Yule, who was the union president. (T. at 76-77, 199, 280.) Ms. Yule investigated the incident by speaking to Roger Krig, Ms. McRoberts, and Gloria Boldt, guards who were on duty when the incident occurred. (T. at 199, 275-76.) On August 10, 1992, she reported the incident to Frank Evitch, the NSP Superintendent of Security. (T. at 200, 278.) After Ms Yule's employment was terminated, Jim Belanger, an NRC Senior Physical Security Inspector, investigated the incident. (T. at 338; RX-15.)

Also in August 1992 during a meeting attended by supervisors, managers, NSP personnel, and security officers, David Hutchson stated that Ms. Yule had been complaining to Frank Evitch about low morale. (T. at 100-01.)

RESPONSE

Ms. Yule did come to my office and advise me that the badge issue area was left unattended for a period of time and that such action was in violation of commitments. Upon receipt of this information, I advised Ms. Yule that I did not recall reading within any of the Prairie Island commitments the necessity to man the badge issue area on a constant bases. Together we reviewed the Security Plan and implementing procedures to determine the staffing criteria. Nothing could be found which required constant manning of badge issue. It appeared that the concept for constant manning of badge issue was more of a custom that may have taken on the significance on a commitment. Based on our commitment criteria I advised Ms. Yule that I found no bases to pursue the event further from a regulatory stand point yet it may be appropriate to look at it from a performance/customer service stand point. Ms. Yule understood there was no need to post the badge

issue area on a constant bases and appeared to be satisfied with the answer/response.

This issue was addressed during Mr. Belanger's 12/14/92 and 01/14/93 reactive inspection of announced concerns. (Reports No. 50-282/92030 (DRSS); No. 50-306/92030 (DRSS)). During this inspection it was clarified by review of procedures and interviews with Officers, (including those mentioned by Ms. Yule in her investigation), that:

- There were no procedure/plan commitments to staff the badge issue area on a continuous bases;
- The interviewed Officers confirmed that there was at least one Officer continuously within the badge issue area during the alleged time the post was abandoned.

As far as Ms. Yule complaining to me about low morale, I do not recall this occurring. There were occasions in which she did discuss the problems associated with Burns International Security failing to recognize the Guard Association as the legitimate bargaining unit for the Guards and the inability to obtain a contract. This was having an adverse impact upon the people. She was advised that this was a labor/management function between her and her employer and that though I may sympathize with their plight I could not become involved in the issue.

ELJ REPORT - Page 11

Lt. Bangasser then wrote a memorandum to Mr. Jones documenting the incident. (T. at 374-75, 412-13p; RX-4.) He also met with Mr. Jones and discussed the matter. (T. at 374-76, 411-12, 452-53.) Mr. Jones reported the incident to Frank Evitch, who told him to take care of it. (T. at 413.)

RESPONSE

A report, which outlined the event was submitted to my office as part of the normal administrative process. Apart from reviewing the documentation from a licensee point of view for regulatory/operational issues no comments were made. As part of Mr. Jones temporary assignment as the Burns Site Manager, the normal expectation would be that he would take care of the situation in accordance with established policies and did not need to be told to do so by myself.

ALJ REPORT - Page 16

When Ms. Yule sent her February 21, 1992 letter to Donald Funk at NRC, she complained that morale in the guard force had declined as a whole, because of actions taken by Burns. (T. at 266-68; CX-9.) She testified that she believed that

the NRC required licensees and subcontractors to maintain morale at a certain level and that the NRC later summoned the NSP Superintendent of Security to appear in Chicago to discuss morale. (T. at 266-67). Since the low or poor morale of a nuclear plant's security force can impact on plant safety and protection, Ms. Yule's letter provided information to the NRC about possible violations.

#### RESPONSE

Morale in and of itself does not fall within the inspection or violation realm of the NRC nor is the subjective and unmeasurable quantity of high/low morale a safety concern. Individually the reporting of morale does not fall within the realm of protected activities. There may be programmatic problems that will occur as a result of morale and these areas may then become areas of concern for the NRC. The reporting of such deficiencies may then fall within the scope of protected activities.

Since morale itself is a subjective topic and open for a wide spectrum of debate, it was not the NRC, but rather NSP that requested a meeting in Chicago. It was at this meeting that the NRC was advised of the programs, changes and direction of Security at Prairie Island and clarity was provided on how these changes may impact on the issue of morale.

#### ALJ REPORT - Page 16

On August 10, 1992, when Ms. Yule reported to Frank Evitch, the NSP Superintendent of Security, that Lt. Majeski had left the badge issue area unattended, she was attempting to have the regulations concerning plant security and protection enforced. This incident was later investigated by the NRC. (RX-15.) In each of the incidents listed above, Ms. Yule engaged in protected activity.

#### RESPONSE

This area was addressed earlier and noted to be unfounded. Ms. Yule was advised, shown and indicated her understanding that there were no commitments or regulatory concerns associated with the abandonment of the badge issue post. Fully realizing this, had she submitted her concern to the NRC after the August 10, 1992 date, it is possible to conclude that Ms. Yule may be liable of deliberate misconduct and knowingly filing false information with the NRC. This lends credence to the issue which implies that her intent for reporting events to the NRC may not be for rectification of safety issues but rather a means for meeting some personal goal or end.

... (T. at 305-06.) In March 1992, when Mr. Conklin left Prairie Island, his replacement, Mr. Evitch, told Ms. Yule, "There are sure a lot of people around here that are concerned about you. Your name always comes up in our meetings." ... These remarks concerning Ms. Yule by NSP personnel show that they were also upset with Ms. Yule's activities. Additionally, while Burns asserts that NSP had no responsibility for Burns' decisions concerning its personnel and that NSP had no authority to manage Burns' employees or to give direct orders to Burns' employees, (Resp. Proposed Findings of Fact at 2)., the record indicates that NSP oversaw the security program and assured that the security plan was implemented correctly, (T. at 475-76), and that Burns was in frequent communication with NSP concerning Ms. Yule.

RESPONSE

My comments about Ms. Yule's name being mentioned at meetings and the concern of people over her were addressed prior. This entire quote is taken out of context and used erroneously to support the probable conclusion that NSP Management personnel were upset with Ms. Yule and were persecuting her for engaging in protected activities. Additionally, I was not within a Managerial capacity at the time in question as is stated. I was in a training role reporting to Rollie Conklin, who did not leave NSP until August of 1993, versus March of 1992 as implied.

I can factually state and support that at no time prior to the ALJ report did I know or believe that Ms. Yule was engaged in any protected activities. Her complaints and concerns that were forwarded to me were acceptable and expected of a Security Officer. I feel very comfortable in stating that I do not believe others involved in this process actually knew Ms. Yule was involved in protected activities. It goes without saying that the majority of Security Force personnel talk regularly with NRC personnel about a variety of subjects and because they do, it is not necessary to conclude they are in a protected status. Neither can it be concluded that once in a protected status you are excused from normal performance expectations, as Ms. Yule indicates.

Ms. Yule's termination was a direct result of her performance and all interactions associated with her centered on either performance or labor/management issues and not on protected activity issues. It is the responsibility of the employer, (Burns) to address performance and labor/management issues and it is the licensee's responsibility to insure compliance with Plan/Procedure commitments. Each area of responsibility are independent and proper and do not intermix as implied within the ALJ report. Because they occur as a course of

normal business one can not automatically conclude that a co-employership relationship exists, especially in the area of employee discipline.

#### SUMMARY/CONCLUSION

From my personal perspective I strongly oppose and deny that Ms. Yule was terminated for protective activities. I am a strong supporter of personnel having the right and ability to stand up and identify anything that they perceive to be a problem. We go to great lengths within the Prairie Island security program to allow for this. We have many programs and processes in place that allow for any individual to critically evaluate or comment on the security program and practices. These programs are proven to be highly successful and no personnel are known to have been persecuted for their use of these programs.

It is apparent that there may in actuality be misuse of the protected activities concept by the complainant. This is evidenced by the fact that Ms. Yule did not consider herself to have been terminated for engagement in protected activities during all her initial proceedings with the Department of Labor National Labor Relations Board, (DOL and NLRB). During these proceedings she contended that her dismissal was based on her union activities. In all of these reviews it was determined that her dismissal was justified.

As a last resort and after the allowable time frame for filing, Ms. Yule filed under the protected activities criteria. It has been stated that this late filing was based upon a recommendation by the Regional Director for the United Plant Guard Workers Union. It would seem prudent that a reasonable person would initially file under the protected activities criteria should they feel that was the determination for their dismissal. Yet, in this case it was not even considered until all other avenues were exhausted. Ms. Yule's entire case is based on the premise that because she complained about potential NRC violations at one time, then everything that subsequently happened to her afterwards must have been in retaliation for her complaints. Further, she is attempting to show that once an individual engages in protected activities they may set their own performance standards, since any discipline could in theory be applied to the protected activities status. Neither of these cases are the intent of the law, yet the ALJ decision and NRC actions give bases to the conclusion that either may be true.

All known activities that were reported to the NRC by Ms. Yule were known to her to be erroneous or unfounded or were already self identified by the licensee and processes were in place to resolve them. This leads a reasonable person to conclude that there never was a need to persecute Ms. Yule for engaging in protected activities, since nothing of



consequence was reported. The only category which remains is that of labor/management/union issues which are not protected activities. The entire history of this case supports this conclusion and the fact that Ms. Yule attempted to further her union cause through insubordination and extreme fluctuations in performance standards. Protected activities were never at issue.

Should Ms. Yule's case be of substance a fear of engaging in protected activities should be an issue at Prairie Island and one could identify it's chilling effect. The opposite is actually the case. Random/independent surveys as well as the magnitude of concerns, suggestions and recommendations being submitted on a daily bases support the fact there is no chilling effect.

The right of individuals to freely voice concerns about any issue they feel impacts safety is paramount and strongly supported. Sadly, society created a need for a law to protect these individuals since obvious abuses could be shown. To use the law/system beyond it's intended scope and create calamity for other innocents in hopes of furthering personal goals/ambitions is perhaps the saddest application of the law.