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Serial: PE&RAS-04-029
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United States Nuclear Regulatory Commission
ATTENTION: Document Control Desk
Washington, DC 20555

BRUNSWICK STEAM ELECTRIC PLANT, UNIT NOS. 1 AND 2
DOCKET NOS. 50-325 AND 50-324 / LICENSE NOS. DPR-71 AND DPR-62

SHEARON HARRIS NUCLEAR POWER PLANT, UNIT NO. 1
DOCKET NO. 50-400 / LICENSE NO. NPF-63

H. B. ROBINSON STEAM ELECTRIC PLANT, UNIT NO. 2
DOCKET NO. 50-261 / LICENSE NO. DPR-23

**RESPONSE TO AN APPARENT VIOLATION OF EMPLOYEE DISCRIMINATION
REQUIREMENTS (U.S. DEPARTMENT OF LABOR ADMINISTRATIVE REVIEW
BOARD CASE NO. 02-007) (EA-04-028)**

Ladies and Gentlemen:

On February 19, 2004, the NRC issued Carolina Power & Light Company, now doing business as Progress Energy Carolinas, Inc. (PEC), an apparent violation of NRC requirements that prohibit discrimination against employees who engage in protected activities, i.e., 10 CFR 50.7, "Employee Protection." The apparent violation was based on findings from a U.S. Department of Labor (DOL) Administrative Review Board (ARB) proceeding (ARB Case No. 02-007).

PEC recognizes the importance of a strong safety conscious work environment and considers discrimination against employees who engage in protected activities to be in direct opposition to our nuclear safety culture. Although PEC disagrees with the DOL's findings, we recognize this as an opportunity to strengthen further the safety conscious work environment in the Nuclear Generation Group.

Attachment 1 provides the response to the apparent violation. To aid in understanding the organizational changes that have occurred since the incident, Attachment 2 provides partial organizational charts both for the organization that existed at the time of the incident and for the organization that currently exists. Attachment 3 provides a listing of regulatory commitments contained in this document.

Please refer any questions regarding this submittal to Mr. Tony Groblewski,
Supervisor-Regulatory Affairs, at (919) 546-4579.

Sincerely,

C. S. Hinnant

HAS
Attachments

- c: L. A. Reyes, USNRC Regional Administrator – Region II
- USNRC Resident Inspector – BSEP, Unit Nos. 1 and 2
- USNRC Resident Inspector – SHNPP, Unit No. 1
- USNRC Resident Inspector – HBRSEP, Unit No. 2
- B. L. Mozafari, NRR Project Manager – BSEP, Unit Nos. 1 and 2
- C. P. Patel, NRR Project Manager – SHNPP, Unit No. 1; HBRSEP, Unit No. 2
- J. A. Sanford – North Carolina Utilities Commission

RESPONSE TO AN APPARENT VIOLATION

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APPARENT VIOLATION:

The apparent violation involves discriminatory actions against an individual who held the position of Superintendent of Access Authorization ("Complainant") in the Corporate Security organization of Carolina Power & Light Company, now doing business as Progress Energy Carolinas, Inc. (PEC). The apparent violation is based on findings from a U.S. Department of Labor (DOL) Administrative Review Board (ARB) proceeding (ARB Case No. 02-007), as documented in the ARB's September 30, 2003, Final Decision and Order of Remand. The NRC reviewed the DOL's findings and concluded that, in apparent violation of 10 CFR 50.7, "Employee Protection," the Complainant was the subject of employment discrimination in 1999, when PEC terminated the Complainant in retaliation for raising concerns about a security breach at PEC's nuclear facilities.

RESPONSE TO AN APPARENT VIOLATION:

PEC does not contest the NRC's conclusion that the action taken against the Complainant was in violation of 10 CFR 50.7. PEC considers the proper course of action is to learn from the incident and move forward to strengthen the safety conscious work environment in the Nuclear Generation Group.

During the nearly 5 years since this incident occurred, PEC had maintained that the Complainant was terminated for legitimate, non-discriminatory reasons related to job performance and management ability, rather than in retaliation for engaging in a protected activity. Prior to the ARB's final decision, DOL repeatedly found in favor of PEC. On July 19, 2000, the DOL's initial finding by the Occupational Safety and Health Administration (OSHA) indicated that the Complainant's allegations were not substantiated. Later, following a formal hearing, the DOL's Administrative Law Judge (ALJ) recommended that the complaint be dismissed in the October 18, 2001, Recommended Decision and Order. The first occasion when the DOL found against PEC was on September 30, 2003, in the Final Decision and Order of Remand of the ARB. After the ARB reached its decision, PEC did not consider it productive to argue further the merits of this particular case or to debate the question of which party has the greater burden of proof.

Consequently, PEC moved to resolve the allegations to the Complainant's satisfaction rather than to pursue further litigation.

PEC does respectfully suggest that the basis for the violation is inaccurately characterized. The NRC states that the ARB found that the Complainant had been discriminated against "in retaliation for raising concerns about a security breach at [PEC's] nuclear facilities." Neither the ARB nor the ALJ concluded that the Complainant's protected activity was "raising concerns about a security breach" at any of PEC's facilities. Rather, the ARB and the ALJ found that the Complainant engaged in a protected activity in seeking the assistance of the Employee Concerns Program so as to ensure that the Complainant could, without fear of reprisal from the Complainant's manager, tell an NRC investigator the complete truth about procedural violations in the Access Authorization program and the falsification of Access Authorization documents. PEC is not aware of any allegation that the Complainant raised concerns about a security breach at PEC's facilities as indicated in an opening statement in the ARB's Final Decision and Order of Remand. In particular, the falsified documents which precipitated this incident were identified by a company compliance analyst during a routine audit of background investigations. Because of actions following this timely management review, there was no unauthorized entry into the protected area of a nuclear facility.

While PEC does not consider the Complainant's termination to be a discriminatory action, PEC does recognize that the leadership provided by the Complainant's manager did not meet senior management's expectations for creating a safety conscious work environment. Likewise, PEC considers that conclusions about this isolated incident are not consistent with management's commitment to ensuring a safety conscious work environment across the Nuclear Generation Group. Therefore, PEC has included some statements related to the overall safety conscious work environment for the NRC's consideration and as a basis for possible mitigation of enforcement sanctions.

Reason for the Apparent Violation:

Based on information documented in the ARB's Final Decision and Order of Remand, the primary cause of the violation is characterized as willful misconduct by the Complainant's manager. In particular, the ARB determined that the Complainant was terminated by PEC because the Complainant's manager, motivated to escape blame for the falsified background investigations by a concern about possible disciplinary action, falsely represented the Complainant's performance to Human Resources and to the vice-president who actually terminated the Complainant. The ARB acknowledged that neither Human Resources nor the vice-president was aware of the protected

activity. However, the ARB deemed the vice-president to have knowledge of the protected activity because the Complainant's manager had both knowledge of the protected activity and substantial input in the decision to terminate the Complainant.

Upon further investigation, PEC concluded that inadequate communication contributed to the Employee Concerns Program being an ineffective barrier against the termination of the Complainant and identified this as a root cause of the apparent violation of 10 CFR 50.7.

On March 5, 1999, the Complainant sought the advice of the Superintendent of Security at the Brunswick plant concerning what to do about the Complainant's manager and was initially directed to report the incident to the Employee Concerns Representative at the Harris plant. As documented in the ALJ's Recommended Decision and Order, the Complainant declined to follow that advice. On March 8, 1999, the Superintendent of Security at the Brunswick plant phoned the Complainant and suggested a meeting with the Manager of Performance Evaluation & Regulatory Affairs. The Employee Concerns Representatives and the Regulatory Affairs unit are parts of the Performance Evaluation & Regulatory Affairs section.

On March 8, 1999, the Complainant met with the Manager of Performance Evaluation & Regulatory Affairs. This meeting, at which the Complainant became a protected employee according to the ARB and ALJ, was informal and began as a hallway encounter with the Supervisor of Regulatory Affairs. The meeting moved into the office of the Supervisor of Regulatory Affairs, where the Manager of Performance Evaluation & Regulatory Affairs was later involved in the discussion. There was no documentation of the discussion, but the recollections of the participants, as documented in ALJ's Recommended Decision and Order, did not indicate that the participants reached a mutual understanding about several key points. Those key points included whether the Complainant's manager wanted the Complainant to lie to the NRC investigator and whether the Complainant expected possible retaliation for telling the truth to the NRC investigator. Consequently, the participants left the meeting with very different understandings about the possible safety implications of the discussion and what course of action should be subsequently taken. The Supervisor of Regulatory Affairs reported that the Complainant described being asked to take responsibility for the Complainant's own actions but not the actions of others. The Complainant reported leaving the meeting thinking that the investigation would ensue with no further action on the part of the Complainant. The Manager of Performance Evaluation & Regulatory Affairs reported leaving the meeting thinking that the Complainant really did not have anything that the Complainant wanted investigated.

The Manager of Performance Evaluation & Regulatory Affairs reported suggesting that the Complainant talk to the Employee Concerns Representative at the Brunswick plant and providing a phone number in case the Complainant wanted something more done. As documented in the ALJ's Recommended Decision and Order, the Complainant declined to follow that suggestion, citing a lack of time before starting medical leave on March 24th. The ALJ determined the Complainant's testimony to be more credible than those of the Supervisor of Regulatory Affairs or the Manager of Performance Evaluation & Regulatory Affairs. The ALJ further noted that even an informal safety complaint to management is sufficient to establish protected activity.

PEC did take specific actions in an attempt to establish proper communication between an Employee Concerns Representative and the Complainant. On April 27, 1999 (one day after the Complainant was terminated), a standard follow-up letter was sent by certified mail providing an opportunity for the Complainant to express any concern. This is a normal part of the Employee Concerns Program for employees that terminate without participating in a face-to-face interview with an Employee Concerns Representative. The Complainant declined to respond to this follow-up letter; the reason is not known.

Corrective Steps That Have Been Taken and Results Achieved:

PEC has taken comprehensive corrective actions to address this particular situation in the Access Authorization organization and to strengthen the overall work environment for raising safety concerns across the Nuclear Generation Group.

Even before the ARB made its decision on September 30, 2003, PEC had taken several actions intended to improve the safety conscious work environment.

- On February 25, 2002, the Access Authorization organization was moved from Corporate Security to a newly created Nuclear Security Section in the Nuclear Generation Group. As part of the Nuclear Generation Group, the Nuclear Security Section, including the Access Authorization organization, receives direction from the Chief Nuclear Officer.
- In June 2002, an individual with many years of nuclear experience was selected from the Robinson plant to be the Nuclear Security Manager reporting directly to the Chief Nuclear Officer.
- By a memo, dated November 26, 2002, PEC provided computer-based training to supervisors and managers. The memo reinforced that the Nuclear Generation Group employees are to be encouraged to raise concerns through the Corrective Action Program, the leadership chain of command, the Employee Concerns Program or directly to the

Nuclear Regulatory Commission. That training was administered through the Employee Concerns Program with requested completion by March 31, 2003.

After the ARB made its decision on September 30, 2003, PEC took the following additional corrective actions:

- When the ARB remanded the case to the ALJ, PEC chose to resolve the allegations to the Complainant's satisfaction rather than to pursue further litigation.
- On March 4, 2004, PEC also published expectations to supervisors and managers to communicate the receipt of the Apparent Violation regarding actions taken against an employee in violation of the employee's protected rights as described in 10 CFR 50.7. The rights provided by 10 CFR 50.7 were also reviewed with supervisors and managers who were cautioned that actions dealing with employee performance must be strictly limited to the employee's performance of specific duties.

Corrective Steps That Will Be Taken to Avoid Further Violations:

A program for biennial refresher training will be established for the Nuclear Generation Group managers and supervisors to reinforce the requirements of 10 CFR 50.7.

General Employee Training and Retraining will be evaluated to ensure it effectively captures employee rights under 10 CFR 50.7.

Employee Concerns computer based training will be developed and provided to individual contributors in the Nuclear Generation Group to reinforce the requirements of 10 CFR 50.7.

Date When Full Compliance Will Be Achieved:

Full compliance will be achieved by December 31, 2004.

STATEMENTS FOR CONSIDERATION RELATED TO THE OVERALL SAFETY CONSCIOUS WORK ENVIRONMENT:

PEC's Chief Nuclear Officer and the management of the Nuclear Generation Group are committed to ensuring a strong safety conscious work environment. Management has established expectations for a safety conscious work environment and processes for both internal and external monitoring of the health of the safety conscious work environment.

Establishing and Communicating Expectations for a Safety Conscious Work Environment:

On June 27, 2002, the Chief Nuclear Officer issued a written directive for the Conduct of Fleet Operations. That directive identifies a safety conscious work environment as a key value and requires managers to openly discuss challenges.

As part of the mid-year and annual performance reviews, employees are asked to indicate in writing that they understand the principles stated in the company's written Code of Ethics and their responsibilities to abide by these principles. That Code of Ethics specifically prohibits retaliation against employees who report perceived unlawful harassment, or who participate in investigations as witnesses or in other capacities.

In April 2002, the Nuclear Generation Group started a newsletter to communicate the perspectives of the Chief Nuclear Officer to all members of the Nuclear Generation Group. That newsletter has repeatedly contained articles to emphasize some aspect of a safety conscious work environment, including:

- September 2002, "ETHICS – The Rules Apply To All Of Us"
- November 2002, "INPO recognizes Progress Energy for 'Excellent' ratings of nuclear plants"
- January 2003, "A Fleet Management Focus on...Performance Monitoring"
- April 2003, "RNP and CR3 Self-Assessments for the Davis-Besse SOER"
- June 2003, "Focusing on the Employee Survey"
- November 2003, "Creating a Safety Culture"
- December 2003, "Keeping the Edge: Enhancing Performance Through Managing Culture"
- December 2003, "NGG Self-Evaluation"

Internal Monitoring of the Health of the Safety Conscious Work Environment:

PEC employs a multi-faceted approach to monitoring the health of the safety conscious work environment. The approach includes: the use of Key Performance Indicators at the working level,

routine assessment as part of the Nuclear Oversight Process, and periodic anonymous surveys of employee opinions by an independent, external consultant.

At the working level, Key Performance Indicators have been established for management to monitor the use and effectiveness of the Corrective Action Program and the Employee Concerns Program.

On June 27, 2002, the Chief Nuclear Officer issued a written directive for the Nuclear Oversight Process to promote a safety conscious work environment of continuous improvement through the use of self-evaluation. The Performance Evaluation Support (PES) group and the Nuclear Assessment Section (NAS) support the nuclear oversight process by providing independent oversight of 10 CFR 50, Appendix B, activities and conducting other management directed or requested assessments. NAS provides oversight for the plant organizations at Robinson (RNP), Brunswick (BNP), Harris (HNP), and Crystal River 3 (CR3). PES provides oversight for NAS and the corporate organization. The PES assessment scope routinely includes self-evaluation activities like the use of the corrective action program. PES and NAS also conducted the following focused assessments:

- April 10, 2003 – PES, 03-07-SP-C, “Corporate Self-Evaluation”
- August 8, 2002 – NAS, RR-CA-02-01, “Round Robin Assessment of the Corrective Action Program for Robinson and Harris Nuclear Plants”
- July 18, 2002 – NAS, B-CA/OE-02-01, “Corrective Action and Operating Experience Programs” (BNP)
- April 26, 2001 – PES, 01-17-CA-C, “Corporate Self-Evaluation Assessment”
- August 11, 2000 – NAS, RR-CA-00-01, “RNP, BNP, HNP Round Robin Corrective Action Program Assessment”
- July 23, 1999 – PES, 99-06-CAP-C, “Corporate Corrective Action Program (CAP) Assessment”
- September 9, 1999 – NAS, H-CA-99-01, “HNP Corrective Action Program”

These assessments probe the Nuclear Generation Group organization for issues and weaknesses with problem identification and resolution. The organizations are assessed against industry best practices. The findings are communicated directly to senior management.

From February through June 2003, PEC self-assessed the requirements of Recommendation 2 of SOER 02-4, Reactor Pressure Vessel Head Degradation at Davis-Besse Nuclear Power Station, issued by the Institute of Nuclear Power Operators (INPO) on November 11, 2002. A total of four self-assessments were conducted—one at each nuclear plant in the Nuclear Generation Group. Each self-assessment team included three or four industry peers from other nuclear

utilities, including: Duke Power, Dominion Generation, and South Carolina Electric & Gas. The overall conclusions of the assessment teams were that every nuclear plant organization within the Nuclear Generation Group had a healthy respect for nuclear safety and that nuclear safety was not compromised by production priorities.

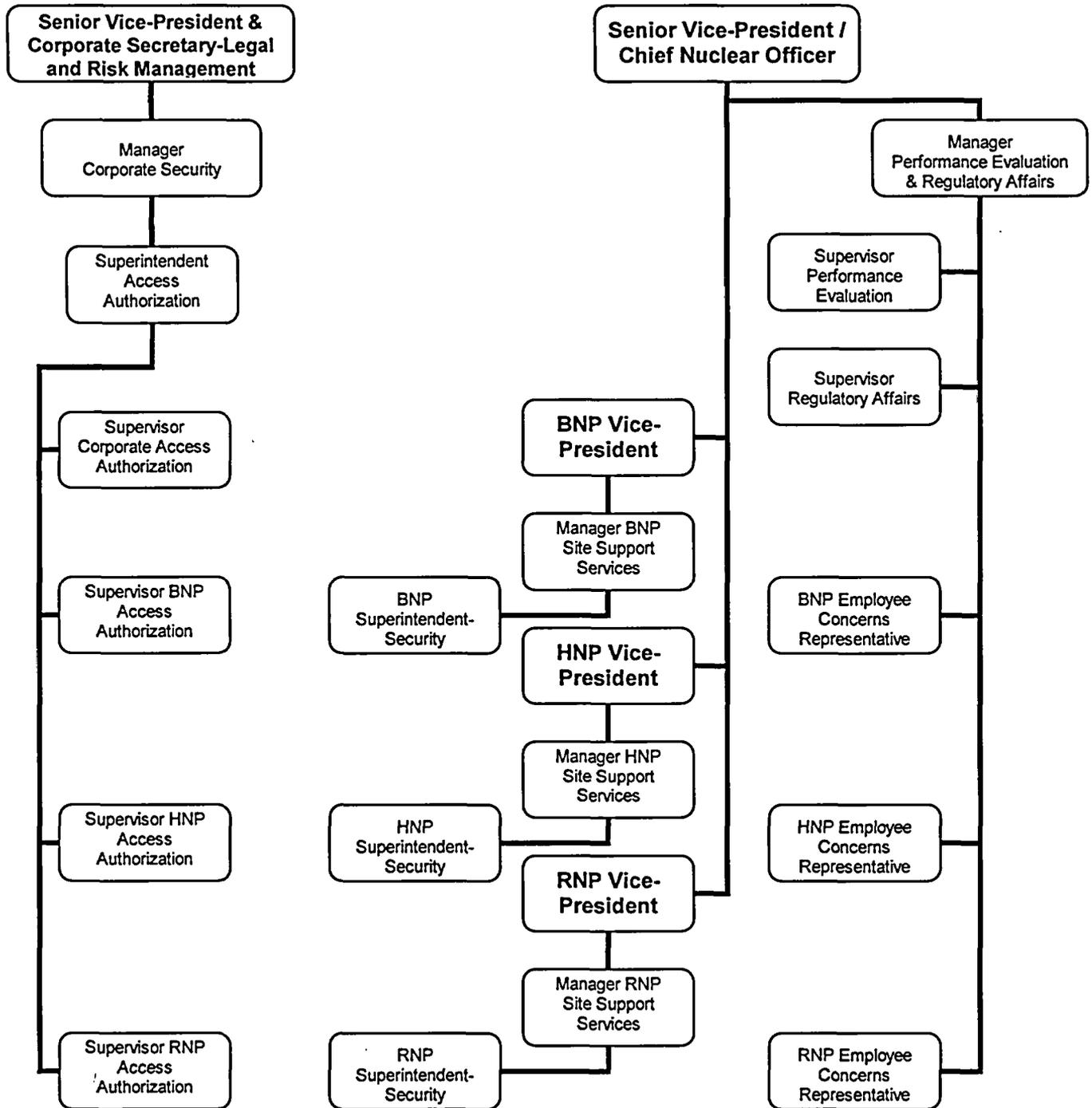
External Monitoring of the Health of the Safety Conscious Work Environment:

Beyond what might be required by regulatory obligations and commitments, PEC has periodically used an independent, external consultant to provide the management team with an awareness of the overall health of the safety conscious work environment. Employee surveys have been performed in 1993, 1995, 1997, and 2001. The next survey of safety conscious work environment is scheduled to be conducted in 2004.

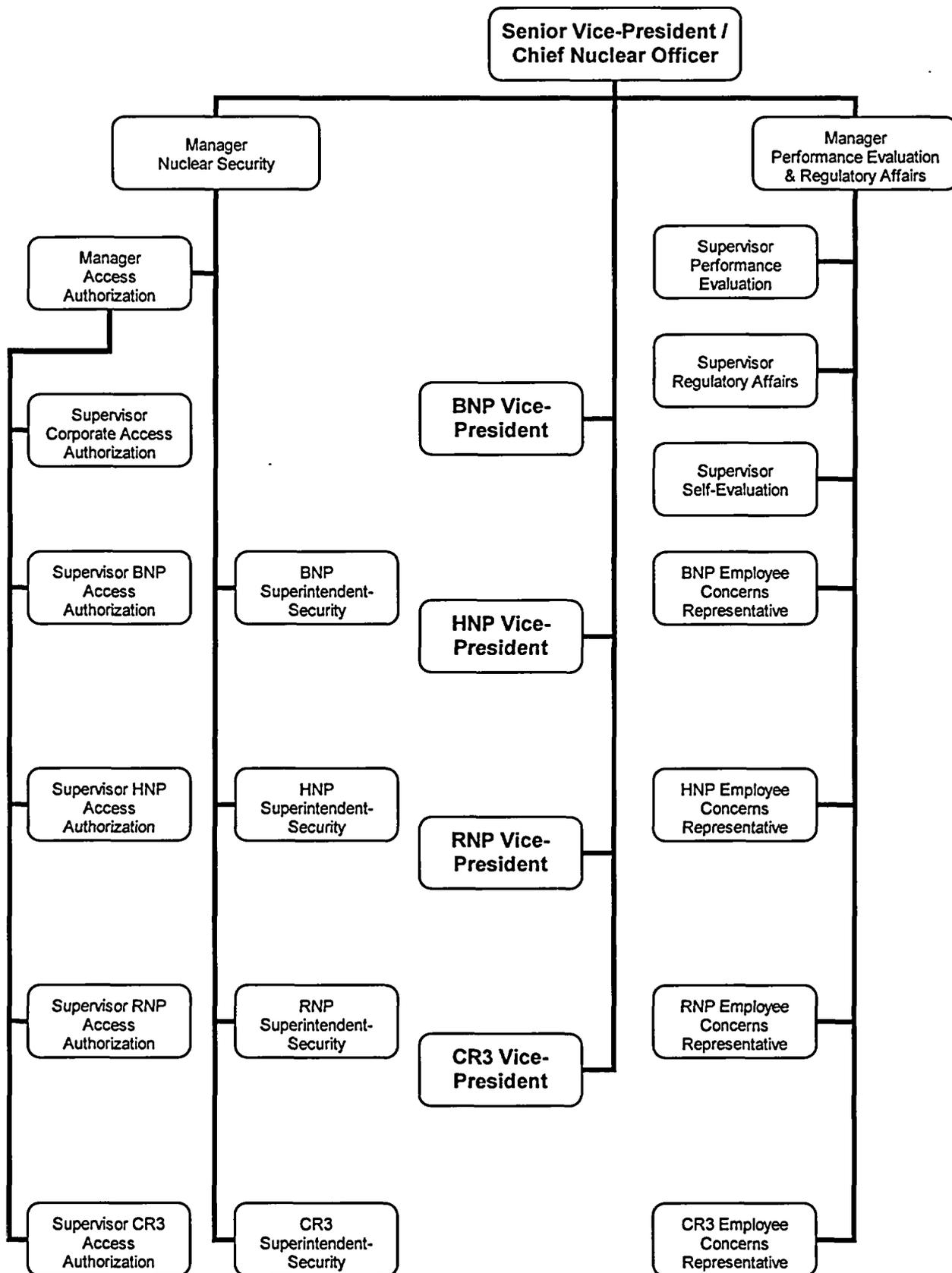
Conclusions:

PEC has established and communicated expectations for a safety conscious work environment. PEC monitors the health of the safety conscious work environment. Based on both internal and external monitoring, PEC concludes that a strong safety conscious work environment exists and that the isolated incident described in the apparent violation is not consistent with the Nuclear Generation Group's commitment to maintaining a strong safety conscious work environment.

Partial Organization Chart for Carolina Power & Light (1999)



Partial Organization Chart for Nuclear Generation Group in Progress Energy (current)



Listing of Commitments

COMMITMENTS	
Commitment Statement	Date
A program for biennial refresher training will be established for the Nuclear Generation Group managers and supervisors to reinforce the requirements of 10 CFR 50.7.	6-30-04
General Employee Training and Retraining will be evaluated to ensure it effectively captures employee rights under 10 CFR 50.7.	6-30-04
Employee Concerns computer based training will be developed and provided to individual contributors in the Nuclear Generation Group to reinforce the requirements of 10 CFR 50.7.	12-31-04