



**PECO ENERGY**

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10CFR2.201  
10CFR2.205

June 10, 1994

Docket No. 50-352  
License No. NPF-39

Director, Office of Enforcement  
U.S. Nuclear Regulatory Commission  
Attn: Document Control Desk  
Washington, DC 20555

SUBJECT: Limerick Generating Station, Unit 1  
Reply and Answer to a Notice of Violation

- REFERENCE: 1) Letter from Thomas T. Martin, USNRC, to D. M. Smith, PECO Energy, dated April 9, 1992
- 2) Letter from Graham M. Leitch, PECO Energy, to T. T. Martin, USNRC, dated May 8, 1992
- 3) Letter from Thomas T. Martin, USNRC, to D. M. Smith, PECO Energy, dated December 8, 1992
- 4) Letter from David R. Helwig, PECO Energy, to Document Control Desk, USNRC, dated January 7, 1993

Gentlemen:

Attached is PECO Energy Company's Reply and Answer to a Notice of Violation and Proposed Imposition of Civil Penalty for Limerick Generating Station (LGS), Unit 1, which was contained in Reference 3. The alleged violation and proposed imposition of civil penalty of \$25,000 involves an employee of the security contractor for LGS. The contractor employee filed a complaint with the U.S. Department of Labor which resulted in an Administrative Law Judge (ALJ) issuing a Recommended Decision and Order finding that the contractor had discriminated against the employee in violation of Section 210 of the Energy Reorganization Act. Based on the ALJ's decision, the NRC concluded that a violation of 10 CFR 50.7 had occurred and that PECO Energy was responsible for such violation. Since PTI filed an appeal of the Recommended Decision, Reference 3 indicated that PECO Energy's formal response was not required until thirty days after the Secretary of Labor issued a final decision in the case.

On May 11, 1994, the Secretary of Labor issued a Final Order Approving Settlement and Dismissing Complaint which approved a Settlement between the contractor and the employee

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Docket No. 50-352  
June 10, 1994  
Page 2

and dismissed the case. PECO Energy received a copy of the Decision from the Security contractor on May 19, 1994.

Attachment 1 to this letter provides our Reply to the Notice of Violation pursuant to 10CFR2.201, including a restatement of the alleged violation. Attachment 2 to this letter provides our Answer to the Notice of Violation pursuant to 10CFR2.205. Based on the information provided in the attachments, PECO Energy denies the violation in whole, and, in the alternative, requests that the civil penalty of \$25,000 be remitted in full, or mitigated.

If you have any questions or require additional information, please contact us.

Very truly yours,

A handwritten signature in cursive script, appearing to read "D. R. Helwig".

Attachments

cc: T. T. Martin Administrator, Region 1, USNRC  
N. S. Perry, USNRC Senior Resident Inspector, LGS

COMMONWEALTH OF PENNSYLVANIA

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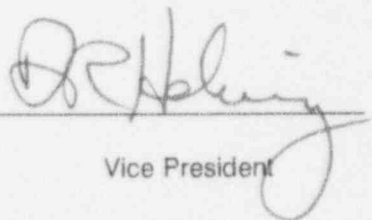
SS.

COUNTY OF MONTGOMERY

:

D. R. Helwig, being first duly sworn, deposes and says:

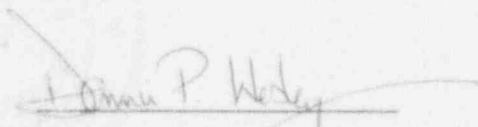
That he is Vice President of PECO Energy Company, the Licensee herein; that he has read the foregoing Reply to a Notice of Violation pursuant to 10CFR2.201 and Answer to a Notice of Violation pursuant to 10CFR2.205 for Limerick Generating Station, Unit 1, and knows the contents thereof; and that the statements and matters set forth therein are true and correct to the best of his knowledge, information, and belief.

  
Vice President

Subscribed and sworn to

before me this 10<sup>th</sup> day

of JUNE 1994.

  
Notary Public

Notarial Seal  
Dennis P. Wesley, Notary Public  
Limerick Twp., Montgomery County  
My Commission Expires April 7, 1997  
Member, Pennsylvania Association of Notaries

Reply to a Notice of Violation Pursuant to 10CFR2.201

Restatement of the Alleged Violation

Based on the results of investigations and hearings conducted by the U.S. Department of Labor (DOL)(DOL case 92-ERA-27) and the resulting decision by a DOL Administrative Law Judge (ALJ), dated June 22, 1992, the NRC has determined that a violation of its regulations occurred. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the Nuclear Regulatory Commission proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violation and associated civil penalty are set forth below:

10 CFR 50.7 prohibits discrimination by a Commission licensee, permittee, an applicant for a Commission license or permit, or a contractor or subcontractor of a Commission licensee, permittee, or applicant against an employee for engaging in certain protected activities. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, and privileges of employment. The activities which are protected include, but are not limited to, reporting of quality discrepancies and safety and safeguards concerns by an employee to his employer or the NRC.

Contrary to the above, an employee of Protection Technology Inc. (PTI), a security subcontractor of the Philadelphia Electric Company, who was a security guard at the Limerick Generating Station, was unlawfully discriminated against as described in the DOL ALJ Recommended Decision and Order issued June 22, 1992 (DOL case 92-ERA-27). Specifically, the employee was required to undergo a psychological evaluation and subsequently discharged on January 7, 1992, by PTI in retaliation for engaging in protected activities. The protected activities included raising safeguards concerns to licensee management regarding security operations while performing his duties at the Limerick Generating Station.

This is a Severity Level III violation (Supplement VII).  
Civil Penalty - \$25,000

RESPONSE

Denial of the Alleged Violation

PECO Energy Company denies the alleged violation in whole.

Reasons for Denial

A description of the events and circumstances surrounding the alleged violation were provided in Reference 2.

There was clear evidence of a fitness-for-duty concern based on observations of the individual's behavior by both PTI and PECO Energy supervision during the January 1, 1992 incident and other prior incidents as described in Reference 2. These concerns had to be dealt with to fulfill the obligations on PECO Energy by 10 CFR Parts 26 and 73. Accordingly, the contractor employee was requested to undergo a psychological evaluation as a non-discriminatory mechanism for determining if the employee's behaviors were representative of a true fitness-for-duty concern. This decision is supported by a case in which a Department of Labor Administrative Law Judge (ALJ) specifically held that requiring a complainant to undergo a fitness-for-duty examination does not constitute discriminatory action under Section 211 (formerly Section 210) of the Energy Reorganization Act. (Diaz - Robainis v. Florida Power & Light Company, Case No. 92-ERA-10, ALJ decision, October 29, 1993, slip op. at 40-42.)

The employment action by the Security contractor against the contractor employee was based on the results of the psychological evaluation which indicated that the employee was not recommended for unescorted access to Limerick Generating Station (LGS). This evaluation was performed by Standard & Associates, Inc., a human resource consulting firm that provides, among other things, the service of performing psychological evaluations for nuclear plant screenings. Therefore, the employment action was based entirely on a legitimate fitness-for-duty concern, and was not associated with any protected activity in which the contractor employee may have been involved. Even if the Recommended Decision of the ALJ had been adopted by the Secretary of Labor, we would urge the NRC to look closely at the facts of this case and conclude that no violation of 10CFR50.7 has occurred.

It should also be noted that, in accordance with established policy, the security contractor employee was granted a psychological reevaluation a year after his disqualification and his access to LGS was restored on the basis of his successful reevaluation.

#### Actions Relative to this Incident

As identified in Reference 2, the following actions have been taken to assure that the employment action does not have a chilling effect in discouraging other PECO Energy or contractor employees from raising perceived safety concerns.

Since the employment action in January 1992, PTI and LGS Security have maintained close scrutiny of security force activities to assure that open communications between the work force and contractor and licensee management have not been adversely affected. This was accomplished through a number of different feedback methods including:

- o formal employee concerns meetings,
- o informal one-on-one discussions with employees,
- o monthly safety meetings,
- o management attendance at Security Force pre-shift briefings (Guardmount),
- o management by walking around (MBWA),
- o reiterating management's "open door" policy,
- o publicizing our complaint/concern Hotline in the daily "Plan of the Day" correspondence,
- o management discussion with new hires in February 1992 (PTI/LGS Security),

- o Unit 1 refueling outage employee presentation meetings, and
- o weekly/daily staff meetings.

In addition, an independent review of the Security Organization at LGS was conducted by a representative of Science Applications International Corporation, an outside contractor, during the week of April 27 - May 1, 1992. This review resulted in positive remarks concerning employee professionalism, and communicating and understanding of job responsibilities. No concerns in these areas were identified.

Security force personnel feedback through the methods identified above clearly indicates that these personnel do not believe that the PTI employee was terminated because he complained of procedure violations. PECO Energy is confident that no negative effects from the PTI employee's termination have occurred.

In addition to the above actions, PTI has specifically explained to the security force that the employee's termination was not related to his complaint about procedures and emphasized that management supports employee feedback concerns and recommendations as essential for continued effective operation.

As identified in Reference 4, the following additional actions have been taken to minimize any potential chilling effect.

Utility management discussed protected activities at monthly meetings with the involved contractor's personnel.

Nuclear Quality Assurance (NQA) Administrative Procedure NQA-30, "Quality Concerns and Allegations," effective December 26, 1988, was superseded by Common Administrative Procedure A-C-905, "Quality Concerns and Allegations," effective February 1, 1993. This procedure addresses, in part, how an individual's quality concerns should be reported, and defines alternatives available to an individual who believes that their previously reported concerns are not receiving proper consideration. This procedure applies to quality concerns identified by PECO Energy employees and contract personnel associated with activities for LGS or Peach Bottom Atomic Power Station (PBAPS). Furthermore, this procedure states "It is the policy of the Nuclear Group to address all Quality Concerns and Allegations regarding the safe design, operation and maintenance of PECO Nuclear Power Stations, regardless of the source, in a forthright manner and without reprisal... No one will ever be penalized for raising a Quality Concern to any level of PECO Energy or the NRC." The procedure also provides the telephone number for the NRC Resident Inspectors at LGS and PBAPS, the NRC Region I office, and the NRC Headquarters for those individuals who elect to discuss their quality concerns with the NRC. Implementation for this procedure is done by way of the General Employee Training (GET) Program, distribution of the "Nuclear Quality Concerns" poster and several corrective action programs utilized at LGS.

On March 1, 1993, a site publication ("For Your Information") FYI-60, "Quality Concerns and Allegations," was issued. The FYI was based on excerpts from Common Administrative Procedure A-C-905. Line management discussed protected activities with all utility and contractor personnel based on this FYI. These discussions included the

definition of a concern, to whom concerns may be identified, and protection from discriminatory actions toward an employee associated with a concern. Separate discussions were conducted with supervision emphasizing the rights of employees raising concerns in order to sensitize all levels of supervision to the protected activity process.

Raising quality concerns was highlighted in a refueling outage information manual that was developed for the Unit 2 refueling outage (2R02) which began in January 1993. The manual contained organizational information related to the refueling outage, and was distributed on site. The manual was used as an information resource throughout the outage. This information was also included in a refueling outage information pamphlet which was developed and distributed for the most recent Unit 1 refueling outage (1R05) in February 1994.

A "Quality Concerns Hotline" was previously established in October, 1988, and advertised to all Nuclear Group employees and contractors by means of a poster. This poster was updated and copies at existing locations were replaced. In addition, copies were posted at new locations. The poster, signed by the Senior Vice President - Nuclear and the Director - Nuclear Quality Assurance, states that anyone who has a quality concern should first notify their supervisor. If not satisfied with the results, the individual should notify higher levels of management as necessary. If the individual is still not satisfied, he/she can call the Quality Concerns Hotline telephone numbers specified on the poster. The poster also states that the individual raising the concern can call the NRC. The poster provides the telephone numbers of the LGS and PBAPS NRC Resident Inspectors, as well as the NRC Region I offices and the NRC Headquarters.

The following documents had been issued prior to the employment action and the alleged discrimination to ensure that PECO Energy employees and PECO Energy contractor employees can raise safety concerns to management or the NRC without fear of reprisal. PECO Energy has maintained the policy, as stated clearly in GET provided to PECO Energy employees and contractors, that individuals should contact management or the NRC with their concerns, and that no negative action (e.g. harassment, dismissal) would be taken.

PECO Energy's "Nuclear Group Management Philosophy for Assurance of Quality," effective August 1991, is posted in all Nuclear Group employee and contractor work locations (e.g. PBAPS, LGS, and Nuclear Group Headquarters). This document is signed by the Senior Vice President - Nuclear, the Vice Presidents of each of the Nuclear Group departments, and the General Manager (now Director) of Nuclear Quality Assurance. This document states in part that the management of the Nuclear Group is committed to 1) developing and maintaining an effective problem reporting process so that employees can report observed quality problems or deficiencies quickly and easily, and 2) encouraging open communications about all areas that affect the safety and quality of nuclear activities. This document also states that the Nuclear Group management expects each employee to 1) notify their supervision in a timely manner of any problems with procedural compliance, and 2) report observed quality problems or deficiencies in a timely manner, using established administrative processes.

Attachment 1  
Docket No. 50-352  
June 10, 1994  
Page 5 of 5

Nuclear Group Policy NP-QA-1, "Quality," became effective October 28, 1991, and indicates that the policy shall be implemented by establishing and maintaining an atmosphere and reporting system that ensures anonymity and freedom from discrimination against individuals who identify quality concerns.

In summary, sufficient actions were in place prior to the employment action and have been taken since to insure that employees are encouraged to identify perceived safety concerns without fear of discriminatory actions. We do not believe, nor did an independent contractor believe, that a chilling effect existed to inhibit employee/management/NRC interactions concerning safety at LGS.



Answer to a Notice of Violation Pursuant to 10CFR2.205

Denial of the Alleged Violation

PECO Energy Company denies the alleged violation in whole.

Reasons for Denial

The reasons for denying the alleged violation are provided on pages 1 and 2 of Attachment 1.

Request for Remission of the Civil Penalty

In accordance with the provisions of 10CFR2.205, based on the reasons for denial of the alleged violation as stated in Attachment 1, we request that the civil penalty in the amount of \$25,000 be remitted in full.

If, after reviewing the information provided in Attachment 1, the NRC concludes that a violation of Commission regulations has occurred and imposition of the civil penalty is still warranted, PECO Energy requests 100 percent mitigation of the proposed penalty based on consideration of the pertinent adjustment factors specified in Section VI.B.2 of 10 CFR Part 2, Appendix C as addressed below.

1) Licensee Performance

With respect to past performance, the NRC indicated in the most recent SALP Report No. 92-99, dated November 5, 1993, that the overall effectiveness of the security program at LGS continued to be excellent. LGS had previously received a SALP Category I rating in the area of Security when this area was evaluated as a separate functional area. In addition, LGS has had no violations relating to discrimination in the past. Therefore, 100 percent mitigation of the base civil penalty on this factor is warranted.

2) Corrective Actions

As discussed in Attachment 1, the employment action was not a result of the individual's involvement in a protected activity but was based entirely upon behavior observations. These observations raised significant questions as to the individual's continued fitness for duty, and required PECO Energy and its contractor to investigate and to take the appropriate actions. The additional actions described in Attachment 1 are sufficient to insure that PECO Energy and contractor employees are encouraged to identify perceived safety concerns without fear of discriminatory actions.

Additionally, in April 1993, an independent review of the Protection Technology, Inc. (PTI) contract security force at LGS was conducted by an outside contractor. This review focused, among other things, on issues affecting morale and individual attitudes, including the willingness of PTI employees to escalate and discuss identified concerns. During the course of this review, there were no indications of fear of discriminatory actions for raising quality concerns to PTI or PECO Energy management, or the NRC by

Attachment 2  
Docket No. 50-352  
June 10, 1994  
Page 2 of 2

PTI employees. This further supports our conclusion that the potential for a chilling effect as a result of employee/management/NRC interactions does not exist at LGS, and that the employment action taken in January 1991 was appropriate. Therefore, 100 percent mitigation of the base civil penalty on this factor is warranted.