

The Light company

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

JUL 28 1994

ST-HL-AE-4856

File No.: D43

10CFR50.7

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
Supplement Regarding Circumstances Surrounding
Revocation of Individual's Access

Reference: Letter to US NRC from Houston Lighting &
Power Company (HL&P) dated August 14, 1992
(ST-HL-AE-4169)

This supplements the referenced letter to account for new circumstances and facts that have occurred or come to light since our initial submittal on August 14, 1992.

First, in 1993 and 1994 a Grand Jury in Houston, Texas conducted an investigation of the allegation that the revocation of access involved in this matter was in retaliation for the individual's protected activities. The Grand Jury heard testimony from the principal witnesses, including the HL&P investigator who determined that the individual was not truthful when he completed his application for access, and the Access Program Director, who decided to revoke the individual's access based on the Investigator's findings. Following this testimony, the Grand Jury decided that indictments were not warranted. The record of the Grand Jury proceedings may include information that should be considered by the NRC in connection with any further action in this case.

Second, since the completion of the OI investigation, the parties engaged in discovery in the pending DOL proceeding concerning the same facts. As a result, important additional relevant evidence has come to light including additional instances in which the complainant omitted employment, residence, and other material information from his application for unescorted access to the South Texas Project (STP). In addition, the explanations provided by the complainant for these omissions have changed over time and raise additional questions regarding his trustworthiness and reliability under NRC criteria for unescorted site access.

Project Manager on Behalf of the Participants in the South Texas Project

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Third, NRC implementation of the new access authorization regulation (10 CFR 73.56) has further clarified the access authorization requirements, in ways which confirm the correctness of HL&P's decision to revoke the individual's access and, indeed, suggest that the Company may have itself been subject to enforcement action had it acted otherwise. Two NRC actions are particularly relevant. On April 1 and 5, 1994, the NRC proposed civil penalties to Arizona Public Service Company (EA 94-011) and Iowa Electric Light and Power Company (EA 93-276), respectively. The penalties were based on alleged violation of the NRC requirements for granting unescorted access. In EA-94-011, the licensee was penalized for granting access without considering that an individual "intentionally omitted listing previous employment in which he had been terminated for cause. 1/" The NRC also noted, with apparent approval, that upon discovery of this omission, Arizona Public Service Company revoked the individual's unescorted access. EA 93-276 involved an employee who was found to have intentionally omitted criminal history information in his access application. The NRC inspection report (50-331/93020 (DRSS)) specifically notes that although past criminal history was lengthy, had the individual disclosed it, he might have been granted access. However, the licensee was penalized because it failed to investigate the reason for the omissions prior to granting access. 2/ These cases clearly demonstrate that HL&P would have been remiss in ignoring indications that Mr. Saporito had omitted material information from his access authorization application at STP. We believe these decisions correctly reflect NRC policy and that the absence of such guidance at the time of the investigation in 1992 may have adversely affected the judgment of the investigator. We bring these matters to your attention because of our concern that these matters be fully aired before the DOL, unprejudiced by premature NRC enforcement action based on an incomplete record.

The recent Report of the Review Team for Reassessment of the NRC's Program for Protecting Allegers Against Retaliation (Review Team Report) states that normally the NRC initiates enforcement action only after a DOL ALJ makes a finding of

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- 1/ As discussed in the referenced letter, HL&P's revocation of the individual's unescorted access to STP also was based on omission of such information.
 - 2/ The NRC Inspection Report noted, with apparent approval, that when Iowa Electric recognized its error and its investigation found that the omissions had been intentional, it revoked the individual's access.

discrimination, and recommends that this policy not be changed. Review Team Report at II.D-3. The Review Team Report notes that where NRC has conducted its own investigation, NRC is not precluded from taking action without awaiting the ALJ, but states that "[in] most cases, awaiting the outcome of adjudication before the ALJ would be warranted." The only exception to this general proposition noted in the Report, is occasions in which there is a "need for immediacy of NRC action." In this instance there is absolutely no need for immediate NRC action, and such action might actually frustrate achievement of other goals supported by the Report, such as avoiding inconsistent government decisions in the same case. 3/

Immediate NRC action might be justified if there were a need to cause a licensee to take additional actions to prevent future violations or to prevent or mitigate a chilling effect on employee willingness to report safety concerns. That is not the case here. In August 1992, HL&P identified actions being taken to prevent a chilling effect as a result of the revocation of the individual's access. See HL&P letter to NRC dated August 21, 1992 (ST-HL-AE-4186). These and other actions have, moreover, been effectively implemented.

Since I took over as HL&P's Group Vice President, Nuclear in April 1993, I have made it a priority to foster an atmosphere in which employees feel free to raise concerns, and have described our actions to achieve this goal in a number of communications to the NRC. 4/ The many actions described in

2/ As a practical matter, other changes at the South Texas Project have rendered such action moot. For example, in the summer and fall of 1993, HL&P substantially reorganized the organization at STP, including the addition of substantial numbers of new personnel with expertise from outside STP. In conjunction with these changes, the management personnel who decided that Mr. Saporito's access should be reviewed and ultimately revoked (conduct which HL&P believes was necessary and appropriate) were moved to positions outside HL&P's nuclear organization. Thus, even if the NRC were to conclude that these individuals' decisions were incorrect, action respecting them would not be of any practical current import for NRC licensed activities.

4/ See HL&P's letters to the NRC on May 13, 1994 (ST-HL-AE-4780); February 11, 1994 (ST-HL-AE-4685); December 31, 1993 (ST-HL-AE-4665); May 21, 1993 (ST-AL-AE-4466); also see NRC meeting summaries for the management meetings on June 12,

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these various communications have been reviewed in several NRC inspections and were specifically considered by the NRC before it concurred in the restart of the units earlier this year. Based on the results of these reviews, HL&P believes that it has taken appropriate actions to assure that employees are encouraged to report safety concerns, and minimize the likelihood of further violations of 10 CFR 50.7.

Not only is it unnecessary for NRC to alter its general policy of deferring its decision on enforcement action, but taking such action at this time would unfairly prejudice the outcome of the DOL hearing in this case. The DOL trial has been scheduled at various times over the past year, but has been delayed primarily at the complainant's request. The hearing is now scheduled to begin on September 26, 1994. The record in the trial will be the first true opportunity for both sides to present their evidence and cross-examine witnesses. Previous investigations, whether conducted by NRC, DOL or HL&P, were conducted in a manner that did not allow either party to cross-examine opposing witnesses and respond to opposing arguments. It is most likely that the adversary process, in which both sides are represented by counsel and the evidence can be openly scrutinized, will uncover additional information that is material to any potential enforcement decision.

Please feel free to call me if you have any questions about any of the matters discussed in this letter.

Sincerely,



W. T. Cottle
Group Vice President,
Nuclear

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4/(...continued)

1994; February 14, 1994; October 12, 1993, and September 8, 1993.