

DEC 08 1992

Docket No. 50-352
License No. NPF-39
EA 92-164

Mr. D. M. Smith
Senior Vice President -
Nuclear
Philadelphia Electric Company
Nuclear Group Headquarters
Correspondence Control Desk
Post Office Box 195
Wayne, Pennsylvania 19087-0195

Dear Mr. Smith:

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL
PENALTY - \$25,000
(U.S. Department of Labor Case No. 92-ERA-27)

This letter refers to the results of an administrative proceeding conducted by the U.S. Department of Labor (DOL), consisting of an investigation and hearing, regarding a complaint filed January 30, 1992, by an employee of Protection Technology Inc. (PTI), a contractor for the Philadelphia Electric Company (PECO) at the Limerick Generating Station, Limerick, Pennsylvania. In this case, a DOL Administrative Law Judge (ALJ) issued a Recommended Decision and Order finding that PTI discriminated against the employee because he engaged in protected activity, in violation of Section 210 of the Energy Reorganization Act (recently changed to Section 211 by the Energy Policy Act of 1992). In this case, PTI has filed an appeal with the Secretary of Labor.

Based on the ALJ's decision, the NRC has concluded that a violation of the Commission's regulations has occurred. On October 22, 1992, an enforcement conference was held with Mr. D. Helwig, and other members of your staff, to discuss this occurrence, the apparent violation, its cause and your corrective actions.

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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The violation described in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty concerns the finding of discrimination in violation of 10 CFR 50.7, "Employee Protection." Specifically, according to the ALJ decision, shortly after the employee engaged in protected activities, his supervisor retaliated against him because of that activity. The evidence showed that the primary motivating factor in PTI's decision to refer the employee for a psychological evaluation and, ultimately, to discharge him was his protected conduct in making his statement of January 1, 1992, concerning Limerick's security procedures. The ALJ based his decision in part on the fact that the employee was suspended the day after raising these safeguards concerns without explanation and without displaying any aberrant behavior. In addition, there was no documented evidence of prior behavioral/disciplinary problems with the employee. The NRC recognizes and fully supports your need to aggressively pursue physical protection of your facility under 10 CFR Part 73 and to assure fitness-for-duty for persons granted unescorted access to protected areas under 10 CFR Part 26. Nonetheless, you must also aggressively assure that individuals are not discriminated against for engaging in protected activities, as the ALJ found in this case.

Under 10 CFR 50.7, discrimination by a Commission licensee, or a contractor of a Commission licensee, against an employee for engaging in certain protected activities is prohibited. 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, providing Commission information about possible violations of requirements imposed under either the Atomic Energy Act or the Energy Reorganization Act, requesting the Commission to institute enforcement action against his or her employer for the administration or enforcement of these requirements, or testifying in any Commission proceeding.

The violation concerning the employee has been categorized as a Severity Level III violation, primarily because the discriminatory actions involved the person who was at that time the PTI site captain. Those actions are of particular concern because, as the site captain, he should have been responsible for protecting persons who raised concerns from harassment and intimidation. Such an environment is necessary if licensees are to fulfill their responsibility to protect the public health and safety. Thus, licensee management and licensee contractors must avoid actions that discriminate against individuals for raising safety concerns, and must promptly and effectively remedy actions that constitute discrimination.

Therefore, to emphasize the importance of maintaining an environment in which employees are free to provide information or raise safety and safeguards concerns without fear of retaliation or discrimination, I have been authorized, after consultation with the Director, Office of Enforcement, and the Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations, and Research, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) 10 CFR Part 2, Appendix C.

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The base value of a civil penalty for a Severity Level III violation is \$50,000. The escalation and mitigation factors set forth in the enforcement policy were considered and, on balance, the base civil penalty was mitigated by 50 percent to \$25,000. With respect to past performance, you received a SALP Category 1 rating in the area of Security and you have had no violations relating to discrimination in the past two years; therefore, 100 percent mitigation of the base civil penalty on this factor is warranted. However, your corrective actions, subsequent to the identification of the violation, were not comprehensive in that your assessment of the event failed to include an independent review of the case to determine if the event was correctly characterized by your contractor (PTI), and therefore, 50 percent escalation of the base civil penalty on this factor is warranted. The other factors were considered and no further adjustments were warranted.

Although the NRC is proposing a civil penalty for this case, payment or appeal of the civil penalty may be deferred until 30 days after a final decision by the Secretary of Labor on PTI's appeal which is still pending. Therefore, you are not required to provide a formal response pursuant to 10 CFR 2.201 and 2.205 until 30 days after the Secretary has issued a final decision in the case. However, notwithstanding your past corrective actions documented in your response of May 8, 1992, to our "chilling effect" letter dated April 9, 1992, regarding the actions against the employee, please respond in writing within thirty days of your receipt of this Notice of Violation and Proposed Imposition of Civil Penalty, describing any additional actions you have taken or plan to take to minimize any potential chilling effect arising from the circumstances related to the employee that might inhibit or prevent your employees or contractors from raising safety concerns to either your own organization or the NRC.

Finally, any decision to restore the employee to duty should assure that the appropriate requirements of 10 CFR Part 26 and Part 73 have been met.

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

Sincerely,

Original Signed By:
Thomas T. Martin

Thomas T. Martin
Regional Administrator

Enclosure: Notice of Violation and Proposed Imposition of Civil Penalty

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cc w/encl:

R. Charles, Chairman, Nuclear Review Board
D. Helwig, Vice President - Limerick Generating Station
G. Beck, Manager - Licensing Section
G. Madsen, Regulatory Engineer - Limerick Generating Station
Secretary, Nuclear Committee of the Board
Public Document Room (PDR)
Local Public Document Room (LPD?)
Nuclear Safety Information Center (NSIC)
K. Abraham, PAO-RI (2)
NRC Resident Inspector
Commonwealth of Pennsylvania

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Rec'd by ph
for OE on 12/3/92
DPA

should we address, in this letter, the "Order" of by the ALJ
concerning reinstatement of Mr. Murray in his old job?