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May 24, 1995

Director of the Office of Enforcement
Mr. James Lieberman
U.S. Nuclear Regulatory Commission
White Flint, Maryland 20555

Dear Mr. Lieberman

It has now been 20 days since mine of May 3, 1995, and I have yet to receive any response from the NRC to my questions. While this doesn't particularly surprise me, I would ask that you advise me as to why it is taking so long to respond to fairly direct, simple questions.

It has also been in excess of a week since my correspondence of May 15, 1995. I have yet to receive any response as to whether or not I will be allowed to attend the enforcement conference scheduled for June 16, 1995. Surely this should be a fairly simple issue and I would again request a response.

Frankly, my concerns are that the enforcement conference, if held behind closed doors, may lead to the same inexplicable results as that recently generated in the Saparito case. Although I do not represent Mr. Saparito, I do have some familiarity with his case, particularly inasmuch it involves many of the same players at HL&P. In particular, I understand that Mr. Dick Balcolm was involved in that case. I trust you will recall the portion of the Administrative Law Judge's opinion wherein he found that Dick Balcolm had engaged in sophistry in his testimony. It is of great concern to me that in all likelihood those persons providing you with the additional or new information will be those exact persons found to have been incredible sophistrists by the Administrative Law Judge in this case. In case I haven't previously made myself clear, that is the reason why I request that I be allowed to represent my clients' at any enforcement conference involving their case.

In reflecting on this matter, I find that there are additional questions which should be answered pertaining to the NRC's handling of HL&P's ongoing problems:

1. My review of 10 C.F.R. Part 2, app. C § 4 indicates that the NRC is to conduct enforcement conferences "whenever the NRC has learned of the existence of a

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potential violation". 10 C.F.R. Part 2, app. C § 1, states that the purpose of the NRC enforcement program is to promote and protect the radiological health and safety of the public, by insuring compliance with NRC regulations and license conditions and obtaining "prompt correction of violations". The section goes on to state that consistent with the purpose of the program, "prompt and vigorous enforcement action will be taken when dealing with licensees." The NRC learned of HL&P's violations in 1992, investigated and, in fact, found in February of 1993, that HL&P had violated the regulations and discriminated against Lamb and Dean in their terminations.

- a. Does the NRC consider this to be prompt and vigorous enforcement, as required by 10 C.F.R.?
 - b. If not, why was there no prompt and vigorous enforcement action taken?
 - c. What discussions were held with management at HL&P which forestalled any enforcement action on this matter despite the NRC's knowledge and findings of violations?
 - d. What legitimate purpose was served by the NRC's failure to promptly and vigorously enforce compliance with its regulations in 1992 or 1993?
 - e. Whose decision was it finally to withhold enforcement action at that time, and since then?
2. The STP ART stated that a demand for information to a licensee was sent in response to the NRC's knowledge of the wrongful terminations of Lamb and Dean. The C.F.R. requires the licensee's answer to such demand. Demand is hereby made under F.O.I.A. for production of any and all demands for information pertaining to my clients and any and all responses from HL&P to the NRC pertaining to my clients.
- a. Why were these documents not provided to me in response to my previous, repeated F.O.I.A. requests?
3. My review of the enforcement procedures and civil penalties available for violations such as those established in my clients' cases, indicates that "civil penalties will normally be assessed for knowing and conscious violations of the reporting requirements . . . and for any willful violation of any commission requirement, including those at any severity level." The code goes on to state that the deterrent effect of civil penalties is best served when the amount of such penalties take into account the licensee's ability to pay. I am certain that you

realize HL&P's ability to pay is truly astronomical and will consider that in any assessed civil penalty. The factors to be considered for increasing of the civil penalty are clearly all present in this case. As stated in the C.F.R. "ineffective licensee programs for problem identification or correction are unacceptable. In cases involving willfulness, flagrant NRC identified violations, repeated poor performance in an area of concern or serious breakdown of management and controls, NRC intends to apply its full enforcement authority where such action is warranted, including issuing appropriate orders and assessing civil penalties for continuing violations on a per day basis, up to the statutory limit of \$100,000.00 per violation per day." Obviously, all of these factors are present in this case.

- a. Does the NRC plan to utilize these guidelines in assessing its civil penalties against HL&P?
4. HL&P's failure to identify these problems and report them to the NRC should, according to § 1, increase the base penalty by 50%. Under § 2, corrective action, it should be noted that no corrective action whatsoever has been taken to effectively remedy these problems at HL&P. In fact, information I have received indicates that these types of problems are worse now than they have ever been in the past.
5. The Code also urges consideration of the licensee's past performance. HL&P has a long, long history of problems with harassment and intimidation of those who bring forward legitimate concerns. There were approximately 250 whistleblower complaints during the construction phase alone at HL&P and many, many more in the interim and they continue to be a problem today.
 - a. Will this past performance be considered or, once again, ignored?
 - b. If not, why not?
6. Under the section captioned "Duration" it is explicitly stated that every day that the licensee was aware of the existence of a condition which resulted in an ongoing violation and failed to initiate corrective action may be considered as a separate violation and subject to separate additional civil penalties. HL&P has known of the problem and, in fact, it has been a management imposed policy to eliminate, or at the very least, harass and intimidate those who report safety and regulatory related concerns. The duration of this problem has virtually been since day one through until the present. Under § 6(3), civil penalties should be increased by as much as 100% to reflect the added significance resulting from this incredible duration.

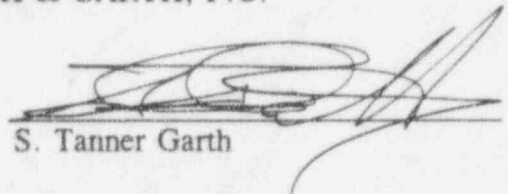
- a. Why has the NRC failed to address this situation in any meaningful fashion?
 - b. Will these factors be applied in assessing the civil penalties against HL&P?
 - c. If not, why not?
 - d. What evidence mitigates against the full imposition of all civil penalties.
7. HL&P has clearly interfered with the conduct of the NRC's investigation of this matter by engaging in sophistry and creation of the alleged RIF. Enforcement sanctions, according to the NRC's rules, should be enhanced or escalated due to the recurring similar violations which have been displayed at HL&P. There are obvious questions of integrity as that pointed out in Section E, "Enforcement Actions Involving Individuals". The NRC has been repeatedly lied to by numerous individuals at HL&P as it pertains to this occurrence.
- a. Will the NRC escalate its enforcement sanctions?
 - b. Will HL&P and the subject individuals be held accountable for these actions?
 - c. If not, why not?

I would appreciate your response to these questions, in addition to those in my prior correspondence as soon as possible.

Very truly yours,

FIBICH & GARTH, P.C.

By:


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c: Joe Barton
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