



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV

611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011 8064

October 17, 1995

EA 95-077

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 PENALTIES -
\$160,000
(NRC Office of Inspector General Investigation 92-491)

Dear Mr. Cottle:

This letter refers to an NRC Office of Inspector General (OIG) investigation conducted at the Houston Lighting & Lighting Power (HL&P) Company's South Texas Project (STP) facility and to a recently-issued Department of Labor (DOL) Administrative Law Judge's (ALJ) Recommended Decision and Order (RDO) on the same issue (93-ERA-7, 93-ERA-8, April 6, 1995). The purpose of this investigation was to review details concerning the alleged discrimination, in violation of the requirements of 10 CFR 50.7, by HL&P against two former members of the licensee's nuclear security department (NSD), Messrs. David Lamb and James Dean. As indicated in the enclosed Notice of Violation (Notice), the NRC has concluded, on the basis of the OIG investigation, the DOL RDO, and a review of other available information, that HL&P discriminated against these individuals by terminating their employment at STP as a result of their engaging in protected activities.

Based on the findings of the OIG investigation, as documented in its report which was issued February 18, 1993, Demands for Information (DFIs) were issued on September 29, 1993, to both HL&P and Mr. Richard Balcom, the former manager of the NSD. Following HL&P's and Mr. Balcom's responses to the DFIs on November 15, 1993, the NRC informed both parties on December 30, 1993 that, because the issue of discrimination was then currently before a DOL ALJ, the staff would await the decision of the ALJ before determining if further enforcement action was warranted.

On April 6, 1995, the ALJ issued his RDO which found that the former NSD employees had been discriminated against by HL&P in that their employment was terminated on May 4, 1992, in retaliation for having earlier identified and reported safety concerns to the NRC. Following the issuance of the ALJ's RDO, a predecisional enforcement conference was conducted with HL&P and Mr. Balcom on June 16, 1995. This conference was transcribed and open to public observation. The purpose of the conference was to give HL&P and Mr. Balcom the opportunity to present their positions regarding their action connected with the alleged discrimination of the two former NSD employees and to discuss any corrective action taken as a result of the ALJ's findings.

9510240186 951017
PDR ADOCK 05000498
G PDR

H005
11

Based on its review of the OIG's report, the DFI responses, the ALJ's RDO, and the information that was obtained during the predecisional enforcement conference, the NRC has determined that violations of NRC requirements occurred. The violations are cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalties.

The NRC recognizes that these violations occurred early in 1992, and that, since their occurrence, HL&P has implemented many improvements both in its program for addressing employee concerns without the employee's fearing retaliation, and in its program for identifying and correcting problems. In addition, NRC recognizes that HL&P has instituted many significant management changes within its organization that appear to have improved its overall performance and increased the desire of management to identify and correct problems. Notwithstanding these actions, the NRC has decided that enforcement action is warranted to reinforce the message to HL&P's present organization that discrimination against any individual who raises safety or regulatory concerns is unacceptable and will not be tolerated by the NRC. Therefore, each of the violations has been categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Action," (Enforcement Policy) (60 FR 34381, June 30, 1995) at Severity Level II.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$80,000 normally is considered for a Severity Level II violation. In this case, in order to emphasize the importance of ensuring that appropriate controls exist to preclude discrimination against individuals for identifying safety concerns, I considered exercising enforcement discretion, in accordance with Section VII of the Enforcement Policy, to increase the base civil penalty to the statutory maximum civil penalty amount of \$100,000 for each of the two violations. However, after considering the efforts that HL&P has undertaken to improve its programs to identify and correct employee identified plant problems without fear of licensee management reprisals as described above, and after consultation with the Commission, I have been authorized to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalties in the amount of \$160,000, \$80,000 for each of the two violations described in the Notice.

HL&P is required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing its response. Since the NRC enforcement action in this case is being proposed prior to a final decision on this matter by the Secretary of Labor (SOL), you may delay payment of, or response to, the proposed civil penalties and submission of certain portions of the response as described in the enclosed Notice until 30 days after the SOL's decision, at which time you may also supplement your earlier responses. In the response required by this letter and Notice, you should document the specific actions taken and any additional actions you plan to prevent recurrence of violations of this type and any actions that you have taken or planned to minimize any chilling effect that might arise from this incident.

Also enclosed with this letter is a copy of a letter and Notice of Violation to Mr. Balcom.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and HL&P's response will be placed in the NRC Public Document Room (PDR). To the extent possible, the response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. However, if you find it necessary to include such information that is not already in the public record, HL&P should clearly indicate the specific information that it desires not to be placed in the PDR, and provide the legal basis to support HL&P's request for withholding the information from the public.

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,



L. J. Callan
Regional Administrator

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

Enclosures: Notice of Violation and
Proposed Imposition of Civil Penalties;
Letter and Notice of Violation
to Mr. Balcom

cc w/encl:

Houston Lighting & Power Company
ATTN: Lawrence E. Martin, General Manager
Nuclear Assurance & Licensing
P.O. Box 289
Wadsworth, Texas 77483

City of Austin
Electric Utility Department
ATTN: J. C. Lanier/M. B. Lee
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

cc w/encl: See Next Page

Houston Lighting &
Power Company

4

cc w/encl: (Con't)
Morgan, Lewis & Bockius
ATTN: Jack R. Newman, Esq.
1800 M. Street, N.W.
Washington, D.C. 20036-5869

Central Power and Light Company
ATTN: Mr. C. A. Johnson
P.O. Box 289
Mail Code: N5012
Wadsworth, Texas 77483

INPO
Records Center
700 Galleria Parkway
Atlanta, Georgia 30339-5957

Mr. Joseph M. Hendrie
50 Bellport Lane
Bellport, New York 11713

Bureau of Radiation Control
State of Texas
1100 West 49th Street
Austin, Texas 78756

Office of the Governor
ATTN: Andy Barrett, Director
Environmental Policy
P.O. Box 12428
Austin, Texas 78711

Judge, Matagorda County
Matagorda County Courthouse
1700 Seventh Street
Bay City, Texas 77414

Licensing Representative
Houston Lighting & Power Company
Suite 610
Three Metro Center
Bethesda, Maryland 20814

Houston Lighting & Power Company
ATTN: Rufus S. Scott, Associate
General Counsel
P.O. Box 61867
Houston, Texas 77208

cc w/encl: See Next Page

Houston Lighting &
Power Company

5

cc w/encl: (Con't)
Egan & Associates, P.C.
ATTN: Joseph R. Egan, Esq.
2300 N Street, N.W.
Washington, D.C. 20037

Little Harbor Consultants, Inc.
ATTN: Mr. J. W. Beck
44 Nichols Road
Cohasset, MA 02025-1166

Houston Lighting &
Power Company

DISTRIBUTION:

PUBLIC

SECY

CA

JTaylor, EDO

JMilhoan, DEDR

JLieberman, OE

LChandler, OGC

JGoldberg, OGC

WRussell, NRR

RZimmerman, NRR/ADP

TAlexion, NRR

Enforcement Coordinators

RI, RII, RIII

FIngram, PA

LNorton, OIG

GCaputo, OI

EJordan, AEOD

LTremper, OC/LFDCB

MSatorius, OE

OE:EA (2)

NUDOCS

RIV DISTRIBUTION:

LJCallan

SJCollins

JDyer▶WJohnson

TPGwynn▶KBrockman

RScarano▶DChamberlain

JPellet

DLoveless, SRI/STP

BHenderson

CHackney

WBrown

GSanborn▶EAFile

RWise

LWilliamson

RIV Files

MIS Coordinator

240014