



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV

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

February 22, 1996

IA 96-007

Mr. Bobby T. Lancaster
[HOME ADDRESS DELETED
PURSUANT TO 10 CFR 2.790]

SUBJECT: JANUARY 16, 1996, PREDECISIONAL ENFORCEMENT CONFERENCE
(INVESTIGATION CASE NO. 4-95-011)

Dear Mr. Lancaster:

This refers to the transcribed predecisional enforcement conference held with you and TU Electric on January 16, 1996, at the NRC's Arlington, Texas office. The conference was held following an investigation conducted by the NRC's Office of Investigations (OI) at the Comanche Peak Steam Electric Station (CPSES) to determine whether a former employee was retaliated against for contacting the NRC. The investigation was prompted by TU Electric informing the NRC in February 1995, that an employee's access to the protected area of the station had been suspended after he telephoned the NRC with concerns about reductions in staffing in his area of responsibility. The NRC has also considered the information that was provided in writing after the conference, including TU Electric's January 22, 1996 letter to the NRC and the January 26, 1996 letter from Donald P. Irwin, of Hunton & Williams, the law firm representing you and other managers who were requested to attend the conference.

Consistent with TU Electric's January 22, 1996 letter, your position at the enforcement conference was that you did not violate 10 CFR 50.5 because the decision to suspend the individual's access to the plant was designed to safeguard the plant, not to retaliate against the employee for potentially reporting a concern to the NRC. Nonetheless, the potential that the employee had called the NRC with a concern was one factor in the decision to suspend the individual's access. You participated in the decision to suspend the individual's access and to review the employee's telephone records to verify whether the employee had indeed contacted the NRC. When the Group Vice President was informed of these actions the next morning, he reversed all actions by issuing orders reinstating the suspended unescorted access, stopped any telephone records check, counseled all involved managers about the potential chilling effects, informed NRC, issued a Division wide memo reiterating the company policy against even the appearance of retaliation, and initiated an investigation. Because of TU Electric's prompt and comprehensive actions, the employee's access was restored before the employee required access to the protected area of the facility and the employee was unaware that the suspension had occurred. The NRC has determined, for the reasons that are explained in the enclosed letter to TU Electric, that the decision to suspend this employee's access to the protected area was a violation of 10 CFR 50.7, which prohibits discriminating against employees who engage in protected activity. However, as indicated in the enclosed letter, NRC has determined

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that the application of Enforcement Discretion is warranted in this case and neither a Notice of Violation nor a civil penalty has been proposed with regard to TU Electric.

NRC has also determined that enforcement action against you is not warranted and no action is being taken against you or any of the other involved managers. However, we believe that you and the other involved managers did not adequately balance potential concerns about protecting the plant from an employee who exhibits aberrant behavior with protecting employee's rights to raise safety concerns. You should understand that the NRC considers that connecting an employee's action of raising a safety concern to the NRC with aberrant behavior is simply unacceptable.

Since NRC is taking no action against you, you are not required to respond to this letter. However, if you choose to provide a response, please provide it to me within 30 days at U. S. Nuclear Regulatory Commission 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," records or documents compiled for enforcement purposes are placed in the NRC Public Document Room (PDR). A copy of this letter with your address removed, and your response, if you choose to submit one, will be placed in the PDR.

Sincerely,



L. J. Callan,
Regional Administrator

Enclosure:
February 22, 1996 letter
to TU Electric

cc w/o encl:
TU Electric
ATTN: C. L. Terry, Group Vice President
Nuclear Production
Energy Plaza
1601 Bryan Street, 12th Floor
Dallas, Texas 75201-3411

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