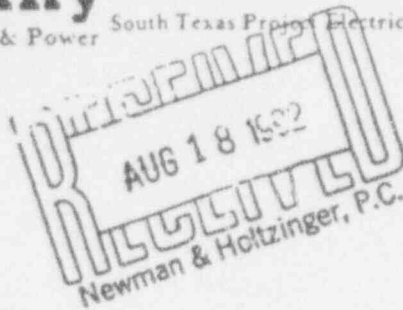


The Light company

Houston Lighting & Power South Texas Project Electric Generating Station P. O. Box 289 Wadsworth, Texas 77483



August 14, 1992
ST-HL-AE-4169
File: G03.17
File: D43
10 CFR 50.7

U.S. Nuclear Regulatory Commission
Attention: Document Control Desk
Washington, D.C. 20555

South Texas Project
Units 1 & 2
Docket Nos. STN 50-498, STN 50-499
Circumstances Surrounding Revocation
of Individual's Access

The NRC has been conducting an investigation of the circumstances surrounding the revocation of an individual's unescorted access to the South Texas Project Electric Generating Station (STPEGS). Specifically, the investigation seeks to determine whether the revocation of access constituted a violation of 10 CFR 50.7 regarding protection of individuals who report nuclear safety concerns. The purpose of this letter is to inform you of Houston Lighting & Power Company's (HL&P) position on this matter.

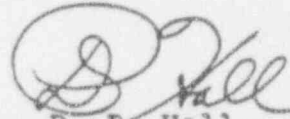
As described in more detail in the attachment to this letter, the access authorization of the individual in question was properly revoked based on concerns regarding his trustworthiness and reliability which were called into question by numerous omissions of material information in the individual's access authorization paperwork, including, among others, omissions relating to previous employment and termination from previous employment. The number and adverse nature of the omissions resulted in the HL&P Access Program Director's determination that the omissions were willful and, therefore, raised serious questions regarding the individual's reliability and trustworthiness. Consistent with NRC regulations and guidance, the Access Program Director revoked the individual's unescorted access to the South Texas Project Protected and Vital Area. A recent review by HL&P confirms that the decision in this case is consistent with prior HL&P access authorization/denial decisions in similar circumstances.

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Pursuant to 10 CFR § 2.790(a)(6), HL&P requests that this letter and its attachments be exempt from disclosure and not be placed in the Public Document Room because it contains confidential personnel information, the disclosure of which would be an unwarranted invasion of personal privacy.

Please call me at (512) 972-8434 should you wish to discuss this matter.



D. P. Hall
Group Vice President,
Nuclear

Attachments: 1) Circumstances Surrounding Revocation Of
Individual's Access
2) Appendix

Houston Lighting & Power Company
South Texas Project Electric Generating Station

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cc: WITHOUT ATTACHMENTS

* Regional Administrator,
Region IV
Nuclear Regulatory Commission
611 Ryan Plaza Drive
Suite 400
Arlington, TX 76011

* George Dick, Project Manager
U.S. Nuclear Regulatory
Commission
Washington, DC 20555

* Virginia Van Cleave,
Investigator, Region IV
Office of Investigations
U.S. Nuclear Regulatory
Commission
611 Ryan Plaza, Suite 400.
Arlington, TX 76011

* J.I. Tapia
Senior Resident Inspector
c/o U.S. Nuclear Regulatory
Commission
P.O. Box 910
Bay City, TX 77414

* J.R. Newman, Esquire
Newman & Holtzinger, P.C.
1615 L Street, NW
Washington, DC 20036

D.E. Ward/T.M. Puckett
Central Power & Light Company
P.O. Box 2121
Corpus Christi, TX 78403

J.C. Lanier/M.B. Lee
City of Austin
Electric Utility Department
P.O. Box 1088
Austin, TX 78767

K.J. Fiedler/M.T. Hardt
City Public Service Board
P.O. Box 1771
San Antonio, TX 78296

* Rufus S. Scott
Associate General Counsel
Houston Lighting & Power
Company
P.O. Box 61867
Houston, TX 77208

INPO
Records Center
1100 Circle 75 Parkway
Atlanta, GA 30339-3064

Dr. Joseph M. Hendrie
50 Bellport Lane
Bellport, NY 11713

D.K. Lacker
Bureau of Radiation Control
Texas Department of Health
1100 West 49th Street
Austin, TX 78756-3189

NOTE: The above copies distributed without the Attachments,
except as noted by asterisk

CIRCUMSTANCES SURROUNDING
REVOCATION OF INDIVIDUAL'S ACCESS

This document describes the circumstances surrounding the revocation of unescorted access to the Protected Area (PA) and Vital Areas (VA) of the South Texas Project Electric Generating Station (STPEGS) of [REDACTED], an employee of a contractor engaged at STPEGS. [REDACTED] access authorization was revoked on February 20, 1992, upon finding that there were several material omissions in his application for access authorization.

I. BACKGROUND

[REDACTED] was employed by [REDACTED] as an instrumentation and control (I&C) technician. [REDACTED] is engaged to provide certain technical services at STPEGS. In order to perform required services at STPEGS, HL&P requires I&C technicians to obtain unescorted access to the STPEGS PA and VA, where most of their work is performed.

[REDACTED] completed the paperwork necessary to process a request for access authorization on January 13, 1992. He acknowledged by signature that "any misstatement, misrepresentation, or omission on any documentation used to process unescorted access will constitute cause for denial of access at any time." Following an adjudication of certain questions relating to [REDACTED] paperwork on February 6, 1992, unescorted access to STPEGS was approved on February 11, 1992, and a badge allowing unescorted access was issued on February 12, 1992.

On February 10, 1992, [REDACTED] submitted a petition to the NRC pursuant to 10 CFR § 2.206, alleging certain deficiencies at the STPEGS. A copy of the petition was furnished by the NRC to STPEGS management which received it late in the afternoon on February 11, 1992. The task of developing a response to the petition was assigned by [REDACTED], [REDACTED], Nuclear of Houston Lighting & Power Company, to [REDACTED]. [REDACTED] Shortly after receiving the petition, [REDACTED] also instructed certain STPEGS managers to be sure that they took no action against [REDACTED] and not to inform others that [REDACTED] had filed the petition. [REDACTED] the STPEGS [REDACTED] (in whose department [REDACTED] worked), was specifically directed to instruct his subordinates to be sure that no action was taken against [REDACTED] and to keep confidential the fact that he filed a "2.206 petition."

II. INVESTIGATION OF THE "2.206 PETITION"

In order to investigate and prepare a response to [REDACTED] "2.206 petition," [REDACTED] requested personnel from the Licensing and Maintenance Departments and from HL&P's "SPEAKOUT Program" to investigate the allegations contained in the petition. (SPEAKOUT is an HL&P "employee concerns" program under which HL&P and contractor employees may raise safety concerns while having their identities kept confidential.) Also, in a separate action, certain Security Department personnel were asked to investigate [REDACTED] concerns relating to escorted access of personnel inside the STPEGS protected areas, an activity which is under the auspices of the STPEGS Physical Security Plan. These personnel were instructed not to disclose [REDACTED] identity or to discuss their investigation with other personnel.

By February 20, 1992, it became clear that the reviews being conducted by Licensing, Maintenance, SPEAKOUT and the Security personnel were not succeeding in finding specific information to either support or develop a number of the vague and general allegations in the "2.206 petition." Accordingly, on the morning of February 20, 1992, [REDACTED] requested that a SPEAKOUT investigator interview [REDACTED] to obtain more specific information on his concerns. The SPEAKOUT Investigator, [REDACTED] attempted to interview [REDACTED] regarding his safety concerns during the early afternoon on February 20, 1992.

[REDACTED] refused to discuss his concerns with [REDACTED] unless the NRC participated in the meeting. [REDACTED] subsequently advised [REDACTED] that the NRC refused to participate in the meeting and that he was hesitant to discuss any safety concerns because of his perception that personnel had been terminated for raising concerns with SPEAKOUT. [REDACTED] offered to clear up any misconceptions [REDACTED] had with respect to this perception. [REDACTED] also stated that he had filed his petition and that he could not discuss specifics involved in the petition because he did not want to interfere with an official NRC investigation. [REDACTED] explained that the issues identified in the petition were too general to conduct an effective investigation. [REDACTED] reiterated that he could not discuss the specifics because he did not want to interfere with an official NRC investigation.

III. INVESTIGATION OF ACCURACY OF ACCESS AUTHORIZATION REQUEST

A "2.206 petition" is a legal document which may lead to the modification, suspension or revocation of an NRC license. As such, a response generally requires the assistance of regulatory counsel. [REDACTED] contacted counsel on February 11, 1992, and was informed that [REDACTED] had in the past filed several such petitions (one only a few weeks earlier) relating to other nuclear facilities and that there had been previously adjudicated cases involving [REDACTED] under Section 210 of the Energy Reorganization Act (ERA). A copy of one such adjudication involving [REDACTED] and [REDACTED] as respondents [REDACTED] was subsequently provided to [REDACTED] on February 20, 1992.

On February 20, 1992, after reviewing the Department of Labor (DOL) decision in the [REDACTED] [REDACTED] noted that there appeared to be omissions or misstatements in [REDACTED] access authorization paperwork, which he had previously examined. These included apparent failure by [REDACTED] to mention that he had been employed or terminated for cause by [REDACTED], and apparent failure to mention litigation he had initiated against [REDACTED] and [REDACTED].

Misstatements and omissions of information in access authorization paperwork are violations of the STPEGS Access Authorization Program, which is required by NRC regulations. When such misstatements or omissions were identified, HL&P's ordinary practice, in accordance with procedures, was to have them investigated by the Nuclear Security Department to determine whether the omissions/misstatements were willful and whether the new information affects the determination to grant access. Accordingly, [REDACTED] requested [REDACTED] of the STPEGS Nuclear Security Department Investigations Section to review [REDACTED] access authorization file. [REDACTED] was furnished with a copy of the DOL Administrative Law Judge's decision in the [REDACTED], but was not provided with information regarding [REDACTED] "2.206 petition" or any related safety concerns. Upon reviewing the [REDACTED] decision and [REDACTED] file, [REDACTED] noted obvious discrepancies. He brought these discrepancies to the attention of [REDACTED] and the Access Program Director, [REDACTED]. [REDACTED] determined that the discrepancies warranted an interview with [REDACTED] to verify the accuracy of the information in his access authorization paperwork and determine whether the apparent inconsistencies and omissions could be plausibly explained. [REDACTED] interviewed [REDACTED] on the same day (February 20, 1992) between approximately 1615 and 1730 hours.

Just prior to this interview, [REDACTED] encountered [REDACTED] by chance in the elevator lobby while [REDACTED] was on his way to [REDACTED] office. In response to a question from [REDACTED] as to the reason for the interview with [REDACTED] told him that he did not know the purpose of [REDACTED] request. In fact, [REDACTED] did not know the purpose of that interview and had not been informed that it would take place. At [REDACTED] request, [REDACTED] showed him the way to [REDACTED] office. Also at [REDACTED] request, [REDACTED] witnessed, but did not participate in the interview. [REDACTED] did not inform [REDACTED] that [REDACTED] had raised safety concerns.^{1/}

During the interview, [REDACTED] was asked to review his access authorization paperwork and to identify any omissions or discrepancies in it. [REDACTED] identified a few minor discrepancies, but did not mention his employment with or termination by [REDACTED]. [REDACTED] then questioned him more closely on each part of the access authorization data form. During this close questioning, [REDACTED] disclosed facts that were required for a complete access authorization application, but were not included in his application:

- o He had, in fact, been employed by [REDACTED] and was terminated for cause, as a consequence of which he had initiated a proceeding under Section 210 of the Energy Reorganization Act against [REDACTED] and [REDACTED]
- o In addition, he had been employed as a full-time chief engineer at the [REDACTED] from January to April 1990. He stated that he was terminated from the position because he offered an opinion regarding the location of a pool shower.
- o He had been employed as a full time engineer at the [REDACTED] reporting to the Chief Engineer. He was also terminated from this position.

^{1/} [REDACTED] also subsequently asked [REDACTED] to witness the interview after [REDACTED] refused to allow his interview to be videotaped -- an otherwise standard practice in such matters at STP.

██████████ also acknowledged a number of other areas in which the information he provided on the form might be inaccurate or improperly omitted. Based on the statements of ██████████ during the interview, ██████████ concluded that the information had been willfully withheld. At the conclusion of the interview, ██████████ was informed that the information he provided would be given to the ██████████, who would make a decision regarding the continuation of his unescorted access. He was advised to return to work the next morning and that his management would inform him of any further action. At no time prior to, or during, the interview was ██████████ informed or aware that ██████████ had met with the NRC or raised safety concerns regarding STPEGS. ██████████ did not, at any time during the interview, indicate that he had raised safety concerns, nor did he indicate that he was hungry, thirsty, tired, or needed a break from the interview.

IV. ACCESS AUTHORIZATION ADJUDICATION

Following this interview, ██████████ reported the results of the interview to ██████████, the ██████████. ██████████ summarized the interview including both the questions he asked and ██████████ answers. ██████████ concluded that the number and adverse nature of the omissions indicated that the omissions were willful. ██████████ requested ██████████ recommendation concerning whether ██████████ access should be revoked, and was informed that revocation would be consistent with past practice. ██████████ determined on the basis of his review of the omitted information, ██████████ advice and his description of the interview with ██████████, that access authorization should be revoked. At the time he made this determination, ██████████ was aware that ██████████ had filed a "2.206 petition," but did not know that ██████████ had met with the NRC or raised any other safety concerns. ██████████ and ██████████ were present when ██████████ made the decision, but offered no advice concerning whether or not ██████████ unescorted access should be continued or revoked. ██████████ was present because he had witnessed ██████████ interview with ██████████ and ██████████ was present because ██████████ could not initially locate ██████████, and contacted ██████████ as the person who had requested the investigation). There was no discussion of the fact that ██████████ had filed the "2.206 petition" or had otherwise raised safety concerns. ██████████ was informed of the decision to revoke his access authorization upon his return to STPEGS on the morning of February 21, 1992.

V. HL&P POSITION

HL&P encourages both HL&P and contractor employees to come forward with any safety concerns they may identify. Employees are encouraged to bring such concerns to the attention of their supervisors. HL&P also has a longstanding and recognized effective confidential employee concerns program, SPEAKOUT. The purpose of SPEAKOUT is to investigate employee safety concerns. The identity of persons raising concerns is protected to the extent practicable, and a response to each concern is provided when requested. Personnel are also informed that they are free to communicate their concerns directly to the NRC, and that they will not be discriminated or retaliated against for doing so. This message is communicated in training sessions, in a Nuclear Group Policy (NGP) statement, and through on-site postings. Hence, [REDACTED] filing of a "2.206 petition" with the NRC is an activity that is not only within his legal rights, but is also consistent with Company policy. This is evidenced by the fact that [REDACTED] statement on his access authorization request form that his employment with [REDACTED] was "terminated as a direct result of my participation in a N.R.C. investigation of the [REDACTED] [REDACTED]" was not considered detrimental when specifically reviewed by the Access Program Director during the decision to grant access on February 6, 1992.2/

[REDACTED] access authorization was revoked solely because of concern regarding his reliability and trustworthiness arising out of willful omissions of material data specifically required by HL&P's access authorization program. This program is required by NRC regulations set forth in 10 CFR § 73.56. As noted by the NRC, the objective of the access authorization program is "providing high assurance that individuals granted unescorted access [to the protected and vital areas] are trustworthy and reliable, and do not constitute an unreasonable risk to the health and safety of the public including a potential to commit radiological sabotage." Guidelines endorsed by the NRC specifically require that "In making a determination of trustworthiness or reliability, the following must be considered:

-
- 2/ This is [REDACTED] characterization of the reason for the termination from [REDACTED] employment. As noted in a letter of [REDACTED], to [REDACTED] from the NRC Director of the Office of Nuclear Reactor Regulation denying action on a 2.206 petition filed against [REDACTED], "On [REDACTED] the U.S. Department of Labor (DOL) Administrative Law Judge (ALJ) issued a decision which held that [REDACTED] discharged you solely as a result of insubordination [REDACTED]"

- a) Willful omission or falsification of material information submitted in support of employment or request for unescorted access authorization."

HL&P procedures for granting and denying access authorization follow this guideline.

As noted previously, there were numerous omissions in [REDACTED] access authorization request paperwork, particularly with respect to previous employment, termination from previous employment, and involvement in litigation. The omitted facts generally were unfavorable, or could have been considered as unfavorable to [REDACTED]. The employment-related omissions would very likely have led to the denial of [REDACTED]'s access authorization in the first instance if they had not been omitted. These facts were omitted despite specific instructions to complete the forms carefully and [REDACTED] signature directly under the statement that "I CERTIFY THAT ALL INFORMATION PROVIDED ON THIS DATA FORM IS CORRECT, AND I UNDERSTAND THAT ANY MISSTATEMENT, MISREPRESENTATION, OR OMISSION MAY CONSTITUTE CAUSE FOR ACCESS DENIAL."^{3/}

Based on these numerous omissions, the Access Program Director concluded that there was a systematic pattern of deliberate omission of adverse information indicating that the omissions were willful, and that these omissions reflected negatively upon [REDACTED] trustworthiness and reliability. Accordingly, [REDACTED] access authorization was revoked.

^{3/} The access authorization screening affidavit similarly states, immediately above [REDACTED] signature, that "I understand that any misstatement, misrepresentation, or omission on any document used to process unescorted access will constitute cause for denial of access at any time." To confirm the information provided in the screening affidavit, applicants for access to STPEGS are personally interviewed as part of the access authorization process. [REDACTED] was personally interviewed by STP access processing personnel on January 13, 1992, and was specifically asked each of the questions on the Screening Affidavit orally and to provide complete details on any cases of termination of employment. [REDACTED] attested that his only termination from employment involved [REDACTED]. He omitted his more recent terminations by other employers.

VI. CONSISTENCY WITH PRIOR ACCESS AUTHORIZATION ADJUDICATIONS

A. Background

As previous sections demonstrate, [REDACTED] access authorization was revoked because of willful omissions of fact from his access authorization request. The revocation followed an investigation and recommendation concerning these matters by STP personnel who were not aware of his involvement in a "protected activity" (the filing of a 2.206 petition with NRC). Hence there is no evidence that the access authorization was revoked on grounds which might constitute discrimination under Section 210 of the ERA or 10 CFR 50.7.

Nevertheless, in reviewing a claim filed by [REDACTED] under Section 210 of the ERA, the DOL District Director found for [REDACTED], based upon an examination of only 13 of the 715 adjudicated access authorization cases at STP from May 1989 to March 1992.^{4/} Nine of these cases involved failure to disclose information in access authorization paper work. Of the nine cases, in only one was access denied or revoked.^{5/} Based solely on that data the Director inferred that revocation of [REDACTED] access authorization was contrary to an otherwise "clear pattern" and, hence, that "discrimination ... was a factor" in the revocation of his access authorization.

The DOL Director's decision is in error. The sample selected was statistically insignificant and biased toward cases adjudicated in 1989, a period which, for the reasons noted in Section C, is totally non-representative. However, since these statistics are the basis for the DOL decision and because the Office of Investigations (OI) evidenced interest in comparable data, a proper analysis of the relevant data is essential and has recently been completed by HL&P.

4/ 543 cases were adjudicated between January 1990-March 1992, a period commencing with the tenure of the current STPEGS Executive Management.

5/ HL&P's analysis of what it believes to be the 13 cases analyzed by the DOL investigator is at variance with his conclusions. HL&P's review found that only six involved omissions of data, and that none involved denial of access, although in two cases the access was not granted because the adjudication was not completed.

B. Consistency of Treatment in Comparable Cases at STP

The HL&P analysis shows, beyond any question, a consistent pattern of treating generally comparable cases in a consistent manner. In summary, the data show that of the 12 adjudications which clearly involved omission/falsification of employment information, nine resulted in denial of access and three resulted in granting of access. In each of the cases where access was granted, only one fact in the application was omitted or false. In contrast, [REDACTED] omitted at least four separate pieces of highly relevant information, including terminations from three recent positions of employment. Even in the nine denial cases, the number of and/or nature of omissions/falsifications of employment data was not as extensive as those in [REDACTED] case, involving, on the average, about two omissions. The decision to revoke [REDACTED] access was thus fully consistent with access adjudication decisions in comparable circumstances at STP.

C. HL&P Analysis

The HL&P analysis, unlike that of the DOL Area Director's, began with an evaluation of the entire population of adjudicated cases in the period between January 1990 and March 1992. This spans an interval during which the access adjudication process was essentially unchanged; during which HL&P applied NUMARC 89-01, "Industry Guidelines for Nuclear Power Plant Access Authorization Program" (August 1989); close in time and encompassing the revocation of [REDACTED] access authorization; and corresponding to the tenure of current STPEGS Executive Management. 6/

Unlike the DOL analysis, HL&P identified the truly comparable cases -- that is, those involving, as in [REDACTED] case, omissions of fact pertaining to prior employment.

HL&P believes that the two categories of omission of greatest consequence in evaluating reliability and trustworthiness are those relating to criminal history and prior employment but that the two categories are sharply distinguishable. At the heart of the distinction between the categories is the fact that the latter almost always involves deliberate lies by the person most familiar with the facts, while the former is often inadvertent or explainable for reasons uniquely associated with the criminal justice system and its related records which are prepared by others, and which the affected individual may not be aware of or understand.

6/ The data, which is being maintained in clearly auditable form at the South Texas Project site, is summarized in the Appendix.

Statistics which include cases involving the omission of criminal history data are suspect and can be misleading because they may involve events that occurred many years earlier (in some cases 10, 20, or 30 years ago) or circumstances which are confusing to people who may be unfamiliar with the criminal justice system. People who are informed that criminal charges have been dismissed or that their cases have been disposed of by "deferred adjudication," or who are informed by their attorneys that their convictions have been expunged from the record, and those who have been temporarily detained or voluntarily present themselves at the courthouse or police station, often do not understand that they have been arrested and/or convicted, or do not recall all of the charges arising from an incident. These factors call into question the "willfulness" of a subsequent failure to provide details concerning criminal history.

In sharp contrast, the access authorization process, insofar as it involves prior employment, focuses primarily on relatively recent events (*i.e.*, within the preceding five years). The circumstances of termination (*i.e.*, for cause) are highly unlikely to be forgotten, unknown or misunderstood by the applicant. The omissions/falsifications are much more likely to be deliberate and are therefore much clearer indicators of unreliability and/or untrustworthiness.

D. Conclusions

As noted above (Section B), an evaluation of comparable cases shows there is no difference between the adjudication on [REDACTED] access authorization and adjudications in similar cases during the relevant period. Indeed, viewed solely on a statistical basis, [REDACTED] case is an outlier in only one sense -- it is the most extreme case of deliberate omission and misrepresentation of employment data encountered at the STP site during the tenure of the current Executive Management.

The analysis is important not only because it invalidates the conclusion of the DOL District Director, but also because it is relevant to the thought-process of those primarily involved in the decision-making process on the revocation of [REDACTED] access authorization. Considering the many factors that may affect an access authorization decision, the single compelling aspect of [REDACTED] case was the large number of omissions of negative information concerning relatively recent employment and related terminations -- aspects of which he failed to divulge until being closely questioned in a personal interview with the HL&P investigator. The investigator's judgement reflected his experience in comparable cases -- those involving material omissions of damaging prior employment data. In that context, [REDACTED] case, as noted above, was extreme and the recommendation regarding revocation of access authorization was well within the bounds of the investigator's experience and prior cases during the relevant period at the STP site.

APPENDIX

A. INTRODUCTION

In order to gain unescorted access authorization at STPEGS, an evaluation of an individual's completed data form and screening affidavit ("application") is required. In determining whether the information on these forms is accurate, an investigator reviews background materials including criminal history, a background report prepared by an investigative agency, and correspondence from police departments or county/state agencies, if necessary. If an individual discloses detrimental information on his/her application or if there appear to be discrepancies between the application and the individual's background information, HL&P initiates an evaluation (adjudication) to determine whether the individual can be considered trustworthy and reliable despite the detrimental information or discrepancies. In addition to the above-mentioned materials, an adjudicator may also interview the individual and consider statements made by that individual addressing any issues raised by the adjudication.

HL&P reviewed its records of adjudications of access authorization applications between January 1, 1990, and March 31, 1992, in an effort to determine the results of adjudications in cases involving omission or falsification of employment-related information. 1/ If such information was not disclosed on an individual's application or any of his/her prior applications, it was determined to be an omission. Minor discrepancies in information (such as insignificant inaccuracies in dates) were not treated as omissions or falsifications.

1/ The review required an initial screening of adjudication forms. These forms contain a section in which the adjudicator indicates the matter under review. Thus, if in any case, the adjudicator only referenced an individual's criminal history as the basis for the adjudication, then, notwithstanding other omissions/falsifications pertaining to employment, the case was not treated as "employment-related."

B. CLASSIFICATION OF ADJUDICATION CASES

Of 543 cases that were adjudicated between January 1, 1990 and March 31, 1992, 99 involved instances in which HL&P identified information that had been omitted or falsified by individuals on their access authorization data forms and/or screening affidavits. Eighty-five of the 99 omission cases involved omitted or falsified information which pertained to an applicant's criminal history. In these cases, 84.7% (72 cases) resulted in granting access; in 15.3% (13 cases) access authorization was denied. Of the remaining 14 cases, 12 involved omissions or falsifications of data related to prior employment. 2/

C. DATA PERTAINING TO EMPLOYMENT-RELATED OMISSIONS

Out of the 12 cases identified by the adjudicator as being under review for reasons including omission/falsification of employment-related information, access was denied in 9 cases or 75%, while access authorization was granted in 3 cases or 25%. Each of the 3 cases in which access was granted involved only 1 omission/falsification, and access was denied in every case where there was more than 1 omission/falsification. The following chart further summarizes the relevant data pertaining to the cases involving omissions or falsifications regarding prior employment.

2/ The other two cases involved omissions or falsifications of information about fitness for duty and education. Both these cases resulted in denial of access authorization.

DATA ON CASES ADJUDICATED FOR OMISSIONS/FALSIFICATIONS
OF EMPLOYMENT-RELATED INFORMATION

<u>Case No.</u>	<u>No. of Omissions</u>	<u>Disposition</u>
90-0486	2	Deny */
91-1025	1	Grant
91-0729	1 **/	Deny
91-0753	3 **/	Deny
91-0772	2	Deny
91-0858	1	Deny
91-1006	1	Grant
91-1084	3	Deny
91-1174	1	Deny
91-1193	1	Grant
91-1205	1 **/	Deny
92-1271 ***/	4	Deny

Total Cases 12

Total Granted 3

Total Denied 9

*/ Termination action was taken by the Human Resources department.

**/ In addition, this individual omitted information relating to his criminal history.

***/ This case number is assigned to [REDACTED]