

DcW

MAY 16 1988

Docket No. 50-454
Docket No. 50-455

Commonwealth Edison Company
ATTN: Mr. Cordell Reed
Senior Vice President
Post Office Box 767
Chicago, IL 60690

Gentlemen:

We have reviewed your submittals regarding an allegation which we received and forwarded to you by letter dated October 8, 1987 (attached), and for which we requested supplemental information in a meeting on February 1, 1988. The allegation concerned the complaint of a former pipe fitter (contractor employee), who alleged that his employment at Byron Nuclear Station was terminated because he raised safety concerns while performing his duties. Your attached responses, dated November 9, 1987 and March 18, 1988, document your conclusions that the allegor was fired for just cause, that he did not raise radiological concerns at the time of his employment was terminated, and that there was no resulting "chilling effect" for other workers at Byron. No violations of NRC requirements were identified. We consider this allegation (RIII-87-A-0050) closed.

Sincerely,

ORIGINAL SIGNED BY W. L. FORNEY

William L. Forney, Chief
Reactor Projects Branch 1

Attachments: As stated

cc w/attachments:
T. J. Maiman, Vice President,
PWR Operations
H. Bliss, Nuclear Licensing Manager
R. Pleniewicz, Station Manager
DCD/DCB (RIDS)
Licensing Fee Management Branch
Resident Inspector, RIII Byron
Resident Inspector, RIII Braidwood
D. W. Cassel, Jr., Esq.
Richard Hubbard
J. W. McCaffrey, Chief, Public
Utilities Division
Diane Chavez, DAARE/SAFE
L. Olshan, NRR LPM
H. S. Taylor, Quality Assurance Division

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OCT 8 1987

Docket No. 50-454
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Commonwealth Edison Company
ATTN: Mr. Cordell Reed
Senior Vice President
Post Office Box 767
Chicago, IL 60690

Gentlemen:

On April 27, 1987, the U. S. Department of Labor's (DOL) Wage and Hour Division in Madison, Wisconsin, received a complaint from a former pipe fitter who had been employed by a Commonwealth Edison Company contractor. The former pipe fitter alleged that his employment at Byron Nuclear Station was terminated because he raised safety concerns while performing his duties. In response to that complaint, the Wage and Hour Division arranged a mutually agreeable settlement between the pipe fitter and Hunter Corporation, the contractor.

Notwithstanding this settlement, the NRC is concerned that a violation of the employee protection provisions set forth in 10 CFR 50.7 may have occurred. Regardless of whether or not a violation of 10 CFR 50.7 occurred, the NRC needs assurance that the actions taken against the former inspector have not had any "chilling" effect on other licensee or contractor personnel.

Therefore, you are requested to provide this office, within 30 days of the date of this letter, a written statement, signed under oath or affirmation, which:

1. Provides the basis for terminating the employment of the former inspector and includes a copy of any investigation report you have regarding the circumstances of the termination, and
2. Describes the actions taken or planned to assure that this termination does not have a "chilling" effect in discouraging other licensee or contractor employees from raising perceived safety concerns.

After reviewing your response, the NRC will determine whether enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with Section 2.790 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, a copy of this letter will be placed in the NRC Public Document Room.

~~8710150333~~

2pp

ENCLOSURE

DT 430.0050

(H)

OCT 8 1987

The response requested by this letter is not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Pub. L. No. 96-511.

Sincerely,

Carl Paparella

A. Bert Davis
Regional Administrator

- cc: T. J. Maiman, Vice President
PWR Operations
- D. Butterfield, Nuclear
Licensing Manager
- R. E. Querio, Plant Manager
DCD/DCB (RIDS)
Licensing Fee Management Branch
- Resident Inspector, RIII Byron
- Resident Inspector, RIII
Braidwood
- D. W. Cassel, Jr., Esq.
Richard Hubbard
- J. W. McCaffrey, Chief, Public
Utilities Division
- Diane Chavez, DAARE/SAFE
- L. Olshan, NRR LPM
- H. S. Taylor, Quality Assurance
Division

RIII (YES)
9/22/87
VanSickle/JP
Lieberman
per [unclear]

Y
RIII
Hinds
B [unclear]
10/19

(YES)
RIII
Forney
9/20/87

RIII
Norellus
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RIII
Greenman

(YES) (YES) up to B Stop letters
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RIII
9/22/87



Commonwealth Edison
 One First National Plaza Chicago Illinois
 Address Reply to Post Office Box 767
 Chicago, Illinois 60690-0767

November 9, 1987

Mr. A. Bert Davis
 Regional Administrator
 U.S. Nuclear Regulatory Commission
 Region III
 799 Roosevelt Road
 Glen Ellyn, IL 60137

Subject: Byron Station Units 1 and 2
Pipefitter Complaint Regarding
Termination of Employment
NRC Docket Nos. 50-454 and 50-455

Dear Mr. Davis:

This is in response to your letter of October 8, 1987 requesting Commonwealth Edison to provide information regarding the employment termination of a pipefitter. This pipefitter was employed by Hunter Corporation, a mechanical contractor at Byron Station.

Commonwealth Edison has reviewed this matter in detail and determined that the actions of Hunter Corporation were appropriate and did not violate 10 CFR 50.7. In addition, our review has concluded that the circumstances of this termination do not appear to create the potential for a "chilling" effect on other workers at Byron Station.

Enclosed with this letter is our response to your questions concerning the basis for termination of the employee and the potential for the "chilling" effect.

To the best of my knowledge and belief, the statements contained in this letter and enclosure are true and correct. In some respect these statements are not based on my personal knowledge, but obtained information furnished by other Commonwealth Edison managers or contractor employees. Such information has been reviewed in accordance with Company practice, and I believe it to be reliable.

Please direct any further questions regarding this matter to this office.

Very truly yours,

K. A. Ainger

K. A. Ainger
 Nuclear Licensing Administrator

Enclosure

SUBSCRIBED and SWORN to
 before me this 12 day
 of November, 1987

John T. May
 Notary Public

3825X

~~8712280247~~
 BP.

Enclosure 3

NOV 12 1987

ENCLOSURE

Question #1

Provide the basis for terminating the employment of the former inspector and include a copy of any investigation report you have regarding the circumstances of the termination.

Response

The person who filed the complaint with the Department of Labor was employed on the night shift by the Hunter Corporation in the capacity of a pipefitter workman, not an inspector. The circumstances surrounding this termination are explained as follows: On March 28, 1987, the crew to which this pipefitter belonged was assigned to work in the Byron Unit 1 containment building. Members of the crew were directed to wait outside the missile shield wall while the crew foreman went to check the status of scaffolding at the specific work location. When the foreman returned, this pipefitter was not present with the remaining crew members. The pipefitter was eventually found in the construction worker lunch room. At this time, he was asked by his foreman whether he planned to return to work for the balance of the shift. He indicated he would not be working anymore that shift, but would be returning on Monday night, his next scheduled shift, if he still had a job. At this time, the Hunter Corporation Project Manager was contacted at home and agreed that this pipefitter should be terminated for refusing to work and failing to follow his foreman's instructions.

Although the pipefitter states in his letter to the Department of Labor that he felt he was unjustly treated because he did not want to receive unnecessary radiation exposure, interviews with Hunter Corporation personnel show no evidence such concerns were raised to either his foreman or the general foreman during the preceding sequence of events.

This pipefitter had received Commonwealth Edison Nuclear General Employee Training (NGET) prior to working in radiation areas. Included in this training is a detailed explanation of a radiation work permit (RWP), a document which informs the worker of the radiological conditions and protective equipment requirements for the job. This training emphasizes the individual's responsibility to read, understand, and sign the RWP. The pipefitter was working under a Type II RWP for this containment job. He signed the RWP on a daily basis and we have no indication that he was concerned with the radiological conditions associated with this job prior to signing the RWP.

Beyond the provisions of the RWP, the NGET course also describes an employee's rights described in NRC Form 3. NRC Form 3 is posted throughout Byron Station.

We have no indication this pipefitter attempted to express his concern about unnecessary radiation exposure through the channels discussed above.

Question #2

Describe the actions taken or planned to assure that this termination does not have a "chilling" effect in discouraging other licensee or contractor employees from raising perceived safety concerns.

Response

Because the circumstances of this termination do not appear to create the potential for a "chilling" effect on other employees at Byron, Commonwealth Edison plans to take no further actions on this matter. The circumstances supporting this conclusion are as follows:

The pipefitter was terminated for refusing to work and failing to follow instructions. At no time before writing to the Department of Labor did the pipefitter state that he had concerns regarding radiation exposure. Thus, any fellow workers who may have witnessed the pipefitter's termination or who may have subsequently learned of it would have no reason to believe that the pipefitter's belated expression of concern for his personal safety was in fact the cause of his termination. Rather, the pipefitter's departure from the work site to the lunch room and his refusal to return to the work site would be the only reasons that fellow workers would be aware of as the reasons for the pipefitter's termination. Since those objectively observable actions of the pipefitter do not constitute protective behavior under 10 CFR 50.7, there would be no reason to believe that the pipefitter's fellow workers concluded that he was fired for raising safety concerns. Accordingly, Commonwealth Edison believes that no further consideration of this matter is warranted.

Nothing about the settlement of this claim modifies the previous conclusion. The following description of that settlement shows that it did not involve any matters of protected activity. After his termination, the pipefitter applied to the Illinois State Unemployment Fund for unemployment compensation benefits. The Fund, following its usual procedures, asked Hunter Corporation the reason for the pipefitter's termination. Hunter Corporation, relying on the facts stated above, reported that the pipefitter had been terminated for cause. Thereafter, the pipefitter and Hunter Corporation agreed to settle their differences by dropping their respective claims, i.e. the pipefitter withdrew his Section 210 claim in exchange for Hunter Corporation no longer contesting the pipefitter's eligibility for unemployment compensation benefits. Nothing about this course of events implicates any protected activities or in any way cause fellow workers, assuming that they knew of these events, to experience a "chilling" effect on their ability to raise perceived safety concerns.