

NUDOCS



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D. C. 20555-0001

October 26, 1994

EA 93-056

Houston Lighting & Power Company
ATTN: William T. Cottle, Group
Vice President, Nuclear
Post Office Box 289
Wadsworth, Texas 77483

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$100,000 AND DEMAND FOR INFORMATION
(NRC Investigation Report No. 4-92-003)

This refers to the investigation conducted by the NRC's Office of Investigations (OI) to determine whether Houston Lighting & Power Company (HL&P) violated 10 CFR 50.7 when it revoked a contract employee's access to the South Texas Project (STP) facility on February 21, 1992. A copy of the synopsis of OI's investigation is enclosed. As indicated in the enclosed Notice of Violation (Notice), the NRC has concluded on the basis of its investigation and review of available information that HL&P terminated this individual's employment at STP as a result of his engaging in activities protected by statute.

The individual, a former employee of Sun Technical Services who was hired as an instrumentation and control technician at STP on January 13, 1992, engaged in protected activities when he alleged violations of various NRC requirements in documents mailed to the NRC in February 1992. Specifically, in a petition dated February 10, 1992, and filed in accordance with 10 CFR 2.206, the individual requested NRC action in response to alleged violations of STP security and work process procedures. HL&P officials were provided a copy of the 10 CFR 2.206 petition and, therefore, were aware of the protected activity.

On February 21, 1992, approximately 10 days after HL&P became aware of this individual's having made allegations to the NRC, HL&P revoked his access to STP allegedly based on HL&P's conclusion that he had omitted material information from his access authorization request. On March 11, 1992, the U.S. Department of Labor's Wage and Hour Division in Houston, Texas received a complaint from this individual alleging that his access to STP had been revoked because of his contacts with the NRC. On June 30, 1992, the District Director of the Wage and Hour Division found that the individual had engaged in a protected activity and that the action against him constituted a violation of Section 210 (now Section 211) of the Energy Reorganization Act of 1974, as amended. HL&P has appealed this decision and a hearing is currently scheduled to begin before a Department of Labor (DOL) administrative law judge (ALJ) on March 14, 1995.

On August 4, 1992, the NRC requested by letter that HL&P provide its basis for the action against this individual and describe actions taken or planned to

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ensure that this action did not have a chilling effect on the willingness of other licensee or contractor employees to raise perceived safety concerns. HL&P responded on August 21, 1992, and stated that it disagreed with DOL's decision. HL&P's letter indicated that the individual had omitted information about previous jobs and termination from previous jobs on his access authorization request. HL&P said "The number and adverse nature of the omissions resulted in the HL&P Access Program Director's determination that the omissions were willful and, therefore, raised serious questions regarding the individual's reliability and trustworthiness." HL&P also said, "A recent review by HL&P confirms that the decision in this case is consistent with prior HL&P access authorization/denial decisions in similar circumstances."

At the outset, it should be made clear that we do not intend to penalize HL&P for reconsidering an access authorization decision it had previously made. Indeed, under NRC's regulatory requirements, licensees have an obligation to reevaluate earlier decisions to authorize unescorted access whenever they obtain information that casts serious doubt on the trustworthiness of an employee and employees are not shielded from such reconsideration simply because they engaged in protected activities. However, while the willful omission of material information on a request for unescorted access is a consideration in determining whether to deny or revoke unescorted access, we are unconvinced, based on the information contained in the OI report and the apparently reasonable explanation that this individual gave for his omissions, that the omissions in this case were the reason for the revocation of the individual's unescorted access. Rather, based on the circumstances of this case and OI's findings, we believe that the individual's unescorted access was revoked because he engaged in protected activities.

This conclusion is strengthened when we consider the inconsistencies in the manner that you had treated previous cases associated with the revocation or denial of unescorted access because of the omission of previous employment information. Based on the OI report's statistical information covering a period from January 1, 1991 to March 19, 1992, your Access Program adjudicated 11 cases that considered revoking or denying an individual's unescorted access based on the omission of previous employment information. Of these 11 cases, no individual's access was revoked following an earlier grant of access, although 7 individuals were denied access during the initial access decision process and 4 were granted access despite the omission of previous employment information. A closer examination of this information revealed that the unescorted access denials were for omission of previous misconduct (1), previous fitness-for-duty problems (2), previous denial of unescorted access at another nuclear facility (2), omission of previous employment (1), and falsification of educational information (1). In addition, a review of the four adjudications that resulted in an individual's unescorted access being granted revealed that two of these cases involved individuals that had unfavorable employment histories, with one individual failing to disclose that he was discharged for cause three times from previous employers and a second individual failing to disclose that he was discharged twice. We do not consider that the discriminated individual's omission of previous employment

information was significantly different from the omissions of the individuals whose unescorted access was granted.

HL&P had earlier considered information supplied by the individual to the effect that his employment had been terminated by another NRC licensee and determined that the individual could properly be granted unescorted access. It was only upon learning that the individual had filed a 10 CFR 2.206 petition directed to activities at STP, that HL&P decided to review its earlier access authorization decision for this individual. From the information available, it appears that this additional review and HL&P's subsequent prompt revocation of the individual's unescorted access were a direct result of the individual's having engaged in a protected activity. We have therefore concluded that the decision to revoke this individual's unescorted access was motivated by his identifying safety concerns to the NRC and not because of the omission of previous employment information; but for his having engaged in such protected activities, the individual's access would not have been revoked. Thus, the NRC has concluded that HL&P violated the provisions of 10 CFR 50.7 which prohibits discrimination against employees who engage in activities of this type.

The NRC considers all violations of this regulation significant, particularly when, as was the case here, management employees above first-line supervisors take discriminatory action against an individual who engaged in activities protected by statute. To reflect the seriousness with which NRC views such infractions and the unacceptability of these actions, the violation in the enclosed Notice has been classified at Severity Level II, in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) 10 CFR Part 2, Appendix C. In addition, in order to determine whether separate enforcement action should be taken against the managers who were most directly involved in making the decision to revoke the individual's access, the NRC is issuing Demands for Information to two HL&P employees, who at the time of the violation were the STP Licensing General Manager and the STP Nuclear Security Department Manager.

The NRC recognizes that HL&P has recently taken a number of steps to improve its nuclear-safety related employee concerns program, now called the Nuclear Safety & Quality Concerns Program (NSQP), and to better ensure that STP employees will feel free to raise concerns without fear of retaliation from supervisors or managers. These steps, which have been discussed in public meetings and described in correspondence between HL&P and the NRC, include: the conduct of an independent assessment of the employee concerns program; actions to assess and improve the climate for raising concerns; sensitivity training for current and new supervisors; the hiring of a new manager of the NSQP who reports directly to the Group Vice President, Nuclear; the establishment of an employee advocate or ombudsman position as part of the NSQP; training of concern evaluators in relating to persons raising concerns and investigative techniques; the establishment of an oversight panel to review the adequacy of concern evaluations and response to concerns; and several additional administrative and procedural steps to enhance employee confidence in the program. As you indicated in your February 11, 1994 letter

to the NRC describing these enhancements, the overall effectiveness of these changes cannot be measured immediately.

To emphasize the high level of importance that the NRC attaches to establishing and maintaining an environment in which employees feel free to raise concerns without fear of retaliation, and preventing acts of discrimination against employees who raise concerns about licensed activities, I have been authorized after consultation with the Commission, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$100,000 for the Severity Level II violation discussed above and in the Notice.

The base value of a civil penalty for a Severity Level II violation is \$80,000. The civil penalty adjustment factors in the Enforcement Policy were considered. Although we considered mitigating the penalty on the basis of your recent efforts to improve the employee concerns program, these actions were not taken in a timely manner with respect to the violation that is the subject of this enforcement action nor have you taken corrective actions in this case. Consequently, no adjustment was made for corrective actions. Your prior performance, overall and in the discrimination area has not been good. Relative to the issue of overall performance, the NRC has issued four escalated enforcement actions in the last two years. The most recent SALP, issued on October 21, 1994, did not address your performance in the area of your employee concerns program; however, a diagnostic evaluation and Region IV special inspections at STP found weaknesses and performance problems in that program. In view of these indications of poor performance, escalation of 50% of the base civil penalty is warranted. The other adjustment factors in the Policy were considered and no further adjustments to the base civil penalty were considered appropriate. Application of the adjustment factors, therefore, would result in an adjusted civil penalty of \$120,000. However, this Severity Level II violation is a single violation. The statutory maximum civil penalty for a single violation is \$100,000; consequently, the civil penalty for this violation will be limited to \$100,000.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. Since the NRC enforcement action in this case is being proposed prior to a decision on this matter by the DOL's administrative law judge or a final decision by the Secretary of Labor (SOL), you may delay submission of the response as described in the enclosed Notice until 30 days after the decision of the DOL's administrative law judge. In addition, you may delay payment of, or response to, the proposed civil penalty until 30 days after the SOL's final decision at which time you may also supplement your earlier response. Notwithstanding the information and corrective actions you previously submitted in regard to this matter, in that portion of your response which describes corrective steps you have taken, you are required to describe any additional actions that you plan to take to minimize any chilling effect arising from this incident.

In addition, pursuant to sections 161c, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, 10 CFR 2.204 and 50.54(f), in order for the

Commission to determine whether your license should be modified or other actions taken, you are required to submit to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, within 30 days of the date of this Demand for Information, in writing and under oath or affirmation --

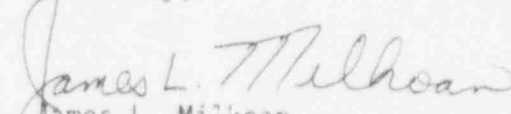
1. A description of the current employment duties and responsibilities of Richard L. Balcom and William J. Jump. Is Mr. Balcom involved in NRC licensed or regulated activities in his current position? Is Mr. Jump involved in NRC licensed or regulated activities in his current position?
2. An explanation as to why the NRC can have confidence that the licensee will ensure an environment that is free from harassment, intimidation, and discrimination, both in general throughout its organization, and in particular with Mr. Balcom and/or Mr. Jump involved in NRC licensed or regulated activities in the future at HL&P.
3. An explanation as to why the NRC can have confidence that Mr. Balcom and/or Mr. Jump will comply with NRC requirements should they be involved in NRC licensed or regulated activities in the future at HL&P.

Copies of the response to this Demand for Information should also be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be placed in the NRC Public Document Room.

The responses directed by this letter and the enclosed Notice are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Pub. L. No. 96-511.

Sincerely,


James L. Milhoan
Deputy Executive Director
for Nuclear Reactor Regulation,
Regional Operations and Research

Docket Nos. 50-498, 50-499
License Nos. NPF-76, NPF-80

Enclosures:

- (1) Notice of Violation and Proposed Imposition of Civil Penalty
- (2) Synopsis of the OI Investigation

Houston Lighting and
Power Company

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cc w/enclosures:
Houston Lighting & Power Company
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721 Barton Springs Road
Austin, Texas 78704

City Public Service Board
ATTN: K. J. Fiedler/M. T. Hardt
P.O. Box 1771
San Antonio, Texas 78296

Newman, Bouknight & Edgar, P.C.
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Central Power and Light Company
ATTN: G. E. Vaughn/T. M. Puckett
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Bureau of Radiation Control
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Austin, Texas 78756

Office of the Governor
ATTN: Susan Rieff, Director
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cc w/encls: See Next Page

Houston Lighting and
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cc w/encls: (Con't)
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