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

MAY 02 1986

Docket Nos. 50-445  
50-446

Construction  
Permit Nos. CPPR-126  
CPPR-127

EA 86-63

Texas Utilities Electric Company  
ATTN: Mr. William G. Council  
Executive Vice President  
400 North Olive  
Lock Box 81  
Dallas, Texas 75201

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTIES

Gentlemen:

The NRC Office of Investigations (OI) conducted numerous investigations into allegations regarding discrimination and intimidation and harassment of Quality Control (QC) personnel at Comanche Peak Steam Electric Station (CPSES). In addition, several actions were initiated by present and former CPSES workers with the Department of Labor (DOL) for alleged discrimination for raising safety concerns. The NRC initiated two enforcement actions for intimidation incidents at CPSES. Two civil penalties were proposed for violations involving QC personnel (EA 83-64 and EA 83-132). You responded to the proposed civil penalties on September 28, 1983 and January 23, 1984 respectively and supplemented your response on April 9, 1986. In your April 9, 1986 response you indicated you would not continue to contest the civil penalty proposed for EA 83-132 and subsequently paid the civil penalty on April 17, 1986. Your responses to EA 83-64 are still under consideration by the NRC staff.

As a result of the numerous allegations of intimidation, harassment, and discrimination, and the relevance of this issue to the contentions in the ongoing operating license hearing, the NRC undertook a comprehensive review and evaluation of the allegations of intimidation, harassment, and discrimination at CPSES. A report prepared by an NRC Comanche Peak Intimidation Panel (Panel) aided by a Study Team of consultants was transmitted to you on November 4, 1985. ("Report of the Review and Evaluation of Allegations of Intimidation and Harassment of Employees at Comanche Peak Steam Electric Station Units 1 and 2," October 1985 (hereinafter "Panel report")). The NRC staff has reviewed the Panel report, the completed DOL discrimination cases regarding CPSES, the OI reports, and your responses regarding intimidation at CPSES including your February 7, 1986 response.

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

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This letter and its enclosed Notice of Violation contain the results of the NRC staff's review. The Notice of Violation describes three incidents identified as violations by the NRC staff during its review of the NRC Panel report and OI investigation reports. This letter also describes several other incidents of possible intimidation and harassment identified in the NRC Panel report which have not been cited as violations for various reasons. An Enforcement Conference to discuss the violations was held in the Region IV office on April 3, 1986.

The first violation described in the Notice involves the intimidation of a QC inspector at CPSES in early 1983. A former Brown & Root, Inc. QC inspector at CPSES alleged that she was instructed by her supervisors to sign off a number of liner plate travelers which the inspector believed were inadequately documented. The Panel reviewed this incident and concluded that it was one of intimidation. A subsequent OI investigation (OI Report 4-84-039) concluded that the independence and organizational freedom of the QC inspector was interfered with by at least one of the QC inspector's supervisors. This is a violation of 10 CFR Part 50, Appendix B, Criterion I.

The second violation involves the so-called "T-shirt" incident. On March 8, 1984, eight electrical QC inspectors from the Unit 1 Safeguards Building wore T-shirts to work with the lettering: "Comanche Peak Nit Picker. I am in the business of picking nits." The QC inspectors were sequestered for several hours in a room, escorted whenever they left the room, and eventually sent home with pay. While they were sequestered, a Quality Assurance (QA) specialist supervisor and two security guards searched their work areas upon the direction of the QA/QC Manager. They confiscated papers including personal effects. The personal effects were eventually returned and the other documents were turned over to the NRC resident inspectors as a result of instructions by Region IV management.

The NRC Panel reviewed this incident and concluded that it was one of intimidation. The CPSES management response, highly visible to other QC inspectors, was an unwarranted over-reaction by CPSES management that was reasonably likely to dissuade QC inspectors from reporting safety concerns.

The third violation involves a confrontation that occurred in early 1983 at the CPSES site QA audit office between the site QC supervisor and members of two QA audit groups. The site QC supervisor mistakenly believed that one of the QA auditors with whom he had a continuing personality conflict had directed craft personnel to remove a weld on a support in contravention of an existing agreement between QA and QC management. Another QA auditor, the one actually involved in identifying the suspect weld, explained to the QC supervisor that craft personnel had initiated the issuance of an item removal notice for the weld of their own volition. Subsequent to the auditor's explanation, the site QC supervisor made a statement that physical or political harm could come to an auditor as a result of his audit activities. A CPSES investigative report concluded that although the QC supervisor's behavior was improper, none of the QA auditors had been intimidated.

In November 1984, one of the QA auditors who had been present during the 1983 confrontation in the audit office made an allegation to the NRC that the site QC supervisor threatened and attempted to intimidate the QA auditors. A copy of the utility's investigative report on the incident was reviewed by OI. The utility staff investigators were also interviewed, and they reported that the notes from their interviews with the witnesses had been destroyed following the issuance of the report in consideration of the confidentiality they had granted the employees. An OI investigation was initiated. The OI investigation (OI Report 4-84-050) concluded that the QC supervisor's statement to the QA auditors was improper, was intended to influence audit findings, and was in contravention of the intended independence of the QA audit program. This is a violation of Criterion I of Appendix B to 10 CFR Part 50.

We recognize that many management and organizational changes have taken place at CPSES. However, we conclude that a civil penalty is appropriate for these violations to emphasize the need for lasting and effective corrective actions to ensure that quality control inspectors and auditors have sufficient organizational freedom to report safety concerns. The Study Team of consultants which reviewed allegations of intimidation at CPSES concluded, and the NRC Panel concurred, that while these instances of intimidation occurred, there was no pervasive climate of intimidation at CPSES. Despite this finding, the violations are significant incidents in the area of organizational freedom under 10 CFR Part 50, Appendix B, Criterion I. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C (1985), each of the violations involving intimidation of QC personnel has been classified as a Severity Level III violation. The base civil penalty for a Severity Level III violation at the time the violations occurred was \$40,000. Therefore, a civil penalty of \$120,000 is being proposed.

The mitigation and escalation factors were considered. Most of the incidents cited involved management practices which subsequent changes in personnel at CPSES may have corrected. Also, your February 7, 1986 response to the NRC Panel report describes management initiatives which should correct those past practices that may have contributed to the incidents of intimidation. However, the prior poor performance on the part of Texas Utilities Electric Company in the area of employee harassment and intimidation was also considered and no adjustment of the base civil penalty was deemed appropriate.

Additional incidents of possible intimidation and harassment were identified in the NRC Panel report but are not included in the enclosed Notice of Violation. One incident not cited in the Notice concerns the publicity given employees who provided testimony before the Licensing Board Panel. CPSES management focused unfavorable attention on employees who testified through an article in the CPSES site newsletter, the "Circuit Breaker." Highlighting the fact that an employee has testified against the company could deter other employees from coming forward in a public way to identify safety concerns. This incident is not cited, however, because the facts associated with this incident do not appear to be sufficient for a violation of 10 CFR Part 50, Appendix B or 10 CFR 50.7.

Another incident not cited in the Notice concerns the discharge of Mr. W. Dunham, a QC inspector at CPSES. Mr. Dunham had spoken out against intimidation of inspectors in the presence of other inspectors. Because of this, his subsequent discharge, albeit for reasons which the Department of Labor determined to be justified, left the impression among inspectors that Mr. Dunham had been terminated for speaking out. Based on the Department of Labor finding, we have determined that no citation for a violation of 50.7 or Appendix B is appropriate. However, your failure to try to correct the perception among the inspectors could have had the effect of discouraging them from reporting safety concerns.

Other incidents of possible intimidation and harassment not cited in the Notice of Violation concern a number of discussions directed toward a particular coatings inspector in response to the inspector's having raised several concerns. Singling out an inspector in repeated meetings where the inspector is required to explain his actions regarding deficiencies he has reported could be intimidating even though no adverse action is taken against the inspector.

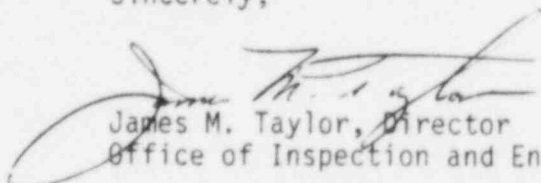
We direct your attention to all of these incidents including those that have not been cited in the enclosed Notice. Regarding those incidents not cited in the Notice, you should recognize that although they did not amount to actual violations for various reasons, the underlying problems leading to the incidents deserve your attention.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. Your response to these enforcement actions will be examined during future inspections to determine whether further enforcement action should be taken.

In accordance with Section 2.790 1f the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, a copy of this letter and its enclosure will be placed in the NRC Public Document Room.

The responses directed by this letter and the enclosed Notice are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, PL 96-511.

Sincerely,



James M. Taylor, Director  
Office of Inspection and Enforcement

Enclosures:

1. Notice of Violation and Proposed Imposition of Civil Penalties