



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

DOS
PDR

February 13, 1997

IA 95-042

Mr. Richard L. Balcom
HOME ADDRESS DELETED
PURSUANT TO 10 CFR 2.790

SUBJECT: RESPONSE TO NOTICE OF VIOLATION

Dear Mr. Balcom:

This is in response to your November 12, 1996 reply to a Notice of Violation issued by the NRC on October 17, 1995. This enforcement action was based on the determination that two former members of the STP security staff had been discriminated against as a result of engaging in protected activities. Specifically, the violation was based on the NRC's review of an April 6, 1995 Department of Labor Administrative Law Judge's (ALJ's) Recommended Decision and Order in the case of David Lamb and James Dean (93-ERA-007 and 93-ERA-008), and on an investigation conducted by the NRC's Office of Inspector General (OIG). A settlement of the individuals' complaints filed with the Department of Labor (DOL) was approved by the DOL's Administrative Review Board (ARB) in its Final Order Dismissing Complaint on October 10, 1996.

Your response was submitted following the settlement agreement between Houston Lighting & Power Company (HL&P) and the two former employees. In your response, you denied that the violation for which you were cited occurred, stating that you engaged in no misconduct and that you did not discriminate against David Lamb or James Dean because of any safety concerns they might have expressed. You also stated that because a settlement was reached by the parties to the Department of Labor's proceeding in this matter, "there will be no DOL decision" and any asserted violation must be based on the report of the NRC's OIG. You stated that this report contained gross errors: specifically, you alleged that the OIG misconstrued the nature of a telephone call between the former Deputy Regional Administrator of the NRC and an HL&P Vice President as a basis for the erroneous conclusion that HL&P managers were aware that Mr. Lamb and Mr. Dean had engaged in protected activity.

You alleged that, since the ALJ was "profoundly influenced" by the OIG report, the misunderstanding of the nature of the telephone call undermines both bases for the NRC's conclusion that you violated NRC requirements. In addition, you stated that, because of the charges made against you by the NRC, your employer removed you from NRC-licensed activities until those charges could be resolved.

We have reviewed your response, and have determined that you have not provided a sufficient basis for reversing our decision in this matter. The ALJ did not rely solely upon the OIG report with regard to assessing whether HL&P management was aware that Messrs. Lamb and Dean engaged in protected activity. Rather, he considered all of the circumstances and available evidence in

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making his determination that various managers indeed knew that these individuals had raised safety concerns. Similarly, the OIG did not rely solely upon the telephone call that you refer to in your response, but upon the totality of the circumstances in concluding that various managers had the requisite knowledge of Messrs' Lamb's and Dean's protected activity.

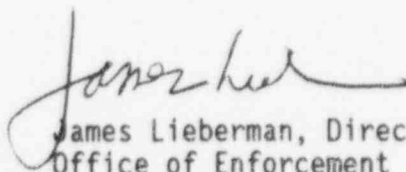
With regard to your assertion that there will be "no DOL decision" in this case because the matter was settled, as stated in the cover letter forwarding the Notice of Violation to you, the NRC considered all of the relevant information in this case, including information developed during the OIG investigation, your response to the Demand for Information issued on September 29, 1993, and information developed during the predecisional enforcement conference held with you and HL&P on June 16, 1995, in determining that your actions violated NRC regulations.

In sum, we have concluded that you have not provided a sufficient basis for reversing our determination that Messrs. Lamb and Dean were terminated for having engaged in protected activity or for withdrawing the enforcement actions taken as a result of this determination. Since you took sole responsibility at the predecisional enforcement conference on June 16, 1995, for making the decision to reorganize the Nuclear Security Department, resulting in their being terminated based on their having engaged in protected activities, we maintain that you discriminated against these two employees in violation of 10 CFR 50.5 and 10 CFR 50.7, as set forth in the Notice of Violation issued to you on October 17, 1995.

Notwithstanding the above, with regard to your statement that you were removed from NRC-licensed activities by your employer, as indicated in our letter which transmitted the Notice of Violation dated October 17, 1995, the NRC has not required that you be removed from NRC-licensed activities and accepts your statements regarding your intent, should you become directly involved in licensed activities again, to carry out your responsibilities to the best of your ability, with absolute personal integrity and in full compliance with NRC requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter will be placed in the NRC Public Document Room (PDR), and is being provided to HL&P.

Sincerely,



James Lieberman, Director
Office of Enforcement

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

Enclosures: As stated

Mr. Richard L. Balcom

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cc:
William T. Cottle, Group Vice
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Richard L. Balcom

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