



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV

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

March 26, 1996

EA 95-281

Entergy Operations, Inc.
ATTN: John R. McGaha, Vice President -
Operations, River Bend Station
P.O. Box 220
St. Francisville, Louisiana 70775

SUBJECT: PREDECISIONAL ENFORCEMENT CONFERENCE HELD FEBRUARY 7, 1996
(NRC Investigation Case No. 4-95-005)

Dear Mr. McGaha:

This refers to the predecisional enforcement conference held on February 7, 1996, in the NRC's Arlington, Texas office. The conference was scheduled after NRC's Office of Investigations (OI) concluded that a River Bend Station (RBS) employee was discriminated against by RBS management in retaliation for past involvement in protected activities, including his having filed a complaint with the U.S. Department of Labor (DOL) in April 1994. As discussed in the NRC's December 22, 1995 letter to you, the investigation found that May 1994, Entergy Operations, Inc. (Entergy) entered into a settlement of the employee's DOL complaint, which included monetary compensation and an agreement to revise his 1993 performance appraisal. In January 1995, eight months after this settlement, the employee was notified that he had been given the lowest possible ranking in Entergy's forced ranking process and, in lieu of his taking a severance package, was placed on a performance improvement program. The OI report appeared to establish a prima facie case that discrimination had occurred, and the predecisional enforcement conference was scheduled to give Entergy an opportunity to respond to the concerns identified in that investigation.

The NRC's concerns included: 1) the belief that this employee's ranking was inconsistent with his previous performance appraisals and with several generally favorable reviews of the program for which this employee was directly responsible, including internal Entergy audits and NRC inspection findings; 2) the belief that the performance appraisals of this employee, when compared with the appraisals of his peers in the same department, provided no apparent basis for his being one of only two employees in his peer group to receive the lowest ranking; and 3) the belief that an RBS manager other than the employee's immediate supervisor may have intentionally influenced the ranking process in retaliation for this employee's protected activities.

Thus, the conference was conducted to discuss apparent violations of 10 CFR 50.7, which prohibits discriminating against employees who engage in protected activities, and 10 CFR 50.5, which prohibits individuals from deliberately causing violations of NRC requirements. The conference provided Entergy and the RBS manager, who appeared to have influenced the ranking process, an

9603290352 960326
PDR ADOCK 05000458
P PDR

opportunity to present any information relevant to this matter and to the NRC's enforcement decision.

At the conference, Entergy provided more details on this employee's ranking relative to his peers, information regarding personal observations of the employee's performance by other RBS managers, and information regarding the steps taken to ensure that the ranking process was fairly and uniformly implemented. Based on a review of all available information, including information obtained during the investigation and information Entergy presented at the conference, the NRC does not have a sufficient basis to conclude that this employee's ranking was based on his previous involvement in protected activities. Furthermore, the NRC does not believe that the involved RBS manager intentionally influenced the ranking process in retaliation for the employee's protected activities. Our decision was substantially influenced by the information Entergy and the involved manager provided during the five-hour long predecisional enforcement conference. This included the following information:

1. Entergy noted that it had assumed responsibility for RBS from Gulf States Utilities (GSU) in late 1993 and that, because RBS was perceived as performing poorly, Entergy did not believe previous GSU performance appraisals had much value and made a conscious decision to ignore these in evaluating plant personnel. The forced ranking process, therefore, was predicated on the higher standards that Entergy was putting in place, and was designed to focus on perceptions of current performance as opposed to past performance. This is particularly important because the NRC's concerns were based substantially on apparent inconsistencies between previous GSU appraisals and this employees's ranking in the forced ranking process.
2. Entergy described in detail the weaknesses in the program for which this employee was responsible and testified that the needed improvements were developed and implemented by the employee's immediate supervisor and, therefore, were not reflective of the employee's ability to devise or bring about such improvements. In fact, Entergy's testimony showed that the program for which this employee was responsible was taken away from him for the very purpose of implementing said improvements. Furthermore, Entergy presented information to show that unfavorable perceptions of this employee's abilities to manage this program were generally shared by other RBS managers and employees in the same department.
3. Entergy noted that, in order to be fair to all employees, a conscious decision was made to afford no special protection to employees in the forced ranking process, regardless of whether they were known to have engaged in protected activities. However, Entergy was mindful of employees' past protected activities and stated that upper level management and legal counsel were consulted in the ranking of several individuals, including the subject employee, who had engaged in protected activities.

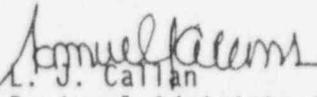
Entergy Operations, Inc.

- 3 -

In summary, Entergy has addressed the fundamental perceptions that the NRC held prior to conducting the predecisional enforcement conference. After consultation with the Director, Office of Enforcement, the staff has concluded that, based on the evidence developed by OI and at the enforcement conference, you would have taken the same action affecting this employee in the absence of his protected activity. Accordingly, at this time the NRC is taking no enforcement action against Entergy or the involved manager and plans no further action with regard to this matter. We are notifying the involved manager in a separate letter. Since no violations were identified, no response to this letter is required.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, and any response you may choose to file, will be placed in the NRC Public Document Room (PDR). To the extent possible, any response you provide should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. In addition, you should be aware that the transcript of the enforcement conference and the materials submitted by Entergy at the conference are the subject of a recent Freedom of Information Act request. We are currently processing that request.

Sincerely,


L. J. Callan
Ser/ Regional Administrator

Docket No. 50-458
License No. NPF-47

cc:

Entergy Operations, Inc.
ATTN: J. W. Yelverton, Executive Vice
President and Chief Operating
Officer
P.O. Box 31995
Jackson, Mississippi 39286-1995

Entergy Operations, Inc.
ATTN: Jerrold G. Dewease, Vice President
Operations Support
P.O. Box 31995
Jackson, Mississippi 39286-1995

Entergy Operations, Inc.
ATTN: Michael B. Sellman, General Manager
Plant Operations
P.O. Box 220
St. Francisville, Louisiana 70775

Entergy Operations, Inc.

- 4 -

Entergy Operations, Inc.
ATTN: James J. Fisicaro, Director
Nuclear Safety
River Bend Station
P.O. Box 220
St. Francisville, Louisiana 70775

Wise, Carter, Child & Caraway
ATTN: Robert B. McGehee, Esq.
P.O. Box 651
Jackson, Mississippi 39205

Winston & Strawn
ATTN: Mark J. Wetterhahn, Esq.
1401 L Street, N.W.
Washington, D.C. 20005-3502

Entergy Operations, Inc.
ATTN: J. E. Venable, Manager - Licensing
P.O. Box 220
St. Francisville, Louisiana 70775

The Honorable Richard P. Ieyoub
Attorney General
P.O. Box 94095
Baton Rouge, Louisiana 70804-9095

H. Anne Plettinger
3456 Villa Rose Drive
Baton Rouge, Louisiana 70806

President of West Feliciana
Police Jury
P.O. Box 1921
St. Francisville, Louisiana 70775

Cajun Electric Power Coop. Inc.
ATTN: Larry G. Johnson, Director
Systems Engineering
10719 Airline Highway
P.O. Box 15540
Baton Rouge, Louisiana 70895

William H. Spell, Administrator
Louisiana Radiation Protection Division
P.O. Box 82135
Baton Rouge, Louisiana 70884-2135

Entergy Operations, Inc.

- 5 -

bcc w/o enclosure:

HQ/OTHER REGIONS:

PDR

LPDR

SECY

CA

JTaylor, EDO (17G21)

JMilhoan, DEDR (17G21)

LChandler, OGC (15B18)

JGoldberg, OGC (15B18)

WRussell, NRR (12G18)

RZimmerman, NRR/ADP (12G18)

DWigginton, NRR

Enforcement Coordinators

RI, RII, RIII

JGilliland, PA (2G4)

LNorton, OIG (5D28)

GCaputo, OI (3E4)

EJordan, AEOD (4D18)

LTremper, OC/LFDCB (9E10)

OE:ES (7H5)

OE:EA (2) (7H5)

NUDOCS

REGION IV:

LJCallan

SJCollins

GSanborn ▶ EAFfile

RWise

BHenderson

CHackney

WBrown

LWilliamson

JDyer ▶ AHowell

TPGwynn ▶ KBrockman

PHarrell ▶ GPick

WSmith, SRI

RIV Files

MIS Coordinator

by tele
B Beckner
Son

OE *[Signature]*
 RPRosano
 3/2/96

NRR *[Signature]*
 RPZimmerman
 3/2/96

[Signature]
 D:OE
 JLiberman
 3/2/96

S. Collins
[Signature]
 3/2/96

G:\EA\FINAL\EA95281.FNL

280004

JEH 4/10



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV

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

March 26, 1996

EA 95-285

Mr. James J. Fisicaro
Director, Nuclear Safety
River Bend Station
P.O. Box 220
St. Francisville, Louisiana 70775

SUBJECT: PREDECISIONAL ENFORCEMENT CONFERENCE HELD FEBRUARY 7, 1996
(NRC Investigation Case No. 4-95-005)

Dear Mr. Fisicaro:

This refers to the predecisional enforcement conference held on February 7, 1996, in the NRC's Arlington, Texas office. The conference was scheduled after NRC's Office of Investigations (OI) came to a conclusion that a River Bend Station (RBS) employee was discriminated against by RBS management in retaliation for past involvement in protected activities, including his having filed a complaint with the U.S. Department of Labor (DOL) in April 1994. As discussed in the NRC's December 22, 1995 letter to Entergy Operations, Inc. (Entergy), the investigation found that in May 1994 Entergy entered into a settlement of the employee's DOL complaint, which included monetary compensation and an agreement to revise his 1993 performance appraisal. In January 1995, eight months after this settlement, the employee was given the lowest possible ranking in Entergy's forced ranking process and, in lieu of his taking a severance package, was placed on a performance improvement program. The OI report appeared to establish a prima facie case that discrimination had occurred, and the predecisional enforcement conference was scheduled to give Entergy an opportunity to respond to the concerns identified in that investigation.

The NRC's concerns included: 1) the belief that this employee's ranking was inconsistent with his previous performance appraisals and with several generally favorable reviews of the program for which this employee was directly responsible, including internal Entergy audits and NRC inspection findings; 2) the belief that the performance appraisals of this employee, when compared with the appraisals of his peers in the same department, provided no apparent basis for his being one of only two employees in his peer group to receive the lowest ranking; and 3) the belief that you may have intentionally influenced the ranking process in retaliation for this employee's protected activities.

Thus, the conference was conducted to discuss apparent violations of 10 CFR 50.7, which prohibits discriminating against employees who engage in protected activities, and 10 CFR 50.5, which prohibits individuals from deliberately causing violations of NRC requirements. The conference provided Entergy and you an opportunity to present any information relevant to this matter and to the NRC's enforcement decision.

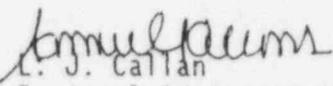
James J. Fisicaro

-2-

For the reasons discussed in the enclosed letter to Entergy, NRC has concluded that no violation of 10 CFR 50.7 occurred and that you did not violate 10 CFR 50.5. As such, no enforcement action is being taken against you or Entergy and the NRC plans no further action with regard to this matter. Since no violations were identified, no response to this letter is required.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, and any response you may choose to file, will be placed in the NRC Public Document Room (PDR). To the extent possible, any response you provide should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction.

Sincerely,


L. J. Callan
Regional Administrator

Enclosure: Letter to Entergy Operations, Inc. (EA 95-281)

cc w/o Enclosure:
Entergy Operations, Inc.
ATTN: John R. McGaha, Vice President -
Operations, River Bend Station
P.O. Box 220
St. Francisville, Louisiana 70775