

Public Service
Electric and Gas
Company

Steven E. Miltenberger

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Vice President and Chief Nuclear Officer

August 12, 1988

NLR-N88121

United States Nuclear Regulatory Commission
Document Control Desk
Washington, DC 20555

Gentlemen:

RESPONSE TO NOTICE OF VIOLATION
DEPARTMENT OF LABOR CASE NO. 86-ERA-8
HOPE CREEK GENERATING STATION
DOCKET NO. 50-354

Public Service Electric and Gas Company (PSE&G) is in receipt of the subject Notice of Violation dated July 14, 1988, regarding an April 1, 1988 Final Decision and Order issued by the U.S. Secretary of Labor which held that Mr. A. Francis, a former contract employee working at Hope Creek Generating Station was discriminated against by the contractor. The NRC findings are based wholly upon the Secretary of Labor's findings against Bogan, Inc., a contractor of PSE&G at its Hope Creek facility, as set forth in the Final Decision and Order of the Secretary of Labor. PSE&G was not a party to the Department of Labor (DOL) proceeding which resulted in the finding of discrimination against the contractor. Neither was any employee of PSE&G called as a witness at the evidentiary hearing before an Administrative Law Judge in that matter held on December 19, 1985.

PSE&G attempted to demonstrate at a June 9, 1988 Enforcement Conference at NRC Region I that, based upon a review of the transcript of the evidentiary proceeding before DOL, there were substantial questions as to the factual and ultimate findings in the DOL proceeding. As noted during the enforcement conference, the transcript of the DOL proceeding contains numerous favorable references to the policies and practices of PSE&G for its high standards of safety, including the ability of workers to raise safety concerns outside their customary management chain. For example, as discussed at the enforcement conference, it was noted that a PSE&G instructor informed Mr. Francis of the presence of NRC inspectors onsite and his right to raise issues to them. NRC has nevertheless adopted the DOL decision that Bogan discriminated against its employee. Under NRC policy, a licensee

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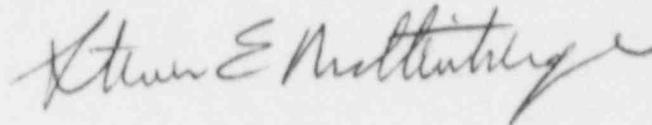
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is held strictly liable for the discriminatory acts of its contractors even though no involvement or complicity in the discriminatory acts has been alleged. Because of this policy, PSE&G will not further contest the violation.

Our response to the Notice of Violation is provided in the Enclosure to this letter.

Should you have any questions with regard to our response, please do not hesitate to contact us.

Sincerely,



Enclosure

- C Mr. D. C. Fischer
USNRC Licensing Project Manager

- Mr. R. W. Borchardt
USNRC Senior Resident Inspector

- Mr. W. T. Russell, Administrator
USNRC Region I

- Mr. D. M. Scott, Chief
Bureau of Nuclear Engineering
Department of Environmental Protection
380 Scotch Road
Trenton, NJ 08628

ENCLOSURE

PUBLIC SERVICE ELECTRIC AND GAS COMPANY
HOPE CREEK GENERATING STATION
RESPONSE TO NOTICE OF VIOLATION

The Notice of Violation included in the July 14, 1988 letter from NRC Region I stated that "...10 CFR 50.7 prohibits discrimination by a Commission licensee, or a contractor or subcontractor of a licensee, against an employee for engaging in certain protected activities. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, and privileges of employment. The protected activities are established in Section 210 of the Energy Reorganization Act, and in general, are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act."

VIOLATION 86-ERA-8

- Contrary to the above, in August 1985, Albert Francis, an employee of Bogan, Inc., a contractor of Public Service Electric and Gas Company at the Hope Creek Generating Station, was demoted from a supervisory position to a technician position in the Instrument and Control Shop for engaging in protected activities. The protected activities involved raising safety concerns as more fully set forth in the Final Decision and Order of the Secretary of Labor, dated April 1, 1988.

RESPONSE

PSE&G does not dispute the violation. The cause of the violation was a failure by Bogan, Inc., to fulfill the provisions of Section 210 of the Energy Reorganization Act with regard to its employee, Mr. A. Francis. In accordance with NRC policy, PSE&G is held responsible in enforcement actions for the discriminatory actions of its contractor.

CORRECTIVE ACTIONS TAKEN AND RESULTS ACHIEVED

The importance of compliance with the requirements of 10 CFR 50.7 has been emphasized again to Bogan, Inc. The results of the NRC's independent consideration of the facts have also been discussed with the contractor. As a consequence of the findings and enforcement actions by DOL and the NRC, the contractor has gained a better appreciation of the requirements of the statute and the significant consequences of a failure to comply. Repetition of a similar incident is therefore deemed unlikely.

The July 14, 1988 letter which transmitted the Notice of Violation asks PSE&G to describe its plans, as discussed at the June 9, 1988 Enforcement Conference, for strengthening contractual requirements with contractors to assure that they adhere to the requirements of 10CFR50.7 and notify PSE&G whenever they are informed by DOL of a complaint by one of their employees. PSE&G has written to contractors doing business with the Nuclear Department onsite, first, to reemphasize the requirements of Section 210 and 10CFR50.7 and, second, to mandate implementation of a program which requires, among other things, notifying contractor employees of their protection under the whistleblower statute and NRC/DOL regulations, including their right to raise safety issues free from discrimination. The letter further requests that, in the event of any allegation to the contractor by an employee of discrimination or an indication that an employee intends to seek or has sought a remedy under Section 210, PSE&G is to be notified. PSE&G will review each notification on a case-by-case basis to determine appropriate action. The content of PSE&G's letter to its contractors is provided as Attachment 1 to this Enclosure.

Provisions similar to those contained in the letters to contractors will be contained in new purchase orders issued by PSE&G on and after July 25, 1988 (see Attachment 2). As discussed at the June 9, 1988 Enforcement Conference, PSE&G provides information regarding employee rights to all individuals, whether employees of PSE&G or contractors, having unescorted site access on a periodic basis. Form NRC-3 is also posted at conspicuous points at Artificial Island.

CORRECTIVE ACTIONS TO BE TAKEN TO AVOID FURTHER VIOLATIONS

No further corrective actions are necessary.

DATE WHEN FULL COMPLIANCE WILL BE ACHIEVED

Full compliance has been achieved.

ATTACHMENT 1

CONTENT OF PSE&G LETTER TO CONTRACTORS

July 18, 1988

Company Name
Address
State

Gentlemen:

This Communication is to advise all employers involved with any work at Artificial Island of the provisions of Section 210, "Employee Protection," of the Energy Reorganization Act of 1974, 42 U.S.C. 5851, as amended, Title 10 of the Code of Federal Regulations, Section 50.7, "Protection of Employees Who Provide Information," and 29 C.F.R. Part 24, hereinafter "Whistleblower Provisions." In order to be in compliance, all Contractors and Subcontractors are reminded that you are to implement a program for all of your employees at the site to notify them of the prohibition against employers from discharging or otherwise discriminating against any employee who engages in protected activities, including but not limited to, contacting or seeking to contact the NRC, PSE&G or the employer, with a concern over matters involving public health and safety. Contractors are also directed to notify any subcontractor in their employ of the foregoing requirement.

As part of this program, please advise all of your employees involved with any work at the site that they are encouraged to raise safety concerns to your management, to PSE&G and to the Nuclear Regulatory Commission without fear of discharge or other discrimination. In the event of any allegation to the Contractor by an employee of discriminatory acts prohibited by the Whistleblower Provisions or any indication that an employee intends to seek or has sought a remedy under the Whistleblower Provisions before the Department of Labor or Nuclear Regulatory Commission, Contractor shall notify PSE&G within two days thereof.

Very truly yours,

James P. Boyle
General Manager -
Purchasing

ATTACHMENT 2

ADDENDUM
TO
GENERAL TERMS AND CONDITIONS
OF PSE&G PURCHASE ORDERS

ARTICLE 5 - EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION -
Change title to; EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE
ACTION/EMPLOYEE PROTECTION.

The following is added as an additional paragraph to this
ARTICLE 5:

Contractor shall be familiar with Section 210, "Employee Protection," of the Energy Reorganization Act of 1974, 42 U.S.C 5851, as amended, Title 10 of the Code of Federal Regulations, Section 50.7, "Protection of Employees Who Provide Information," and 29 C.F.R. Part 24, hereinafter "Whistleblower Provisions." Contractor shall implement a program and develop procedures to advise all employees that they are entitled and encouraged to raise safety concerns to Contractor's management, to PSE&G, and to the Nuclear Regulatory Commission without fear of discharge or other discrimination. In the event of any allegation to the Contractor by an employee of discriminatory acts prohibited by the Whistleblower Provisions or any indication that an employee intends to seek or has sought a remedy under the Whistleblower Provisions before the Department of Labor or Nuclear Regulatory Commission, Contractor shall notify PSE&G within two days thereof.