DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group Studying Employer Assets In ERISA Employer-Sponsored Plans; Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 USC 1142, a public meeting will be held on May 14, 1997 of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group studying Employer Assets in ERISA Employer-Sponsored Plans.

The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon and from 1:00 p.m. until approximately 3:30 p.m. in Room N–5437 A&B, Department of Labor Building, Second and Constitution Avenue NW, Washington, DC 20210, is for Working Group members to begin taking testimony on the topic of employer assets in ERISA employer-sponsored plans. The work group will seek testimony related to Department of Labor issues and violations related to employer assets held by the plan, current and legislative history and actions related to employer assets held by a plan and discussion related to the types of plans that include employer assets or securities.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before May 6, 1997, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group on Employer Assets in ERISA Employer-Sponsored Plans should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by May 6, 1997, at the address indicated in this notice. Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before May 6.

Signed at Washington, DC this 17th day of April, 1997.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 97–10465 Filed 4–22–97; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

Public Board of Inquiry in Puerto Rico; Explosion

In connection with its investigation of the explosion in the Humberto Vidal shoe store and office building in San Juan, Puerto Rico, on November 21, 1996, the National Transportation Safety Board will convene a public board of inquiry at 9:00 a.m., on Monday, June 2, 1997, in the ballroom of the Embassy Suites Hotel, 8000 Tartak Street, Carolina, Puerto Rico. For more information, contact Pat Cariseo, Office of Public Affairs, Washington, D.C. 20594, telephone (202) 314–6100.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Robert Barlett, 202–314–6446 (voice) or 202–314–6482 (fax), at least 5 days prior to board of inquiry date.

Dated: April 21, 1997.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 97–10606 Filed 4–21–97; 8:45 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–30266; License No. 30–23697–01E EA 96–135]

21st Century Technologies, Inc. successor Licensee to Innovative Weaponry, Inc., Fort Worth, Texas, Order Imposing Civil Monetary Penalty

I

Innovative Weaponry, Inc. [of New Mexico] was the former holder of Materials License No. 30–23697–01E issued by the Nuclear Regulatory Commission (NRC or Commission) and which was amended on April 3, 1995 to name Innovative Weaponry of Nevada (Licensee) as the licensee. The license was subsequently amended to change the name to 21st Century Technologies, Inc., and reissued to reflect a move to Fort Worth, Texas. The license authorized the Licensee to distribute luminous gunsights or weapons containing luminous gunsights in accordance with the conditions specified therein.

II

An investigation of the Licensee's activities was conducted from May 9, 1995 through March 22, 1996. The results of this 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 15, 1996. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations.

The Licensee responded to the Notice in a Reply and an Answer, both dated October 1, 1996. In its responses, the Licensee admitted that the events that constitute the violations occurred, but denied that these were violations of lawful exercise of regulatory authority under the Atomic Energy Act, asserted that the penalty would cause financial hardship, and disagreed with other aspects of the enforcement process.

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, as set forth in the Appendix to this Order, that the violations occurred as stated and that the amount of the proposed penalty for the violations designated in the Notice should be mitigated by $5,000 and a civil penalty of $2,500 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 $2,500 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to James Lieberman, 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, D.C. 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 addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Assistant General Counsel for Hearings 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:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above, and

(b) Whether, on the basis of those violations, this Order should be sustained.

Dated at Rockville, Maryland this 10th day of April 1997.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix—Evaluation and Conclusion

On May 15, 1996, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC investigation. Innovative Weaponry, Inc. (Licensee) responded to the Notice on October 1, 1996. The Licensee admitted that the events that were described in the Notice occurred, but denied that these were violations of lawful exercise of regulatory authority under the Atomic Energy Act, asserted that the penalty would cause financial hardship, and disagreed with other aspects of the enforcement process. The NRC's evaluation and conclusion regarding the licensee's requests are as follows:

Restatement of Violations

A. License No. 30–23697–01E authorizes the licensee to distribute SRB Technologies, Inc., Model PRH–800/G/200 sealed light sources.

Contrary to the above, from June to August 1995, the licensee distributed tritium sealed light sources from a manufacturer not authorized in the license. (01013)

B. License Condition 10 of License No. 30–23697–01E authorizes the licensee to distribute sealed light sources in specified gunsights and in specified configurations.

Contrary to the above, from July to September 1995, the licensee distributed tritium sealed light sources in configurations not specified or otherwise authorized in the license. (01023)

These violations represent a Severity Level III problem (Supplement VI). Civil Penalty—$7,500.

Summary of Licensee's Response to Violations

In its October 1, 1996 ''Reply to Notice of Violation,'' the Licensee admitted that it distributed tritium sealed sources from a manufacturer not mentioned in the license but denied that that was a violation of a lawful exercise of regulatory authority under the Atomic Energy Act of 1954, as amended. The Licensee did not specifically admit or deny the violation of distribution of tritium sealed light sources in configurations not specified or otherwise authorized in the license, but implied admission of that act by use of statements such as ''[t]he reason for both actions was inadvertent error'' and ''[t]he distribution of configurations mentioned [sic] in the license was also made without direct knowledge of corporate management,'' and further discussed those acts in the context of admitting that the acts occurred. The Licensee denies that either of these activities constitutes a violation of a lawful exercise of regulatory authority under the Atomic Energy Act and relevant case law. The Licensee further argues that the provisions of the license requiring ''designation of manufacturers'' and ''description of the configuration of the gunsights as a condition precedent to distribution'' are unlawful because they are beyond the jurisdiction of the NRC to regulate.

In its October 1, 1996 ''Answer to Notice of Violation,'' the Licensee denied the violations to the extent and for the reasons set out in its ''Reply to Notice of Violation,'' and enumerated the following as extenuating circumstances: (1) The NRC lacks jurisdiction, (2) there were no adverse consequences to public health and safety, (3) the alleged acts were not intentional and were not [sic] without prior knowledge of management, (4) the alleged acts were self-identified, (5) management attempted to correct the situation immediately on discovery, (6) the Licensee realized no appreciable profit, (7) no accepted philosophy of enforcement is well served by imposing the civil penalty. In addition, the Licensee contended that the acts are of only minor concern rather than ''significant regulatory concern.''

NRC Evaluation of Licensee's Response to Violations

The Licensee's Reply specifically admitted that the Licensee had distributed tritium sources from a manufacturer who was not mentioned in the license. As to the second violation, distribution of sources in configurations not authorized, the only logical inference that can be drawn from the language of the October 1, 1996 Reply is that the Licensee also admits the facts of that violation. In addition, at the April 23, 1996 Predecisional Enforcement Conference the Licensee conceded that the events described in the Notice had occurred. The Licensee has not challenged the NRC's findings that the unauthorized distributions occurred and has not provided any facts to support such a challenge. Thus, there is no need to further address the factual determinations.

As to the assertion that the conditions or restrictions contained in the license are unlawful due to their failure to ensure public health and safety, the regulations controlling radioactive materials are promulgated under the Act to protect health and minimize danger to life by assuring that licensees will do what is required. The regulations require that sufficient information concerning the sources and the product be submitted prior to issuance of a license, to demonstrate that the product will meet the safety criteria set forth in the regulations for that type of product. Thus, if a licensee manufactures products in unapproved configurations, the NRC has no way of knowing if the product poses a threat to public health and safety. The provisions concerning the specific source and gunsight models listed in IWI's license were not imposed by the NRC; rather, the list of authorized source models, designation of suppliers of tritium sources, and the specific configurations of gunsights came directly from information submitted by IWI to the NRC during the licensing process.

The thrust of the Licensee's disagreement goes to the agency's jurisdiction and the licensing system promulgated under 10 CFR Part 30. Section 81 of the Atomic Energy Act (AEA or Act) provides in part that a person may not transfer or receive, own, or possess any byproduct material except as authorized pursuant to the AEA.

The NRC's jurisdiction under Section 81 of the Act to regulate use of sealed sources containing byproduct material is long-established. Regulations controlling radioactive materials are promulgated under the Act to protect health and minimize danger to life by endeavoring to ensure that licensees will do what is required to prevent adverse impacts on public health and safety. As noted in the General Statement of Policy and Procedure for NRC Enforcement Actions, (NUREG–1600), Section I (Enforcement Policy), licensees are expected to exercise meticulous attention to detail and maintain a high standard of compliance with NRC requirements. This standard applies even in cases such as this, in which no adverse consequences to public health and safety actually occurred in this matter.

Further, regardless of whether violations were committed with or without the knowledge of Licensee management, a licensee committing a violation is subject to enforcement action. In this case, the Licensee did not make a sufficient effort to be aware of the applicable requirements and ensure that they were met. Section VI.B. of the

Enforcement Policy states: ''Although management involvement, direct or indirect, in a violation may lead to an increase in the civil penalty, the lack of management involvement may not be used to mitigate a civil penalty.''

The claim that the Licensee realized no appreciable profit from the transactions is not relevant to the fact that the licensee violated its license. As to whether this civil penalty serves the purposes of the NRC's enforcement program, it clearly does so. In cases such as this, an NRC enforcement action is used, in part, as a deterrent to emphasize the importance of management being aware of license requirements, and where there is a question as to the meaning of a requirement, of the need to seek clarification. If a licensee believes that license conditions are unwarranted, the licensee should seek an amendment, and comply with the license until the amendment is granted.

Summary of Licensee's Request for Mitigation

The Licensee contends that the enforcement action imposes a severe financial hardship on the Licensee, that the NRC standards for imposing civil penalties are too vague to meet standards of due process, and that the penalty should not be imposed because the basic information on which the decision is being made has not been made available to the Licensee in preparation of its defense.

NRC Evaluation of Licensee's Request for Mitigation

The Licensee sought mitigation complaining that the NRC standards for imposing civil penalties are too vague to meet the standards of due process but did not provide further argument or explanation of that claim. The Congress has provided the Commission with the discretion to issue civil penalties of up to $110,000 per day per violation. The NRC has for almost 15 years provided publicly available guidelines for developing enforcement actions, including civil penalties. These guidelines are published in the Enforcement Policy.

As to the Licensee's claim that the basic information on which the action was taken was not made available to the Licensee, although the OI Report had not yet been provided to the Licensee because the Licensee had not paid the required charges,[1] the discussion at the Predecisional Enforcement Conference centered on these violations and how they occurred. Further, during the OI investigation the NRC obtained copies of records from the Licensee, including purchase documents for luminous sources and sales documentation. The nature of the violations cited is such that these documents and the personal knowledge of Licensee employees were clearly the basis for the citations and were available to the Licensee.

The staff has reviewed the assessment of the civil penalty, including the exercise of discretion which escalated the civil penalty to $7,500. In assessing a civil penalty, the NRC weighs both the potential safety significance and the regulatory significance. While the safety concerns in this matter may not be significant, the regulatory concerns are significant because Licensee management failed to apply the meticulous attention to compliance with license conditions that is required of a licensee. While the NRC remains concerned about management involvement in these violations, the civil penalty has been reconsidered in light of the safety significance of the actual violations. The civil penalty is, therefore, being mitigated by $5,000.

As to alleged financial hardship, the NRC's Enforcement Policy provides: ''. . . it is not the NRC's intention that the economic impact of a civil penalty be so severe that it puts a licensee out of business (orders, rather than civil penalties, are used when the intent is to suspend or terminate licensed activities) or adversely affects a licensee's ability to safely conduct licensed activities.''

Therefore, to balance these considerations and to be responsive to the potential financial hardship to the Licensee, the NRC will allow the Licensee, if it wishes, to pay the civil penalty in monthly installments.

NRC Conclusion

The NRC has concluded that the violations occurred as stated and that the Licensee provided an adequate basis for mitigation of the civil penalty. However, full mitigation is not warranted because of the importance of emphasizing the role of management in ensuring that it understands regulatory requirements and that these requirements are implemented. Here, the new management did not make sufficient effort to ensure compliance. Consequently, a civil penalty in the amount of $2,500 should be imposed. However, to be responsive to the potential for further financial hardship, the NRC will permit the Licensee to pay the civil penalty in monthly installments.

[FR Doc. 97–10524 Filed 4–22–97; 8:45 am]
BILLING CODE 7590–01–P

[1] The OI Report was provided to the Licensee on October 16, 1996.

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–400]

Carolina Power & Light Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–63 issued to Carolina Power & Light Company (the licensee) for operation of the Shearon Harris Nuclear Power Plant, Unit 1, located in New Hill, North Carolina.

The proposed amendment would modify the emergency diesel generator (EDG) circuitry to return the onsite power system to its original functional design basis, minimize the need for operator action if a loss of off-site power (LOOP) occurs during EDG testing, and to eliminate the need to declare the EDG inoperable during periodic testing. The proposed amendment must be issued in a timely manner to avoid an unnecessary delay in the modification of the EDG circuitry, and thus an unnecessary delay of the Harris unit 1 restart as a result of the recent discovery by the licensee that the EDG circuitry is not in compliance with the current plant Final Safety Analysis Report (FSAR) and licensing basis requirements. Such a forced delay in the unit restart is unnecessarily costly to the licensee, and the proposed amendment would improve the reliability of the EDG in its designed function during postulated design bases events. The licensee held a meeting with the staff on April 7, 1997, to discuss the proposed modification to the EDG protection circuitry and formally notified the NRC staff that the proposed modification constitutes an unreviewed safety question; and thus the modification would need the NRC review and approval pursuant to the requirements of 10 CFR 50.59(c) and 10 CFR 50.90. On April 18, 1997, the licensee submitted their proposed modification to the EDG circuitry and requested that staff approval be granted under exigent circumstances pursuant to 10 CFR 50.91(a)(6). The NRC staff is thus satisfied that, once formally notified of the potential deficiency in the EDG protection circuitry, the licensee used its best efforts to make a timely amendment request.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6), for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below: