



**RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) / PRIVACY ACT (PA) REQUEST**

2000-0088

1

RESPONSE TYPE  FINAL  PARTIAL

REQUESTER

Marcus J. Page

DATE

NOV 08 2000

**PART I. -- INFORMATION RELEASED**

- No additional agency records subject to the request have been located.
- Requested records are available through another public distribution program. See Comments section.
- APPENDICES Agency records subject to the request that are identified in the listed appendices are already available for public inspection and copying at the NRC Public Document Room.
- APPENDICES **A** Agency records subject to the request that are identified in the listed appendices are being made available for public inspection and copying at the NRC Public Document Room.
- Enclosed is information on how you may obtain access to and the charges for copying records located at the NRC Public Document Room, 2120 L Street, NW, Washington, DC.
- APPENDICES **A** Agency records subject to the request are enclosed.
- Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (see comments section) for a disclosure determination and direct response to you.
- We are continuing to process your request.
- See Comments.

**PART I.A -- FEES**

AMOUNT \*

\$ 292.91

- You will be billed by NRC for the amount listed.  None. Minimum fee threshold not met.
- You will receive a refund for the amount listed.  Fees waived.

\* See comments for details

**PART I.B -- INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE**

- No agency records subject to the request have been located.
- Certain information in the requested records is being withheld from disclosure pursuant to the exemptions described in and for the reasons stated in Part II.
- This determination may be appealed within 30 days by writing to the FOIA/PA Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Clearly state on the envelope and in the letter that it is a "FOIA/PA Appeal."

**PART I.C COMMENTS (Use attached Comments continuation page if required)**

The actual fees for processing your request are as follows:

Review: \$283.31  
Duplication: 9.60  
TOTAL: \$292.91

You have already submitted advance payment in the amount above.

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Carol Ann Reed

**RESPONSE TO FREEDOM OF INFORMATION  
ACT (FOIA) / PRIVACY ACT (PA) REQUEST**

FOIA/PA 2000-0088

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**PART II.A -- APPLICABLE EXEMPTIONS**

APPENDICES  
**A**

Records subject to the request that are described in the enclosed Appendices are being withheld in their entirety or in part under the Exemption No.(s) of the PA and/or the FOIA as indicated below (5 U.S.C. 552a and/or 5 U.S.C. 552(b)).

- Exemption 1: The withheld information is properly classified pursuant to Executive Order 12958.
- Exemption 2: The withheld information relates solely to the internal personnel rules and procedures of NRC.
- Exemption 3: The withheld information is specifically exempted from public disclosure by statute indicated.
  - Sections 141-145 of the Atomic Energy Act, which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165).
  - Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).
  - 41 U.S.C., Section 253(b), subsection (m)(1), prohibits the disclosure of contractor proposals in the possession and control of an executive agency to any person under section 552 of Title 5, U.S.C. (the FOIA), except when incorporated into the contract between the agency and the submitter of the proposal.
- Exemption 4: The withheld information is a trade secret or commercial or financial information that is being withheld for the reason(s) indicated.
  - The information is considered to be confidential business (proprietary) information.
  - The information is considered to be proprietary because it concerns a licensee's or applicant's physical protection or material control and accounting program for special nuclear material pursuant to 10 CFR 2.790(d)(1).
  - The information was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.790(d)(2).
- Exemption 5: The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. Applicable privileges:
  - Deliberative process: Disclosure of predecisional information would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. Where records are withheld in their entirety, the facts are inextricably intertwined with the predecisional information. There also are no reasonably segregable factual portions because the release of the facts would permit an indirect inquiry into the predecisional process of the agency.
  - Attorney work-product privilege. (Documents prepared by an attorney in contemplation of litigation)
  - Attorney-client privilege. (Confidential communications between an attorney and his/her client)
- Exemption 6: The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy.
- Exemption 7: The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated.
  - (A) Disclosure could reasonably be expected to interfere with an enforcement proceeding (e.g., it would reveal the scope, direction, and focus of enforcement efforts, and thus could possibly allow recipients to take action to shield potential wrongdoing or a violation of NRC requirements from investigators).
  - (C) Disclosure would constitute an unwarranted invasion of personal privacy.
  - (D) The information consists of names of individuals and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources.
  - (E) Disclosure would reveal techniques and procedures for law enforcement investigations or prosecutions, or guidelines that could reasonably be expected to risk circumvention of the law.
  - (F) Disclosure could reasonably be expected to endanger the life or physical safety of an individual.
- OTHER (Specify)

**PART II.B -- DENYING OFFICIALS**

Pursuant to 10 CFR 9.25(g), 9.25(h), and/or 9.65(b) of the U.S. Nuclear Regulatory Commission regulations, it has been determined that the information withheld is exempt from production or disclosure, and that its production or disclosure is contrary to the public interest. The person responsible for the denial are those officials identified below as denying officials and the FOIA/PA Officer for any denials that may be appealed to the Executive Director for Operations (EDO).

| DENYING OFFICIAL | TITLE/OFFICE                       | RECORDS DENIED | APPELLATE OFFICIAL |      |    |
|------------------|------------------------------------|----------------|--------------------|------|----|
|                  |                                    |                | EDO                | SECY | IG |
| Guy P. Caputo    | Director, Office of Investigations | Appendix A     | X                  |      |    |
|                  |                                    |                |                    |      |    |
|                  |                                    |                |                    |      |    |

Appeal must be made in writing within 30 days of receipt of this response. Appeals should be mailed to the FOIA/Privacy Act Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, for action by the appropriate appellate official(s). You should clearly state on the envelope and letter that it is a "FOIA/PA Appeal."

**APPENDIX A  
RECORDS BEING WITHHELD IN PART**

| <b><u>NO.</u></b> | <b><u>DATE</u></b> | <b><u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u></b>                                                                                                                                                                                                    |
|-------------------|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.                | 09/29/99           | Office of Investigations' Case No. 4-1999-033- San Onofre Nuclear Generating Station: Deliberate Violation of Security Plan With Management's Knowledge. (30 pages) <b>Portions withheld, EX. 6 and 7C</b>                                           |
| 2.                | 09/14/99           | Office of Investigations' Case No. 4-1999-036- San Onofre Nuclear Generating Station: Discrimination Against Bechtel Contractor by Supervision For Reporting Safety Concerns. (18 pages) <b>Portions withheld, EX. 5, Attorney-Client Privilege.</b> |

Title: SAN ONOFRE NUCLEAR GENERATING STATION:

[REDACTED]  
[REDACTED] EX 7C

Licensee:

Southern California Edison Co.  
23 Parker Street  
Irvine, CA 92718

Docket No.: 50-361/362

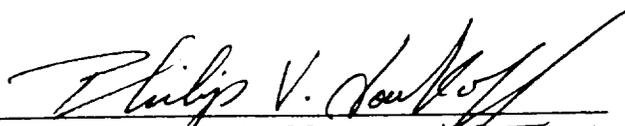
Case No.: 4-1999-033

Report Date: September 29, 1999

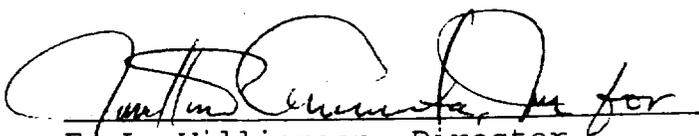
Control Office: OI:RIV

Status: CLOSED

Reported by:

  
Philip V. Joukoff, Special Agent  
Office of Investigations  
Field Office, Region IV

Reviewed and Approved by:

  
E. L. Williamson, Director  
Office of Investigations  
Field Office, Region IV

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Information in this record was deleted  
in accordance with the Freedom of Information  
Act, exemptions b + 7C  
FOIA- 2000-0088

A/1

SYNOPSIS

This investigation was initiated on June 22, 1999, by the Nuclear Regulatory Commission (NRC), Office of Investigations (OI), Region IV (RIV), to determine if

EX 7C

Based on the evidence developed, interviews, and document reviews, the allegation that SCE/SONGS

EX 7C

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DIRECTOR, OFFICE OF INVESTIGATIONS, REGION IV**

Case No. 4-1999-033

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DIRECTOR, OFFICE OF INVESTIGATIONS, REGION IV**

Case No. 4-1999-033

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EX 7C

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LIST OF INTERVIEWEES

|                                                                   | <u>Exhibit</u> |
|-------------------------------------------------------------------|----------------|
| BLUE, Sharon, Fitness-For-Duty Supervisor, SONGS.....             | 7              |
| CHAPINSKI, Leo J., former Security Officer, SONGS.....            | 4              |
| DAVILA, Julia, Business Analyst, SONGS.....                       | 8              |
| DEBENEDETTO, Christine, Manager of Human Resources,<br>SONGS..... | 9              |
| HARRIS, Robert, Security Investigator, SONGS.....                 | 6              |
| WALLACE, Jack, Security Manager, SONGS.....                       | 5              |

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DETAILS OF INVESTIGATION

Allegation No. 1

EX 7C

Applicable Regulations

10 CFR 73.71: Reporting of Safeguards Events (1998 and 1999 Editions)

Allegation No. 2

Employment Discrimination

Applicable Regulations

10 CFR 50.7: Employee Protection (1998 and 1999 Editions)

Purpose of Investigation

This investigation was initiated on June 22, 1999 (Exhibit 1), by the Nuclear Regulatory Commission (NRC), Office of Investigations (OI), Region IV (RIV), to determine if

During the course of the investigation, a second allegation was surfaced that SCE/SONGS managers terminated the employment of Leo J. CHAPINSKI, Security Officer (SO), SONGS, in retaliation for his having reported security concerns to the NRC.

Background

On March 31, 1999, Bruce EARNEST, Physical Security Inspector, Division of Reactor Safety (DRS), Region IV (RIV), was contacted by

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Coordination with NRC Staff (Exhibit 3)

On June 21, 1999, the RIV Allegation Review Board (ARB) discussed allegations and requested that OI:RIV interview [redacted] to determine what additional information was available. The ARB further directed that DRS:RIV review the transcript of OI's interview with CHAPINSKI to identify any potential violations of NRC rules and/or regulations.

EX. 7C

EX 7C

Interview of Allegor (CHAPINSKI) (Exhibit 4)

On July 29, 1999, CHAPINSKI was interviewed by OI:RIV in San Clemente, California, and stated as follows.

CHAPINSKI stated he was formerly employed by SCE/SONGS as a Nuclear Security Officer 2 (NSO-2) from October 1996 until June 7, 1999, when his protected area (PA) access was revoked. CHAPINSKI added that he was subsequently told by Jack WALLACE, Security Manager, SONGS, that "they no longer needed me as a security officer because I could not get into the protected area." CHAPINSKI added that until March 15, 1999, he had a PA access authorization, but on that date he "...had to leave my post due to a stressful situation, whereby another Edison employee served me a subpoena to go to court."

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CHAPINSKI related that in the end, he "...was off for nearly 30 days, just because people couldn't communicate between the doctors." CHAPINSKI advised that for the approximately 30 days he was absent from work, SONGS placed him on a family leave of absence, and paid him approximately \$9.00 per hour rather than his normal pay of \$11.45 per hour.

CHAPINSKI stated that since he was absent from work for over 30 days, SONGS procedures required him, upon his return to work, to complete a new Minnesota Multi Phasic Inventory (MMPI) examination and to meet with Dr. William HEARD, SCE/SONGS Contract Psychologist, to have his PA access authorization reinstated. CHAPINSKI added that "several weeks" after doing so, he was denied PA access reinstatement by Sharon BLUE, Supervisor,

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Fitness-For-Duty (FFD) Program, SONGS, based upon the results of his latest MMPI and a report supplied to SCE/SONGS by HEARD. CHAPINSKI added that after his PA access was denied, he met with WALLACE who told him that based upon his [CHAPINSKI's] inability to obtain PA access, SONGS did not have a job for him as an SO.

CHAPINSKI testified that he felt there was linkage between his losing his SO job at SONGS and his having discussed security concerns with EARNEST. CHAPINSKI related that his talking with EARNEST was "...just the straw that broke the camel's back. As I said before, most of my problems started once the supervision found out that I was a [redacted] working as a nuclear security officer, and I had had (sic) heard supervisors saying such things as it's pretty bad that we've got to [redacted]

Ex 6  
7C

[redacted] security officers, things of that nature."

CHAPINSKI stated that he spoke with EARNEST because he "didn't know where else to turn." CHAPINSKI related that he had previously talked with David ASKEY, Investigator, SONGS Employee Concerns Program (ECP), about "harassment at the workplace" and the "good old boy" system in the SONGS Security Department where employees who are "in" or "liked" can come to work late, sleep while on duty, etc. while those like him [CHAPINSKI] who are "out" are disciplined and/or terminated for such activities. CHAPINSKI related that he was told by ASKEY that the SONGS ECP could not assist him in his allegations.

CHAPINSKI stated that he told one or two of his close friends such as MARKHAM and/or Jerry BUSH, SO, SONGS, that he was providing security concerns to EARNEST. CHAPINSKI added that the NRC may also want to talk with these individuals, and perhaps other SOs that had been employed at SONGS for longer time periods than him [CHAPINSKI], as those individuals had information regarding [redacted]

Ex 7C

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EX  
7C

CHAPINSKI testified that in July 1998, he was in training to become a SONGS NSO-1, a higher paying position than the NSO-2 position that he occupied at that time. CHAPINSKI related that during a classroom discussion associated with the training, the instructor tried to make an analogy and mentioned Frank DELAFUENTE, SO, SONGS, and that he [DELAFUENTE] got into a situation while participating in a handcuffing drill during a previous training session where someone could have been hurt. According to CHAPINSKI, the instructor was "sticking up" for DELAFUENTE, but he [CHAPINSKI] "took exception to that" as DELAFUENTE was "very rude" and "discourteous" to him [CHAPINSKI] and "...went out of his way to make me feel real small and he [DELAFUENTE] was just a pain to work with." CHAPINSKI added that he told the instructor during the class that he [CHAPINSKI] would "do what ever it takes" to handcuff an aggressor, and, according to CHAPINSKI, the instructor then told him that he [CHAPINSKI] would stop during a handcuffing drill when the instructor told him to stop.

CHAPINSKI testified that he [CHAPINSKI] then "...made a comment that I shouldn't have made, and what I said was this; I will stop if I hear you. That one comment, I will stop if I hear you, was taken by Penny Smith Tyler two nights later to a good friend of hers by the name of Rick Weber. Rick Weber took it to another good friend of hers, James Linville. James Linville then started

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getting people's statements..." and "...I was taken out of my classroom. They took my red badge [PA access authorization], they took my site badge, and they sent me home, pending an investigation."

CHAPINSKI stated that after an investigation was conducted, he was allowed to return to work at SONGS as an NSO-2, but was told that he would have to wait 18 to 24 months before he would again be allowed to enter NSO-1 training. CHAPINSKI alleged that SMITH-TYLER, who shares [redacted] with Rick WEBER, NSO, SONGS, and LINVILLE worked together to file the complaint against him [CHAPINSKI] that had him removed from NSO-1 training so that SMITH-TYLER would be guaranteed of obtaining a permanent NSO-1 position for herself. CHAPINSKI stated that he subsequently filed a complaint with the SONGS Human Resources (HR) Department under the SONGS Focus on Resolution (FOR) program, an internal conflict resolution process available to SCE/SONGS employees, regarding his being removed from NSO-1 training. EX7C

CHAPINSKI testified that the FOR complaint he filed with SONGS HR regarding his being removed from NSO-1 training was heard by various levels of SCE/SONGS management without resolution. CHAPINSKI added that as a result, in March 1999, an FOR panel consisting of three SCE managers heard his [CHAPINSKI's] complaints and subsequently concluded that SCE/SONGS management had properly removed him from NSO-1 training. CHAPINSKI related that he disagreed with this finding. EX7C

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CHAPINSKI added that since his employment had been terminated by SCE/SONGS in June 1999, he filed another FOR complaint with SONGS HR that was currently in progress. CHAPINSKI stated that his current FOR complaint dealt not only with his PA access authorization being denied, but also with why he had not been allowed to work at other security posts outside the PA since Nicole HARNESS, SO, SONGS, who also had no PA access authorization, had been allowed to work. CHAPINSKI alleged that SCE/SONGS had also allowed HARNESS to test nuclear safeguards equipment and allowed her access to the secondary alarm station, which contains safeguards information, without her possessing the required PA access authorization. CHAPINSKI added that Noreen LEVAN, another SONGS SO, also did not have unescorted PA access, but continued to work because she was assigned to security work in areas that did not require PA access. CHAPINSKI stated that it was discriminatory for SONGS to accommodate these individuals while terminating his employment for not having PA access authorization.

In response to questioning, CHAPINSKI stated that he had no knowledge that the alleged discriminatory actions taken against him by SCE/SONGS were a result of his raising security concerns to EARNEST.

CHAPINSKI testified that former SONGS SO David PAGE was told by SCE/SONGS management to not be a witness for CHAPINSKI during his FOR hearing. CHAPINSKI added that PAGE formerly worked the graveyard shift with SMITH-TYLER, LINVILLE, and WEBER and either heard or overheard derogatory conversations about him [CHAPINSKI]. CHAPINSKI added that another former SONGS SO, Robert EDWARDS, told him [CHAPINSKI] that he [EDWARDS] could tell the NRC of instances in which SONGS personnel had done "a lot worse things" than him [CHAPINSKI] and very little, if anything, was done to them. CHAPINSKI added that Jeanine SMITH, SO, SONGS, would not testify during his [CHAPINSKI's] FOR board/panel because she feared losing her job if she did so.

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CHAPINSKI related that SONGS was further discriminating against him by not allowing him as many hours of overtime as other SOs, which he felt was done in retaliation for his reporting security concerns to EARNEST. CHAPINSKI added that, however, he had no evidence to support this feeling or "hunch" that this was the case. CHAPINSKI stated that "a lot of old-timers" at SONGS told him that the reason SONGS management "honed in" on him was because he carried a "book" and made notes about security activities at SONGS.

CHAPINSKI stated he was told by HEARD that out of the 500 questions contained in the MMPI examination, he [CHAPINSKI] answered all but six questions the same way in 1996 as he did in 1998. CHAPINSKI added that he again answered the questions the same way in the MMPI he took in 1999, yet, for reasons unknown to CHAPINSKI, HEARD refused to reinstate his PA access authorization in 1999. CHAPINSKI related that he appealed his denial of PA access reinstatement to BLUE, who told him he would need to obtain an opinion from another psychologist to appeal his PA access authorization denial. CHAPINSKI reported that he subsequently took another MMPI administered by "Dr. RICHARDS" of Kaiser Hospital, followed by a 1-hour consultation with this doctor, after which RICHARDS told him that he was acceptable for PA access at SONGS.

CHAPINSKI stated that he was now waiting for RICHARDS to contact Mark LIPIAN, a contract psychologist for SCE/SONGS in San Francisco, California, who will decide if his [CHAPINSKI's] PA access should be reinstated which would allow him to return to work at SONGS. CHAPINSKI added that he did not think that was going to occur, in part, because he had raised concerns to the NRC.

#### Testimony/Evidence

##### Interview of WALLACE (Exhibit 5)

On July 30, 1999, WALLACE was interviewed at SONGS by OI:RIV and stated as follows.

WALLACE related that he assumed his current position as security manager at SONGS on June 1, 1998. WALLACE added that during the first week of July 1998, CHAPINSKI was involved in a training class at SONGS to be promoted from his position at the time,

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NSO-2 unarmed officer, to the position of NSO-1 armed responder. WALLACE stated that during this training class, CHAPINSKI was reported to have made a threat of physical violence against other SONGS SOs. WALLACE added that when this threat information was received by SONGS security management, CHAPINSKI was placed on paid investigative leave while the matter was investigated by Robert HARRIS, Security Investigator, SONGS.

WALLACE recalled that HARRIS' investigation found that CHAPINSKI had made threatening comments during the training class, and a letter of reprimand was subsequently issued to CHAPINSKI. WALLACE related that the investigative process in this matter, as there was an alleged threat of physical violence, required that CHAPINSKI's unescorted site access be temporarily suspended during the investigation. WALLACE added that in order for his site access to be reinstated, CHAPINSKI was interviewed by HEARD who reported that it was acceptable for CHAPINSKI to continue to be employed as an NSO-2 and be granted unescorted site access, but HEARD advised against allowing CHAPINSKI to carry/use firearms which is required for the SONGS NSO-1 job position. WALLACE stated that as a result, he removed CHAPINSKI from NSO-1 training and told him [CHAPINSKI] that he would again be eligible for training/promotion to NSO-1 if he [CHAPINSKI] had no personnel complaints for a period of approximately 18 months.

WALLACE stated that during the above process, f

EX 7C

WALLACE recalled that CHAPINSKI's discrimination allegations were forwarded to SONGS HR where an FOR was conducted to investigate these allegations. WALLACE explained that the SONGS FOR process is a tiered resolution process that includes conflict resolution meetings between the employee and various levels of management up to a resolution board/panel consisting of three senior SCE managers that attempt to resolve/conciliate the complaint(s).

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WALLACE stated that CHAPINSKI's FOR process proceeded up the management chain at SONGS/SCE, and at each step of the process, CHAPINSKI made more and more allegations of potential wrongdoing on the part of the SONGS Security Department to the point that by the time the FOR board met to hear his complaints, CHAPINSKI had made 47 allegations. WALLACE recalled these allegations included: harassment and intimidation; violations of security procedures; filing nuclear safety concerns (NSC); SOs being prevented from "coverups" by SONGS Security Department managers of security violations; "breaking and entering"; and violations of numerous NRC regulations. WALLACE stated that in his opinion, each time CHAPINSKI had a forum, he would make more allegations. WALLACE testified that all CHAPINSKI's allegations were investigated by either HARRIS or Russell KRIEGER, Vice President, SCE, SONGS, but none of the allegations could be substantiated. EX 7C

WALLACE stated that he felt CHAPINSKI was less than truthful in the allegations that he made at SONGS, and in some of the information that he told SONGS Security Department personnel. WALLACE explained CHAPINSKI had told the FOR board that SONGS management had provided the FOR briefing book regarding his allegations to the NRC. According to WALLACE, CHAPINSKI also told the FOR board that he [CHAPINSKI] had been in contact with television shows "20/20," "60 minutes," and "Dateline" about his security allegations at SONGS. WALLACE added that CHAPINSKI had told SONGS Security Department personnel that he was "flying" to NRC:RIV to provide information to the NRC regarding SONGS security deficiencies and also that he [CHAPINSKI] had been "called" to RIV and NRC headquarters to help the NRC work on aberrant behavior regulations. WALLACE related that CHAPINSKI also raised various "conspiracy theories" to various SONGS employees that SONGS management was "out to get him" and/or terminate his employment as he was at one time a'

WALLACE related that in approximately March 1999, while CHAPINSKI was on duty at SONGS as an NSO-2, he was

WALLACE stated that after being [redacted] CHAPINSKI left work on sick leave, reporting that he was "stressed out" and then stayed absent from work on stress related leave for approximately 35 to 40 days. WALLACE added that since CHAPINSKI was absent from work for over 30 days, per procedure, his unescorted site/PA EX 61 7C

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access badge was suspended. WALLACE reported that upon returning to work, CHAPINSKI was referred to SONGS access authorization personnel at the Central Processing Facility (CPF) to have his unescorted site/PA access reinstated.

WALLACE advised this process took some time to complete as CHAPINSKI was referred to the SONGS psychologist for an interview based upon some comments that he [CHAPINSKI] had made to the access authorization personnel. WALLACE related that during this time, CHAPINSKI was assigned to security duties outside the protected area as he did not have unescorted site/PA authorization. WALLACE added that on June 7, 1999, BLUE informed him that HEARD had determined that CHAPINSKI's unescorted site access and Safeguards Information (SI) clearance were both to be permanently revoked for psychological reasons. WALLACE related there were no SONGS Security Department jobs in which CHAPINSKI could work without a SI clearance, and thus on June 8, 1999, he informed CHAPINSKI that he was being placed on 30 days unpaid leave with the opportunity to apply for a transfer to another SCE job during the leave period. WALLACE stated that on July 8, 1999, as CHAPINSKI had not found another job within SCE, his employment was terminated.

WALLACE stated that he never discriminated against CHAPINSKI as a result of his having raised NSCs. WALLACE added that, in fact, he had verbally on numerous occasions encouraged CHAPINSKI to report any concerns to the SONGS ECP so that the concerns could be investigated.

#### Interview of HARRIS (Exhibit 6)

On July 30, 1999, HARRIS was interviewed at SONGS by OI:RIV and stated as follows.

HARRIS stated that he first came in contact with CHAPINSKI in approximately July 1998, when he [HARRIS] was asked to investigate an incident in which it was alleged that CHAPINSKI had threatened other SOs during a training class at SONGS. HARRIS recalled that the alleged threat in question was that CHAPINSKI had stated he would "get even" with those SONGS SOs that had treated him badly in the past when he [CHAPINSKI] was promoted to the position of SO-1 and carried a firearm. HARRIS advised that he interviewed and took written statements from most of the attendees in the class session in question, after which he interviewed CHAPINSKI.

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HARRIS related that his investigation determined that most of the class attendees perceived that CHAPINSKI had made a threat to "get even" with some SONGS SOs. HARRIS added that when he interviewed CHAPINSKI, he denied making any threatening comments during the training class. HARRIS recalled that when he confronted CHAPINSKI with the written statements of the other class attendees, CHAPINSKI changed his account of the incident and stated he did not remember the incident; however, CHAPINSKI did tell him [HARRIS] that he did not like <sup>one of the</sup> individuals with whom CHAPINSKI had allegedly stated he would "get even." HARRIS related that CHAPINSKI also displayed anger with other SONGS SOs during the interview which resulted in him [HARRIS] recommending that CHAPINSKI be evaluated by HEARD to determine his suitability for unescorted site/PA access. HARRIS recalled that HEARD recommended that CHAPINSKI's unescorted site access be continued, but that he not be placed in a position that required the carrying/use of firearms. EX 7C

HARRIS stated that he next was involved with CHAPINSKI in approximately December 1998, when CHAPINSKI made 11 allegations to KRIEGER that included: SOs threatening each other; SOs threatening an NRC Inspector; SOs fighting with each other; manipulation of promotion selection processes; and security department supervisors exhibiting aberrant behavior. HARRIS reported that he investigated each of the allegations but could not substantiate any of them.

HARRIS stated that he was involved with CHAPINSKI a third time in approximately February 1999, when CHAPINSKI alleged that [redacted] and that two SOs had threatened to file an NSC against him [CHAPINSKI] in an attempt to have him removed from SO-1 training. HARRIS stated that he investigated these allegations and determined that one EX 7C

HARRIS added that the allegation regarding the SOs threatening to file an NSC against CHAPINSKI could not be substantiated. EX 7C

HARRIS stated that he was last involved with CHAPINSKI in the latter part of February 1999, when CHAPINSKI made an allegation that an unidentified SCE/SONGS employee was acting in a "aberrant/abhorrent" manner and was physically and verbally threatening. HARRIS related that he investigated and determined

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that CHAPINSKI was making the allegation against WALLACE due to a verbal disagreement that CHAPINSKI and WALLACE had prior to a Security Department meeting. HARRIS reported that his investigation determined that CHAPINSKI and WALLACE had a verbal disagreement during which both individuals raised their voices, but the witnesses to the incident did not observe any physical intimidation or aberrant behavior. HARRIS stated that the allegation was not substantiated.

HARRIS stated that he had no knowledge whether or not CHAPINSKI had ever raised any NSCs to the ECP or to SONGS management. HARRIS added that he had no knowledge that SONGS management had ever discriminated against CHAPINSKI in retaliation for his involvement in whistle-blowing activities.

AGENT'S NOTE: At the request of the reporting agent, HARRIS provided copies of his investigation reports and notes regarding the above investigations. These documents are shown in Exhibit 6, pp. 4 to 100.

#### Interview of BLUE (Exhibit 7)

On July 30, 1999, BLUE was interviewed at SONGS by OI:RIV and stated as follows.

BLUE stated that her job duties included supervising the evaluation of SONGS personnel for drug and alcohol usage to determine if personnel were competent to conduct their job related duties. BLUE added that she also supervised the SONGS Continual Behavioral Observation Program as well as the SONGS violence in the workplace program.

BLUE related that in July 1998, it was brought to her attention that CHAPINSKI had allegedly made some threatening comments during a training class at SONGS. BLUE stated she discussed the matter with Noel JERVIS, Operations Commander, SONGS, and it was decided that HARRIS would be asked to investigate the incident to determine the circumstances.

BLUE related that HARRIS' investigation determined that some of the SOs in the training class felt that CHAPINSKI's comments meant he was going to "get even" with other SOs when he [CHAPINSKI] was authorized to carry a firearm. BLUE recalled that HARRIS had recommended that CHAPINSKI be sent to HEARD for

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evaluation. BLUE added that she also felt CHAPINSKI should be evaluated by HEARD, and she passed this information to Robert SYPULT, Corporate Security Director, SCE, who concurred with her opinion.

BLUE stated that HEARD subsequently evaluated CHAPINSKI and reported that he [CHAPINSKI] should be allowed to continue having unescorted PA access to SONGS, but he should not be allowed to use firearms in his work.

BLUE related that she next was involved with CHAPINSKI in approximately March 1999, when CHAPINSKI took a stress leave from SONGS, and her department was monitoring the situation to determine if he should be allowed continued unescorted site/PA access. BLUE stated that when CHAPINSKI returned from this leave, as he was absent from the site for over 30 days, he had to process through the FFD department to determine his suitability to continue to have unescorted site/PA access.

BLUE added that during this process, CHAPINSKI told one of her subordinates, Julia DAVILA, Analyst, SONGS, that he wanted to be called by a new name, "Jack Bull", rather than his own name. BLUE recalled that CHAPINSKI told DAVILA that "Jack Bull" was the name of a Home Box Office (HBO) movie in which the main character, "Jack Bull," took the law into his own hands and acted basically as a vigilante. BLUE recalled that CHAPINSKI told DAVILA that he admired the convictions, morals, and ethics of "Jack Bull", which resulted in DAVILA recommending that CHAPINSKI be administered a new MMPI test with an additional evaluation by HEARD.

BLUE stated that on May 23, 1999, HEARD reported to SONGS that based upon the new MMPI, the "Jack Bull" statements and his personal interview with CHAPINSKI, he [HEARD] had concluded that CHAPINSKI should not be allowed unescorted site access/PA to SONGS for psychological reasons.

BLUE stated she was aware that CHAPINSKI had filed an equal employment opportunity complaint against SONGS regarding his being removed from SO-1 training in 1998, but she had no knowledge that CHAPINSKI had ever raised any nuclear safety related concerns or allegations to SONGS management or anyone else.

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Interview of DAVILA (Exhibit 8)

On July 30, 1999, DAVILA was interviewed at SONGS by OI:RIV and stated as follows.

DAVILA advised that a portion of her job duties was the review of SONGS FFD Program and access authorization documents to recommend whether or not personnel should be granted unescorted access to the SONGS PA. DAVILA added that her involvement in these activities caused her to be involved on two occasions with CHAPINSKI's access authorization.

DAVILA recalled that in approximately mid-1998, CHAPINSKI's PA access authorization was suspended by SONGS, and she was asked by her supervisor, BLUE, to review CHAPINSKI's files to determine if his PA access authorization should be reinstated. DAVILA stated she reviewed the file, including a criminal history check, an MMPI test/evaluation, and a letter from HEARD which stated PA access could be reinstated. DAVILA related that based upon this review, she found that CHAPINSKI met the requirements for unescorted PA access. DAVILA added that she recommend that CHAPINSKI's PA access be reinstated at the time, which was subsequently done.

DAVILA stated that she was again involved with CHAPINSKI on approximately April 22, 1999, when he was returning to work at SONGS from a disability leave. DAVILA related that as he [CHAPINSKI] had been absent from work for over 30 days, he was required to have his PA access reinstated, in accordance with SONGS security procedures. DAVILA added that CHAPINSKI came to the CPF and completed a Personal History Questionnaire (PHQ) that was required to renew his PA access. DAVILA recalled that in completing the form, CHAPINSKI answered two of the questions, pertaining to whether he had ever been removed from and/or been denied unescorted access at a nuclear power plant because of FFD violations, as "yes."

DAVILA stated that due to these answers, the clerk helping CHAPINSKI summoned her [DAVILA], who then discussed these PHQ answers with CHAPINSKI and determined that CHAPINSKI had misunderstood the questions and the correct answers to the questions was actually "no." DAVILA related that during this interaction with CHAPINSKI, she noted that he had also written on the PHQ that he had previously used another name or alias, "Jack

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Bull", and she questioned him about this name usage. DAVILA recalled that CHAPINSKI told her this was a new name he wanted his friends to call him that came from the title of an HBO movie of the same title. According to DAVILA, CHAPINSKI then explained that "Jack Bull" had the convictions, morals, and ethics that he admired.

DAVILA related that subsequent to talking with CHAPINSKI, she researched the themes of the "Jack Bull" movie, and determined that they involved the main character, "Jack Bull" taking the law into his own hands and pursuing a quest for vigilante justice when the legal system failed to right those wrongs brought on "Jack Bull" by "an evil cattle baron." DAVILA stated that based upon her interview with CHAPINSKI and the "Jack Bull" information, she told BLUE that CHAPINSKI should be considered for psychological evaluation.

DAVILA stated that after CHAPINSKI was examined by HEARD on this occasion, she received instructions from BLUE to permanently revoke his [CHAPINSKI's] PA access based upon HEARD's recommendation.

AGENT'S NOTE: At the request of the reporting agent, DAVILA supplied copies of CHAPINSKI's PHQ and an associated electronic mail that she had written to BLUE about her April 1999 interaction with CHAPINSKI. Copies of these two documents are shown in Exhibit 8, pp. 3 and 4.

Interview of DEBENEDETTO (Exhibit 9)

On July 30, 1999, Christine DEBENEDETTO, HR Manager, SONGS, was interviewed at SONGS by OI:RIV and stated as follows.

DEBENEDETTO stated that her job duties included supervising the SONGS FOR program. DEBENEDETTO added that she first became involved with CHAPINSKI in approximately July 1998, when she learned an allegation had been made that CHAPINSKI had made some inappropriate comments during a SO-1 training class, and HARRIS had been asked to investigate the matter. DEBENEDETTO related that after the investigation was complete, she was aware that CHAPINSKI was removed from SO-1 training, and he had a meeting with WALLACE during which CHAPINSKI was informed that he would have to wait approximately 18 months before again being considered for SO-1 training.

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DEBENEDETTO related that in September 1998, she received an FOR complaint from CHAPINSKI alleging that he [CHAPINSKI] was the subject of employment discrimination. DEBENEDETTO recalled that CHAPINSKI felt he was the subject of employment discrimination as the disciplinary action taken against him by SONGS/SCE regarding the training class incident was more severe than the disciplinary action taken in the past against other SOs for similar acts. DEBENEDETTO related that this FOR complaint by CHAPINSKI was taken to the third and highest "step" in the FOR process in which a resolution panel/board of senior SCE managers heard CHAPINSKI's complaint in a formal setting. DEBENEDETTO recalled that the resolution panel/board found that the disciplinary action taken by SONGS management was appropriate and thus found against CHAPINSKI.

DEBENEDETTO stated that her department currently had in process a second FOR complaint filed by CHAPINSKI alleging that his unescorted site/PA access was improperly revoked by SONGS leading to his being improperly terminated by SCE in June/July 1999. DEBENEDETTO added that this FOR was filed in July 1999, and there were not any conclusions to the FOR at this time.

DEBENEDETTO stated that she had no knowledge that CHAPINSKI had ever raised any nuclear safety concerns to anyone at SONGS.

#### Additional Coordination with NRC Staff

On August 6, 1999, OI:RIV, forwarded a copy of CHAPINSKI's interview transcript to Russell WISE, Senior Allegations Coordinator, RIV, for review by the NRC staff (Exhibit 10). On August 13, 1999, EARNEST reported that he had reviewed the transcript and wanted to review the results of the additional interviews completed by OI:RIV in this case as well as the SCE/SONGS investigative reports completed by HARRIS prior to making a determination of |

| Ex 7C

On August 27, 1999, OI:RIV provided EARNEST with the Results of Interview with DAVILA and HARRIS (Exhibit 12). On September 23, 1999, EARNEST reported that his review of the information developed by OI during this investigation identified no new issues that warranted further investigative activity and recommended closing the investigation. EARNEST related the

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Review of Documentation

At the request of OI:RIV, SCE/SONGS provided copies of the documents associated with CHAPINSKI's September 1998 FOR complaint. A review of these documents and those provided by HARRIS and DAVILA during their interviews revealed the following information that is pertinent to this investigation.

On approximately /



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testified that he met with a SONGS ECP Investigator [ASKEY] about some of his concerns but was told that the ECP could not help him.

∩

[REDACTED]

EX 7C

However, CHAPINSKI also testified that his talking with EARNEST was "...just the straw that broke the camel's back. As I said before, most of my problems started once the supervision found out that I was a [REDACTED] working as a nuclear security officer, and I had had (sic) heard supervisors saying such things as [REDACTED] [REDACTED] security officers, things of that nature."

EX 6 r  
7C

CHAPINSKI left work in March 1999, due to a stress induced situation that did not involve SONGS management and was then absent from work for a long enough period of time that his PA access was suspended. While going through the process to have his PA access reinstated, CHAPINSKI made statements to DAVILA regarding his wanting to be called "Jack Bull" which led her to question his mental/emotional stability for PA access. Subsequently, based upon an MMPI and a personal interview, HEARD

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concluded that CHAPINSKI should not be allowed PA access for psychological reasons. Without such access, CHAPINSKI could not work as a SONGS SO.

Conclusions

Based on the evidence developed, testimony, documentation and a review by the NRC staff,†

[REDACTED]

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LIST OF EXHIBITS

| <u>Exhibit No.</u> | <u>Description</u>                                                      |
|--------------------|-------------------------------------------------------------------------|
| 1                  | Investigation Status Record, dated June 22, 1999.                       |
| 2                  | Electronic Mail from WISE, dated June 3, 1999.                          |
| 3                  | NRC ARB Minutes, dated June 21, 1999.                                   |
| 4                  | Transcript of Interview with CHAPINSKI, dated July 29, 1999             |
| 5                  | Results of Interview with WALLACE, dated August 9, 1999.                |
| 6                  | Results of Interview with HARRIS, dated August 10, 1999.                |
| 7                  | Results of Interview with BLUE, dated August 10, 1999.                  |
| 8                  | Results of Interview with DAVILA, dated August 12, 1999.                |
| 9                  | Results of Interview with DEBENEDETTO, dated August 11, 1999            |
| 10                 | Memorandum from Williamson to WISE, dated August 6, 1999.               |
| 11                 | Electronic Mail from EARNEST, dated August 13, 1999.                    |
| 12                 | Memorandum from Williamson to Gail GOOD, dated August 27, 1999.         |
| 13                 | Memorandum from EARNEST to WISE, dated September 23, 1999.              |
| 14                 | Outline/Notes of WALLACE, undated.                                      |
| 15                 | Memorandum from HARRIS to BLUE, with Attachments, dated August 4, 1998. |
| 16                 | Letter from HEARD to Marty FLANNERY, SCE/SONGS, dated May 23, 1999.     |

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Title: SAN ONOFRE NUCLEAR GENERATING STATION:

DISCRIMINATION AGAINST BECHTEL CONTRACTOR BY SUPERVISION  
FOR REPORTING SAFETY CONCERNS

Licensee:

Southern California Edison Co.  
23 Parker Street  
Irvine, CA 92718

Docket No.: 50-361/362

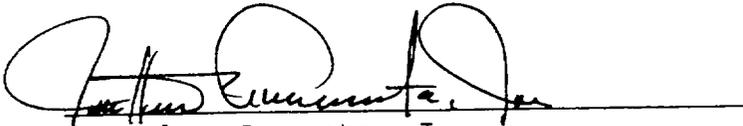
Case No.: 4-1999-036

Report Date: September 14, 1999

Control Office: OI:RIV

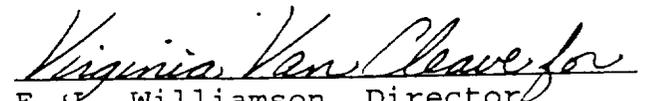
Status: CLOSED

Reported by:



Jonathan Armenta, Jr.  
Senior Special Agent  
Office of Investigations  
Field Office, Region IV

Reviewed and Approved by:



E. L. Williamson, Director  
Office of Investigations  
Field Office, Region IV

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SYNOPSIS

This investigation was initiated on July 7, 1999, by the Nuclear Regulatory Commission (NRC), Office of Investigations (OI), Region IV (RIV), to determine if a Bechtel Construction, Inc. (Bechtel) contract painter, at Southern California Edison's (SCE) San Onofre Nuclear Generating Station (SONGS), was the subject of employment discrimination by his management for reporting concerns.

Based on the evidence developed, testimony, documents, and a review by the technical staff and the regional counsel, the allegation that the contract painter was the subject of employment discrimination by his management for reporting concerns was not substantiated.

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## DETAILS OF INVESTIGATION

### Allegation

Discrimination Against Bechtel Contractor by Supervision for Reporting Safety Concerns

### Applicable Regulations

10 CFR 50.5: Deliberate Misconduct (1999 Edition)

10 CFR 50.7: Employee Protection (1999 Edition)

### Purpose of Investigation

This investigation was initiated on July 7, 1999, by the Nuclear Regulatory Commission (NRC), Office of Investigations (OI), Region IV (RIV), to determine if Ricardo CASTRO, a contract painter, Bechtel Construction, Inc. (Bechtel), employed at Southern California Edison's (SCE) San Onofre Nuclear Generating Station (SONGS), was the subject of employment discrimination by Bechtel management for reporting concerns (Exhibit 1).

### Background

On June 23, 1999, John KRAMER, NRC Resident Inspector at SONGS, was contacted by CASTRO who reported he [CASTRO] was concerned that several Bechtel foremen identified as Butch CABRERA, Steve TOTH, and Dave WHITE, overseeing paint coating applications at SONGS, did not have the technical expertise to be foremen, and the paint coating applications were not being properly applied. CASTRO explained he was concerned about the paint coating applied to the main condenser water boxes and water box components. CASTRO related that as a result of his complaint about this issue, he was given 1 week off without pay approximately 2 years ago.

CASTRO stated he raised his concern to the Bechtel general foreman and had talked to the SONGS Nuclear Safety Concerns Program (NSC). He said the Bechtel foreman did not do anything with his concerns, and the NSC informed him there was nothing they could do about his concerns.

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On July 6, 1999, the RIV Allegation Review Board (ARB) requested that OI:RIV interview CASTRO and attempt to obtain additional information about his concerns.

#### Additional Background

OI:RIV conducted two investigations [OI:RIV Case Nos. 4-1998-043 and 4-1998-045] at SONGS during 1998. The allegers in both investigations were contract Bechtel painters who reported they were discriminated against by Bechtel management for reporting paint related concerns. Allegers in the aforementioned cases related detailed information regarding Bechtel's "ranking system" [Bechtel's Craft Ranking Procedures (Exhibit 2)] used by management to schedule employee lay offs during reduction-in-force (RIF) periods.

The aforementioned OI investigations revealed Bechtel utilized the force ranking process to evaluate Bechtel employees. According to Bechtel management, a numerical grade was assigned for each employee based on a sum total of points assigned to six categories: safety, quality, job knowledge, initiative, attendance, and productivity. The final number was used by management to determine who would be laid off during off peak times or when economic conditions warranted a RIF. Both allegers in each of the previous investigations claimed they were numerically ranked low which enabled management to terminate them early in the lay off period. Both previous OI:RIV investigations concluded there was insufficient evidence to substantiate the allegations that the allegers were discriminated against by Bechtel management for reporting safety concerns.

In OI:RIV Case No. 4-1998-043, it was determined the allegger filed a concern with the NSC regarding the quality of the coating application on a condenser water box. The NRC:RIV technical staff on October 22, 1998, reported that the paint coatings application on the condenser water box was of such low safety significance that the RIV staff recommended no further action.

#### Interview of Allegger [Ricardo G. CASTRO] (Exhibit 3)

CASTRO was interviewed by OI:RIV on July 13, 1999, at the NRC resident's office at SONGS and stated substantially as follows.

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CASTRO stated he began working at SONGS in 1980 as a journeyman painter and has held that position for about 20 years. In 1997, according to CASTRO, he was involved in an incident with his supervisor, Gary ZUBER, Foreman, Bechtel, which ultimately resulted in disciplinary action against him [CASTRO] for refusing to follow a directive.

CASTRO said in early 1997, ZUBER instructed him to repaint a condenser "butterfly" water box which the swing shift had painted the night before. CASTRO recalled the condenser water box had a lot of bubbles on the surface, and the paint had not been correctly applied. CASTRO said he refused to repaint it because if he did so, the bubbles would reappear, and it would reflect on him having done a poor job. CASTRO said ZUBER walked away, but returned later and informed him [CASTRO] that he was being laid off for a week for insubordination. CASTRO said he went to see Jim ANGELO, General Foreman [1997], Bechtel, but to no avail, because he [CASTRO] was laid off for a week for disobeying ZUBER. CASTRO said he believed he was engaged in a nuclear safety-related activity. He said painting pieces of equipment, like the condenser water boxes, protected the equipment that helped run the plant.

In November 1997, CASTRO said Scott PARADA offered him a foreman's job, but he turned it down when PARADA told him the position did not include a pay raise. CASTRO said PARADA offered the job to Vince BROWN, Journeyman Painter, who accepted the job without a pay increase. CASTRO said PARADA initially wanted him [CASTRO] to take the foreman's job because he [PARADA] wanted someone who was qualified and experienced, but instead, PARADA assigned him [CASTRO] to be the component checker [a nonmanagement position] for the day-shift crew.

CASTRO recalled, in September 1998, BROWN asked him [CASTRO] if he would voluntarily take a week off work, as Excused Absence (EA), so that painters who had previously been laid off would not have to be laid off from work again. CASTRO said he thought it was a good idea, and although he said he needed the money, he volunteered to be on EA for 1 week. CASTRO said it balanced things out with those painters who had already been laid off, adding that, "...I just want to help the coworkers, instead of letting them go... I agreed to do that because I like to cooperate with my coworkers." He explained that eight other painters agreed to be placed on EA for 1 week. The following

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day, CASTRO said management posted a sign-up list for those painters wishing to participate. He claimed he signed up for the fourth week, but when management posted the schedule for EA, he [CASTRO] learned from PARADA that he [CASTRO] was selected to go on EA the first week. He said he talked to PARADA and was told that since his [CASTRO's] name was not on the sign-up list, management selected him for the first week. He said it was unfair, and he felt management selected him to go on EA the first week in retaliation for reporting his concerns in 1997.

CASTRO said he went on EA on October 12, 1998, and was off for a week. When he returned to work the following week, CASTRO stated PARADA informed him that he [CASTRO] was being laid off, as part of a RIF, the next week, October 26, 1998. CASTRO said PARADA explained that Bechtel was trying to economize, and the lay off was part of a RIF and not part of any disciplinary action. CASTRO said he talked to Dan MORIARITY, General Foreman [1998], Bechtel, regarding his lay off. CASTRO said MORIARITY told him there was nothing he could do because it was part of a RIF, and everybody at Bechtel was participating. CASTRO explained he had just returned from a week off on EA, and he did not appreciate being laid off again so soon. CASTRO said he told MORIARITY that the RIF schedules were unfair. CASTRO stated although he volunteered to be laid off for a week on October 12, 1998, he felt management treated him unfairly by laying him off almost 2 weeks back-to-back.

According to CASTRO, he received a "force ranking" score of 21 from PARADA, which he attributed to his experience and seniority. CASTRO further stated that on May 29, 1999, he and about 40 other painters were laid off in a series of staggered lay offs [beginning on April 26, 1999].

AGENT'S NOTE: Force ranking was a method by which Bechtel evaluated their employee's performance by assigning a numerical grade based on the sum total of points assigned to six categories. The final number was used by management to determine who would be laid off during off peak times or when economic conditions warranted a RIF (Exhibit 2).

According to the licensee's investigation report, NSC 99-051, more than 80 Bechtel painters were laid off as a result of the April 26, 1999, RIF. CASTRO was among the last remaining nonmanagement painters to be laid off. Seven foremen were also laid off during this force ranking (Exhibit 4: enclosure two, pages 1-8).

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CASTRO said he returned to work on June 28, 1999, but he felt he was discriminated against because other painters, with less seniority, experience, and a lower ranking number, were called back to work before he was. He said the RIF affected everybody at Bechtel, "a lot of people were laid off... they went down to eight people," and only 33 painters were called back to work. CASTRO said the eight painters who were not laid off were all foremen. Three of the eight foremen, CABRERA, TOTH, and WHITE had recently been promoted to foreman and did not have his experience or seniority. CASTRO said CABRERA, TOTH, and WHITE worked for Bechtel about 6 years, and he felt management should have promoted painters based on their painting skills and job performance, not favoritism. He said seven painters had been promoted recently [within 2 years] and none of them were as qualified or as experienced as he was.

CASTRO said he reported his concerns to the NSC on June 3, 1999, which resulted in an open investigation [NSC 99-51] by the NSC, alleging that Bechtel's continued efforts to discriminate against him for having reported his safety concerns in 1997, was evident by his recent lay off on May 29, 1999. On June 16, 1999, CASTRO met with NSC Investigator, Randy BAKER, to discuss the findings of the NSC investigation. According to CASTRO, BAKER advised him [CASTRO] the investigation did not reveal any wrongdoing on Bechtel's part. CASTRO said BAKER told him Bechtel management adhered to Bechtel's Craft Ranking Procedures, and there was no evidence to substantiate his [CASTRO's] complaint. BAKER stated there was nothing the NSC could do to change the way Bechtel laid off personnel. CASTRO said he told BAKER he was disappointed and dissatisfied with NSC's investigation and was going to the NRC on the issue. Although CASTRO informed NSC of his intentions to go to the NRC to report his concerns, he stated neither PARADA nor MORIARITY knew about his visit with the NRC resident at SONGS on June 23, 1999.

CASTRO said he had never been discouraged by management from reporting concerns to the NRC or the NSC; in fact, he said they encouraged employees to report their concerns to management first and if the employee was still not satisfied, then they had the liberty to go to the NRC. He further stated he had never been threatened with his job. He said part of the reason why he went to the NRC was because he felt free to express his concerns without fear of retaliation from Bechtel or SONGS.

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CASTRO said he did not raise the discrimination issue with the NRC resident when he [CASTRO] reported his concerns because he felt it was not a discriminatory matter in the first place and was not a discriminatory concern for the NRC to address. He further stated, "It's not an issue for NRC...[the NRC's] real concerns are about [safety] equipment and the plant [safety]. That's why I never brought it to NRC."

#### Coordination with NRC Staff

On July 23, 1999, OI:RIV provided a copy of CASTRO's transcript of interview to Russ WISE, Senior Allegations Coordinator (SAC), RIV. WISE was requested to provide the transcript to the RIV technical staff for review of any potential safety/health issues.

On August 16, 1999, Dale POWERS, Chief, Engineering and Maintenance Branch, Division of Reactor Safety, RIV, reported the results of his review of CASTRO's transcript (Exhibit 5). POWERS stated that based on his review of the information provided, he did not identify any technical issues; further, the condition of the main condenser water box protective coatings was not a safety-related matter. POWERS added, since CASTRO did not provide OI with information that he had participated in any safety-related work activity, no additional review by the NRC was warranted.

#### Coordination with Regional Counsel

On July 23, 1999, OI:RIV provided a copy of CASTRO's transcript of interview to Karla SMITH, Regional Counsel, RIV. SMITH was asked to review CASTRO's transcript of interview and determine if CASTRO was engaged in protected activity and if there was sufficient evidence to support a claim that CASTRO was the subject of employment discrimination.

In an electronic-mail, dated August 26, 1999, SMITH stated

Based on a review of CASTRO's transcript of

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EX 5

interview, the "SCE Nuclear Safety Concerns Program Investigation Summary," and the Bechtel "Craft Ranking Procedure," SMITH

EX 5

Review of Documentation

Nuclear Safety Concerns Program Investigation Summary Case NSC 99-51, dated August 2, 1999 (Exhibit 4)

This document was an investigation summary of NSC Report of Investigation, NSC 99-51, and reported the NSC findings of the concerns identified by CASTRO on August 2, 1999. None of the five concerns were substantiated by NSC. The following is a summary of the results of the investigation as reported in the NSC Investigation Summary (Exhibit 4).

INVESTIGATION SUMMARY

NSC Case No. NSC 99-51, dated August 2, 1999

RE: NSC 99-51:

Issue #1: CASTRO alleged that several identified foremen did not have his technical expertise and/or seniority and were not qualified for the job.

Conclusion: The NSC investigation revealed the evidence did not substantiate the allegation.

Issue #2: CASTRO alleged that Bechtel laid him off before other less qualified painters were laid off.

Conclusion: CASTRO was laid off in accordance with Bechtel's procedure for RIFs. Bechtel was required to lay off all painters, including seven foremen. This concern was not substantiated.

Issue #3: CASTRO alleged that MORIARITY moved his [CASTRO's] name to the top of the voluntary EA list. As a result, CASTRO was one of the first painters to be on EA, contrary to his claim that he signed up for a later time.

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Conclusion: The NSC found no evidence to support ~~that~~ CASTRO's EA assignment on the first week had anything to do with MORIARITY. This concern was not substantiated.

Issue #4: CASTRO alleged that he was assigned to a painting crew during Unit 2 Cycle 10 instead of being assigned as an independent worker because he complained about MORIARITY.

Conclusion: The NSC investigation did not find any evidence that CASTRO's assignment to a painting crew was related to his allegation against MORIARITY. The issue was not substantiated.

Issue #5: CASTRO alleged that he was laid off on May 29, 1999, due to harassment, intimidation, and racial discrimination.

Conclusion: The NSC found no evidence to support that CASTRO was laid off as a result of management's retaliation against him. CASTRO was laid off in accordance with Bechtel's policies for RIFs. This concern was not substantiated.

Bechtel Craft Ranking Procedure, dated October 7, 1998 (Exhibit 2)

This document set forth the purpose, scope, supervisory responsibilities, ranking criterion, and procedures for implementing the force ranking process utilized by Bechtel.

Compiled BECHTEL Painter's Force Ranking Report, dated April 26, 1999 (Exhibit 4: Enclosure two, Pages 1-8)

This document showed the consolidated results for May 29, 1999, force ranking of Bechtel painters. CASTRO's total score was 21, the highest ranking for nonmanagement personnel.

Testimony/Evidence

Interview of Willis FRICK (Exhibit 7)

FRICK, Manager, NSC, SCE, was interviewed by OI:RIV on July 13, 1999, and advised he has worked for SCE since 1975. He explained

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the role and purpose of the NSC and how, by agreement, it was utilized by contractor personnel to include Bechtel personnel. FRICK added that all new personnel assigned to SONGS, were thoroughly briefed on the presence and accessibility of the NSC. Furthermore, all supervisors were given specific training to allow subordinates the opportunity to voice concerns to the NSC or NRC without fear of retaliation.

In regard to the conduct of investigations by the NSC, FRICK stated he had a staff of four full-time investigators, but on occasion, utilized technical staff personnel depending on the issues. FRICK advised that Randy BAKER, Investigator, NSC, was assigned to investigate CASTRO's safety concerns. FRICK explained that although the investigation had been completed, the investigation report would not be issued until the end of July or early August 1999, adding that a copy of the investigation report would be provided to OI:RIV upon issuance.

#### Analysis of Evidence

An analysis of evidence was performed to examine those factors involved to determine if CASTRO was the subject of employment discrimination.

##### 1. Protected Activity

In 1997, CASTRO reported a paint related concern to his supervisor, which according to SMITH, [

EX 5

##### 2. Management's Knowledge of Protected Activity

In 1997, CASTRO informed ZUBER that the coating applications on the condenser water box had not been applied properly. After he learned from ZUBER that he was being laid off for insubordination, he [CASTRO] talked to ANGELO, but was still laid off for a week for insubordination. In November 1997, CASTRO told MORIARITY he [CASTRO] was not being treated

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fairly as a result of his concerns he reported to ~~ZUBER~~. On June 3, 1999, CASTRO filed five concerns with the NSC and also reported similar concerns to the NRC resident inspector at SONGS.

3. Adverse Action

CASTRO was laid off for a week in 1997 for insubordination, not due to a RIF. CASTRO said he felt management retaliated against him because he reported paint related concerns. He volunteered for the second lay off on October 12, 1998, as part of an EA. On October 26, 1998, CASTRO was laid off as part of a RIF. On May 29, 1999, Castro was laid off for 1 month as a result of another economic downsize by Bechtel.

4. Did the Adverse Action Result from CASTRO Engaging in Protected Activity?

CASTRO was given a week off in 1997, for not obeying a direct instruction by his superior.

CASTRO was laid off twice, for a week at a time, in October 1998. CASTRO signed up for the first voluntary, temporary lay off known as an "Excused Absence." CASTRO complained that he signed up to go on EA on the fourth or fifth week, but was told differently by his management. PARADA selected CASTRO to take EA leave on the first week, October 12, 1998. The second October 1998 lay off was a week after he returned from his EA lay off. On October 26, 1998, CASTRO was laid off as part of a RIF, but he claimed he was being treated unfairly because management laid him off 2 weeks almost back-to-back. CASTRO referred to Bechtel's "force ranking" system (Exhibit 2), used to govern the temporary lay offs, as an unfair employment practice, but according to the licensee's internal investigation report (Exhibit 4), Bechtel has a nondiscriminatory system in place, and that system ranked CASTRO in accordance with Bechtel's procedure for RIFs.

In May 1999, the lay off schedule was also governed by Bechtel's "force ranking" system, which appeared to occur without discrimination, i.e., CASTRO's ranking score was one of the highest [21], and he was one of the last to be laid off out of approximately 87 painters (Exhibit 4:

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Enclosure 2, pp. 1-8). CASTRO was concerned that painters with lower ranking scores were called back before he was. Everybody was laid off except for eight foremen, and it is unlikely this May 1999 lay off, which occurred 2 years after the "protected activity," was related to the 1997 incident. Bechtel had gone through several economic crunches and in order to be objective and fair in scheduling lay offs, Bechtel used the force ranking system to determine who would be laid off during off peak times or when economic conditions warranted a RIF.

Regarding the promotion of other painters over him, the licensee reported that foremen were selected from the ranks of qualified journeymen painters. By his own admission, CASTRO indicated that all journeymen painters were qualified to be foremen. CASTRO did not give any examples why he thought that CABRERA, TOTH, and WHITE did not qualify to be foremen, or that they were unable to perform the duties of journeymen painters. He said his supervisors offered him several opportunities to serve as backup foreman (including at least one since the 1997 incident), which he refused, since the assignments involved no pay increase. CASTRO was offered, and served, in a position as a temporary component checker since the 1997 incident. CASTRO's own admission to this issue indicates Bechtel may have had legitimate nondiscriminatory reasons for not promoting him, such as his demonstrated lack of initiative to serve as a backup foreman when asked.

The adverse actions which CASTRO claimed resulted from management's retaliation for reporting safety concerns were for the most part due to CASTRO's own choices during the last 2 years. CASTRO chose to disobey a directive; volunteered to participate on EA; and chose not to take a foreman's job position.

### Conclusions

Based on the evidence developed, testimony, documents, and a review of the allegations by the technical staff and the regional counsel, the allegation that CASTRO was the subject of employment discrimination by his management for reporting concerns was not substantiated.

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LIST OF EXHIBITS

| <u>Exhibit<br/>No.</u> | <u>Description</u>                                                                          |
|------------------------|---------------------------------------------------------------------------------------------|
| 1                      | Investigation Status Record, dated July 7, 1999.                                            |
| 2                      | Bechtel Craft Ranking Procedure, dated October 7, 1998.                                     |
| 3                      | Transcript of Interview with CASTRO, dated July 13, 1999.                                   |
| 4                      | Nuclear Safety Concerns Program Investigation Summary Case NSC 99-51, dated August 2, 1999. |
| 5                      | Memo from POWERS to WISE, dated August 16, 1999.                                            |
| 6                      | NRC Electronic Mail from SMITH, dated August 26, 1999.                                      |
| 7                      | Report of Interview with FRICK, dated July 13, 1999.                                        |

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