

DCD/DCB
(RIDS)

April 22, 1992

Dockets No. 50-454 and 50-455
Licenses No. NPF-37 and NPF-66
Construction Permit CPPR-131
EA 92-019

Commonwealth Edison Company
ATTN: Mr. Cordell Reed
Senior Vice President
Opus West III
1400 Opus Place
Downers Grove, Illinois 60515

Dear Mr. Reed:

SUBJECT: NOTICE OF VIOLATION
(U.S. Department of Labor Case No. 87-ERA-4)

This refers to the results of an investigation and hearing conducted by the U. S. Department of Labor (DOL) into a complaint filed on October 3, 1986, by a quality control inspector formerly employed by the Hatfield Electric Company at the Byron Nuclear Station. In his complaint (DOL Case No. 87-ERA-4), the former quality control inspector alleged that Hatfield Electric Company improperly terminated his employment on September 12, 1986, following his contacts with the NRC in May and June 1986, and his August 19, 1986, appearance at a DOL hearing involving another former employee of Hatfield Electric. An October 31, 1986, decision by the DOL Area Director instructed the Hatfield Electric Company to reinstate the former quality control inspector. That decision was appealed by Hatfield Electric Company and was upheld by a DOL Administrative Law Judge on August 13, 1987. Subsequently, on January 22, 1992, the DOL Deputy Secretary affirmed the Administrative Law Judge's recommended decision.

After reviewing that decision, the NRC finds that a violation of the Commission's regulations has occurred. An enforcement conference is not being held in this case because additional information is not necessary. The NRC review of the technical electrical components by the Hatfield Electric Company at the

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Byron Nuclear Station was documented in NRC Inspection Reports Nos. 50-454/86031; 50-455/86017, which was mailed to you on December 5, 1986.

The violation described in the enclosed Notice of Violation concerns an incident of discrimination in violation of 10 CFR 50.7, "Employee Protection." Specifically, under 10 CFR 50.7, discrimination by a Commission licensee, or its contractor, against an employee for engaging in certain protected activities is prohibited. The activities which are protected include providing the Commission information about possible violations of requirements imposed under either the Atomic Energy Act or the Energy Reorganization Act, requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements, or testifying in any Commission proceeding.

This has been categorized as a Severity Level III violation because discrimination by first-line supervisors against employees for raising safety concerns or participating in formal proceedings is a significant regulatory concern, whether the actions were taken by the licensee or its contractor.

Such discriminatory acts could create a chilling effect which could lead to individuals not raising safety issues. Such an environment cannot be tolerated if licensees are to fulfill their responsibility to protect the public health and safety. It is imperative that managers and supervisors of the licensee and its contractors avoid actions that discriminate against individuals for cooperating in proceedings under the Atomic Energy Act or the Energy Reorganization Act or for raising safety concerns. The actions of the licensee and its contractors must also promote an environment conducive to the reporting of safety issues. Therefore, to emphasize the importance of maintaining an environment in which employees are free to provide information or safety concerns without fear of retaliation, I am issuing the enclosed Notice of Violation in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) 10 CFR Part 2, Appendix C (1986).

Normally, a civil penalty is considered for a Severity Level III violation. However, after consultation with the Commission, I

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have decided that a civil penalty will not be proposed in this case. In reaching this decision the staff considered: (1) the time that has passed since this violation occurred; (2) that the plant was under construction at the time of the violation and has since been completed and operating for several years without further violations of this type; (3) that no similar violations have occurred at other CECO NRC-licensed facilities since the occurrence of this September 12, 1986, violation; and (4) the apparent isolated nature of the violation.

The NRC acknowledges that your July 29, 1986, letter described corrective actions in response to a similar, previous enforcement action (EA 86-87). The corrective actions for this earlier violation included: (1) meeting with senior management of all site contractors to discuss their obligations under 10 CFR 50.7; (2) developing an "early warning" system to determine if a discharge involving worker protection is lawful; and (3) pre-planning reductions-in-force to determine whether a discharge is improperly motivated.

While normally a written response to a Notice of Violation is required, we are not requiring a response to the specific violation for the above reasons. However, we note that the individuals involved in the September 12, 1986, discriminatory act are employed in the quality assurance organization of the William Pope Company, another contractor at the Byron Nuclear Station. Therefore, we are requesting that you provide written assurance that the individuals responsible for the September 12, 1986, discriminatory act now appreciate the need for open communications when an employee raises a safety concern.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response will be placed in the NRC Public Document Room.

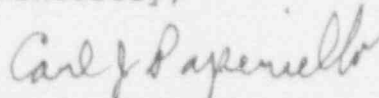
The response directed by this letter and the enclosed Notice are not subject to the clearance procedures of the Office of

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Management and Budget as required by the Paperwork Reduction Act of 1980, Pub. L. No. 96-511.

Sincerely,



A. Bert Davis
Regional Administrator

Enclosure: Notice of Violation

cc w/enclosure:
DCD/DCB (RIDS)
M. Wallace, Vice President
PWR Operations
T. Kovach, Nuclear Licensing Manager
T. Schuster, Nuclear Licensing
Administrator
R. Pleniewicz, Station Manager
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Supervisor
Resident Inspectors: Byron, Braidwood,
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Robert M. Thompson, Administrator
Wisconsin Division of Emergency
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*Headquarters' concurrence received during 4/21/92 telecon between R. Rosano, OE, and C. H. Weil, RIII *WJ 4/22/92*

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Day File

EA File (2)

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