

May 20, 1993

Note to: Jim Lieberman, OE
Jack Goldberg, OGC
Len Williamson, OI

Subject: Public Service Company of Colorado (EA 92-152)

*DR
For our
meeting
Det. [unclear]
show [unclear]
ke [unclear]
[unclear]*

I am providing you an unexpurgated copy of the settlement agreement between McTiernan and the company and a copy of some information that we requested the company provide us during the enforcement conference.

With regard to the settlement agreement, we had previously seen only a redacted version of it. This copy was provided by the Secretary of Labor's office.

We are scheduled to discuss this case at 9:30 a.m. CDT on Monday, June 7. You should have received a copy of the transcript of the enforcement conference. Let me know if you can think of any other information that you need to support our discussions or to reach an enforcement decision.

[Signature]
Gary Saborn

B/S

94



FAX
TRANSMITTAL COVER SHEET
WASHINGTON, D.C. 20210
FAX NO. (202) 219-9315

DATE: 5-19-93 NO. OF PAGES: 2

OFFICE OF
ADMINISTRATIVE
APPEALS

TO: NAME : Gary Samborn
LOCATION : San Francisco
PHONE NO.: 817-860-8222
FAX NO. : 817-860-8122

FROM: NAME : Joyce Claro
LOCATION : Wash., D.C.
PHONE NO.: 202-219-4728
COMMENTS: _____

SETTLEMENT, RELEASE AND
CONFIDENTIALITY AGREEMENT

This Settlement and Release Agreement is entered into this 9th day of July, 1991, by and between GEORGE S. McTIERNAN (McTiernan) and PUBLIC SERVICE COMPANY OF COLORADO (Public Service).

WHEREAS, McTiernan commenced U.S. Department of Labor Case No. 91-ERA-37 against Public Service claiming a violation of 42 U.S.C. §8681;

WHEREAS, McTiernan has conferred with counsel of his choice, and being fully informed, wishes to discontinue pursuit of his claim against Public Service and any claim he may have for attorney's fees on the terms and conditions outlined below; and

WHEREAS, in consideration of McTiernan dismissing the complaint and other terms and conditions outlined below, Public Service agrees not to pursue its defenses to such claim.

NOW, THEREFORE, the parties agree as follows:

1. McTiernan agrees to do all things necessary to have the Department of Labor dismiss Case No. 91-ERA-37 with prejudice by not later than July 11, 1991.
2. Public Service agrees to pay to George S. McTiernan the sum of \$9,900.00 upon execution of this Agreement. Such sum shall include any claim for attorney's fees under any law or theory of entitlement, which McTiernan hereby waives.
3. No Admission of Liability. It is specifically understood and agreed by the parties that the execution of this Agreement does not represent an admission of liability on the part of any person or entity, liability for any claim raised by Case No. 91-ERA-37 being expressly denied.
4. Confidentiality. As part of the consideration hereunder and as an express stipulation of this Agreement, McTiernan will not disclose to any third party the terms of this Agreement, including the amount set forth in Paragraph 2 and acknowledges that payment of monetary consideration to McTiernan is expressly conditioned upon the non-disclosure of this Agreement to any third party. In the event McTiernan discloses any of the terms of this Agreement to any third party, the parties acknowledge that the damages incurred by such disclosure will be


difficult or impossible to ascertain. Consequently, upon breach of this confidentiality provision by McTierman, Public Service shall be entitled to liquidated damages in the amount of \$9,000.00. Notwithstanding the foregoing, it shall not be a breach of this confidentiality provision, if, McTierman is required by court order, administrative order, applicable state or federal law, to disclose the terms of this settlement, so long as before doing so, McTierman notifies Public Service in writing of his obligation to do so.

5. Mutual Release. The parties hereby fully release and forever discharge each other, including Public Service's affiliates, directors, officers, employees, shareholders, successors, and assigns of any and all demands, obligations, actions, actions for attorneys fees, liabilities or damages of every kind and nature whatsoever, in law or in equity, which are known or unknown, arising out of McTierman's employment at Fort St. Vrain prior to the date of this Agreement, except as provided above.

Dated: July 11, 1991

Dated: July 11, 1991

By: 
George S. McTierman,
Complainant

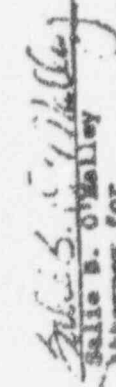
By: 
A. Clegg Crawford
Vice President of Nuclear
Operations
PUBLIC SERVICE COMPANY
OF COLORADO

Dated: July 11, 1991

Dated: July 11, 1991

KELLY, STANFIELD & O'DONNELL

By: 
Thomas Bairford
Attorney for
GEORGE S. MCTIERMAN

By: 
Salie B. O'Malley
Attorney for
PUBLIC SERVICE COMPANY
OF COLORADO

H. Lankford

TELECOPY Cover Page



**Public
Service**

Fort St. Vrain
16305 Weld County Road 19 1/2
Platteville, CO 80651
(303) 785-6471

* PLEASE INFORM ADDRESSEE THAT HIS TELEFAX HAS BEEN RECEIVED *

TO: (NAME / COMPANY)

WILL MILHOAN

TELEFAX PHONE #: 817-860-8211

RECEIVER'S PHONE #: _____

FROM: (NAME / PSCo)

DON WARRENBOURG

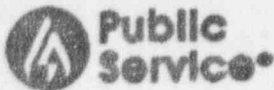
TELEFAX PHONE #: 303-620-1707

SENDER'S PHONE #: 303-620-1009

COMMENTS or SPECIAL INSTRUCTIONS:

* Return Original to Sender *

Total Number of Pages Including Cover Page: 4



FORT ST. VRAIN NUCLEAR GENERATING STATION
PUBLIC SERVICE COMPANY OF COLORADO

DATE: MAY 17, 1993

TO: JIM MILHOAN

FROM: DON WAREMBOURG

SUBJ: LIST OF RADIOLOGICAL OCCURRENCE REPORTS/FOLLOW-UP ENFORCEMENT
CONFERENCE OF MAY 10, 1993

Per your request, I am faxing the subject information to you. If you have any questions, please do not hesitate to give me ((303) 620-1009) or Ted Borst ((303) 620-1000) a call.

Don Warembourg
Don Warembourg

cc: Ray Hall/Paul Michaud
Fax: 303-554-5809

Sally O'Malley
Fax: 303-295-2599

Crawford
Fax: 329-1674

FORT ST VRAIN STATION RADIOLOGICAL OCCURRENCE REPORTS (ROR)

AS FOLLOWUP TO THE ENFORCEMENT CONFERENCE HELD ON MAY 10, PLEASE FIND ENCLOSED A TABULATION TO ROR'S INITIATED IN 1990, 1991, AND 1992 AT FORT ST VRAIN. THE ROR'S ARE CODED WITH EITHER A "P" - INITIATED BY A PUBLIC SERVICE COMPANY OF COLORADO EMPLOYEE, OR A "C" - INITIATED BY A CONTRACTOR EMPLOYEE.

14 ROR'S WERE INITIATED IN 1990, 10 WERE INITIATED IN 1991, AND 19 WERE INITIATED IN 1992. OF THE 14 ROR'S INITIATED IN 1990, 3 OR 22% WERE INITIATED BY CONTRACTORS. ALL OF THESE WERE INITIATED BY THE COMPLAINANT. OF THE 10 ROR'S INITIATED IN 1991, 3 OR 30% WERE INITIATED BY CONTRACTORS. OF THE 19 ROR'S INITIATED IN 1992, 18 OR 95% WERE INITIATED BY CONTRACTORS. THE REDUCTION IN THE NUMBER OF ROR'S INITIATED IN 1991 CAN BE ATTRIBUTED TO THE FACT THAT MANY ISSUES WERE RESOLVED VIA THE HP ISSUES LIST AND THE "ISSUE OF THE DAY" IN THE HP AREA. FOR EXAMPLE, IT SHOULD BE NOTED THAT THE ISSUES BETWEEN THE COMPLAINANT AND THE PERMANENT PSC HP TECHS WERE HANDLED ON THE ISSUES LIST RATHER THAN BY ROR'S. ALSO, THE FACT THAT THE NUMBER OF ROR'S INITIATED BY CONTRACTORS STAYED THE SAME IN 1991 AS IN 1990 INDICATES THAT THERE WAS NO CHILLING EFFECT WITH RESPECT TO RAISING PERCEIVED SAFETY CONCERNS. THE INCREASE IN THE NUMBER OF ROR'S INITIATED IN 1992 CAN BE ATTRIBUTED TO THE INCREASED EMPHASIS ON THE ROR PROGRAM BROUGHT ON BY SHIPMENT OF SPENT FUEL TO THE INDEPENDENT SPENT FUEL STORAGE INSTALLATION (ISFSI). ALSO, DUE TO FUEL SHIPMENT IN 1992, MANY MORE CONTRACTORS WERE ON SITE THAN IN PREVIOUS YEARS. IN 1992 THE CONTRACT HP TECHS ESSENTIALLY TOOK OVER THE RESPONSIBILITY FOR RUNNING THE DAY TO DAY ACTIVITIES IN THE HP AREA. THE REMAINING PSC HP TECHS WERE ASSIGNED TO A SPECIAL PROJECT TEAM, RESULTING IN A REDUCED OPPORTUNITY TO INITIATE ROR'S.

<u>ROB</u>	<u>ORIGINATOR</u>	<u>DATE</u>	<u>ISSUE</u>
90-01 P	TILLMAN	01/22/90	INADEQUATE DOSIMETRY
90-02 P	THOMAS	01/24/90	UNAUTH ENTRY INTO AREA
90-03 P	HUTCHINS	01/25/90	UNAUTH ENTRY INTO AREA
90-04 P	AMEN	03/02/90	UNAUTH MOVEMENT OF MATL
90-05 P	THOMAS	05/10/90	RAM OUTSIDE AUTH AREA
90-06 C	MCTIERNAN	06/13/90	VENTILATION FLOW PROBS
90-07 P	THOMAS	07/03/90	UNEXPECTED HIGH RAD AREA
90-08 P	TILLMAN	07/12/90	OPEN RIV ON FHM
90-09 P	TILLMAN	07/25/90	RWP VIOLATION
90-10 P	ODONOGHUE	08/02/90	RWP VIOLATION
90-11 C	MCTIERNAN	09/20/90	UNPOSTED RAD AREA
90-12 C	MCTIERNAN	10/16/90	PERSONNEL CONTAMINATION
90-13 P	TILLMAN	10/19/90	HOT PARTICLE ON NRC INSP
90-14 P	BLAIN	10/18/90	RAM IN UNAUTH AREA
91-01 P	WOODARD	01/29/91	RWP VIOLATION
91-02 P	TILLMAN	02/06/91	RWP VIOLATION
91-03 P	TILLMAN	03/09/91	OFFSCALE DOSIMETER
91-04 P	TILLMAN	06/11/91	RWP VIOLATION
91-05 P	WOODARD	06/24/91	POSITIVE URINE SAMPLE
91-06 P	ODONOGHUE	08/01/91	CONTAMINATION ON RFF
91-07 C	JONES	08/05/91	PERSONNEL CONTAMINATION
91-08 P	BLAIN	10/09/91	RWP VIOLATION
91-09 C	STROUD	11/21/91	OFFSCALE DOSIMETER
91-10 C	BALL	12/26/91	WRONG FILM BADGE ISSUED
92-01 C	THORP	01/13/92	CONTAMINATION SPREAD
92-02 C	SAWYER	02/10/92	RWP VIOLATION
92-03 C	EYRE	02/06/92	UNAUTH MOVEMENT OF HP AREA
92-04 C	STROUD	02/22/92	EQUIP FAILURE
92-05 C	EYRE	02/12/92	UNAUTH RAD EXPOSURE
92-06 C	MILLER	03/12/92	RIV OPEN ON FHM
92-07 C	KUHN	03/22/92	BYPASSING RAD MONITORS
92-08 P	BLAIN	04/02/92	EXCEED ADMIN EXP LIMIT
92-09 C	HEARD	04/17/92	IMPROPER EXIT FROM HP AREA
92-10 C	ZAHRT	04/10/92	CONTAMINATION SPREAD
92-11 C	FULLER	MARCH	TRITIUM SAMPLE NOT OBTAINED
92-12 C	FULLER	05/22/92	INAD DOSIMETRY
92-13 C	FROST	06/26/92	CONTAMINATION SPREAD
92-14 C	VASSETT	07/23/92	RWP VIOLATION
92-15 C	GRANT	07/23/92	RWP VIOLATION
92-16 C	MILES	08/31/92	RWP VIOLATION
92-17 C	THORP	09/22/92	RWP VIOLATION
92-18 C	SECURITY	10/27/92	INAD DOSIMETRY
92-19 C	CUMMIN	VARIOUS	RAM SHIPPING VIOLATIONS

EATC0922

REGION = CUMULATIVE
 LICENSEE = PUBLIC SERVICE CO. OF CO.
 LICENSEE TYPE = ALL

ENFORCEMENT ACTION TRACKING SYSTEM
 LICENSEE HISTORY REPORT
 SORTED BY EA NUMBER
 DATE RANGE = ALL DATES
 DATE TYPE =

SUPPLEMENT = ALL

07/08/93
 PAGE 1

EA # ES/TYPE	LICENSEE FACILITY	INSP DATE HQ DATE	SUPPL SEV	PROPOSED CP DATE MIT/ESC	IMPOSED CP DATE MIT/ESC	AMT PAID DATE	ACTIP/4 DATF	ENF CONF DATE NUREG VOL
77-011 /RX	PUBLIC SERVICE CO. OF CO FT ST VRAIN NUCLEAR PLAN	00/00/00 00/00/00		8,000 05/11/77 M: E:	0 00/00/00 M: E:	8,000 05/27/77	00/00/00	00/00/00
81-009 /RX	PUBLIC SERVICE CO. OF CO FT ST VRAIN NUCLEAR PLAN	08/22/80 11/19/80	3 3	0 00/00/00 M: E:	0 00/00/00 M: E:	0 00/00/00	00/00/00	00/00/00
86-081 R/RX	PUBLIC SERVICE CO. OF CO FT ST VRAIN NUCLEAR PLAN	11/22/85 05/12/88	3 2	85,000 07/07/88 M: E:	0 00/00/00 M: E:	85,000 08/05/88	00/00/00	00/00/00 V5N3
FACTS: Potential pathways for unauth/undetected access from controlled to protected and vital areas.								
86-082 PR/RX	PUBLIC SERVICE CO. OF CO FT ST VRAIN NUCLEAR PLAN	10/04/85 05/12/88		0 00/00/00 M: E:	0 00/00/00 M: E:	0 00/00/00	00/00/00	00/00/00
86-098 HW/RX	PUBLIC SERVICE CO. OF CO FT ST VRAIN NUCLEAR PLAN	05/09/88 06/02/88	1 3	75,000 07/07/88 M: E:	0 00/00/00 M: E:	75,000 08/05/88	00/00/00	00/00/00 V5N3
FACTS: Operation of power level in excess of level restricted by NRC.								
86-144 PR/RX	PUBLIC SERVICE CO. OF CO FT ST VRAIN NUCLEAR PLAN	08/08/88 09/17/88	8 4	0 00/00/00 M: E:	0 00/00/00 M: E:	0 00/00/00	NOV 09/24/88	00/00/00
86-188 PR/RX	PUBLIC SERVICE CO. OF CO FT ST VRAIN NUCLEAR PLAN	09/19/88 11/25/88	3 4	0 00/00/00 M: E:	0 00/00/00 M: E:	0 00/00/00	NOV 12/31/88	00/00/00
87-143 DR/RX	PUBLIC SERVICE CO. OF CO FT ST VRAIN NUCLEAR PLAN	05/15/87 07/27/87	3 4	0 00/00/00 M: E:	0 00/00/00 M: E:	0 00/00/00	NOV 09/01/87	00/00/00

8/9

EATC0922

ENFORCEMENT ACTION TRACKING SYSTEM
 LICENSEE HISTORY REPORT
 SORTED BY EA NUMBER
 DATE RANGE = ALL DATES
 DATE TYPE =

07/08/93
 PAGE 2

REGION = CUMULATIVE
 LICENSEE = PUBLIC SERVICE CO OF COL
 LICENSEE TYPE = ALL

SUPPLEMENT = ALL

EA # ES/TYPE	LICENSEE FACILITY	INSP DATE HQ DATE	SUPPL SEV	PROPOSED CP DATE MIT/ESC	IMPOSED CP DATE MIT/ESC	AMT PAID DATE	ACTION DATE	ENF CONF DATE NUREG VOL
87-167 HW /RX	PUBLIC SERVICE CO. OF CO FT ST VRAIN NUCLEAR PLAN	07/31/87 12/04/87	1 4	0 00/00/00 M: E:	0 00/00/00 M: E:	0 00/00/00	NOV 12/04/87	00/00/00
90-059 DR /RX	PUBLIC SERVICE CO. OF CO FT ST VRAIN NUCLEAR PLAN	03/02/90 00/00/00	8 4	0 00/00/00 M: E:	0 00/00/00 M: E:	0 00/00/00	NOV 04/27/90	04/16/90
		FACTS: Emergency Preparedness KEYWORDS: 080100 - Emergency Preparedness - Event Classification - 080200 - Emergency Preparedness - Notification of NRC - 080300 - Emergency Preparedness - Event Response - 080400 - Emergency Preparedness - Emerg. Planning Standa -						
90-174 GC /RX	PUBLIC SERVICE CO. OF CO FT ST VRAIN NUCLEAR PLAN	09/28/90 10/30/90	4 4	0 00/00/00 M: E:	0 00/00/00 M: E:	0 00/00/00	NOV 10/30/90	10/18/90
		FACTS: Radiation protection KEYWORDS: 040101 - Health Physics/Materia - Cause - Personnel Error 040102 - Health Physics/Materia - Cause - Procedural Error 040203 - Health Physics/Materia - Effect - Exposure 040211 - Health Physics/Materia - Effect - Unplanned Rad. Exposur 040405 - Health Physics/Materia - Monitoring/Testing - Dosimetry 040415 - Health Physics/Materia - Monitoring/Testing - Survey/Evaluation 040504 - Health Physics/Materia - Programmatic - Procedures 040520 - Health Physics/Materia - Programmatic - Health Physics 040604 - Health Physics/Materia - Misc. - Label						
91-088 EK /RX	PUBLIC SERVICE CO. OF CO FORT ST VRAIN	06/21/91 07/25/91	4 3	82,500 08/15/91 M: C E: H	0 00/00/00 M: E:	62,500 09/13/91	00/00/00	07/25/91 V10NJ
		FACTS: Repetitive radiation protection violations KEYWORDS: 010407 - Reactor Ops - Functional Area - Tech. Spec. 040102 - Health Physics/Materia - Cause - Procedural Error 040203 - Health Physics/Materia - Effect - Exposure 040211 - Health Physics/Materia - Effect - Unplanned Rad. Exposur 040415 - Health Physics/Materia - Monitoring/Testing - Survey/Evaluation 040506 - Health Physics/Materia - Programmatic - Rad. Prot. Program 040610 - Health Physics/Materia - Misc. - Rad Work Permit 050600 - Transportation - Packaging/Loading						

EATC0922

ENFORCEMENT ACTION TRACKING SYSTEM
LICENSEE HISTORY REPORT
SORTED BY EA NUMBER
DATE RANGE = ALL DATES
DATE TYPE =

07/08/93
PAGE 3

REGION - CUMULATIVE
LICENSEE = PUBLIC SERVICE CO. OF COL
LICENSEE TYPE = ALL

SUPPLEMENT = ALL

EA # ES/TYPE	LICENSEE FACILITY	INSP DATE HQ DATE	SUPPL SEV	PROPOSED CP DATE MIT/ESC	IMPOSED CP DATE MIT/ESC	AMT PAID DATE	ACTION DATE	ENF CONF DATE NUREG VOL
92-152 DR /RX	PUBLIC SERVICE CO. OF CO FT ST VRAIN NUCLEAR PLAN	07/20/92 00/00/00		0 00/00/00 M: E:	0 00/00/00 M: E:	0 00/00/00	00/00/00	05/10/93
FACTS: Discrimination against contractor for reporting unsafe health physics practices.								
KEYWORDS: 070400 - Misc. Matters - Sect. 210 - Discrimina -								

July 15, 1993

FACT SHEET
FOR DISCRIMINATION CASES

COMPLAINANT [COMP]: McTiernan, George S. ERA NO.: 91-ERA-037

LICENSEE/FACILITY: Public Service Company of Colorado
Ft. St. Vrain
Applied Radiological Company (see disclaimer
in "Remarks" below)

NRC REGION: 4

DESCRIPTION OF PROTECTED ACTIVITY: reporting poor work practices
by an HP tech

DESCRIPTION OF ALLEGED DISCRIMINATION: termination

DATE OF DISCRIMINATION: March 21, 1991

DATE OF COMPLAINT: March 26, 1991

DATE COMPLAINT RECEIVED BY DOL: March 29, 1991

DID COMPLAINANT ALSO REPORT DISC. TO NRC?:

LICENSEE'S EXPLANATION OF ACTION: McT was not a team player, his
complaints about the HP tech were evidence of behavior problems
and the licensee had trouble disciplining him.

"The decision to release this contract Health Physics technician
. . . had already been made prior to this conversation ever
taking place." (see response to chill ltr., dated 6/10/91)

DISCUSSION:

ACTIONS TAKEN TO MAKE COMPLAINANT WHOLE:

CULPABLE LICENSEE MANAGER(S) [CLM]: (INCLUDE NAME, TITLE, AND
WHETHER CLM IS STILL WITH LICENSEE AND IN WHAT CAPACITY IF KNOWN)

ACTIONS TAKEN AGAINST CLM:

SETTLED: Yes DATE SETTLED: July 10, 1991 (see ALJ,
7/31/91)

SETTLEMENT CONDITIONS:

DISTRICT DIRECTOR'S DECISION: April 29, 1991 - discrimination

B/10

"McTiernan was terminated from employment with Public Service Company of Colorado after the firm learned he complained to Bill Woodard and the Quality Assurance Department about inadequate testing of conditions hazardous to employee health."

DOL ALJ DECISION: recommended approval of settlement (see SOL, 2/21/92)

SECRETARY OF LABOR DECISION: February 21, 1992 - approved settlement

DOL ALJ REVISED DECISION (IF APPLICABLE):

NRC ACTIONS TAKEN:

DISCUSSED WITH OI?: OI rpt. 4-91-019 concluded that McT had been "deliberately" terminated by lic. for his protected activity. DOJ declined prosecution on 2/1/93.

CHILLING EFFECT LETTER [CEL] SENT?: May 10, 1991

June 10, 1991 response: The licensee stated that the decision to release McT was made before he raised safety concerns. Licensee also refused to release internal investigative reports "at the current time".

ENFORCEMENT ACTION ISSUED (INCLUDE EA NO.): EA 92-152

CLOSEOUT ACTION (OTHER THAN ENFORCEMENT):

REMARKS: Although McT worked for Applied Radiological, he said in his complaint that "None of my complaint is directed toward ARC. They had no involvement in this violation." (p. 1)