

May 8, 1992

GPC 92-ERA-038  
HLP 92-ERA-045

Mr. Franklin E. Pierce, Investigator  
United States Department of Labor  
Wage and Hour Division  
1375 Peachtree Street, N.E.  
Atlanta, Georgia 30367

Dear Mr. Pierce:

Pursuant to our telephone conversation of 05-04-92, I am providing materials to your office for consideration insofar as they are relevant to my complaint against the Georgia Power Company (GPC), Nuclear Support Services, Inc. (NSS), and Houston Lighting & Power (HLP).

I recently sent your office a copy of my amended complaint regarding the above to officially include HLP as party to this proceeding. In light of the amended complaint, HLP should be served notice of the complaint in accordance with DOL regulations.

Although we briefly discussed the merits of the complaint over the telephone on 05-04-92, I would like to take this opportunity to address the critical issues in greater detail.

#### ISSUES FOR CONSIDERATION

1. On or about February 10, 1992, Complainant engaged in "protected activities" by contacting the Nuclear Regulatory Commission (NRC), regarding apparent violations of NRC requirements at the HLP South Texas Project (STP). HLP was well aware of Complainant's engagement in protected activities because Complainant provided HLP a copy of the petition. See enclosed 10 C.F.R. 2.206 petition.
2. On or about February 12, 1992, Complainant had further contact with the NRC and a meeting was arranged for February 18, 1992 in Arlington, TX. HLP was well aware of Complainant's engagement in protected activities because Mr. Gary Sanborne, NRC Enforcement Officer stated to Complainant that he would ask Mr. D.P. Hall to attend the meeting. See enclosed complaint at page 3, paragraph 2.
3. On or about February 21, 1992, Complainant's unescorted access to STP was revoked and HLP officials refused to state the reason for revoking Complainant's unescorted access. See enclosed complaint at page 7, paragraph 2.
4. On or about February 28, 1992, Complainant accepted a position as a Senior I&C technician with NSS at the GPC Vogtle

station. See enclosed amended complaint at page 2, paragraph 2; NSS employment confirmation letter dated 02-28-92.

5. On or about March 2, 1992, Complainant's employment at the Vogtle station was terminated because of adverse comments made by a HLP manager against Complainant. See enclosed amended complaint at page 2, paragraphs 3,4; page 3, 4.

6. HLP proffers the business reason for revoking Complainant's unescorted access was ... the omission of material information from the forms submitted by you in support of your request for unescorted access... See enclosed HLP letters of March 4 & 26, 1992; Complainant's Appeal dated March 12, 1992.

7. A reasonable person need not expend a great deal of time considering HLP's argument to reach a conclusion that HLP's business reason is pretextual based on consideration of the following:

(a) HLP could have maintained Complainant's unescorted access because:

(i) Complainant voluntarily submitted additional information to HLP regarding the omissions;

(ii) Any information omitted is not found to be adverse to Complainant's unescorted access;

(iii) HLP officials were already aware of the omitted information;

(iv) Complainant did not willfully & knowingly omit any information which upon discovery could have adversely affected his unescorted access;

(v) Complainant hurriedly completed the security documents which resulted in some omissions, however, Complainant was new to the nuclear industry as a contractor employee and had no trouble obtaining unescorted access to the Palo Verde station by completing security forms with similar work history information. See security enclosures for HLP and Arizona Public Service.

(vi) Of all the hundreds of other contractors at STP, was anyone else's unescorted access revoked for the same reasons cited for the Complainant? If so, did they engage in protected activities?

(vii) Has HLP been previously charged with other 42 U.S.C. 5851 violations?

(b) HLP could have continued Complainant's employment as an escorted contractor at STP.

(c) HLP could have continue Complainant's employment in a position outside the STP protected area. Thus, no unescorted access would be required.

8. HLP engaged in continuing discrimination and/or violation of 42 U.S.C. 5851 by blacklisting Complainant. A HLP manager provided NSS with adverse comments stating that Complainant was a security risk and a poor worker. These comments by HLP resulted in Complainant's employment termination at the Vogtle station.

9. NSS refused to continue Complainant's background investigation because of the adverse comments made by HLP and because HLP refused to provide NSS with the reason that HLP revoked Complainant's unescorted access at STP.

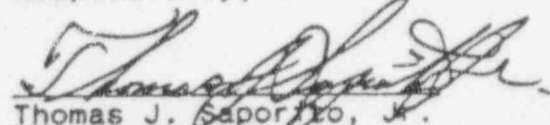
10. Georgia Power Company refused to employ Complainant, according to NNS manager Mr. Frank Koller, because of the HLP action of revoking Complainant's unescorted access and not providing a reason.

In light of the fact that Complainant is a nuclear whistleblower, all three Respondents have taken actions and measures to insure that Complainant is prevented a career in the nuclear industry to protect Respondents' financial interests from risk of civil penalties which might be levied by the NRC.

In the interest of public health & safety and as a matter of law, I request a favorable Wage & Hour Determination in this matter.

Should you have any questions regarding the foregoing, please don't hesitate to contact me.

Respectfully,

  
Thomas J. Saporito, Jr.



cc: U.S. Department of Labor  
Employment Standard Administration  
200 Constitution Ave., N.W., Room S-3502  
Washington, D.C. 20210

Mr. Sam Perez, Investigator  
U.S. Department of Labor  
Wage and Hour Division  
Post Office Box 809  
Galveston, Texas 77553

2320 LaBranch, Room 2100  
Houston, Tx. 77004

92-C-RA-045

June 30, 1992

Houston Lighting &  
Power Company  
South Texas Project  
ATTN: Betty Brown, N5070  
P.O. Box 289  
Wadsworth, Tx. 77483

Certified No.: P 663 272 155

Case No. 92 615 12203

Dear Ms. Brown:

RE: Thomas J. Saporito, Jr. vs. Houston Lighting & Power Company

This letter is to notify you of the results of our compliance actions in the above case. As you know, Thomas J. Saporito, Jr. filed a complaint with the Secretary of Labor under the Energy Reorganization Act on March 11, 1992. A copy of the complaint; a copy of the Regulations, 29 CFR Part 24; and a copy of the pertinent section of the statute were furnished to you in a previous letter from this office.

Our initial efforts to conciliate the matter did not result in a mutually agreeable settlement. A fact-finding investigation was then conducted. This investigation involved two allegations:

- 1) That Mr. Saporito's unescorted access was revoked because of engagement in a protected activity.
- 2) That Mr. Saporito was "blacklisted" for future employment because of statements made by Houston Lighting and Power Company representative Rich DeLong.

On allegation number 2, blacklisting, it is our conclusion that the allegations cannot be substantiated because Mr. DeLong said only that he would not rehire Mr. Saporito.


On allegation number 1, revocation of unescorted access, the weight of evidence to date indicates that Thomas J. Saporito, Jr. was a protected employee engaging in a protected activity within the scope of the Energy Reorganization Act and that discrimination as defined and prohibited by the statute was a factor in the actions which comprise his complaint. The following information supported this determination.

Mr. Saporito's unescorted access was revoked soon after he contacted the Nuclear Regulatory Commission alleging violations of NRC requirements. In order to determine if Mr. Saporito was treated the same as others who had failed to disclose information, thirteen adjudicated cases were reviewed. Nine of the thirteen cases were for failure to disclose information. In only one case was access denied or revoked for failure



to disclose information on the Data Form. A review of the cases shows a clear pattern of granting access in almost every case when an employee failed to disclose information on the Data Form and the Screening Affidavit.

This letter is notification to you that the following actions are required to remedy the violation:

- 1) 
- 2) payment of interest on the above.
- 3) the complainant's personnel records to be expunged including any reference to the revocation of complainant's unescorted access.
- 4) the respondent to post copies of this order in its entirety throughout the respondent's South Texas Project Electric Generating Station to include but not be limited to: (a) all NRC bulletin boards, (b) all bulletin boards posted with the NRC form 3, (c) all employee bulletin boards, (d) all bulletin boards in the Nuclear Support Center and (e) all bulletin boards throughout all the numerous training facilities and buildings around the station.

This letter is also notification to you that, if you wish to appeal the above findings and remedy, you have a right to a formal hearing on the record. To exercise this right you must, within five (5) calendar days of receipt of this letter, file your request for a hearing by telegram to:

The Chief Administrative Law Judge  
U.S. Department of Labor  
800 K Street N.W.  
Washington, D.C. 20001-8002

Unless a telegram is received by the Chief Administrative Law Judge within the five-day period, this notification of findings and remedial action will become the Final Order of the Secretary of Labor which must be implemented within 30 days. By copy of this letter, Thomas J. Saporito, Jr. is being advised of the determination and the right to a hearing. A copy of this letter and complaint have also been sent to the Chief Administrative Law Judge. If you decide to request a hearing, it will be necessary for you to send copies of the telegram to Thomas J. Saporito, Jr. and to me at 2320 LaBranch, Room 2100, Houston, Tx. 77004, (713) 750-1685. After I receive the copy of your request, appropriate preparations for the hearing can be made. If you have any questions, do not hesitate to call me.

It should be made clear to all parties that the U.S. Department of Labor does not represent any of the parties in a hearing. The hearing is an adversarial proceeding in which the parties will be allowed an opportunity to present their evidence for the record. The Administrative Law Judge who conducts the hearing will issue a recommended decision to the Secretary based on the evidence,

testimony, and arguments presented by the parties at the hearing. The Final Order of the Secretary of Labor will then be issued after consideration of the Administrative Law Judge's recommended decision and the record developed at the hearing and will either provide for appropriate relief or dismiss the complaint.

Sincerely,

Daniel K. Brown  
District Director

cc: Thomas J. Saporito, Jr.

[REDACTED]

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Dallas, Tx. 75202

The Chief Administrative Law Judge  
U.S. Department of Labor  
800 K Street N.W.  
Washington, D.C. 20001-8002

UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF THE ADMINISTRATOR OF THE WAGE AND HOUR DIVISION  
EMPLOYMENT STANDARD ADMINISTRATION  
U.S. DEPARTMENT OF LABOR, ROOM S3502  
200 CONSTITUTION AVENUE, N.W.  
WASHINGTON, D.C. 20210

In the Matter of:

Thomas J. Saporito, Jr.,  
Complainant,

v.

Houston Lighting & Power,  
Respondent.

DATE: FEBRUARY 24, 1992

CASE NO.: 92-ERA- 45

COMPLAINT

Complainant, Thomas J. Saporito, Jr., hereby submits his complaint of violations of the Employee Protection Provision of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5851 (The Act).

Complainant was employed by the Respondent on January 13, 1992 through the contract services of SUN Technical Services located at 27285 Las Ramblas, Suite 280, Mission Viejo, CA 92961 to work as an Instrument Control Technician at the Respondent's South Texas Project Electric Generating Station (STPEGS), located near Wadsworth, Texas.

J/3

Complainant was escorted as a visitor and worked as an Instrument Control Technician at STPEGS from January 13, 1992 to February 13, 1992. On February 14, 1992, the Complainant was granted unescorted access to STPEGS and issued a RED Picture Badge #1397 which allowed the Complainant to enter, work and exit STPEGS unescorted. On February 14, 1992, Complainant worked the day shift (08:00-16:30) as a RED badged and unescorted Instrument Control Technician at STPEGS.

On February 10, 1992, the Complainant contacted the Nuclear Regulatory Commission (NRC) by submitting a petition pursuant to 10 C.F.R. 2.206 which identified various violations of NRC requirements at STPEGS. A complete and accurate copy of the February 10, 1992, 10 C.F.R. 2.206 petition was mailed to Mr. D.P. Hall, Group Vice President Nuclear at Houston Lighting and Power, STPEGS, Post Office Box 289, Wadsworth, Texas 77483. Clearly, the Respondent was cognizant that the Complainant was engaged in a "Protected Activity".

On or about February 12, 1992, the Complainant was contacted by telephone at his residence located at [REDACTED] [REDACTED] by Mr. Gary F. Sanborn, Enforcement Officer with the NRC Region IV office. Mr. Sanborn arranged for the Complainant to meet with the NRC Region IV staff on February 18, 1992 at the NRC Region IV office in Arlington, Texas to enable positive recovery of investigative material and specific details of violations at STPEGS.

Mr. Sanborn stated that he would contact Mr. D.P. Hall and provide him an opportunity to attend this meeting. Clearly, the Respondent was cognizant that Complainant was engaged in a "Protected Activity".

On February 18, 1992, Complainant attended the NRC meeting and identified various violations of NRC requirements to the NRC staff. Mr. D.P. Hall did not attend the meeting of February 18, 1992 at the NRC Region IV office.

On February 20, 1992, only TWO DAYS after Complainant's meeting with the NRC, Complainant was told by Instrument Control Foreman, Chilis, that Complainant was required to meet with Mr. Rick Cink at 12:30 pm in the Nuclear Support Center (NSC) building. I asked Mr. Chilis to identify Mr. Cink. Mr. Chilis replied that Mr. Cink was with Speakout.

Complainant visited the NRC site resident's office and requested that the NRC Senior resident inspector, Mr. Joe Tapai, attend this meeting. Complainant informed the NRC that he felt threatened and intimidated by being forced to attend this meeting with Mr. Cink. The NRC initially agreed to attend the meeting but later refused to attend the meeting. Mr. Tapai contacted the NRC Region IV office to enable Complainant to clarify this issue.

While waiting for the NRC Region IV to return the call, a STPEGS employee entered the NRC office. Mr. Tapai looked at Complainant and asked if Complainant wanted to move to another



room. Complainant replied no, I don't care if we have this discussion on site in the Instrument Control shop because an employee has the right to speak with the NRC. The STPEGS employee had a short discussion with Mr. Tapia, looked at the Complainant and left the office.

At this time, Complainant identified to the NRC a willfull falsification of safety related documents, failure to follow procedures, and improper and inaccurate calibration of a safety related system, (boric acid level), at STPEGS.

Complainant attended the meeting with Mr. Cink, and was asked to disclose everything that Complainant had revealed to the NRC at the February 18, 1992 NRC meeting. Complainant put Mr. Cink on notice that he was engaged in a "Protected Activity" and that Mr. Cink was interfering in an active NRC investigation that the Complainant was participating in.

Complainant told Mr. Cink that because Mr. Hall did not accept the NRC's request to attend the meeting and since investigative material was provided to the NRC at the meeting, that specific investigative information would not be provided. Complainant offered to discuss with Mr. Hall, Mr. Cink and the Director of Quality Assurance at STPEGS, numerous other issues which did not disclose NRC investigative material and which were discussed at the February 18, 1992 NRC meeting.

Mr. Cink stated that was fine and that he would try to arrange the meeting. Mr. Cink showed the Complainant a copy of

the February 10, 1992, 10 C.F.R. 2.206 stamped and dated as received by the Respondent. Mr. Cink stated that upper management had dumped the document on his desk. Mr. Cink asked if some of the issues in the 10 C.F.R. 2.206 could be discussed at the meeting. Complainant stated yes and Mr. Cink agreed to arrange for a meeting of Complainant, Mr. Hall, the Director of Quality Assurance and himself.

Complainant then informed Mr. Cink that Complainant had just informed the NRC of a Technical Specification violation at STPEGS concerning the safety related boric acid system. Complainant informed Mr. Cink that the Foreman, Mr. Springfield and the Craftsman, Mr. Duran, were both made aware of this concern.

Complainant returned to the Instrument Control shop at about 16:15 hours and was immediately informed by Mr. Springfield that Complainant must immediately report to Mr. Watt Hinson of the Nuclear Security Department. Complainant asked Mr. Springfield who Mr. Hinson was and what the meeting was about. Mr. Springfield replied that he didn't know.

Complainant notified Mr. Springfield that it was 15 min. from quitting time but Mr. Springfield stated that Complainant must attend the meeting. Complainant stated that the meeting would require overtime payment. Mr. Springfield stated that he would not authorized any overtime payment but that Complainant must attend the meeting.

Complainant exited STPEGS and entered the NSC and met with Mr. Cink and Mr. Hinson. Mr. Hinson stated that he was now required to conduct an interview with Complainant regarding his unescorted access to STPEGS. Mr. Hinson refused to state why the interview was required or who requested it, or if any STPEGS procedure required the interview.

Complainant asked if the meeting was being video recorded and Mr. Hinson stated "yes" it was. Complainant asked why Mr. Hinson didn't reveal this fact at the onset of the meeting. Mr. Hinson replied that he was eventually planning to mention it. Complainant requested that the video recorder be turned off. Mr. Hinson stated that he would have to check with his boss. Mr. Hinson left and returned and stated that his boss had left for the day but that he (Mr. Hinson) turned the video recorder off.

Mr. Hinson then insisted and required that Complainant sign and date a meeting/interview consent form. Complainant was forced to comply and then the form was witnessed by Mr. Cink. Complainant then put Mr. Hinson on notice that Complainant was participating in an active investigation with the NRC concerning violations of NRC requirements at STPEGS. Complainant informed Mr. Hinson that his interview with Complainant was an attempt by Mr. Hinson to intimidate and threaten Complainant because of his participation in the active NRC investigation.

Complainant stated to Mr. Hinson that it was incredible

that this interview was required so very shortly after the Complainant met with the NRC in Arlington, Texas and immediately after Complainant informed the NRC of yet another violation of NRC requirements at STPEGS which occurred a few hours ago indicating willfull falsification of safety related documents. Mr. Hinson smiled and said "what meeting" and then conducted the interview. The interview was very extensive and exceptionally detailed lasting for at least 1 1/2 hours during which time the Complainant was not offered a break, food or drink. At the end of the meeting, Mr. Hinson told the Complainant to report to work the next day at STPEGS as usual.

On February 21, 1992, Complainant reported to the STPEGS East Security Gate and was denied access to the station. Complainant then entered the NRC resident inspector's office in the NSC. All of the NRC inspectors were out of town, therefore, the Complainant notified the NRC Executive Director for Operation in Washington, D.C. that the Respondent had taken discriminatory action against the Complainant who was actively engaged in "Protected Activity".

Complainant then called Mr. Frank Reed an Instrument Control manager, and informed Mr. Reed that Complainant's access to STPEGS had been denied and that Complainant was waiting further direction in the NRC resident inspector's office. A couple of hours later, Complainant was called to a meeting with Mr. Sanchez, acting maintenance manager, Mr. Cink of Speakout

and Mr. D.W. Bohner of Speakout.

Mr. Sanchez informed Complainant that his unescorted access to STPEGS had been revoked. Complainant asked why his access had been revoked. Mr. Sanchez stated that he didn't know and that "...He didn't understand why the Complainant's access had been revoked because he had security documents with him that authorized and approved the Complainant's unescorted access to STPEGS..." Mr. Sanchez stated that the matter could be appealed within 15 days and provided a form (STP 255 (01/90)) (Request For Appeal) to Complainant.

Complainant asked for a copy of the Administrative Procedure IP7.02Q Revision 10 dated 10-09-91 which provided instructions and explanations for utilizing the (STP 255) form. Mr. Sanchez refused to provide Complainant with a copy of the procedure. Complainant asked Mr. Sanchez for a written statement explaining the specific reason(s) that Complainant's access to STPEGS was revoked. Complainant explained that this information was critical to enable Complainant the ability to Request an Appeal. Mr. Sanchez refused to provide a written statement specifying the reason(s) for denying the Complainant access to STPEGS.

Complainant informed Mr. Sanchez, Mr. Cink and Mr. Bohner that Complainant was engaged in a "Protected Activity" and that employment discrimination of revoking Complainant's access to STPEGS was illegal. Complainant then informed Mr. Sanchez that



the NRC was notified of a violation of NRC requirements at STPEGS. Mr. Sanchez was notified of work performed on the boric acid level system which was safety related equipment and that a document was willfully falsified, procedures were not followed, and that the transmitter in the system was not accurately calibrated.

Mr. Sanchez was informed that the Foreman, Mr. Springfield, was apprized of this occurrence and that a brief discussion was held between the Complainant and Mr. Duran, the craftsman involved. Complainant requested that Mr. Sanchez arrange a meeting with the Quality Assurance Director, Mr. Hall, Mr. Cink, Mr. Springfield and Mr. Duran and that the original work package be provided at the meeting along with the implementing procedures.

Complainant explained that the meeting would provide everyone with an open and free discussion of the violations, why they occurred and how to prevent them from re-occurring by recognizing what occurred and by scheduling enhanced training. Mr. Sanchez refused to comply with the request.

Complainant requested that Mr. Sanchez arrange for the Complainant to obtain a whole body count and permit the Complainant to return his Security I.D. badge and parking permit to the Security Department. Mr. Sanchez refused stating that Complainant was not authorized access to STPEGS and would not be escorted on site as a visitor.

Complainant then went to the site cafeteria with Mr. Cink for lunch to provide Mr. Sanchez another opportunity to allow Complainant access to STPEGS for a whole body count and to return a security badge and a parking permit. Mr. Sanchez failed to arranged for the whole body count, therefore, Complainant left the site for home.

Mr. Cink followed Complainant to Complainant's car in the parking lot. Complainant told Mr. Cink that the falsification of the safety related work needed immediate attention. Mr Cink replied, yes, I'd better hurry over there and get those work documents before Sanchez does.

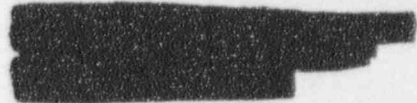
Complainant asserts that his denied access to STPEGS and therefore his employment discrimination was improper and illegal because it was motivated by and could not have happened but for his open and notorious engagement in activities protected by the Act.

Complainant requests that the Department of Labor (DOL) investigate the complaint pursuant to its authority as described in 29 C.F.R. Part 24. FOR ALL THE REASONS CLAIMED HEREIN AND ON THE BASIS OF THE FULL EVIDENTIARY RECORD developed by the DOL investigator, Complainant seeks a decision and order awarding him full back pay to include payment of the remaining balance of a 1 year service agreement that SUN Technical Services has with the Respondent and other damages to which he is entitled, as well as equitable relief to insure that the actions of the

Respondent are not deemed acceptable conduct by employers  
governed by the Act.

Respectfully submitted,

  
Thomas J. Saporito, Jr.



cc: James Taylor, Executive Director for Operation  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

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UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF THE ADMINISTRATOR OF THE WAGE AND HOUR DIVISION  
EMPLOYMENT STANDARD ADMINISTRATION  
ROOM S-3502, 200 CONSTITUTION AVENUE, N.W.  
WASHINGTON, D.C. 20210

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In the Matter of: )

Thomas J. Saporito, Jr. )  
Complainant, )

v. )

Houston Lighting & Power Co., )  
Respondent )  
\_\_\_\_\_

DATE: MARCH 05, 1992

CASE NO.: 92-ERA- 45

AMENDED COMPLAINT

Complainant, Thomas J. Saporito, Jr., hereby submits his amended complaint of violations of the Employee Protection Provision of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5851 (The Act).

Complainant was employed by the Respondent on January 13, 1992 through the contract services of SUN Technical Services located at 27285 Las Ramblas, Suite 280, Mission Viejo, CA 92961 to work as an Instrument Control Technician at the Respondent's South Texas Project Electric Generating Station (STPEGS), located near Wadsworth, Texas.

On February 18, 1992, the Complainant met with officials of the Nuclear Regulatory Commission (NRC), Region IV office in Arlington, Texas to discuss apparent violations of NRC

requirements at the STPEGS. Shortly thereafter, on February 21, 1992, the Respondent terminated the Complainant's employment by revoking the Complainant's unescorted access to STPEGS. See Complaint filed with the U.S. Department of Labor on February 24, 1992.

On February 28, 1992, the Complainant accepted a position as a Senior I&C Technician with Nuclear Support Services, Inc. (NSS), at the A.W. Vogtle Nuclear Plant 1 near Waynesboro, Georgia. See attached NSS confirmation letter.

On 03-02-92, the Complainant reported for work at 06:30 hrs. at the Vogtle nuclear station. Complainant submitted to a Fitness for Duty examination which consisted of drug screening and alcohol testing. Complainant then completed a psychological examination and was sent to Augusta, Georgia for a physical examination.

During the physical examination, the Complainant was summoned to the telephone. The Complainant was informed by a NSS manager, Robert Goodwin, that there was a glitch in the Complainant's background investigation. The Complainant asked Mr. Goodwin what the glitch was about. Mr. Goodwin stated that he would have the NSS Project Manager, Art Rutherford, call the Complainant right back. Note: Telephone number for Art Rutherford is 1-205-899-5156, ext. 2419.

Shortly thereafter, Mr. Rutherford called the Complainant at the doctor's office. Mr. Rutherford told the Complainant that there was a glitch in the Complainant's background investigation and that he (Rutherford), informed the doctor to discontinue the Complainant's physical examination. Mr.



Rutherford told Complainant that NSS was releasing the Complainant effective immediately.

The Complainant asked Mr. Rutherford what the glitch in the background investigation was about. Mr. Rutherford told the Complainant that a manager at the STPEGS said that the Complainant was a security risk. The Complainant asked Mr. Rutherford for the name of the STPEGS Manager who made the comment. Mr. Rutherford told the Complainant that the Complainant would have to speak with a NSS manager, Frank Koller, to recover the STPEGS manager's name.

The Complainant returned to his hotel room and received a telephone call from Mr. Goodwin. Mr. Goodwin told the Complainant that the glitch in the background investigation had been resolved and that the Complainant should return to the doctor's office to complete the physical examination. The Complainant told Mr. Goodwin that the Complainant would un-pack and return to the doctor's office.

Shortly thereafter, Mr. Goodwin again called the Complainant and told the Complainant that there was another glitch in the background investigation and not to return to the doctor's office. The Complainant asked Mr. Goodwin what the glitch in the background investigation was about. Mr. Goodwin told the Complainant to contact Mr. Koller for that information.

The Complainant contacted Mr. Koller and asked about the glitch in the background investigation. Mr. Koller told the Complainant that NSS halted the background investigation because a developed reference, a supervisor at STPEGS, told Mr. Koller that the Complainant was a security risk. Mr. Koller told the

Complainant that the STPEGS supervisor told Mr. Koller that the Complainant's work performance was poor.

The Complainant asked Mr. Koller for the name of the STPEGS supervisor who made the comments. Mr. Koller refused to release the name of the supervisor because the NSS Human Resources Manager, Brenda Acker, would not allow the release of the STPEGS supervisor's name to the Complainant.

The Complainant informed Mr. Koller that it appeared that the STPEGS, NSS and the Vogtle nuclear station were blacklisting the Complainant from working in the nuclear industry through illegal conduct in violation of 42 U.S.C. 5851. Complainant asked Mr. Koller why NSS halted the background investigation without even contacting any of the references and other employers that Complainant had provided to NSS.

Mr. Koller told the Complainant that NSS halted the background investigation because of the comments received from the STPEGS supervisor. The Complainant informed Mr. Koller that the Complainant had been granted unescorted access at the Palo Verde nuclear station working as an I&C Technician during the Unit 2 refueling outage.

The Complainant told Mr. Koller that the Complainant's work performance at the Palo Verde nuclear station was excellent and, in fact, Mr. Isador Chavez, a Palo Verde supervisor, specifically requested a copy of the Complainant's resume. Mr. Chavez told the Complainant that he (Chavez), would personally bring the Complainant back to work the next Unit 2 refueling outage at Palo Verde.

The Complainant informed Mr. Koller that the Complainant

contacted the NRC to request an investigation of the blacklisting conduct by STPEGS, NSS and the Vogtle nuclear station. The Complainant told Mr. Koller that the Complainant intended to file a complaint with the U.S. Department of Labor (DOL), to initiate an investigation into the blacklisting conduct.

Mr. Koller became very excited and told the Complainant that NSS would continue the background investigation by contacting the references which the Complainant listed on the NSS application. Mr. Koller told the Complainant to return home to Florida and to call him (Koller) in a couple of days.

On March 05, 1992, the Complainant contacted Mr. Koller at 1-800-338-7333. Mr. Koller told the Complainant that NSS had contacted the Vogtle nuclear station and that Vogtle's only concern was that the Complainant's unescorted access had been revoked at the STPEGS. Mr. Koller told the Complainant that NSS had sent a letter to STPEGS asking for the specific reason(s) for revoking the Complainant's unescorted access at STPEGS.

Mr. Koller told the Complainant that a SUN Technical Services representative, Amy Sabatino, informed NSS that the Complainant had voluntarily quit the position at the STPEGS. Mr. Koller told the Complainant that he (Koller), would contact the Complainant on 03-06-92 after further background checks were completed.

On 03-05-92, the Complainant contacted Ms. Sabatino at 1-714-582-1223 and asked Ms. Sabatino why she told NSS that the Complainant had voluntarily quit his position at the STPEGS ? Ms. Sabatino told the Complainant that the SUN Technical

computer had that information keyed into its data base. Ms. Sabatino would not released the name of the SUN Technical employee who was responsible for updating the computer data base.

The Complainant informed Ms. Sabatino that his position at STPEGS was terminated by STPEGS when STPEGS officials revoked the Complainant's unescorted access to STPEGS shortly after the Complainant met with NRC officials in Arlington, Texas concerning apparent violations of NRC requirements at the STPEGS.

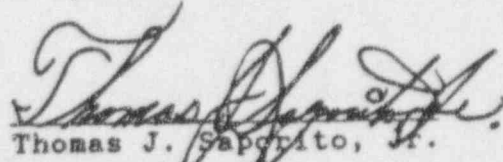
Ms. Sabatino told the Complainant that she would correct the information in the SUN Technical computer data base, contact Mr. Koller of NSS and advise him (Koller), of the error and follow-up this discussion with a written letter to the Complainant from SUN Technical Services.

Complainant asserts that the Respondent's conduct of blacklisting the Complainant was improper and illegal because it was motivated by and could not have happened but for his open and notorious engagement in activities protected by the Act.

Complainant requests that the DOL investigate the amended complaint pursuant to its authority as described in 29 C.F.R. Part 24. FOR ALL THE REASONS CLAIMED HEREIN AND ON THE BASIS OF THE FULL EVIDENTIARY RECORD developed by the DOL investigator, Complainant seeks a decision and order awarding him full back pay and reinstatement to his position as Senior I&C Technician at the Vogtle nuclear station and other damages to which he is entitled, as well as equitable relief to insure that the actions of the Respondent are not deemed acceptable conduct by employers

governed by the Act.

Respectfully submitted,

  
Thomas J. Saporito, Jr.



cc: James Taylor, Executive Director for Operation  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Billie P. Garde, Esq.  
Hardy, Milutin & Johns  
Attorneys at Law  
500 Two Houston Center  
909 Fannin at McKinney  
Houston, Texas 77010



2320 LaBranch, Room 2100  
Houston, Tx. 77004

March 11, 1992

Thomas J. Saporito, Jr.  
[REDACTED]

Certified No. P 663 272 539

Case No.: 92 615 12203

Dear Mr. Saporito:

This will acknowledge receipt of your complaint against Houston Lighting and Power Company, South Texas Project alleging violations of the Energy Reorganization Act (ERA). Your complaint was received in this office on March 11, 1992.

The Act requires the Secretary of Labor to notify the party named in the complaint about the filing of the complaint and to conduct an investigation into the alleged violations. Consequently, we are providing Houston Lighting and Power Company with a copy of your complaint and information concerning the Wage and Hour Division's responsibilities under this law. We have enclosed a copy of the pertinent section of the Act and a copy of Regulations, 29 CFR Part 24 for your information.

This case has been assigned to Sam Perez whose first action will be to try and achieve a mutually agreeable settlement through conciliation. If this is not possible a fact-finding investigation will be conducted as soon as possible. If you have further evidence, please give it to our representative who will contact you on this matter. If you have any questions do not hesitate to call me at (713) 750-1682 or our representative at (409) 766-3504.

Sincerely,

Daniel K. Brown  
District Director

Enclosure

cc: Julio R. Aguilar,  
Supervising Consultant  
Houston Lighting & Power Co.  
P.O. Box 1545  
Houston, Tx. 77251

Russell Wise, Allegations Coordinator  
Enforcement and Investigation Staff  
Nuclear Regulatory Commission  
611 Ryan Plaza Dr., Suite 1000  
Arlington, Tx. 76011

James C. White, Esq.  
U.S. Department of Labor  
Regional Solicitor's Office  
525 Griffin, Suite 501  
Dallas, Tx. 75202

Bill A. Belt, Regional Administrator  
U.S. Department of Labor  
Wage and Hour Division  
525 Griffin, Room 800  
Dallas, Tx. 75202

2320 LaBranch, Room 2100  
Houston, Tx. 77004

March 11, 1992

Thomas J. Saporito, Jr.  
4901 Misty Lane #402  
Bay City, Tx. 77414

Certified No. P 663 272 539

Case No.: 92 615 12203

Dear Mr. Saporito:

This will acknowledge receipt of your complaint against Houston Lighting and Power Company, South Texas Project alleging violations of the Energy Reorganization Act (ERA). Your complaint was received in this office on March 11, 1992.

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Sincerely,

Daniel K. Brown  
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U.S. Department of Labor  
Wage and Hour Division  
525 Griffin, Room 800  
Dallas, Tx. 75202

J/5

5/4/92

UNITED STATES OF AMERICA  
BEFORE THE U.S. DEPARTMENT OF LABOR

THOMAS J. SAPORITO, JR.  
Complainant,

v.

GEORGIA POWER COMPANY,  
Respondent,

and

NUCLEAR SUPPORT SERVICES, INC.  
Respondent,

and

HOUSTON LIGHTING & POWER COMPANY  
Respondent.

CASE NO.: 92-ERA-

AMENDED COMPLAINT

Pursuant to 29 C.F.R. 18.5 (e), Complainant, Pro Se, Thomas J. Saporito, Jr., hereby submits his Amended Complaint of violations of the Employee Protection Provision of the Energy Reorganization Act of 1974, as amended, 42 U.S.C 5851 (The Act).

On or about March 03, 1992, Respondent (HLP), Houston Lighting & Power Company, stated to Mr. Art Rutherford, Project Manager for Respondent (NSS), Nuclear Support Services, Inc., that Complainant was a security risk.

On or about March 03, 1992, Respondent (HLP), stated to Mr. Frank Koller, Manager for Respondent (NSS), that Complainant was a security risk and that Complainant's work performance was poor.

On or about March 05, 1992, Mr. Koller told Complainant that NSS had contacted the Vogtle nuclear station and that Vogtle's only concern was that Complainant's unescorted access at

J/c

Respondent's (HLP), South Texas Project (STP), had been revoked.

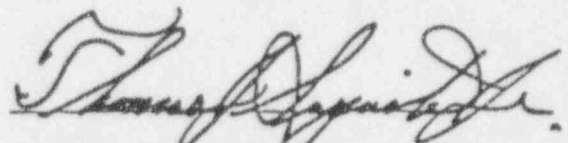
On or about April 03, 1992, Respondent (NSS), representative Mr. Frank Koller sent a letter to Complainant stating, in part, that:

"...We were unable to get any information at all from South Texas Project in regard to your access revocation or denial. Without that information available a determination was made not to grant access to you at this time..." (sic)

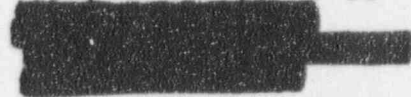
Complainant asserts that the discriminatory conduct by all three (3), Respondents (GPC, NSS & HLP), of blacklisting the Complainant was improper and illegal because it was motivated by and could not have happened but for the Complainant's history of open and notorious engagement in activities protected by the Act.

Complainant requests that the Department of Labor investigate the Amended Complaint pursuant to its authority as described in 29 C.F.R. 24 in the interest for the health and safety of the general public.

Respectfully submitted,



Thomas J. Saporito, Jr.  
Complainant, Pro Se



Dated this 4th day of May, 1992 at Lake Worth, Florida.  
cc: See Service Sheet

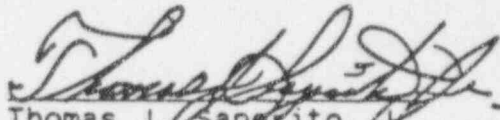
SERVICE SHEET

CASE NAME: THOMAS J. SAPORITO, JR. V. GEORGIA POWER  
COMPANY AND NUCLEAR SUPPORT SERVICES, INC. AND  
HOUSTON LIGHTING & POWER COMPANY

CASE NO.: 92-ERA-

TITLE OF DOCUMENT: AMENDED COMPLAINT

I hereby certify that a copy of the foregoing document was sent to  
the following at their last known addresses by methods indicated  
below on the 4th day of May, 1992.

  
Thomas J. Saporito, Jr.  
Complainant, Pro Se

REGULAR MAIL

Billie P. Garde, Esq.  
Hardy, Milutin & Johns  
500 Two Houston Center  
909 Fannin at McKinney  
Houston, Texas 77010

Stewart Ebner, Administrator  
U.S. Nuclear Regulatory Comm.  
Region II  
101 Marietta St., N.W. #2900  
Atlanta, GA 30323

Robert D. Martin, Administrator  
U.S. Nuclear Regulatory Comm.  
Region IV  
611 Ryan Plaza Drive, #400  
Arlington, Texas 76011

REGULAR MAIL

James Taylor, EDO  
U.S. Nuclear Regulatory Comm.  
Washington, D.C. 20555  
Robert D. Martin, Administrator

Frank Pierce, Investigator  
U.S. Department of Labor  
Wage and Hour Division  
1371 Peachtree St., N.E. #105  
Atlanta, Georgia 30367



Houston Lighting & Power Company  
South Texas Project Electric Generating Station  
FM 521  
Wadsworth, TX



NARRATIVE

Part 1 -

Complainant, Thomas J. Saporito, Jr., was employed by SUN Technical Services, a subcontractor of Houston Lighting & Power (HL&P) at the South Texas Project Electric Generating Plant (STPEGS). South Texas Project is a nuclear powered electricity generating station and as such is subject to the Energy Reorganization Act (ERA).

The complainant was employed as an Instrument Control Technician from 01/13/92 until 02/20/92. While performing in this position he engaged in protected activities by contacting the Nuclear Regulatory Commission (NRC) by petition identifying various violations of NRC requirements; by meeting with NRC officials at NRC Region IV offices to offer information/details of violations; by identifying a number of safety related items to an on-site NRC Inspector.

Mr. Saporito began employment at STP on 01/13/92 and was escorted as a visitor for approximately one month. The Data Form submitted by Mr. Saporito (See Exhibit C-29 through C-33) was reviewed by Andrew Woods, Security Sr. Coordinator, who submitted a Request for Adjudication on 02/03/92 based on information related to Mr. Saporito's credit/criminal/employment history (See Exhibit C-15 & D-7). Issues raised at this time were Mr. Saporito's suitability and trustworthiness. The data was reviewed by R.L. Balcomb, Mgr., Nuclear Security, and the decision to grant unescorted access made on 02/11/92 (See Exhibit C-16 and C-17)

On 02/10/92 Mr. Saporito contacted the NRC by submitting a petition which identified violations of NRC requirements. A copy of said petition was mailed to Mr. D.P. Hall, Group Vice President Nuclear, at STPEGS, Wadsworth, Texas. On or about 02/12/92 Mr. Saporito was contacted by telephone at his residence by Gary Sanborn, NRC Enforcement Officer, who arranged a meeting with NRC Region IV staff on 02/18/92 at the Region IV office in Arlington, Texas. Mr. Saporito attended the meeting and identified various violations of NRC requirements.

W.J. Jump, Mgr., Nuclear Licensing, requested assistance from legal counsel in providing examples of responses to the Petition filed by Mr. Saporito. Counsel provided Department of Labor documentation of litigation against Florida Power & Light and ATI (a Florida trade school) on 02/17/92 or 02/18/92. While reviewing this data Mr. Jump noticed that Mr. Saporito was identified in the Department of Labor document provided by Counsel. He felt it was his responsibility to refer this information for evaluation and contacted Mr. W. Hinson, Mgr., Access Authorization, on 02/20/92

Houston Lighting & Power Company  
South Texas Project Electric GEnerating Station  
FM 521  
Wadsworth, TX

Mr. Hinson conducted an interview with Mr. Saporito on 02/20/92. R.W. Cink, Sr. Investigator/SPEAKOUT, was also present. A Preliminary Interview Form was read and signed by Mr. Saporito. He was provided the Data Form and Screening Affidavit from his file and asked to verify they were the same forms initially submitted for unescorted access. He reviewed them and stated they were the same forms. He was asked to review the forms and determine if any requested information had not been answered completely. He did so and provided Mr. Hinson with additional information (See Exhibit B-6, C-24).

Mr. Hinson then proceeded to interview Mr. Saporito over each area of the two forms. As a result, he provided additional information in the employment and the litigation/legal disputes and other areas (See Exhibits B-6, C-25). Upon completion of the interview he was advised the information provided would be made available to the Access Program Director (APD) who would make a decision on the continuation of his unescorted access.

Mr. R.L. Balcom, Mgr., Nuclear Security, made the determination to revoke Mr. Saporito's unescorted access on 02/20/92 (See Exhibit C-22).

Mr. Saporito amended his complaint to include SUN Technical Services, Inc. on 04/24/92.

Mr. Saporito accepted a position as a Senior I&C Technician with Nuclear Support Services (NSS) at the Georgia Power Company Vogtle Station on or about 02/28/92. In an attempt to conduct a background investigation, NSS contacted Mr. Rich DeLong, Saporito's supervisor at STPEGS. Mr. DeLong made some unfavorable comments about him which cause Mr. Saporito to again amend his complaint on 05/04/92 alleging "blacklisting" (See Exhibits B-3, E-2, E-3, E-7 & E-8).

## Part 2-

There were two issues being investigated: (1) Did HL&P discriminate against Mr. Saporito by denying him unescorted access as a result of his engagement in protective activities, and (2) Did a comment made by Mr. Rich DeLong to NSS constitute "blacklisting".

ITEM (1): AT issue is the firm's Nuclear Plant Access Authorization System (Inter-departmental Procedures IP-7.02Q Rev. No. 10). Was Mr. Saporito treated the same as others who had failed to disclose information on the Data Form and the Screening Affidavit?

Houston Lighting & Power Company  
South Texas Project Electric Generating Station  
FM 521  
Wadsworth, TX

The Access Authorization System (See Exhibit F) was reviewed and the following should be noted: Under Title 8.0 Approval and Maintenance of Unescorted Access it states that willful omission or falsification of material information submitted in support of employment shall be considered in determining suitability for unescorted access. Under Title 11.6 Contractor/Vendor/Utility Data Form, it states "I certify that all information provided on this data form is correct and I understand any misstatement, misrepresentation or omission may constitute cause for access denial. The Screening Affidavit contains the following statement "I understand that any misstatement, misrepresentation or omission on any documentation used to process unescorted access will constitute cause for denial of access at any time.

In order to determine if Mr. Saporito was treated the same as others who had failed to disclose information, thirteen (13) adjudicated cases were reviewed. Of the thirteen, nine were for failure to disclose information (See Exhibits G through O). The following information was obtained from these adjudicated cases. It should be noted that cases can be adjudicated more than once based on new information received. Access is revoked when a person quits or is laid off.

Exhibit G- Question of character and reputation. Opened 08/28/89. Closed 08/29/89.  
Decision: Continue access (See Exhibits G-1, G-3, G-20, G-24)

[REDACTED] Opened 10/30/89? Closed 11/20/89.  
Decision: Access Authorized, individual to be interviewed on next visit (See Exhibits G-8, G-26, G-27) Employee's access was revoked on 05/14/91 due to his death. (See Exhibit G-32)

Exhibit H- Employee begins employment on 02/08/89 and is authorized access on 04/06/89.

Failed to disclose charges on Data Form. [REDACTED]  
[REDACTED] Opened 05/31/89. Closed 06/21/89.  
Decision: Employee left site 06/19/89, employment terminated. Access revoked. (See Exhibits H-5, H-29, H-30, H-33, H-35)

Employee back on site 01/08/90. Reinstated and authorized access on 01/31/90  
Employee leaves site and access revoked on 09/07/90. (See Exhibit H-62)

Exhibit I- Employee begins employment on 03/22/84; request access on 01/09/89 and is granted access on 01/31/89. (See Exhibit I-1)

Failed to disclose charges on Data Form. [REDACTED]  
Opened 05/31/89. Closed 06/07/89 Decision: Review after 1988 DWI disposition (See Exhibits I-7, I-20, I-22, I-23, I-32, I-33)

Employee is part of ROF. Access is revoked on 10/10/89 (See Exhibit I-34, I-35)

Houston Lighting & Power Company  
South Texas Project Electric Generating Station  
FM 521  
Wadsworth, TX

Exhibit J- Employee begins employment and is authorized access on 03/17/89.  
(See Exhibit J-1)

Failed to disclose charges on Data Form. [REDACTED]  
[REDACTED] Opened 05/31/89 Decision: Continue access until  
request is complete made on 06/30/89. Closed 08/16/89  
Decision: Continue access. (See Exhibits J-4, J-20, J-21, J-22, J-25)

Employee terminated his employment on 10/20/89; access revoked on 10/20/89.  
(See Exhibit J-35)

Exhibit K- Failed to disclose discharged for cause on Data Form. Opened 08/08/89  
Closed 08/16/89. Decision: Access Approved (See Exhibits K-1, K-2, K-3,  
K-5, K-6, K-10, K-21)

Employee terminated his employment on 10/16/89; access revoked on 10/16/89.  
(See Exhibit K-29)

Exhibit L- Employee is granted access on 03/01/89. (See Exhibit L-1)

Failed to disclose charge on Data Form. FBI Rap Sheet disclosed one  
[REDACTED] Opened 05/31/89 Closed 06/07/89.  
Decision: Continued access (See Exhibit L-5, L-20, L-22, L-23, L-24)

Employee part of RQF and access revoked on 09/11/89. (See Exhibit L-31)

Exhibit M- Employee begins employment on 02/14/89. Access granted on 03/20/89;  
(See Exhibit M-1)

Failed to disclose charges on Data Form. [REDACTED]  
Opened 05/30/89. Closed 06/19/89. Decision: Continue access  
(See Exhibits M-5, M-18, M-19, M-20, M-21)

Employee part of RQF and access revoked on 02/14/92. (See Exhibit M-32)

Employee reapplies and is scheduled to start on 03/24/92 and a request  
for unescorted access is made on 03/20/92. Decision: Access denied on  
04/20/92. (See Exhibits M-5, M-33, M-35, M-37, M-38, M-39, M-40, M-44)



Houston Lighting & Power Company  
South Texas Project Electric Generating Station  
Hwy 521  
Wadsworth, TX

Exhibit N- Employee is granted access on 02/27/89. (See Exhibit N-1)

Failed to disclose charge on Data Form. [REDACTED]  
[REDACTED] Opened 05/31/89. Closed 06/07/89. Decision: Continue access  
(See Exhibit N-5, N-26, N-28, N-29, N-35)

Employee part of ROF and access revoked on 08/12/89.

Exhibit O- Employee began employment 02/07/89. Access granted on 04/06/89  
(See Exhibit U-1)

Failed to disclose charge on Data Form. [REDACTED]  
Opened 05/31/89. Closed 06/30/89. Decision: Continue access.  
(See Exhibits O-5, O-30, O-31, O-32, O-33, O-39, O-43)

Employee terminated his employment and access was revoked on 09/15/89.  
(See Exhibit O-44)

Out of nine cases reviewed, only in one case was the access denied/revoked due to an employee's failure to disclose information on the Data Form. This after the employee had already worked for over three years and had been granted access on 03/20/89. In the rest of the cases, the access was granted or continued. In none of the cases was the access revoked within twenty-four hours of opening the case and after the employee was interviewed. These cases were selected at random and clearly shows a pattern of granting access in almost every case when an employee failed to disclose information on the Data Form and the Screening Affidavit. It can also be said that the pattern of granting access also demonstrates consideration in determining suitability for unescorted access is less than strict and relies more on the reviewer's subjectivity rather than objectivity.

HL&P officials were well aware of Mr. Saporito's protected activity prior to the adjudication of his file. The timeliness of the adjudication, the practice of granting access to employees who failed to disclose information coupled with the knowledge of his protected activity leads one to question the revoking of his access.

It is well documented that files are adjudicated periodically as new information is received; however, the Access Authorization System is too vague when addressing the issues of denial/revocation of unescorted access. Cases are adjudicated without any clear basis for the decisions rendered. As such the Investigator can only look at patterns that develop as a result of the decisions rendered. It is the determination of the Investigator that the revocation of Mr. Saporito's unescorted access was a result of his engaging in a protected activity. The facts are clear the engagement in the protective activity was a factor in the adjudication of his file by HL&P which resulted in the denial/revocation of his unescorted access.



Houston Lighting & Power Company  
South Texas Project Generating Station  
Fm 521  
Wadsworth, TX

ITEM (2): Mr. Saporito claims statements made by Mr. Rich DeLong constituted "blacklisting".

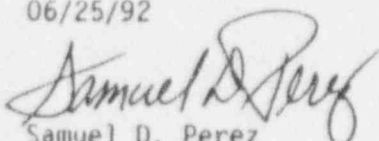
Mr. DeLong was interviewed and although he did say he would not rehire \* him, he stated no other derogatory information was said about Mr. Saporito. He stated he was briefed by Counsel and was well aware of Mr. Saporito's claim with the NRC. He stated the information given to Mr. Troy Conner of NSS was standard. He did say he told Mr. Conner it was his understanding that the reason for Mr. Saporito being denied unescorted access was due to omission of information and referred Mr. Conner to Nuclear Security.

Mr. DeLong is no longer working at STPEGS. He left on or about 04/15/92 and is presently employed at the Caroling Power & Light Brunswick Plant.

It is the Investigator's determination that the comments made by Mr. DeLong did not constitute "blacklisting".

The Investigator attempted to conciliate the matter but was not successful in doing so. It is the Investigator's recommendation that Mr. Saporito be awarded the terms of his request made in a letter dated 03/26/92. (See Exhibit A)

06/25/92

  
Samuel D. Perez  
Investigator

Vny c  
7/16/92

UNITED STATES OF AMERICA  
BEFORE THE DEPARTMENT OF LABOR

Thomas J. Saporito, Jr.  
Claimant,  
v.

CASE NO.: 92-ERA-00038 GPC  
~~92-ERA-045 HLR~~  
CASE NO.: 92 615 12203

Georgia Power Company,  
Houston Lighting & Power Company,  
Nuclear Support Services, Inc.,  
Respondents.

---

MOTION FOR CONSOLIDATION OF HEARINGS

COMES NOW, Thomas J. Saporito, Claimant pro se, pursuant to 29 C.F.R. 18.11, 24.5(b), and Federal Rules for Civil Procedure 42(a) and hereby submits a Motion for Consolidation of Hearings in the above-styled case and states grounds in support of said motion that:

1. The same or substantially the same evidence is relevant and material to the issues in each case.

2. Claimant's original complaint filed on April 1, 1992, was amended on May 4, 1992, as a matter of right and as a matter of law pursuant to 29 C.F.R. 18.5(e) to include and capture Houston Lighting & Power Company. See enclosed copy of Claimant's May 4, 1992, Amended Complaint.

3. The U.S. Department of Labor, Wage and Hour Division Investigator, Mr. Franklin E. Pierce, was officially notified of discriminatory blacklisting conduct by Houston Lighting & Power Company and Claimant's request for DOL investigation along with a copy of Claimant's May 4, 1992, Amended Complaint. See enclosed copy of Claimant's May 4, 1992, Amended Complaint and May 8, 1992 letter to DOL Investigator, Mr. Franklin E. Pierce.

5/10

4. DOL Investigator, Mr. Franklin E. Pierce, did, in fact, investigate and include Houston Lighting & Power Company in his investigation of Claimant's April 1, 1992, Complaint and May 4, 1992, Amended Complaint. See enclosed copy of Mr. Franklin E. Pierce's June 4, 1992, investigative report.

5. Representatives of the Nuclear Regulatory Commission (NRC), initiated actions to review the facts and circumstances involving alleged "blacklisting" practices by Houston Lighting & Power Company, Georgia Power Company, and Nuclear Support Services, Inc. See enclosed copy of NRC March 11, 1992 letter to Claimant and Claimant's March 4, 1992 and March 14, 1992 letters to the NRC Region II.

6. It is in the interests of the public to consolidate these proceedings.

7. The issues, relevant evidence, and material facts involved in these proceedings cannot realistically be divorced from the context of Claimant's engagement in protected activities and the "blacklisting" conduct of the Respondents'. See enclosed copy of DOL Wage and Hour Determination Dated June 30, 1992, and referred to as Case No. 92 615 12203.

8. Claimant's case against Respondents' would be adversely affected if these proceeding are not consolidated.

9. Claimant is a pro se litigant in these matters now before the DOL and Claimant continues his search for counsel, however, Claimant is currently unemployed and in severe financial straits. Consolidation of these proceedings would somewhat ease the financial burden of Claimant.

10. Failure to consolidate these proceedings would be prejudicial to Claimant giving Respondents' "two bites at the apple".

WHEREFORE, the "good cause" reasons stated herein, Claimant seeks relief from the court and prays for the court to grant Claimant's Motion for Consolidation of Hearings.

DATED this 16th day of July, 1992.

Respectfully submitted,

  
Thomas J. Saporito, Jr.  
Claimant pro se  


I hereby certify that a copy of the foregoing was sent to the following at their last known addresses by means indicated below.

Regular Mail:

Jesse P. Schaudies, Esq.  
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Atlanta, Georgia 30308-2216

Eugene E. Pepinsky, Jr.  
KEEFER, WOOD, ALLEN & RAHAL  
210 Walnut Street  
Post Office Box 11963  
Harrisburg, PA 17108

D. P. Hall, Group Vice Pres. Nuclear  
Houston Lighting & Power Company  
Post Office Box 408  
Wadsworth, Texas 77483-0408

George Jenkins, Director  
Enforcement & Investigations  
U.S. Nuclear Regulatory Commission  
U.S.N.R.C. Region II  
101 Marietta St., N.W. #2900  
Atlanta, GA 30323

Express Mail:

Honorable Clement J. Kichuk  
Administrative Law Judge  
Office of Adm. Law Judges  
101 N.E. Third Ave., #500  
Ft. Lauderdale, FL 33301

The Chief Administrative  
Law Judge  
U.S. Department of Labor  
Tech World Building, #4148  
800 K Street, N.W.  
Washington, D.C. 20001

U.S. Department of Labor

Office of Administrative Law Judges  
Heritage Plaza, Suite 530  
111 Veterans Memorial Blvd.  
Metairie, LA 70005  
(504) 589-6201



Date: August 7, 1992



CASE NO. 92-ERA-45

IN THE MATTER OF

THOMAS J. SAPORITO, JR.  
Complainant

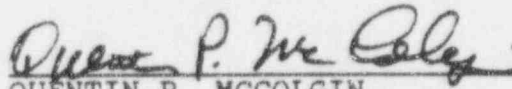
v.

HOUSTON LIGHTING AND POWER COMPANY  
Respondent

ORDER CANCELLING HEARING

Both complainant and respondent have filed motions to continue the hearing scheduled in this matter for August 12, 1992. Complainant in his motion, expressly waives the time requirements for the issuance of a final order imposed by statute and, for a variety of reasons, requests a continuance until January 1, 1993.

Inasmuch as both parties have shown good cause for a continuance, the hearing in this matter set for August 12, 1992, is cancelled. The parties shall, by motion filed on or before October 1, 1992, specify their respective preference as to the date and place of hearing together with the grounds in support thereof. Each party shall also estimate the number of hours required to present his or its evidence at the hearing.

  
QUENTIN P. MCCOLGIN  
ADMINISTRATIVE LAW JUDGE

Dated: August 7, 1992  
Metairie, Louisiana  
QPMC:dqc

5/11



AUSTIN  
DALLAS  
NEW YORK  
WASHINGTON, D.C.

BAKER & BOTTS  
ONE SHELL PLAZA  
910 LOUISIANA  
HOUSTON, TEXAS 77002-4995

TELEPHONE (713) 229-1234  
FACSIMILE (713) 229-1522  
TELEX 76-2779

H-18,680  
(Saporito)

August 8, 1992

Hon. Clement J. Kichuk  
Administrative Law Judge  
Office of Administrative Law Judges  
101 N.E. Third Ave., #500  
Ft. Lauderdale, FL 33301

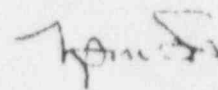
Re: Case Nos. 92-ERA-00038 and 92-ERA-00045

Dear Sir:

Please find enclosed Opposition to Motion for Consolidation along with proposed Order in connection with the above-captioned cases.

Thank you for your assistance in this matter.

Very truly yours,



L. Chapman Smith

LCS:93

Enclosure

cc: Hon. Quentin P. McCoglin  
Mr. Daniel K. Brown  
Mr. Thomas J. Saporito, Jr.  
Mr. Bill A. Belt  
Mr. Russell Wise  
Mr. James White  
Administrator, DOL  
Environmental Protection Agency  
Deputy Associate Solicitor

Hon. Clement J. Kichuk

-2-

August 8, 1992

Deputy Associate Solicitor  
Mr. A. William Dahlberg  
Mr. Jesse P. Schaudies, Jr.  
Mr. Bobbye Spears  
Regional Administration, EPA  
Ms. Billie P. Garde  
Director, Enforcement and Investigation  
Director, Office of Enforcement  
Mr. Daniel W. Bremer  
Mr. Frank Koller  
Mr. D. P. Hall

U.S. DEPARTMENT OF LABOR

IN THE MATTER OF:

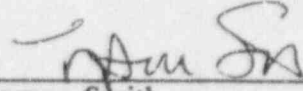
THOMAS J. SAPORITO, JR.	§	
	§	
Complainant	§	
	§	
V.	§	CASE NO. 92-ERA-00038
	§	and NO. 92-ERA-00045
HOUSTON LIGHTING & POWER	§	
	§	
Respondent	§	

OPPOSITION TO MOTION FOR CONSOLIDATION

Respondent Houston Lighting & Power Company ("HL&P") opposes the Motion for Consolidation filed by Thomas J. Saporito, Jr. in 92-ERA-00038. HL&P had no notice of any 210 complaint filed against it by Thomas J. Saporito, Jr. in connection with 92-ERA-00038. HL&P was not permitted to participate in any investigation of such complaint and received no notice of the Department of Labor determination of the complaint. HL&P is not properly a party to Case No. 92-ERA-00038 and consolidation with Case No. 92-ERA-00045 would be improper and highly prejudicial to HL&P.

Respectfully submitted,

BAKER & BOTTS



L. Chapman Smith  
3000 One Shell Plaza  
Houston, TX 77002  
(713) 229-1546  
FAX: (713) 229-1522

Attorney for Houston Lighting  
& Power Company

#### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been mailed to the following people this 10 day of August, 1992.

Hon. Clement J. Kichuk  
Administrative Law Judge  
Office of Administrative Law Judges  
101 N.E. Third Ave., #500  
Ft. Lauderdale, FL 33301

Mr. Quentin P. McColgin  
Administrative Law Judge  
U.S. Department of Labor  
Office of Administrative Law Judges  
Heritage Plaza, Suite 530  
111 Veterans Memorial Blvd.  
Metairie, LA 70005

Mr. Daniel K. Brown  
District Director  
2320 LaBranch, Room 2100  
Houston, TX 77004

Mr. Thomas J. Saporito, Jr.



Mr. Bill A. Belt  
U.S. Dept. of Labor  
Wage and Hour Division  
Federal Building, Room 800  
525 Griffin St.  
Dallas, TX 75202

Mr. Russell Wise  
Allegations Coordinator  
Enforcement and Investigation  
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Washington, DC 20405

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Division of Fair Labor Stds.  
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Room N-2716  
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Washington, DC 20460



Mr. A. William Dahlberg  
President & CEO  
Georgia Power Company  
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Atlanta, GA 30308

Mr. Jesse P. Schaudies, Jr.  
Troutman Sanders  
Nationsbank Plaza  
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Atlanta, GA 30308

Mr. Bobbye Spears  
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U.S. Department of Labor  
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Atlanta, GA 30367

Regional Administrator  
U.S. Environmental  
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345 Courtland Street, NE  
Atlanta, GA 30365

Ms. Billie P. Garde  
Hardy, Milutin & Johns  
500 Two Houston Center  
909 Fannin at McKinney  
Houston, TX 77010

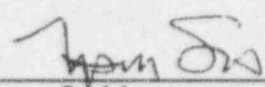
Director  
Enforcement and Investigation  
Coordination Staff  
Region II  
U.S. Nuclear Regulatory Comm.  
101 Marietta Street, NW  
Suite 2900  
Atlanta, GA 30323

Director  
Office of Enforcement  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

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Mr. Frank Koller, Manager  
Nuclear Support Services, Inc.  
Post Office Box 3120  
Hershey, PA 17033

Mr. D. P. Hall  
Group Vice President  
South Texas Project  
P. O. Box 408  
Wadsworth, TX 77483-0408

  
\_\_\_\_\_  
L. Chapman Smith

U.S. DEPARTMENT OF LABOR

IN THE MATTER OF:

THOMAS J. SAPORITO, JR.

Complainant

V.

HOUSTON LIGHTING & POWER

Respondent

§  
§  
§  
§  
§  
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§

CASE NO. 92-ERA-00045  
AND NO. 92-ERA-00038

ORDER

Respondent's Opposition to Motion for Consolidation having been considered,  
it is ordered that the Motion for Consolidation is hereby denied.

---

CLEMENT J. KICHUK  
Administrative Law Judge

U.S. Department of Labor

Office of Administrative Law Judges  
Heritage Plaza, Suite 530  
111 Veterans Memorial Blvd.  
Metairie, LA 70005  
(504) 589-6201



Date: August 28, 1992

CASE NO. 92-ERA-38  
92-ERA-45 \*  
(Consolidated)

IN THE MATTER OF

THOMAS J. SAPORITO, JR.  
Complainant

v.

HOUSTON LIGHTING AND POWER COMPANY  
Respondent

v.

GEORGIA POWER COMPANY  
Respondent

v.

NUCLEAR SUPPORT SERVICES, INC.  
Respondent

ORDER CONSOLIDATING CASES FOR HEARING

Thomas J. Saporito, Jr., who is the complainant in both the cases identified above moves to consolidate the cases for hearing which motion is opposed by the three named respondents. Stripped of its procedural complications which are not relevant to the disposition of this motion, the two cases involve two causes of action arising out of two forms of alleged discriminatory conduct each of which are alleged to violate 42 U.S.C. §5851(a). This employee protection statute provides:

No employer, including a Commission licensee, an applicant for a Commission license, or a contractor or a subcontractor of a Commission licensee or applicant, may discharge any employee or otherwise discriminate against any employee with respect to

his compensation, terms, conditions, or privileges of employment because the employee-

(1) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter or the Atomic Energy Act of 1954, as amended, or a proceeding for the administration or enforcement of any requirement imposed under this chapter or the Atomic Energy Act of 1954, as amended;

(2) testified or is about to testify in any such proceeding or;

(3) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purposes of this chapter or the Atomic Energy Act of 1954, as amended....

The first cause of action is the subject of complainant's first complaint which names Houston Lighting and Power Company (Houston Lighting) as the respondent. The allegation here is that complainant was employed at Houston Lighting's facility located in Texas and that between February 10 and February 18, 1992, he brought various safety matters to the attention of the Nuclear Regulatory Commission and that as a result thereof, Houston Lighting terminated his employment. Complainant alleges that his acts of reporting safety matters to the Nuclear Regulatory Commission constituted protected activity and that his discharge by Houston Lighting constituted discriminatory conduct in violation of the employee protection statute cited above. Complainant's three other complaints all go to a second cause of action alleging that Houston Lighting, Georgia Power Company and Nuclear Support Services, Inc., blacklisted complainant and that as a result of such blacklisting, complainant was denied a job which had been offered to him at Georgia Power's nuclear facility located in Georgia. This blacklisting by the named respondents is alleged to have been the result of complainant's protected activity and is also alleged to have violated the above quoted employee protection statute.

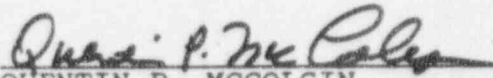
The procedural rules applicable to these proceedings contain specific provisions for consolidating hearings. The rule specifies:

When two or more hearings are to be held, and the same or substantially similar evidence is relevant and material to the matters at issue at each hearing, the Chief Administrative Law Judge may, upon motion by any party or on his own or her own motion order that a consolidated hearing be conducted....



29 C.F.R. §24.5(b)

It is evident that in each of these cases, the same evidence will be presented to prove that complainant was engaged in protected activity. Thus, the consolidation of these cases for hearing is appropriate based on the rule criteria alone. Moreover, there is an additional basis for consolidating these hearings. If complainant prevails in both of these causes of action, the remedy granted in one will likely be a consideration in fashioning a remedy in the other. Thus, the potential remedies may be interdependent. For these combined reasons, the motion to consolidate is granted and the two cases identified hereinabove are hereby consolidated for hearing.



QUENTIN P. MCCOLGIN  
ADMINISTRATIVE LAW JUDGE

Dated: *August 28, 1992*

Metairie, Louisiana

QPMC:dqc

SERVICE SHEET

Case Name: THOMAS J. SAPORITO, JR.

Case No.: 92-ERA-45 & 92-ERA-38

Title of Document: ORDER CONSOLIDATING CASES FOR HEARING

A copy of the above document was sent to the following:

Thomas J. Saporito, Jr.

[REDACTED]

Office of Enforcement and  
Compliance Monitoring  
Environmental Protection  
Agency  
401 M Street, SW  
Washington, DC 20460

A. William Dahlberg  
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Georgia Power Company  
333 Piedmont Avenue, N.E.  
Atlanta, Georgia 30308

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Deputy Associate Solicitor  
Division of Fair Labor  
Standards  
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Bobbie Spears  
Regional Solicitor  
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Commission  
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Suite 2900  
Atlanta, GA 30323

Director  
Office of Enforcement  
U. S. Nuclear Regulatory  
Commission  
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Allegations Coordinator  
Enforcement & Investigation  
Nuclear Regulatory Commission  
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District Director  
Employment Standards Adm.  
Wage & Hour Division  
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Frank Koller, Manager  
Nuclear Support Services, Inc.  
Post Office Box 3120  
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Reporting Service

D.P. Hall, Group Vice Pres.  
Nuclear Houston Lighting and  
Power Company  
P. O. Box 408  
Wadsworth, TX 77483-0408

*Deborah Q. Cureau*  
DEBORAH Q. CUREAU  
Dated: *August 28, 1992*

L. Chapman Smith, Esq.  
Baker & Botts  
910 Louisiana  
Houston, TX 77002-4995

Daniel K. Brown  
District Director  
2320 LaBranch  
Room 2100  
Houston, TX 77004

Bill A. Belt  
U. S. Dept. of Labor  
Wage and Hour Division  
Federal Bldg., Room 800  
525 Griffin St.  
Dallas, TX 75202

U.S. Department of Labor

Office of Administrative Law Judges  
Heritage Plaza, Suite 530  
111 Veterans Memorial Blvd.  
Metairie, LA 70005  
(504) 589-6201

*CD*  
*DR*



Date: September 8, 1992

CASE NO. 92-ERA-38  
92-ERA-45  
(Consolidated)

IN THE MATTER OF

THOMAS J. SAPORITO, JR.  
Complainant

v.

HOUSTON LIGHTING AND POWER COMPANY  
Respondent

v.

GEORGIA POWER COMPANY  
Respondent

v.

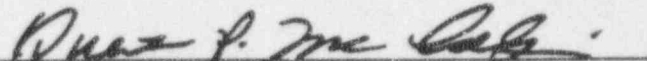
NUCLEAR SUPPORT SERVICES, INC.  
Respondent

ORDER QUASHING SUBPOENA

The Regional Administrator, Wage and Hour Division, Region IV, has moved to quash a subpoena duces tecum issued upon him by claimant. The asserted basis for this motion is that the subpoena was not issued under lawful authority and that except for information called for in the subpoena which has already been furnished to claimant, the documents called for are privileged.

5/14

There being no response to the motion filed and good cause having been shown, the motion is granted and the subpoena is hereby quashed.

  
QUENTIN P. MCCOLGIN  
ADMINISTRATIVE LAW JUDGE

Dated: *September 8, 1992*

Metairie, Louisiana

QPMC:dgc



SERVICE SHEET

Case Name: THOMAS J. SAPORITO, JR.

Case No.: 92-ERA-45 & 92-ERA-38

Title of Document: ORDER QUASHING SUBPOENA

A copy of the above document was sent to the following:

Thomas J. Saporito, Jr.  
[REDACTED]

Office of Enforcement and  
Compliance Monitoring  
Environmental Protection  
Agency  
401 M Street, SW  
Washington, DC 20460

A. William Dahlberg  
President & CEO  
Georgia Power Company  
333 Piedmont Avenue, N.E.  
Atlanta, Georgia 30308

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U.S. Environmental Protection  
Agency  
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Atlanta, Georgia 30365

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600 Peachtree Street, NE  
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Division of Fair Labor  
Standards  
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Regional Solicitor  
U. S. Depart. of Labor  
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Billie P. Garde, Esq.  
Hardy, Milutin & Johns  
500 Two Houston Center  
909 Fannin at McKinney  
Houston, TX 77010

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Employment Standards Adm.  
Wage and Hour Division  
U.S. Dept. of Labor  
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101 Marietta Street, NW  
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Atlanta, GA 30323

Director  
Office of Enforcement  
U. S. Nuclear Regulatory  
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Washington, DC 20555

Russell Wise  
Allegations Coordinator  
Enforcement & Investigation  
Nuclear Regulatory Commission  
611 Ryan Plaza Dr., Suite 1000  
Arlington, TX 760111

Daniel W. Bremer  
District Director  
Employment Standards Adm.  
Wage & Hour Division  
1375 Peachtree Street, NE  
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Frank Koller, Manager  
Nuclear Support Services, Inc.  
Post Office Box 3120  
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Reporting Service

D.P. Hall, Group Vice Pres.  
Nuclear Houston Lighting and  
Power Company  
P. O. Box 408  
Wadsworth, TX 77483-0408

*Deborah Q. Cureau*  
DEBORAH Q. CUREAU  
Dated: *September 8, 1992*

L. Chapman Smith, Esq.  
Baker & Botts  
910 Louisiana  
Houston, TX 77002-4995

Daniel K. Brown  
District Director  
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Room 2100  
Houston, TX 77004

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TELEPHONE (713) 229-1234  
FACSIMILE (713) 229-1522  
TELEX 76-2779

H-18,680

September 11, 1992

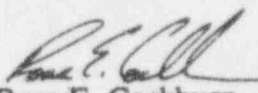
Hon. Quentin P. McColgin  
Administrative Law Judge  
U.S. Department of Labor  
Office of Administrative Law Judges  
Heritage Plaza, Suite 530  
111 Veterans Memorial Blvd.  
Metairie, LA 70005

Re: *Thomas J. Saporito, Jr. v. Houston Lighting & Power Company*  
Case No. 92-ERA-45

Enclosed please Houston Lighting & Power Company's Responses to Claimant's Request for Interrogatories and Production of Documents and Responses to Claimant's Request for Admissions in connection with the above-captioned matter. Appropriate service has been made on all parties.

Thank you for your courtesy and cooperation.

Very truly yours,

  
Ross E. Cockburn

REC:93

Enclosures

cc: Mr. Thomas J. Saporito, Jr. (Cert. RRR - 797 679 018)  
Mr. Russell Wise  
Mr. Jesse P. Schaudies, Jr.  
Mr. Eugene E. Pepinsky, Jr.

L0361/0093/07AZ01

J/15

U.S. DEPARTMENT OF LABOR

IN THE MATTER OF:

THOMAS J. SAPORITO, JR.

Complainant

V.

HOUSTON LIGHTING & POWER

Respondent

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CASE NO. 92-ERA-45

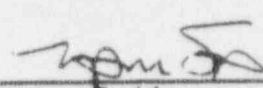
**HOUSTON LIGHTING & POWER COMPANY'S  
RESPONSES TO CLAIMANT'S REQUEST FOR ADMISSIONS**

TO: Complainant, Thomas J. Saporito, Jr., *pro se*, [REDACTED]  
[REDACTED]

COMES NOW Houston Lighting & Power Company and responds to  
Claimant's (sic) Request for Admissions as follows on the attached pages.

Respectfully submitted,

BAKER & BOTTS

  
\_\_\_\_\_  
L. Chapman Smith  
Ross E. Cockburn  
3000 One Shell Plaza  
Houston, TX 77002  
(713) 229-1546  
FAX: (713) 229-1522

Attorneys for Houston Lighting  
& Power Company

### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been mailed to the following people this \_\_\_\_ day of September, 1992.

Mr. Quentin P. McColgin  
Administrative Law Judge  
U.S. Department of Labor  
Office of Administrative Law Judges  
Heritage Plaza, Suite 530  
111 Veterans Memorial Blvd.  
Metairie, LA 70005

Mr. Russell Wise  
Allegations Coordinator  
Enforcement and Investigation  
Staff  
Nuclear Regulatory Commission  
611 Ryan Plaza Dr., Suite 1000  
Arlington, TX 76011

Mr. Jesse P. Schaudies, Jr.  
Troutman Sanders  
Nationsbank Plaza  
Suite 5200  
600 Peachtree Street, NE  
Atlanta, GA 30308

Mr. Eugene E. Pepinsky, Jr.  
Reefer, Wood, Allen & Rahal  
210 Walnut Street  
P. O. Box 11963  
Harrisburg, PA 17108-1963

Mr. Thomas J. Saporito, Jr.  


\_\_\_\_\_  
L. Chapman Smith



## RESPONSES TO REQUEST FOR ADMISSIONS

### General Objections

Houston Lighting & Power Company objects to Claimant's Request for Admissions to the extent that this request seeks documents which are subject to the attorney-client privilege, the work product privilege, or were prepared in anticipation of this action by or for HL&P's representatives (including counsel and consultants). These privileges are claimed as to the following classes of documents:

- a. all personal notes, memoranda, or other documents generated by Respondent's counsel, or their representatives, in anticipation of this litigation and/or in the prosecution, investigation or trial preparation of this action;
- b. any written communications between Respondent and its current or previous counsel, concerning the subject of said counsel's representation;
- c. all documents prepared by Respondent at the request of its counsel or representatives of its counsel for the purpose of facilitating the rendering of legal service in the litigation of this action;
- d. all documents prepared by Respondent, its attorneys, or attorneys' representatives, agents, or other agents after the events which form the basis of this action, for the use of Respondents counsel concerning the subject matter of this action.

Without waiving these objections, and subject to further objections as stated in the response to each item, Respondent Houston Lighting & Power Company responds to Claimant's Request for Admissions. Because many of the requests are in the past tense but do not specify a particular time period, HL&P admits or denies these requests based on the state of facts existing at the time Claimant's access to STP was denied, unless otherwise indicated. Later time periods are irrelevant to the single issue in this case -- HL&P's motivation for its revocation of Complainant's access.

1. Respondent is an employer defined within the meaning of the Energy Reorganization Act of 1974 as Amended 42 U.S.C. 5851 (the Act).

Response: Admit

2. Claimant was an employee defined within the meaning of the Energy Reorganization Act of 1974 as Amended 42 U.S.C. 5851 (the Act).

**Response:** Admit

3. Claimant was discharged or otherwise discriminated against with respect to his compensation, terms, conditions, or privileges of employment.

**Response:** Denied

4. Claimant engaged in "protected activity" prior to his employment with Respondent in any capacity.

**Response:** Respondent never employed Complainant. Subject to this clarification, HL&P admits that Complainant engaged in "protected activity" prior to his employment with SUN Technical.

5. Claimant engaged in "protected activity" during his employment with Respondent in any capacity.

**Response:** Respondent never employed Complainant. Subject to this clarification, HL&P admits that Complainant engaged in "protected activity" during his employment with SUN Technical.

6. Respondent knew, had knowledge or became aware that Claimant engaged in protected activity prior to his employment with Respondent in any capacity.

**Response:** HL&P objects to this request as vague and ambiguous. HL&P further objects that Complainant was never employed with Respondent. Subject to these objections, HL&P admits that certain HL&P personnel had knowledge of Complainant's involvement in an NRC investigation regarding Turkey Point when HL&P initially granted Complainant's unescorted access. HL&P personnel initially obtained such knowledge from access authorization documents prepared by Complainant.

7. Respondent knew, had knowledge or became aware that Claimant engaged in protected activity during his employment with Respondent in any capacity.

**Response:** HL&P objects that Complainant was never employed with Respondent. Subject to this objection, HL&P admits that certain HL&P personnel were aware that Complainant had filed a 10 CFR § 2.206 petition.

8. Claimant suffered retaliation and was, in fact, denied access to the South Texas Nuclear Generating Station (STP), as a contract I&C technician and that the retaliation and plant access denial was motivated, at least in part, by the Claimant's engaging in protected activity prior to his employment with Respondent in any capacity.

**Response:** Denied

9. Claimant suffered retaliation and was, in fact, denied access to the South Texas Nuclear Generating Station (STP), as a contract I&C technician and that the retaliation and plant access denial was motivated, at least in part, by the Claimant's engaging in protected activity during his employment with Respondent in any capacity.

**Response:** Denied

10. Claimant was qualified to work at the STP nuclear station as a contract I&C technician.

**Response:** Denied in that Complainant was not "qualified" by reason of his inability to retain unescorted access and his omission of material information on his clearance documents.

11. Claimant possessed field experience in the nuclear industry qualifying him as an I&C technician.

**Response:** Admit that a review of Complainant's resumé indicates he possessed field experience in the nuclear industry as an I&C technician.

12. Claimant possessed bench testing experience in the nuclear industry qualifying him as an I&C technician.

**Response:** Admit that a review of Complainant's resumé indicates he possessed bench testing experience in the nuclear industry.

13. Claimant possessed pneumatic experience in the nuclear industry qualifying him as an I&C technician.

**Response:** Admit that a review of Complainant's resumé indicates he possessed pneumatic experience in the nuclear industry.

14. Claimant possessed the job requirements, education, training, and experience specifications and requirements to obtain the position of contract I&C technician in accordance with the labor contract that Respondent had with SUN Technical Services.

**Response:** Denied as to Complainant's ability to meet the job requirement of obtaining and retaining unescorted access necessary for the performance of the job, otherwise admit based on information in Complainant's resumé.

15. Claimant possessed the requirements of the STP nuclear station's FSAR and/or contractual terms of Respondent's Labor Agreement with SUN Technical Services, for a contract I&C technician position.

**Response:** Denied as to Complainant's ability to obtain and retain the unescorted access necessary to perform the duties of an I&C Technician. A review of Complainant's resumé indicates he could satisfy other requirements.

16. Claimant possessed the requirements for a qualified contract I&C technician per the STP nuclear station's technical specifications, UPFSAR's and/or station training requirements.

**Response:** Denied as to Complainant's ability to obtain and retain the unescorted access necessary to perform the duties of a I&C Technician. HL&P denies that Complainant obtained any certification specific to STP.

17. Claimant met the requirements of ANSI-ANS 3.1 - 1978 Paragraph 4.5.2, Level II, I&C technician.

**Response:** Admit that a review of Complainant's resumé indicates he could meet these requirements.

18. Respondent's labor contract with SUN Technical Services, sets forth, establishes, and describes in detail the job requirements for the position of contract I&C technician at the STP nuclear station.

**Response:** HL&P admits that the contract provides general descriptions of job categories as well as requirements that contractor personnel possess the ability to obtain unescorted access and meet trustworthiness standards. Additionally, the contract, by reference, requires compliance with the STP access authorization program.

19. Claimant was at some time during his employment at Respondent's STP nuclear station granted "unescorted access" to the STP nuclear station.

**Response:** Admit that Complainant was initially granted unescorted access based on paperwork he provided which contained omissions/falsifications.

20. Claimant's access to the STP nuclear station was revoked shortly after Claimant contacted Nuclear Regulatory Commission (NRC), officials regarding concerns at the STP nuclear station.

**Response:** Admit that after discovery of, and investigation into, Complainant's omissions of material information in his access documents, STP revoked his unescorted access on or about February 20, 1992.

21. Senior HL&P executive management were made aware or became aware that Claimant contacted NRC officials concerning operations at the STP nuclear station.

**Response:** Object to this request as vague as to "Senior." For further answer to this request, Respondent directs Complainant to the document produced in answer to Interrogatory No. 8 which provides information as to the identities and extent of knowledge sought in this request. HL&P executive management was aware of the 10 CFR 2.206 petition filed by Complainant, but not of any other contacts Complainant may have had with NRC personnel.

22. On or about June 1, 1992, the NRC issued a Notice of Violation (NRC Inspection Report Nos. 50-498/92-07; 50-499/92-07), to the STP nuclear station for violation of NRC requirements at the STP nuclear station.

**Response:** HL&P objects to this request as irrelevant. The events relevant to this action occurred many months prior to June 1, 1992, and thus any events on or after this date are irrelevant and immaterial. Subject to this objection, admitted.

23. The violations issued to the STP nuclear station were security violations previously identified to the NRC by the Claimant.

**Response:** HL&P objects to this request as irrelevant. The events relevant to this action occurred many months prior to June 1, 1992, and thus any events on or after this date are irrelevant and immaterial. Subject to this objection, HL&P can neither admit nor deny this allegation because it was not a party to discussions between Complainant and the NRC, and as of the time Complainant's access to STP was denied, was unaware that Complainant had communicated any safety concerns with the NRC other than those in the 2.206 petition. HL&P denies that the subsequent violations were identified in the 2.206 petition.

24. The violations issued to the STP nuclear station were security violations previously identified to STP management by the Claimant.

**Response:** Denied



25. On June 30, 1992, the Department of Labor, Wage and Hour Division, issued a determination favorable to Claimant stating, in part, that: "...Mr. Saporito's unescorted access was revoked because of engagement in a protected activity..".

**Response:** Admit that the Department of Labor issued the finding as quoted above, STP's appeal of which forms the basis for this action. The Wage and Hour Division also determined that HL&P had not "blacklisted" Mr. Saporito.

26. Respondent by and through counsel of BAKER & BOTTS, filed a timely appeal within (5) five days of receipt of the DOL's June 30, 1992, determination seeking a hearing in the matter.

**Response:** Admit that Baker & Botts filed an appeal to that portion of the Director's decision that was not in HL&P's favor.

27. Respondent agreed to a one year contract with Claimant through the contract labor agreement Respondent had with SUN Technical Services for Claimant to work at the STP nuclear station as a contract I&C technician.

**Response:** Denied

28. Claimant was employed at the STP nuclear station as a contact I&C technician with "escorted" access to the STP facility during the time period of January 13, 1992, to about February 13, 1992.

**Response:** Admit

29. Claimant was given "unescorted" access to the STP facility on or about February 14, 1992.

**Response:** Admit that Complainant was granted unescorted access during this general time frame based on documents he provided that contained omissions and/or falsifications.

30. Claimant identified concerns relevant to the STP facility to the NRC on or about February 10, 1992, by submitting a petition pursuant to 10 C.F.R. 2.206.

**Response:** Admit

31. Claimant mailed a complete and accurate copy of the February 10, 1992, 10 C.F.R. 2.206 petition to Mr. D.P. Hall, Group Vice President Nuclear, at the Houston Lighting & Power Company.

**Response:** Admit that Mr. Hall was aware of the 2.206 petition.

32. Mr. D.P. Hall, became aware of Claimant's "protected activity" prior to Claimant's unescorted access to the STP facility being revoked.

**Response:** Admit

33. Claimant met with NRC officials in Arlington, TX on or about February 18, 1992, concerning matters relevant to the STP facility.

**Response:** HL&P personnel were not present at any meeting matching that described in this request, and HL&P was not notified that such meeting was scheduled. HL&P admits that Complainant subsequently alleged that he attended such a meeting. HL&P has no direct knowledge of this meeting.

34. On February 20, 1992, only two (2) days after Claimant met with NRC officials, Claimant was required to meet with Mr. Rick Cink, an HL&P employee concerning his 10 C.F.R. 2.206 petition.

**Response:** STP admits that as part of its investigation of Complainant's concerns in his 10 CFR 2.206 petition, a meeting was scheduled between Mr. Cink, a SPEAKOUT employee, and Complainant. Complainant was requested, not required, to attend the meeting. Neither Mr. Cink nor other HL&P personnel were aware that Complainant had met with NRC officials.

35. On or about February 20, 1992, Mr. Cink was put on notice by Claimant that the Claimant was a "protected employee" because he was engaged in "protected activity".

**Response:** STP admits that on or about February 20, 1992, Complainant alleged to Mr. Cink that he was engaged in protected activity, but provided no specifics as to the nature of any concerns.

36. On or about February 20, 1992, Mr. Cink showed Claimant a copy of Claimant's 10 C.F.R. 2.206 petition.

**Response:** Admit that Mr. Cink had a copy of the 2.206 petition (with the Complainant's name deleted) with him at the time he met with Complainant.

37. On or about February 20, 1992, Claimant informed Mr. Cink that Claimant had just informed the NRC of a Technical Specification violation at STP concerning the boric acid system, a safety related system.

**Response:** Denied

38. On or about February 20, 1992, Claimant informed Mr. Cink that Claimant informed Mr. Springfield and Mr. Duran of a concern about the boric acid system at STP.

**Response:** Denied

39. Mr. Cink, Mr. Springfield and Mr. Duran were all employees of HL&P on or about February, 1992.

**Response:** Admit

40. Claimant was told to meet with Mr. Hinson of the Nuclear Security Department on or about February 20, 1992 at approximately 4:15 pm.

**Response:** Admit

41. Claimant was told by Mr. Springfield that he must attend this meeting even though it was but 15 minutes before Claimant's quitting time for the day.

**Response:** Admit, although Mr. Springfield does not recall how long it was until quitting time.

42. Mr. Springfield stated to Claimant that he would not authorize any payment of overtime pay for the meeting Claimant was required to attend with Mr. Hinson.

**Response:** Admit that Mr. Springfield was not authorized to approve overtime. However, Complainant received overtime pay for the meeting.

43. On or about February 20, 1992, Mr. Hinson required and, in fact, conducted an interview with Claimant concerning his previously filed employment documents and/or security documents.

**Response:** Admit that on or about February 20, 1992, Mr. Hinson interviewed Complainant regarding omissions and untruths in the documents Complainant submitted in order to gain access to STP.

44. On or about February 20, 1992, Claimant was forced and/or required to sign a meeting/interview consent form by Mr. Hinson.

**Response:** Admit that pursuant to STP's standard personnel interview procedures, Mr. Hinson asked Complainant to sign a Preliminary Interview Form informing

him of company policies involving investigatory interviews and his responsibility to provide complete and truthful information. Complainant did not object to this request and voluntarily signed the form.

45. On or about February 20, 1992, Claimant informed Mr. Hinson that his interview with Claimant was an attempt by Mr. Hinson to intimidate and threaten Claimant because of his participation in the active NRC investigation.

**Response:** Denied

46. On or about February 20, 1992, Claimant stated to Mr. Hinson that it was incredible that this interview was required so very shortly after the Claimant met with the NRC in Arlington, TX and immediately after Claimant informed the NRC of yet another violation of NRC requirements at STP. A violation occurring a few hours ago indicating willful falsification of safety related documents.

**Response:** Denied

47. On or about February 21, 1992, Claimant's unescorted access to the STP facility was revoked.

**Response:** Admit that after inquiry and adjudication as to Complainant's material omissions and untruths in documents Complainant submitted in order to obtain unescorted access, HL&P revoked his unescorted access on or about February 20, 1992.

48. On or about February 21, 1992, Claimant met with Mr. Sanchez, Mr. Cink and Mr. Bohner concerning the revocation of Claimant's unescorted access to STP.

**Response:** Admit that Complainant met with Mr. Sanchez, Mr. Cink, and Mr. Bohner for a standard exit interview. During this meeting, Complainant brought up the issue of the revocation of his unescorted access.

49. On or about February 21, 1992, Mr. Sanchez refused to tell Claimant why his unescorted access was revoked.

**Response:** Admit to the extent that on February 21, 1992, Mr. Sanchez truthfully informed Complainant that Mr. Sanchez did not know why Complainant's access had been revoked. Complainant was specifically informed of the basis for the revocation of his access by letter of March 4, 1992.



50. On or about February 21, 1992, Claimant informed Mr. Sanchez, Mr. Cink and Mr. Bohner that Claimant was engaged in a "protected activity" and that employment discrimination of revoking Claimant's access to STP was illegal.

**Response:** HL&P objects to the form of this request because each matter to which an admission is requested is not separately set forth. HL&P denies that STP's revocation of Complainant's access was discrimination, but admits that Complainant has made such allegations.

51. On or about February 20, 1992, Claimant was denied an opportunity to take a whole body count at the STP facility.

**Response:** Denied. Complainant left STP abruptly on February 21, 1992, before out-processing, including a whole body count, could be completed. HL&P had made arrangements for Complainant to receive a whole body count. On February 27, 1992, while visiting at STP, Complainant completed out-processing including a whole body count.

52. Claimant's employment at STP could have been continued as an escorted contract I&C technician.

**Response:** Denied

53. During Claimant's meeting with Mr. Hinson, Claimant voluntarily submitted additional information regarding apparent omissions on employment and/or security documents.

**Response:** Admit that during Complainant's meeting with Mr. Hinson, Complainant identified additional omissions and untruths on his access documents, but only after repeated close questioning by Mr. Hinson.

54. Any information apparently omitted by Claimant on employment and/or security documents at the STP facility was not found to be adverse to Claimant's ability to retain unescorted access to the STP facility.

**Response:** Denied

55. HL&P officials were already aware of apparent omissions on Claimant's employment and/or security documents before Claimant was challenged by Mr. Hinson regarding the same.

**Response:** HL&P admits that certain personnel were aware of some apparent omissions on Complainant's security documents prior to his interview with Mr. Hinson.



This caused, pursuant to standard procedure, a request for Mr. Hinson to investigate. However, HL&P was not aware of several of the omissions Complainant admitted to upon questioning from Mr. Hinson.

56. HL&P has been previously charged with violations of 42 U.S.C. 5851 relevant to the STP facility by Administrative Law Judges and/or higher authority.

**Response:** Object to this request as it seeks a response that is irrelevant and immaterial to the issue in this action.

57. HL&P could have continued Claimant's employment outside the protected area at the STP facility.

**Response:** Denied

58. HL&P engaged in a continuing violation of 42 U.S.C. 5851 by blacklisting Claimant while Claimant was seeking employment at the Vogtle nuclear station.

**Response:** Object to this request as seeking a response irrelevant and immaterial to this issue in this action. Complainant's blacklisting allegation is not a viable issue in this action due to Complainant's failure to appeal the Department of Labor's findings on that issue. Subject to the above objections, denied.

59. Mr. DeLong gave negative comments and/or references regarding Claimant to representatives of Nuclear Support Services, Inc., and/or their affiliates.

**Response:** HL&P objects to this request as vague in its use of the phrase "negative comments and/or references." HL&P objects to this request as seeking a response that is irrelevant and immaterial to the issue in this action. Complainant's allegation of blacklisting is not a viable issue in this action due to Complainant's failure to appeal the Department of Labor's finding on this issue. Subject to these objections, HL&P's understanding is that Mr. DeLong simply told the truth regarding Complainant, when asked questions by an NSS representative whom Complainant had authorized to call Mr. DeLong. This occurred after Mr. Saporito's access to STP was denied. Mr. DeLong did not initiate this contact, and HL&P did not authorize Mr. DeLong to provide information concerning Complainant.

60. Mr. DeLong was terminated from HL&P.

**Response:** Denied

61. Mr. Migel gave negative comments and/or references regarding Claimant to representatives of Nuclear Support Services, Inc., and/or their affiliates.

**Response:** Mr. Migel recalls one conversation with an individual he believes to have been from Nuclear Support Services, Inc. Mr. Migel does not recall the particulars of the conversation, except that he referred the caller to the Human Resources Department. Mr. Migel did not initiate the call. HL&P did not authorize or direct Mr. Migel to provide any information concerning Complainant. This occurred after Mr. Saporito's access to STP was denied.

62. Mr. Migel was terminated from HL&P.

**Response:** Denied

63. Claimant signed a waive (sic) and/or consent form allowing HL&P officials and/or their representatives to obtain required employment and other background information from Claimant's previous employers.

**Response:** Admit

64. HL&P officials and/or their representatives contacted other utilities regarding Claimant.

**Response:** HL&P admits that as a part of its normal pre-employment and access processing, an HL&P contractor contacted Complainant's former employers, some of whom were utilities, prior to the time Complainant was granted access to STP.

65. HL&P officials and/or their representatives contacted officials and/or their representatives at the Georgia Power Company regarding Claimant.

**Response:** Denied as to any contacts prior to the time Complainant filed his employment discrimination case against Georgia Power Company. HL&P objects to this request to the extent it seeks information on subsequent contacts because they are irrelevant and immaterial to this case.

66. HL&P officials and/or their representatives contacted officials and/or their representatives at the Arizona Public Service Company regarding Claimant.

**Response:** With respect to any contact after the time Complainant filed his complaint in this action with the DOL, HL&P objects to this request as it seeks material protected by the attorney-client and/or the attorney work product privileges and which is irrelevant and immaterial because it relates to time periods after the events at issue in this proceeding occurred. HL&P further objects that this request seeks material prepared in anticipation of this litigation by or for HL&P's representatives. Subject to these objections, admitted only to the extent that as part of its normal access processing, an HL&P contractor contacted APS as one of Complainant's former employers. Records of that contact have been produced in response to other requests.

67. HL&P officials and/or their representatives contacted officials and/or their representatives at the Florida Power & Light Company regarding Claimant.

**Response:** HL&P objects to this request as it seeks materials protected by the attorney-client and/or the attorney work product privileges. HL&P further objects that this request seeks materials prepared in anticipation of this litigation by or for HL&P's representatives. Subject to these objections, denied.

68. HL&P and the Florida Power & Light Company both utilize the law firm of Newman, Holtzinger and associates based in Washington, D.C.

**Response:** HL&P objects to this request to seeking a response that is immaterial and irrelevant to the issue in this action.

69. Claimant was required to interview with a HL&P retained psychologist as part of his MMPI testing.

**Response:** Admit that Complainant underwent psychological screening and testing with psychologists under contract to HL&P.

70. Claimant met with Dr. Higgins, a HL&P retained psychologist in January, 1992.

**Response:** After reasonable inquiry, HL&P can neither admit nor deny that Complainant met with a "Dr. Higgins." HL&P's contract service reports that they do not employ a "Dr. Higgins." HL&P does not retain a psychologist known as "Dr. Higgins."

71. Claimant informed Dr. Higgins that he was previously employed at the Florida Power & Light Company and that he was a nuclear whistleblower at the FPL Turkey Point nuclear facility.

**Response:** Upon reasonable inquiry, HL&P has no knowledge regarding the substance of any conversations between Complainant and any psychologists with whom he interviewed, and had no such knowledge at the time of the events at issue in this proceeding. Upon reasonable inquiry, HL&P can neither admit nor deny this request and does not know who the "Dr. Higgins" referred to in the request is.

72. Claimant informed Mr. (sic) Higgins that the FPL Vice President Nuclear, Mr. John Odum fired Claimant from the Turkey Point nuclear facility after Claimant engaged in protected activity at that station.

**Response:** Upon reasonable inquiry, HL&P has no knowledge regarding the substance of any conversations between Complainant and any psychologists with whom he interviewed, and had no such knowledge at the time of the events at issue in this proceeding. Upon reasonable inquiry, HL&P can neither admit nor deny this request.

73. Dr. Higgins stated to Claimant that Mr. Odum was employed at HL&P as the personnel director.

**Response:** Upon reasonable inquiry, HL&P has no knowledge regarding the substance of any conversations between Complainant and any psychologists with whom he interviewed, and had no such knowledge at the time of the events at issue in this proceeding. Upon reasonable inquiry, HL&P can neither admit nor deny this request.

74. Dr. Higgins' interview with Claimant recovered a majority, if not all, the information which was apparently omitted from Claimant's employment and/or security documents.

**Response:** Upon reasonable inquiry, HL&P has no knowledge regarding the substance of any conversations between Complainant and any psychologists with whom he interviewed, and had no such knowledge at the time of the events at issue in this proceeding. Upon reasonable inquiry, HL&P can neither admit nor deny this request.

U.S. DEPARTMENT OF LABOR

IN THE MATTER OF:

THOMAS J. SAPORITO, JR.

Complainant

V.

HOUSTON LIGHTING & POWER

Respondent

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CASE NO. 92-ERA-45

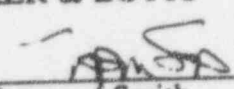
**HOUSTON LIGHTING & POWER COMPANY'S  
RESPONSES TO CLAIMANT'S REQUEST FOR  
INTERROGATORIES AND PRODUCTION OF DOCUMENTS**

TO: Complainant, *pro se*, Thomas J. Saporito, Jr., 7881 Piper Lane, Lake Worth,  
Florida 33463.

COMES NOW Houston Lighting & Power Company ("HL&P") and responds  
to Claimant's (sic) Request for Interrogatories and Production of Documents as follows on  
the attached pages. All documents to be produced will be made available to Complainant  
for inspection and copying at the offices of HL&P's counsel, Baker & Botts.

Respectfully submitted,

BAKER & BOTTS

  
L. Chapman Smith  
Reis E. Cockburn  
3000 One Shell Plaza  
Houston, TX 77002  
(713) 229-1546  
FAX: (713) 229-1522

Attorneys for Houston Lighting  
& Power Company



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been mailed to the following people this \_\_\_\_ day of September, 1992.

Mr. Quentin P. McColgin  
Administrative Law Judge  
U.S. Department of Labor  
Office of Administrative Law Judges  
Heritage Plaza, Suite 530  
111 Veterans Memorial Blvd.  
Metairie, LA 70005

Mr. Russell Wise  
Allegations Coordinator  
Enforcement and Investigation  
Staff  
Nuclear Regulatory Commission  
611 Ryan Plaza Dr., Suite 1000  
Arlington, TX 76011

Mr. Jesse P. Schaudies, Jr.  
Troutman Sanders  
Nationsbank Plaza  
Suite 5200  
600 Peachtree Street, NE  
Atlanta, GA 30308

Mr. Eugene E. Pepinsky, Jr.  
Keefer, Wood, Allen & Rahal  
210 Walnut Street  
P. O. Box 11963  
Harrisburg, PA 17108-1963

Mr. Thomas J. Saporito, Jr.  
[REDACTED]

\_\_\_\_\_  
Ross E. Cockburn

## **RESPONSES TO REQUEST FOR INTERROGATORIES AND PRODUCTION OF DOCUMENTS**

### General Objections

Houston Lighting & Power Company objects to Claimant's (sic) Request for Interrogatories and Production of Documents to the extent that this request seeks documents which are subject to the attorney-client privilege, or the work product privilege. Work product and/or attorney-client privilege is claimed as to the following classes of documents.

- a. all personal notes, memoranda, or other documents generated by Respondent's counsel, or their representatives, in anticipation of this litigation and/or in the prosecution, investigation or trial preparation of this action;
- b. any written communications between Respondent and its current or previous counsel, concerning the subject of said counsel's representation;
- c. all documents prepared by Respondent at the request of its counsel or representatives of its counsel for the purpose of facilitating the rendering of advice in the litigation of this action;
- d. all documents prepared by Respondent, its attorneys, or attorneys' representatives, agents, or other agents after the events which form the basis of this action, for the use of Respondent's counsel concerning the subject matter of this action.

Without waiving these objections, and subject to further objections as stated in the response to each item, Respondent Houston Lighting & Power Company responds to Claimant's (sic) Request for Interrogatories and Production of Documents. Because many of the requests are in the past tense but do not specify a particular time period, HL&P responds based on the state of facts existing at the time Complainant's access to STP was denied, unless otherwise indicated. Later time periods are irrelevant to the single issue in this case — HL&P's motivation for its revocation of Complainant's access.

### **RESPONSES TO INTERROGATORIES**

1. Did Respondent have a labor agreement and/or contract with SUN Technical Services to supply I&C technicians for work at the South Texas Project Electric Generation Station (STP)? If so, please state and/or comply with the following:

- (a) The duration of the contract for I&C technicians;

**Response:** See response to 1(c).

(b) Identify the labor agreement and/or contract number;

**Response:** See response to 1(c).

(c) Produce to Complainant a copy of the labor agreement and/or contract.

**Response:** HL&P will produce a copy of the relevant agreements between SUN Technical Services and Houston Lighting & Power Company.

2. What is the estimated total amount of wages that Claimant would have been entitled to, including estimated overtime wages, had Claimant's unescorted access not been revoked at STP?

**Response:** Respondent cannot calculate the figures asked for in this interrogatory because no period of time is specified. Also, HL&P does not know how much overtime, if any, Complainant would have worked nor how long Complainant would have continued in SUN Technical's employment at STP. Complainant's wages and employment were under the control of SUN Technical Services and not HL&P.

3. State whether any employee of Respondent, job applicant, contractor or other person has ever filed a complaint with the United States Department of Labor charging the Respondent with violations of 42 U.S.C. 5851 within the last five (5) years. If so, for each such complaint please state:

**Response:** Respondent objects to this interrogatory as irrelevant, immaterial and overly broad and burdensome. Whether or not any other person has ever filed a complaint with the Department of Labor charging HL&P with violations of 42 U.S.C. 5851 is immaterial and irrelevant to the issue in this action - STP's motivation in denying Complainant's access. HL&P further objects that this interrogatory seeks information inadmissible under 29 C.F.R. Sections 18.402 and 18.404, and is not calculated to discover admissible material. HL&P also objects that information regarding the identities and circumstances of employment of persons at STP are confidential and it is HL&P's policy not to release them because to do so would constitute an unwarranted invasion of the privacy of these individuals.

(a) The name and address of the Claimant;

**Response:**

(b) The date of the complaint;

Response:

(c) The agency or department with which it was filed;

Response:

(d) The nature and substance of the complaint;

Response:

• (e) The date and substance of any action taken by the agency or department.

Response:

4. Has Respondent within the last 36 month period prior to Claimant's complaint, ever had a decision by the United States Secretary of Labor or higher authority rule against Respondent regarding a complaint of discrimination in violation of 42 U.S.C. 5851? If so, please state:

HL&P objects to this interrogatory as irrelevant and immaterial to the issue in this action. Respondent also objects that the phrase "higher authority" is unclear. Findings and decisions by the Secretary of Labor or others in cases unrelated to Complainant's are irrelevant and immaterial as to the issue of Respondent's motivation in denying Complainant's access. HL&P objects that this interrogatory seeks information inadmissible under 29 C.F.R. Sections 18.402 and 18.404 and is not calculated to discover admissible material. Without waiving these objections, HL&P has had no such decisions.

(a) The date of each such occurrence;

Response:

(b) The nature of the actual or alleged violation;

Response:

- (c) The final or current disposition of these matters;

Response:

- (d) Identify the case number of each such occurrence.

Response:

5. Has Respondent ever terminated, laid-off or transferred any employee as a direct or indirect result of failing to comply with, or charge that Respondent failed to comply with, any federal nuclear safety law or regulation? If so, please state:

Response:

Respondent objects to this interrogatory as irrelevant, immaterial and overly broad and burdensome. Whether or not any other person has ever filed a complaint with the Department of Labor charging HL&P with violations of 42 U.S.C. 5851 is immaterial and irrelevant to the issue in this action -- STP's motivation in denying Complainant's access. HL&P further objects that this interrogatory seeks information inadmissible under 29 C.F.R. Sections 18.402 and 18.404 and is not calculated to discover admissible material. HL&P objects that the identities and circumstances of employment of its employees are confidential and it is HL&P's policy not to release them because to do so would constitute an unwarranted invasion of the privacy of these individuals.

- (a) The dates of each such termination, lay-off or transfer;

Response:

- (b) The nature and substance of the actual or alleged violations;

Response:

- (c) The final or current disposition of these matters;

Response:



- (d) The number of employees involved in each incident.

**Response:**

6. Has Respondent ever terminated, laid-off, transferred or revoked the "unescorted access" of any employee as a direct or indirect result of omissions from employment and/or security documents relative to the STP nuclear station? If so, please state:

**Response:** In response to this interrogatory, HL&P refers Complainant to the document produced in response to interrogatory 8 and specifically to section VI and the appendix thereof. HL&P objects to any further disclosure of the identities and circumstances of the individuals involved in these situations because this information is confidential and disclosure would constitute an unwarranted invasion of the privacy of these individuals.

- (a) The dates of each such termination, lay-off, transfer and/or revocation or unescorted access;

**Response:**

- (b) The nature and substance of the actual or alleged omissions;

**Response:**

- (c) The final or current disposition of these matters;

**Response:**

- (d) The number of employees involved in each incident.

**Response:**

7. State whether Claimant at any time had been given notice of discharge, termination, lay-off or revocation of unescorted access to STP and, if so, the reasons for the notice and the final disposition.

**Response:** HL&P provided Complainant with notice of the revocation of unescorted access on February 21, 1992. Letters describing the basis for denial of access were provided to Complainant on March 4, 1992 and March 26, 1992. The basis for the revocation is further described in the document provided in response to interrogatory 8.

8. Describe in detail the reason for revoking Claimant's unescorted access to the STP facility.

**Response:** In response to this interrogatory, Respondent produces the attached Circumstances Surrounding Revocation of Individual's Access provided to the U.S. Nuclear Regulatory Commission. The reason for revoking claimant's access was also described in letters provided to Complainant on March 4 and March 26, 1992.

9. Describe in detail any information which you claim that Claimant omitted from any employment and/or security documents.

**Response:** In response to this interrogatory, Respondent directs Complainant to the document produced in response to interrogatory 8 and other documents produced in response to Complainant's discovery requests.

10. Name all individual(s) who questioned or challenged or caused to be questioned or challenged, Claimants employment and/or security documents and the dates of each occurrence.

**Response:** In response to this interrogatory, Respondent directs Complainant to the document produced in response to interrogatory 8.

11. State whether Respondent ever gave a written or oral referral regarding Claimant to anyone. If so, please state to who, when and the substance of such referral.

**Response:** Respondent objects that this question is vague as to the meaning of written or oral "referral" regarding Complainant, and that if this question refers to any allegation of blacklisting, it is irrelevant and material as that issue is not viable in this action due to Complainant's failure to appeal the DOL finding on that issue. Subject to this objection, Respondent provides the following information: the STP - Fitness for Duty Office responded to a written suitability inquiry from Nuclear Support Services on March 6, 1992. This

request was accompanied by an authorization form signed by Complainant. The response stated, "No record of subject at STPEGS. FFD record." No other written or oral referral authorized by Respondent was provided.

12. Please state the name of each person who participated in the decision making process to hire contract I&C technicians for the Respondent's STP facility on or about January, 1992.

**Response:** HL&P objects to this question as irrelevant and immaterial and outside the scope of permissible discovery in this action. STP's decision to hire contract employees is not at issue in this action and has no relevance to the reasons for denial of Complainant's access.

13. State the name of each person who participated in the decision to revoke Claimant's unescorted access to the STP facility.

**Response:** Mr. Richard L. Balcom, Manager of Security, South Texas Project Electrical Generating Station. Mr. J.W. Hinson, Administrator - Investigations/Compliance Division, South Texas Project Electrical Generating Station (subsequent to the events relevant to this action. Mr. Hinson has changed positions at STP).

14. What persons are known to you to have personal knowledge of the incident, as the result of which, or the reason Claimant stopped working for Respondent?

**Response:** HL&P objects that the premise of this question is flawed in that Complainant never worked for Respondent. HL&P also objects that the "incident" referred to in the question is undefined. The individuals having personal knowledge of the basis for revocation of Complainant's access to STP are identified in response to interrogatory 13 above.

15. On what facts and evidence do you rely to prove your denial that Claimant's unescorted access was revoked and that Claimant stopped working for Respondent because Claimant was engaged in "protected activity" at STP?

**Response:** HL&P objects to the form of this question as complex, and that Complainant did not work for Respondent. Subject to this objection, HL&P does not deny that Complainant's access was revoked. Complainant's access was revoked for the reasons set out in the March 4, 1992 and March 26, 1992 letters to Complainant and in the document produced in response to interrogatory 8. Revocation of Complainant's unescorted access was not due to his engagement in "protected activity."

16. On what facts and evidence do you rely to prove your denial that Claimant's unescorted access was revoked and that Claimant stopped working for Respondent because Claimant engaged in "protected activity" prior to his employment at STP?

**Response:** HL&P objects to the form of this question as complex, and that Complainant did not work for Respondent. Subject to this objection, HL&P does not deny that Complainant's access was revoked. Complainant's access was revoked for the reasons set out in the March 4, 1992 and March 26, 1992 letters to Complainant and in the document produced in response to interrogatory 8. Revocation of Complainant's access was not due to his engagement in "protected activity."

17. Until Claimant stopped working for you, was there ever any complaint relative to Claimant's ability to do his work? If so, please provide details of each occurrence and the names of those making such claims.

**Response:** HL&P objects that the premise of this question is flawed in that Complainant never worked for Respondent. Subject to this objection, during his investigation on February 20, 1992, Mr. J.W. Hinson noted discrepancies in Complainant's access authorization paperwork which called Complainant's ability to perform his work into question in that such omissions and inaccuracies could be grounds for denial of unescorted access.

18. State whether between January, 1992, to present, Respondent made any communication to any other employer and/or company regarding Claimant? if so, please state:

**Response:** Communications regarding Complainant are reflected in the documents produced to Complainant under interrogatory 20. To the extent that Respondent has communicated with its attorneys, Respondent objects to this question as requesting information protected under the attorney-client and attorney work product privileges. HL&P further objects that this interrogatory seeks materials prepared in anticipation of this litigation by or for HL&P's representatives. HL&P further objects that as to time periods subsequent to STP's revocation of Complainant's access, this interrogatory seeks material that is irrelevant and immaterial to the issue in the action - STP's motivation for its revocation of Complainant's access. Respondent also objects that this interrogatory is overly broad and seeks information unrelated to Respondent's denial of access to Complainant. Subject to these objections, Respondent directs Complainant to the responses to interrogatories 35 and 36 and the communications reflected in response to this interrogatory.

(a) The dates of all such communications;



**Response:** See documents produced. On or around March 2, 1992.

(b) Who was communicated with;

**Response:** See documents produced. Mr. Troy Connor.

(c) The substance of the communication;

**Response:** See documents produced. Mr. Connor contacted both Ms. Betty Brown and Mr. Andrew Woods regarding Complainant. Neither Ms. Brown nor Mr. Woods provided any information concerning Complainant to Mr. Connor. See also responses to interrogatory 35 and 36.

(d) Identify all documents which related, in any way, to this communication.

**Response:** See documents produced.

(e) Produce to Claimant a copy of all documents identified in sub-part (d) above.

**Response:** See documents produced.

19. Did Respondent hire, subcontract, commission or in any way, directly or indirectly, investigate or cause to be investigated the substantive allegations Claimant raised concerning violations of 42 U.S.C. 5851? If so, please state the following:

**Response:** HL&P objects to this question to the extent it seeks information protected under the attorney-client and/or the attorney work product privileges. HL&P further objects that this interrogatory seeks information prepared in anticipation of this litigation, for or by HL&P's representatives. Also, certain documents requested are the confidential personnel files of individuals not involved in this litigation. Disclosure of these files would be an unwarranted invasion of the personal privacy of these individuals. Subject to these objections, HL&P is providing copies of the requested reports.

(a) The name and title of all investigatory firms and/or subcontractors;

**Response:** See documents produced.



(b) The name and title of all employees engaged in the investigation;

**Response:** See documents produced.

(c) A statement of where all documents and final reports, relating directly or indirectly to the investigation are located;

**Response:** Documents will be produced.

(d) A list of all persons involved in the investigation and the documents reviewed in the course of the investigation;

**Response:** See documents produced.

(e) Produce to Claimant a copy of all documents identified in sub-part (d) above;

**Response:** HL&P will produce all supporting documents except the personnel files reviewed. Such files are confidential and release would constitute an unwarranted invasion of the employee's personal privacy.

(f) A summary of the finding/results of said investigation;

**Response:** The investigations concluded that Complainant's access was denied because of willful omission of material facts in Complainant's access authorization paperwork and that denial was not motivated by other activities of Complainant.

(g) Produce to Claimant a copy of all documents identified in sub-part (f) above;

**Response:** See documents produced.

(h) A statement as to why said investigation was conducted;

**Response:** The Speakout investigation was conducted to determine whether Complainant's allegations could be substantiated. The Andrews study was performed to evaluate the adequacy of the Speakout investigations conducted in response to Complainant's allegations.

(i) Produce to Claimant a copy of all documents identified in sub-part (h) above.

**Response:** See documents produced.

20. Does Respondent have in his possession or know of the existence of any logs, diaries, discs, records, tapes, notes, brochures, pamphlets, agreements or other tangible documentary materials relating in any way to the facts, events, allegations, inferences, or indications involved in Claimant's complaint or your answers to any of these interrogatories or relied upon in answering any interrogatory contained in the entirety of this document? If so, as to each item, state the following:

**Response:** HL&P objects to this question to the extent that it asks for materials protected under the attorney-client and work product privileges. HL&P further objects to this interrogatory to the extent that it seeks information prepared in anticipation of this litigation for or by HL&P's representatives. Furthermore, HL&P excludes in the answer to this numbered interrogatory any documents referred to or produced under any other numbered interrogatory, request for production, or request for admission. HL&P objects to this interrogatory to the extent that the phrase "relating in any way to the facts, events, allegations, inferences, or indications involved in Claimant's complaint" has no clear meaning and appears to exceed the permissible scope of discovery relevant to the single issue viable in this action - STP's motivation for its revocation of Complainant's access. Subject to these objections, HL&P will produce records relevant to the denial of access to Complainant.

(a) The description of each item or document, including but not limited to, date, author, each recipient;

**Response:** See documents produced.

(b) The name and present or last known address of person or organization now in possession thereof or any copy thereof; and

**Response:** See documents produced.

(c) Produce to Claimant a copy of each such item in your possession.

**Response:** See documents produced.

21. List the names, addresses, and telephone numbers of all witnesses, including expert witnesses, who will or may be called upon to testify in support of your

denial of the state (sic) violation of 42 U.S.C. 5851 in the complaint and the amended complaint.

**Response:** HL&P objects to providing telephone numbers for witnesses. All witnesses may be contacted through counsel for HL&P. At this time, HL&P has not identified any expert witnesses.

- 1) Richard L. Balcom: Mr. Balcom will discuss the facts and circumstances surrounding the decision to deny Mr. Saporito's access to the South Texas Project and the reasons for that decision. He will also describe HL&P's access authorization procedures and program.
- 2) J.W. Hinson: Mr. Hinson will discuss the facts and circumstances surrounding the decision to revoke Mr. Saporito's access to the South Texas Project and the reasons for that decision. Mr. Hinson will specifically describe the interview that he held with Mr. Saporito on February 20, 1992, and the conclusion he reached based on the facts discovered during that interview. Mr. Hinson will also discuss the fact that the decision to deny Mr. Saporito's access was fully consistent with previous decisions in similar cases.
- 3) Rick Cink: Mr. Cink will testify as to what he observed during the interview of Mr. Saporito, and during the time when Mr. Balcom and Mr. Hinson consulted with one another during the process of deciding whether to revoke Complainant's access and his other contacts with Mr. Saporito.
- 4) Mr. William Jump. Mr. Jump will describe the STF access authorization program, associated NRC requirements, and the reasons why the truthfulness and completeness of access authorization paperwork came into question and was required to be investigated.

HL&P reserves the right to identify additional witnesses as discovery in this case proceeds.

22. As to each witness identified in interrogatory 21 above, indicate the nature and substance of the information about which the witness will or may give testimony.

**Response:** See response to number 21.

23. List specifically and in detail each and every exhibit you propose to utilize or may utilize during the hearing in this matter and for each such exhibit indicate:

**Response:** HL&P reserves the right to utilize any of the documents produced to Complainant in these interrogatories, in response to his request for

production, made a part of HL&P's responses to Complainant's request for admissions, or produced to HL&P by Complainant or other parties to this litigation.

(a) The date of each such exhibit;

**Response:** See the documents themselves.

(b) The author of each such exhibit;

**Response:** See the documents themselves.

(c) The recipient of each such exhibit;

**Response:** See the documents themselves.

(d) The number of pages of each such exhibit;

**Response:** See the documents themselves.

(e) The subject matter of each such exhibit;

**Response:** See the documents themselves.

(f) The name and address of the present custodian of each such exhibit; and

**Response:** See item (g) below.

(g) Produce to Claimant a copy of each such exhibit.

**Response:** Through responses to other discovery requests in this litigation, Complainant will be provided copies of each such exhibit.

24. State the name of each and every company or organization Respondent has contacted or been contacted by seeking or submitting information regarding Claimant.

**Response:** HL&P objects to this interrogatory because it duplicates other discovery requests which have already been responded to. (See e.g. responses to interrogatory 18, 20, 35 and 36.) To the extent that HL&P has communicated

with its counsel, HL&P objects to this interrogatory to the extent that this question seeks information protected by the attorney-client and attorney work product privileges, and is an attempt to discover HL&P's trial preparation strategy. HL&P objects to this question to the extent that it seeks information prepared in anticipation of this litigation by or for HL&P's representatives. HL&P also objects to the extent that this interrogatory seeks information concerning events that occurred after the time Complainant's access was denied, and which are therefore irrelevant.

25. State the name of each and every company or organization Respondent's attorneys have contacted or been contacted by seeking or submitting information regarding Claimant.

**Response:** HL&P objects to this interrogatory on the basis that it calls for information protected under the attorney-client and/or attorney work product privileges, and is an attempt to discover HL&P's trial preparation strategy. The information requested is also irrelevant to the extent it requests information regarding events that occurred after the denial of Complainant's access. HL&P further objects to this interrogatory on the basis that it calls for information or material prepared in anticipation of this litigation for or by HL&P's representatives.

26. Did Robert Goodwin ever contact Respondent seeking or submitting information regarding Claimant?

**Response:** HL&P objects that this interrogatory seeks information neither material nor relevant to the issue in this action -- STP's motivation for its revocation of Complainant's access. Subject to this objection, Respondent has no record of any contact from "Robert Goodwin."

27. Did Art Rutherford ever contact Respondent seeking or submitting information regarding Claimant?

**Response:** HL&P objects that this interrogatory seeks information neither material nor relevant to the issue in this action -- STP's motivation for its revocation of Complainant's access. Subject to this objection, Respondent has no record of any contact from "Art Rutherford."

28. Did Frank Koller ever contact Respondent seeking or submitting information regarding Claimant?

**Response:** HL&P objects that this interrogatory seeks information neither material nor relevant to the issue in this action -- STP's motivation for its revocation of



Complainant's access. Subject to this objection, Respondent has no record of any contact from "Frank Koller."

29. Did Respondent contact previous employers and references which Claimant identified on Respondent's employment and/or security documents? If so, for each contact please state the date and substance of every communication and provide the names for every individual contacted and their employer.

**Response:** HL&P objects to this interrogatory as duplicative of number 18. See answer to number 18.

30. Did Respondent ever have any conversations or contact with representatives or employees of SUN Technical Services regarding Claimant? If so, as to each conversation or contact, please state the name of the employee/representative, date of conversation/contact, and the substance of the conversation/contact.

**Response:** HL&P has no record of any contact with SUN Technical Services regarding Complainant that is relevant to this action, except that HL&P believes that Mr. Rich DeLong notified SUN Technical Services on or about February 21, 1992 that Complainant's access had been denied based on omission of information in access authorization documents submitted by Complainant. SUN Technical Services was also informed that Complainant's services were no longer required at STP.

31. Did Respondent ever have any conversations or contact with representatives or employees of Nuclear Support Services, Inc. regarding Claimant? If so, as to each conversation or contact, please state the name of the employee/representative, date of conversation/contact, and the substance of the conversation/contact.

**Response:** Object to this question as duplicative of other requests and as seeking information neither relevant nor material to the single issue viable in this action—STP's motivation in its decision to deny Complainant's access. Subject to this objection, see the response to interrogatory 18, 35, and 36.

32. Did Respondent ever have any conversations or contact with representatives or employees of Southern Nuclear Operating Company regarding Claimant? If so, as to each conversation or contact, please state the name of the employee/representative, date of conversation/contact, and the substance of the conversation/contact.

**Response:** Object to this question as seeking information neither relevant nor material to the single issue viable in this action—STP's motivation in its decision to

deny Complainant's access. Subject to this objection, HL&P has no information regarding any such communications or contacts.

33. Did Respondent ever have any conversations or contact with representatives or employees of A.T.I. regarding Claimant? If so, as to each conversation or contact, please state the name of the employee/representative, date of conversation/contact, and the substance of the conversation/contact.

**Response:** Object to this question as seeking information neither relevant nor material to the single issue viable in this action--STP's motivation in its decision to deny Complainant's access. Subject to this objection, no.

34. Did Respondent ever have any conversations or contact with representatives or employees of Florida Power & Light Company regarding Claimant? If so, as to each conversation or contact, please state the name of the employee/representative, date of conversation/contact, and the substance of the conversation/contact.

**Response:** Object to this question as seeking information neither relevant nor material to the single issue viable in this action--STP's motivation in its decision to deny Complainant's access. Subject to this objection, no.

35. Did Brian Migel ever have any conversation and/or contact with anyone regarding Claimant? If so, as to each conversation and/or contact, please state the name of the person contacted and the date of each conversation and/or contact and the substance of each conversation and/or contact.

**Response:** HL&P objects that this interrogatory seeks information neither relevant nor material to the single viable issue in this action -- STP's motivation for its revocation of Complainant's access. Subject to this objection, Mr. Migel recalls one conversation with someone he believes was with Nuclear Support Services, Inc. Mr. Migel does not remember the substance of this conversation but believes he referred the caller to the Human Resources Department. Mr. Migel did not initiate this communication. HL&P did not authorize or direct Mr. Migel to provide any information concerning Complainant.

36. Did Rich DeLong ever have any conversation and/or contact with anyone regarding Claimant? If so, as to each conversation and/or contact, please state the name of the person contacted and the date of each conversation and/or contact and the substance of each conversation and/or contact.

Response:

HL&P objects that this interrogatory seeks information neither relevant nor material to the single viable issue in this action - STP's motivation for its revocation of Complainant's access. Subject to this objection, HL&P understands that on or about March 2, 1992 Mr. DeLong was contacted by an individual named Troy Connor from Nuclear Support Services. Mr. Connor, requested information concerning Mr. Saporito from Mr. DeLong and Mr. DeLong informed Mr. Connor that Mr. Saporito's access to the South Texas Project had been denied. In response to questions from Mr. Connor, Mr. DeLong also informed Mr. Connor that he understood that the basis for the denial of Mr. Saporito's access was omission of information on his access authorization paperwork, and that Mr. DeLong personally would not rehire Mr. Saporito. At the time Mr. DeLong understood that Mr. Saporito had authorized Mr. Connor to obtain the requested information. HL&P did not authorize or direct Mr. DeLong to provide any information to Mr. Connor. See also answer to Interrogatory No. 30.

HOUSTON LIGHTING & POWER COMPANY

By: Betty Brown

VERIFICATION

STATE OF TEXAS       §  
                              §  
COUNTY OF HARRIS   §

BEFORE ME, the undersigned Notary Public, on this day personally appeared BETTY BROWN, Manager, Houston Electric, LLC for Houston Lighting & Power Company, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of Houston Lighting & Power Company, and that he executed the same as the act and deed of such corporation in the capacity therein stated and that the foregoing responses are true and correct to the best of his knowledge, information and belief.

SUBSCRIBED AND SWORN TO BEFORE ME on the 11 day of Sept, 1992, to certify which witness my hand and official seal.

Mary D. Hill  
Notary Public in and For  
The State of Texas

My Commission Expires:

5/23/93

## RESPONSES TO REQUEST FOR DOCUMENTS

All documents produced will be made available at the offices of HL&P's counsel, Baker & Botts, for inspection and copying.

1. All documents identified in or used for answering the above numbered Interrogatories and their sub-parts.

**Response:** HL&P objects to this request to the extent that it seeks materials protected by the attorney-client and attorney work product privileges. HL&P further objects to this request to the extent that it seeks materials prepared in anticipation of this litigation by or for HL&P's representatives. Subject to these objections, HL&P will produce, in response to this request or other interrogatories, any documents responsive to this request.

2. All personnel records, security documents, training records, employment applications and/or other documents maintained by Respondent regarding Claimant.

**Response:** HL&P objects to this request to the extent that it seeks materials protected by the attorney-client and attorney work product privileges. HL&P also objects to the extent that the request seeks materials prepared in anticipation of litigation by or for HL&P's representatives. Subject to these objections, HL&P will produce, in response to this request or other interrogatories, all documents responsive to this request.

3. Any and all documents evidencing, referring to, or in any way relating to any and all protected activity Claimant may have engaged in which is in Respondent's or Respondent's counsel's possession, custody or control.

**Response:** HL&P objects to this request to the extent that it seeks material protected by the attorney-client and attorney work product privileges. HL&P further objects to this request to the extent that it seeks materials prepared in anticipation of this litigation by or for HL&P's representatives. HL&P objects to this request as overly broad and vague as to "any and all protected activity Complainant may have engaged in," the only activity relevant to this action is Complainant's alleged protected activity while in the employment of SUN Technical. Subject to these objections, HL&P will produce all documents responsive to this request.

4. Any and all documents evidencing, referring to, or in any way relating to any and all instances or types of adverse treatment Claimant received from Houston Lighting & Power Company at any time.



**Response:** Complainant received no adverse treatment from Houston Lighting & Power Company.

5. Any and all documents evidencing, referring to, or in any way relating to any and all instances or types of adverse treatment Claimant received from Georgia Power Company at any time.

**Response:** HL&P has no knowledge of any adverse treatment Complainant received from Georgia Power Company.

6. Any and all documents evidencing, referring to, or in any way relating to any and all instances or types of adverse treatment Claimant received from Arizona Public Service Company at any time.

**Response:** HL&P has no knowledge of any adverse treatment Complainant received from Arizona Public Service Company.

7. Any and all documents evidencing, referring to, or in any way relating to any and all instances or types of adverse treatment Claimant received from A.T.I. at any time.

**Response:** HL&P has no knowledge of any adverse treatment Complainant received from ATL.

8. Any and all documents evidencing, referring to, or in any way relating to any and all instances or types of adverse treatment Claimant received from SUN Technical Services at any time.

**Response:** HL&P has no knowledge of any adverse treatment Complainant received from SUN Technical Services.

9. Any and all documents evidencing, referring to, or in any way relating to any and all instances or types of adverse treatment Claimant received from Nuclear Support Services, Inc. at any time.

**Response:** HL&P has no knowledge of any adverse treatment Complainant received from Nuclear Support Services, Inc.

10. Any and all documents evidencing, referring to, or in any way relating to any and all instances or types of adverse treatment Claimant received from The Atlantic Group at any time.

**Response:** HL&P possesses no knowledge of any adverse treatment Complainant received from The Atlantic Group.

11. Any and all documents evidencing, referring to, or in any way relating to any and all instances or types of adverse treatment Claimant received from Southern Nuclear Operation Company at any time.

**Response:** HL&P possesses no knowledge of any adverse treatment Complainant received from Southern Nuclear Operation Company.

12. Any and all documents, including any complaints or amended complaints, judicial orders, or copies of depositions or deponents resulting from any claims previously filed by anyone against Respondent under the Energy Reorganization Act, 42 U.S.C. 5851.

**Response:** HL&P objects to this request as seeking materials both irrelevant and immaterial to the issue in this action – STP's motivation for its decision to deny Complainant's access. HL&P further objects to this request as seeking materials inadmissible under 29 C.F.R. §§ 18.402 and 18.404 and not calculated to discover admissible material.

13. Any and all documents received by Respondent from Arizona Public Service Company, or Georgia Power Company, or The Atlantic Group, or SUN Technical Services, or Nuclear Support Services, or A.T.I., or Southern Nuclear Operation Company regarding Claimant.

**Response:** HL&P objects that this request is vague, ambiguous, exceeds the permissible scope of discovery in this action, is overly broad and burdensome. HL&P objects to this request to the extent that it seeks material protected under the attorney-client or attorney work product privileges. HL&P further objects to this request to the extent that it seeks materials prepared in anticipation of this litigation for or by HL&P's representatives. HL&P objects to this request to seeking material irrelevant and immaterial to the issue in this action – STP's decision to deny Complainant's access. Subject to these objections, HL&P will produce all materials responsive to this request in response to interrogatory 20.

14. Any and all notes Respondent has evidencing, referring to or in any way relate to Respondent's denial/defense of claims in this matter.

**Response:** HL&P objects to this request as overly broad and vague. HL&P objects to this request to the extent that it seeks materials protected under the

attorney-client and/or the attorney work product privileges. HL&P further objects to the extent this request seeks materials prepared in anticipation of this litigation for or by HL&P's representatives. Subject to these objections, HL&P will produce all materials responsive to this request in response to interrogatories 8 and 20 and request for production 3.

15. Any and all notes Respondent's counsel has evidencing, referring to or in any way relate to Respondent's denial/defense of claims in this matter.

**Response:** HL&P objects to this request as it seeks materials protected by the attorney-client privilege and/or the attorney work product privilege. HL&P further objects to this request as it seeks materials prepared in anticipation of this litigation for or by HL&P's representatives.

16. Any and all documents evidencing that any person employed by Respondent had knowledge of Claimant's whistleblowing or protected activities at STP or at other nuclear stations.

**Response:** HL&P objects to this request as vague and overly overbroad. HL&P further objects to this request to the extent that it seeks documents and material irrelevant to the issue in this action - STP's motivation for its decision to deny Complainant's access. Subject to these objections, HL&P will produce all material responsive to this request in response to interrogatories 8, 18, 19, and 20 and request 3 above.

17. Any and all documents evidencing Claimant's claim that he has been "blacklisted" by Respondent or any company affiliated with Respondent.

**Response:** Respondent has not "blacklisted" Complainant nor has any company affiliated with Respondent.

18. Any and all local or national newspapers or industry publications subscribed to or in possession, custody or control of Respondent which now or previously identified Claimant as a whistleblower or that he engaged in "protected activity" or otherwise raised safety concerns at other nuclear stations.

**Response:** Respondent objects to this request as overly broad and vague. Respondent further objects to this request as seeking documents irrelevant and immaterial to the issue in this action. HL&P has no materials responsive to this request in its possession, custody or control, and the HL&P individuals involved in the events that are the subject of this proceeding were and are unaware that any such material existed.

Office of Administrative Law Judges  
Heritage Plaza, Suite 530  
111 Veterans Memorial Blvd.  
Metairie, LA 70005  
(504) 589-6201

*DOL*



Date: October 14, 1992

*BPL* *HLTP*  
CASE NO. 92-ERA-38 & 92-ERA-45

IN THE MATTER OF

THOMAS J. SAPORITO, JR.  
Complainant

v.

HOUSTON LIGHTING AND POWER COMPANY  
GEORGIA POWER CO., AND NUCLEAR  
SUPPORT SERVICES, INC.,  
Respondent

ORDER SCHEDULING TELEPHONE CONFERENCE

A telephone conference shall be held on October 20, 1992 at 9:00 a.m. (CST). The purpose of this conference is to schedule dispositive motions, further discovery and the time and place of hearing. It is understood that representative's of the parties will be available at this time at the office of claimant's counsel. Should any party or representative who desires to participate in this conference not be available at that office, such party or party representative shall promptly notify this office specifying the place where he or she can be reached.

*Quentin P. McColgin*  
\_\_\_\_\_  
QUENTIN P. MCCOLGIN  
ADMINISTRATIVE LAW JUDGE

Metairie, Louisiana  
QPMC:dgc

SERVICE SHEET

Case Name: THOMAS J. SAPORITO, JR.

Case No.: 92-ERA-45 & 92-ERA-38

Title of Document: ORDER SCHEDULING TELEPHONE CONFERENCE

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DEBORAH Q. CUREAU  
Dated: *October 14, 1992*

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Metairie, LA 70005  
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*DO*

Date: October 20, 1992

CASE NO. ~~92-ERA-38~~ & 92-ERA-38  
(~~consolidated~~)

IN THE MATTER OF

THOMAS J. SAPORITO, JR.  
Complainant

v.

HOUSTON LIGHTING AND POWER COMPANY  
GEORGIA POWER CO., AND NUCLEAR  
SUPPORT SERVICES, INC.,  
Respondent

ORDER

A telephone conference was conducted on October 20, 1992 with counsel for the parties named herein. To confirm the orders entered during this conference it is ordered that:

1. Any dispositive motion which does not go to the merits shall be filed by October 31, 1992;<sup>1</sup>
2. Claimant's deposition shall be taken by December 15, 1992;
3. All dispositive motions shall be filed by January 8, 1993;<sup>2/</sup>
4. All discovery shall be completed by February 1, 1993;
5. The hearing in this matter shall commence at 9:30 a.m. on March 15, 1993 in Houston, Texas at a place to be designated by subsequent notice and shall continue from day to day until completed.

---

<sup>1</sup> & <sup>2</sup> Responses to these motions shall be filed within fifteen days of the deadlines.

*5/17*

The determination to hold the hearing in Houston, Texas instead of the alternative proposed place hearing of Atlanta, Georgia is based on the view that the former is more convenient for the bulk of the witnesses as well as complainant and Houston Lighting. This is demonstrated by the estimate provided by the parties of the time required to present their evidence. Thus, the time required by complainant and Houston Lighting was estimated to be an aggregate of between five and seven days in contrast to the one day estimate by Nuclear Support Services.

Quentin P. McColgin  
QUENTIN P. MCCOLGIN  
ADMINISTRATIVE LAW JUDGE

Dated: *October 20, 1992*  
Metairie, Louisiana

QPMC:dgc

SERVICE SHEET

Case Name: THOMAS J. SAPORITO, JR.

Case No.: 92-ERA-45 & 92-ERA-38


Title of Document: ORDER

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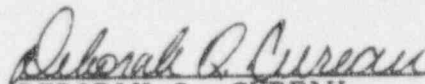
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Date: November 24, 1992

HL4P GPC  
CASE NO. 92-ERA-45 & 92-ERA-38  
(Consolidated)

IN THE MATTER OF

THOMAS J. SAPORITO, JR.  
Complainant

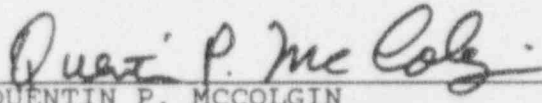
v.

HOUSTON LIGHTING AND POWER COMPANY  
GEORGIA POWER CO., AND NUCLEAR  
SUPPORT SERVICES, INC.,  
Respondent

RECOMMENDED ORDER OF DISMISSAL

Upon consideration of Complainant's Notice of Dismissal of Respondent Georgia Power Company, all papers filed in response thereto and the record herein, it be and hereby is

Ordered that Complainant's complaint against Respondent Georgia Power Company is DISMISSED with prejudice pursuant to Fed. R. Civ. P. 41(a)(1)(i).

  
QUENTIN P. MCCOLGIN  
ADMINISTRATIVE LAW JUDGE

Dated: NOV 24 1992  
Metairie, Louisiana  
QPMC:dgc

SERVICE SHEET

Case Name: THOMAS J. SAPORITO, JR.

Case No.: 92-ERA-45 & 92-ERA-38

Title of Document: RECOMMENDED ORDER OF DISMISSAL

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Dated: *November 24, 1992*

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Date: February 1, 1993

CASE NO. 92-ERA-45 & 92-ERA-38  
(Consolidated)

IN THE MATTER OF

THOMAS J. SAPORITO, JR.  
Complainant

v.

HOUSTON LIGHTING AND POWER COMPANY  
GEORGIA POWER CO., AND NUCLEAR  
SUPPORT SERVICES, INC.,  
Respondent

**ORDER DENYING RESPONDENT HOUSTON LIGHTING AND POWER COMPANY'S  
MOTION TO DISMISS COMPLAINANT'S BLACKLISTING CLAIM**

Pursuant to Rule 12(b) of the Federal Rules of Civil Procedure and the authority granted to the Administrative Law Judge pursuant to 29 C.F.R. § 18.29(a)(8), Houston Lighting and Power Company (hereinafter "HL&P") moves to dismiss Complainant's blacklisting claims against it, in the consolidated cases 92-ERA-38 and 92-ERA-45.

In support of this motion, HL&P has filed a memorandum, to which Complainant, Thomas J. Saporito, Jr., filed opposition, to which HL&P filed a reply.

In essence, HL&P asserts that Complainant's blacklisting case should be dismissed because the request for hearing was untimely. It is held that Complainant is entitled to hearing on the blacklisting charge, for the reasons set forth below.

**Factual Background**

In a complaint dated February 24, 1992, Complainant alleged a violation of the employee protection provisions of 42 U.S.C. §5851 (1988). Complainant submitted an amended complaint on March 5, 1992, additionally alleging "blacklisting."

*Dick  
How do the  
ST claim relate  
to orig of case?  
JL*

*5/19*

On June 30, 1992, the Department of Labor, Houston, Texas, office, issued an untitled document notifying a Ms. Brown of HP&L of the "results of our compliance actions." On the first of Complainant's allegations, discriminatory employment action based on a protected activity, the Department of Labor found for the Complainant. On the second allegation, blacklisting by HL&P representative Rich DeLong, the Department of Labor stated only:

On allegation number 2, blacklisting, it is our conclusion that the allegations cannot be substantiated because Mr. DeLong said only that he would not rehire Mr. Saporito.

The letter to Ms. Brown further purported to notify the Respondent of the actions required to remedy the violation of the employee protection provisions of the ERA. Further, it stated:

This letter is also notification to you that, if you wish to appeal the above findings and remedy, you have a right to a formal hearing on the record. To exercise this right you must, within five (5) calendar days of receipt of this letter, file your request for a hearing by telegram to...The Chief Administrative Law Judge...Unless a telegram is received...this notification of findings and remedial action will become the Final Order of the Secretary of Labor which must be implemented within 30 days.

The form letter continues:

By copy of this letter, Thomas J. Saporito, Jr. is being advised of the determination and the right to a hearing....If you decide to request a hearing, it will be necessary for you to send copies of the telegram to Thomas J. Saporito, Jr. and to me....After I receive the copy of your request, appropriate preparations for the hearing can be made....The hearing is an adversarial proceeding in which the parties will be allowed an opportunity to present their evidence for the record. The Administrative Law Judge will issue a recommended decision to the Secretary based on the evidence, testimony, and arguments presented by the parties at the hearing. The Final Order of the Secretary of Labor will then be issued after consideration of the Administrative Law Judge's recommended decision and the record developed at the hearing and will either provide for appropriate relief or dismiss the complaint.

Complainant's contemporaneous complaint against Georgia Power Company was investigated by the Department of Labor, Atlanta, Georgia, office. On June 3, 1992, by certified mail, the Department of Labor notified Complainant specifically that the



Department of Labor did not find evidence of knowledge of protected activity or blacklisting. It specifically notified Complainant of his appeal rights. Georgia Power Company was purportedly notified by copy of the letter addressed to Complainant of the determination and the right to a hearing.

On June 8, 1992, Complainant timely sent a telegram to The Chief Administrative Law Judge, U.S. Department of Labor, stating:

I request a hearing regarding the wage and hour findings dated June 3, 1992 concerning my discrimination complaint and filed against Georgia Power Company, Houston Lighting & Power, and Nuclear Support Services Inc.

It is undisputed that the Complainant did not file a telegram requesting a hearing after receiving either the copy of the June 30 letter to HL&P or a copy of the hearing request of HL&P. The only hearing request submitted by Complainant on file is that quoted above.

Upon Complainant's request for a hearing, the case in Georgia was docketed 92-ERA-45. Upon HL&P's request for a hearing, the case in Texas was docketed 92-ERA-38. By order of this Administrative Law Judge, these cases have been consolidated for hearing.

### Analysis

#### 1. The Request for a Hearing De Novo Allows all Parties to Litigate All Claims

The allegations in Complainant's complaint and amended complaint were treated by the Department of Labor as though they were severable causes of action. Essentially, the Respondent asserts that because the Department of Labor made a determination unfavorable to Complainant on the blacklisting claim, in light of the fact that Complainant did not file his own hearing request, he waived the right to hearing on the blacklisting claim.

Respondent has cited no authority directly on point. In the cases cited by Respondent (e.g. Ward v. Bechtel Construction, Inc., 85-ERA-9 (July 11, 1986), no party requested a hearing within five days, therefore, the determination became final.

In fact, the Secretary of Labor has held the opposite, in Smith v. Tennessee Valley Authority, 87-ERA-20 (April 27, 1990). The Secretary stated:

Once a hearing is requested (as was done in the present case) the determination of the Administrator never becomes the final order of the Secretary. 29 C.F.R. §24.4(2)(i) and (3)(i) [case citations

omitted]....Instead, the parties are given de novo consideration of the case before the administrative law judge [case citations omitted], who issues a recommended decision based on the record compiled at the hearing. 29 C.F.R. §24.5(e)(2) [citations omitted]. The ALJ's recommended decision is then reviewed by the Secretary who issues the final order in the case based on the hearing record and the ALJ's recommended decision. 29 C.F.R. §24.6(b)(1).

There is certainly no requirement that any party appeal each and every specific issue, or that each party file an appeal or request for a hearing on each ground alleged. In fact, each party notified was told simply to request a hearing via telegram, nothing more.

Thus, it is clear that once any party requests a hearing on the claims submitted to the agency, the Administrative Law Judge becomes the fact-finder, and all claims submitted to the agency are properly preserved for a "formal hearing on the record." (See also, 5 U.S.C §557(b).)

## 2. The Issue of Blacklisting is Not Res Judicata

As held above, the decision of the Wage and Hour Commission has not become the final order of the Secretary of Labor, pending a formal hearing. It has been held that when a statute provides for de novo review, res judicata does not apply. See American Heritage Life Insurance Co. v. Heritage Life Insurance Co., 494 F.2d 3 (5th Cir. 1974).

In the same vein, re judicata will not apply when there is an facial error in the decision below.

## 3. Dismissal of Complainant's Blacklisting Claim Without Opportunity for Hearing in the Case is Both a Statutory and Due Process Violation.

Where the rights of individuals are affected, it is incumbent upon agencies to follow their published procedures, even though the procedures may be more rigorous than the process that otherwise would be required. Barr v. U.S., 689 F.Supp. 1248 (E.D. N.Y. 1988). The time provisions for filing an appeal must be liberally construed so as not to prejudice an adversely affected party. See Rowland v. Califano, 588 F.2d 449 (5th Cir. 1979).

In the present case, Department of Labor regulations clearly contemplate two post-investigation scenarios: (I) the complaint is found to be without merit, in which case the Complainant is to be notified directly of the determination, pending finality, and procedure for requesting a hearing. If a hearing is requested, a copy of the request must be sent to the Respondent (employer) by

the Complainant. 29 C.F.R. §24.4(d)(2)(i) and (ii); and (II) the administrator finds a violation did occur, in which case the Respondent is to be notified directly of the determination, pending finality, and procedure for requesting a hearing. If a hearing is requested, a copy of the request must be sent to the Complainant by the Respondent. 29 C.F.R. §24.4(d)(3)(i) and (ii).

From the structure of the regulations, it is clear that these are mandatory, separate procedural sequences. The purpose of the regulations is to comport with the agency's statutory mandate and the constitutionally compelled adequate due process. Most importantly, they provide the means by which a party is notified of the outcome of the case, and the means by which that outcome may be challenged. "The due process clause requires that notice be reasonably calculated to inform parties of proceedings which may directly and adversely affect their legally protected interest." North Ala. Express, Inc. v. U.S., 585 (F.2d 783 (5th Cir. 1978)).

In the present case, the regulations require that a party aggrieved by an unfavorable decision be notified directly by certified mail of their legal recourse. In the case of the determination regarding the complaint lodged against Georgia Power, the Atlanta office of the Department of Labor properly served and notified Complainant of its unfavorable decision, which he timely and properly appealed via request for a hearing. That case became 92-ERA-38.

The Houston office's later determination against HL&P was both favorable in part and unfavorable in part for Complainant and Respondent. Both the regulations cited above and due process required, at a minimum, that each party be notified directly via certified mail of its rights.<sup>1</sup> The Department of Labor, Houston office, followed the regulations properly as to Respondent, but not as to Complainant. Each party should have been notified not only of the outcome of the investigation but also as to that party's appeal rights in accordance with the two different notification procedures prescribed by the regulation. The notification received by complainant failed to inform him of his appeal rights. Hence that notification was insufficient and cannot serve as a bar to the maintenance of his blacklisting claim against Houston Lighting and Power.

It is clear that Complainant intends to litigate his case vigorously, and would not have waived his right to a hearing on his blacklisting claim. Thus, the copy of a letter from the Houston office sent to Respondent was insufficient notice to Complainant and is error below. Additionally, the notice, had it been sufficient to inform Complainant of his rights, did not indicate that any part of his complaint would be waived if not appealed with

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<sup>1</sup>As a safeguard, each party in interest should receive direct notice of the outcome of the determination. Whether the regulations comply with due process is not, however, presently before this administrative law judge.

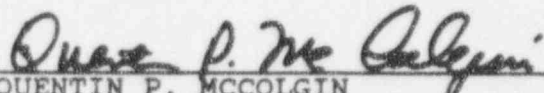
specificity. Complainant, proceeding pro se, albeit experienced in bringing "whistleblower" claims, had a right to rely on Respondent's request for a hearing as sufficient to preserve his right to a trial de novo on the entire claim, and he cannot now be penalized by forfeiture of his claim by doing so.

4. The Facts as Presently Developed do not Support a Summary Decision Regarding HL&P's Requested Dismissal of 92-ERA-45

Despite Respondent's claims to the contrary, the factual basis for Complainant's blacklisting claim is not before this administrative law judge, and the present record is insufficient to support a summary decision. In light of the fact that it has been determined that Complainant has not as yet had a trial on the merits of his blacklisting claim, and there remain both questions of fact and law, the motion to dismiss Complainant's blacklisting claims in 92-ERA-45 must be denied.

ORDER

It is hereby ORDERED, ADJUDGED and DECREED that the Motion to Dismiss Complainant's Blacklisting Claim is in all things DENIED.

  
QUENTIN P. MCCOLGIN  
ADMINISTRATIVE LAW JUDGE

Dated: *February 1, 1993*

Metairie, Louisiana

QPMC:dgc



SERVICE SHEET

Case Name: THOMAS J. SAPORITO, JR.

Case No.: 92-ERA-45 & 92-ERA-38

Title of Document: ORDER DENYING RESPONDENT HOUSTON LIGHTING AND  
POWER COMPANY'S MOTION TO DISMISS COMPLAINANT'S BLACKLISTING CLAIM

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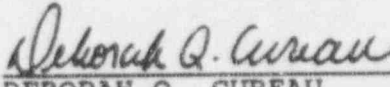
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Date: *March 3, 1993*

CASE NO. 92-ERA-45 & 92-ERA-38  
(Consolidated)

IN THE MATTER OF

THOMAS J. SAPORITO, JR.  
Complainant

v.

HOUSTON LIGHTING AND POWER COMPANY  
GEORGIA POWER CO., AND  
NUCLEAR SUPPORT SERVICES, INC.  
Respondent

ORDER DENYING RESPONDENT NUCLEAR SUPPORT SERVICE'S  
MOTION FOR SUMMARY JUDGMENT

Pursuant to the authority granted to the administrative law judge under 29 C.F.R. §§18.40, 18.41, Nuclear Support Services, Inc. (hereinafter "NSS") moves for summary decision on complaints of Thomas J. Saporito, Jr. (Complainant) in the consolidated cases 92-ERA-38 and 92-ERA-45.

In support of this motion, NSS has filed a memorandum, to which Complainant filed opposition, to which NSS filed a reply.

In essence, NSS asserts that there is no genuine issue of material fact that it had a non-discriminatory justification for terminating Complainant, and that he cannot prevail on his blacklisting claim because there is no genuine issue of material fact that NSS' actions rise to the level of a prima facie case of blacklisting. It is held that Complainant is entitled to hearing on his claims, for the reasons set forth below.

Background

On February 28, 1992, Complainant was hired conditionally by Respondent NSS for work as a Senior Instrument and Control technician at the Plant Vogtle nuclear power plant near Waynesboro, Georgia. Respondent NSS is a contractor at plant Vogtle for Georgia Power Company.

Complainant reported for duty at the plant on March 2, 1992, at 6:30 a.m., and was sent for a fitness for duty and psychological examination.

During his physical examination, at an as-yet undetermined time of day, Complainant was informed that the examination would cease and he was being terminated from employment. Respondent has stated that Complainant was terminated due to two negative responses to the prior employment investigation. Subsequent investigation on March 3, 1992 led to another unfavorable response to the employment investigation.

Complainant claims that he was "blacklisted" by NSS because on March 2, 1992, while still employed by NSS, he stated that he had filed complaints with the NRC during prior employment, and that he would instigate investigation of NSS. NSS claims that Complainant first made NSS aware that he had engaged in prior protected activity in a letter dated March 15, 1992. Further, NSS claims that Complainant was terminated for legitimate business reasons, i.e., negative remarks and an unexplained prior revocation of access at other facilities.

#### Analysis

##### 1. Summary judgment is not appropriate because genuine issues of motive and credibility are unresolved.

The administrative law judge may only enter summary judgment for either party if the pleadings, affidavits or materials obtained through discovery show that there is no genuine issue of material fact and that the moving party is entitled to summary decision. See 29 C.F.R. §18.40(d); Fed.R.Civ.P. 56.

In the present case, the factual reasons for Complainant's dismissal are in dispute. Claimant has stated that discovery is not as yet complete, and no depositions (other than his own) have been taken. It is clear from the documents submitted by both parties in support of the motions that credibility issues will be key in the ultimate decision. Thus, it would be premature to reach the merits of this case on the present documentary record.

The burden of proof is upon Respondent-movant. The evidence submitted by Respondent to date is inadequate to determine whether Complainant was terminated in a discriminatory manner or "blacklisted" by NSS.

##### 2. Complainant has made his prima facie case for dual-motive discharge.

In order to establish a prima facie case under Section 210 of the Energy Reorganization Act (ERA), Complainant must demonstrate six factors. See e.g. Mackowiak v. University Nuclear Systems, Inc., 735 F.2d 1159, 1163 (9th Cir. 1984). It is undisputed that an employer/employee relationship existed, or that Complainant was

the subject of an adverse employment action. There is no evidence to suggest that he engaged in a protected activity while employed by NSS. However, an employee who "blows the whistle" on a third party (e.g., another employer) is protected against discrimination. Johnson v. Old Dominion Security, 86-CAA-3,4,5 (SOL May 29, 1991). The remaining critical issues in dispute are, essentially (1) whether NSS had actual or constructive knowledge of Complainant's prior protected activity and (2) whether NSS had a discriminatory motive in terminating Complainant's employment.

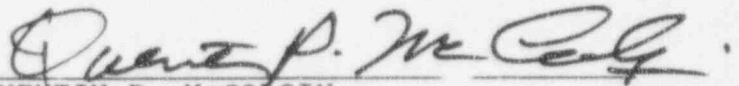
The evidence of these final two factors may be direct or circumstantial. See e.g., Wagoner v. Technical Products, Inc., 87-TSC-4 (SOL Nov. 20, 1987); Ellis Fischel State Cancer Hospital v. Marshall, 629 F.2d 563, 566 (8th Cir. 1980), cert. denied 450 U.S. 1040 (1981); Couty v. Dole, 886 F.2d 147 (8th Cir. 1989).

In the present case, the circumstantial evidence submitted by Complainant to date is sufficient to raise an inference of discriminatory motive. Thus, Complainant has made out his prima facie case and granting of summary judgment would be improper.

Thus, as there exist genuine, material issues of fact, including witness testimony and credibility, Respondent's Motion for Summary Judgment must be denied, and Complainant will be given the opportunity to fully litigate his claims against Respondent.

#### ORDER

It is hereby ORDERED, ADJUDGED and DECREED that the Motion to for Summary Judgment filed on behalf of Nuclear Support Service, Inc. is in all things DENIED.

  
QUENTIN P. MCCOLGIN  
Administrative Law Judge

Dated: *March 3, 1993*

Metairie, Louisiana

QPMC:tdb

SERVICE SHEET

Case Name: THOMAS J. SAPORITO, JR.

Case No.: 92-ERA-45 & 92-ERA-38

Title of Document: ORDER DENYING RESPONDENT NUCLEAR SUPPORT  
SERVICE'S MOTION FOR SUMMARY JUDGMENT

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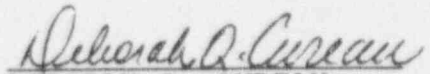
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Reporting Service

  
DEBORAH Q. CUREAU  
Dated: *March 3, 1993*

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Nuclear Houston Lighting and  
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Daniel K. Brown  
District Director  
2320 LaBranch  
Room 2100  
Houston, TX 77004

Nuclear Support Services Inc.  
W. Market St.  
Campbelltown, Pa. 17010

#### Narrative

Coverage: The firm is engaged in supplying contract manpower to the nuclear and non-nuclear power industry and is thus covered by and subject to the provisions of the Energy Reorganization Act (ERA). See Ex. C-1

#### Part 1

On 1/13/92 Thomas Saporito was hired by Sun Technical Services, a subcontractor of Houston Lighting and Power, (HL&P), to work as an I & C Technician at the South Texas Project Electric Generating Plant, Wadsworth, Texas. While performing in this position he engaged in protected activities by contacting the Nuclear Regulatory Commission, (NRC), concerning various safety concerns and identifying a number of safety related items to an on-site NRC inspector. See Ex. D-2

On 2/20/92 HL&P revoked Mr. Saporito's unescorted site access to protected areas of the South Texas Project Electric Generating Station was withdrawn. HL&P notified Mr. Saporito via letter, Ex. D-3, stating the reason for the revocation was due to "the omission of material information from the forms submitted by you in support of your request for unescorted access." As a result of the revocation of the site access Mr. Saporito was terminated from his employment.

Mr. Saporito filed a whistleblower complaint for 1) illegal discharge due to his engagement in protected activities and 2) blacklisting him for future employment. Wage & Hour conducted an investigation and found in Mr. Saporito's favor on the discharge claim and against him on the blacklisting charge. This resolution of this case is presently pending on appeal to the Secretary. A hearing has been scheduled for July, 1993.

On 3/2/92 Mr. Saporito was hired by Nuclear Support Services, (NSS), to work as a senior I & C technician for Georgia Power Company, (GPC), at the Vogtle nuclear station, Waynesboro, Ga. When a background security investigation by NSS disclosed the revocation of site access by HL&P at the South Texas plant Mr. Saporito was terminated by NSS. NSS terminated Mr. Saporito because a revocation of site access at any nuclear plant in the past would disallow site access to be granted to a prospective employee at a current nuclear plant. Mr. Saporito filed a whistleblower complaint with Wage & Hour against NSS and GPC. The investigation did not support Mr. Saporito's claim of illegal discharge. Mr. Saporito has appealed this finding and this case has been combined with the HL&P case and will be resolved at the

hearing in July, 1993.

Since 3/2/92 Mr. Saporito has continually contacted NSS in an attempt to be considered for hire as an I & C technician at any available work site. He has forwarded four resumes to NSS and has called NSS's toll free number on various occasions in the past year to determine if I & C technician's were being hired. In addition, he has <sup>also</sup> contacted NSS recruiters on 3 separate occasions and been informed I & C technician jobs were going to be opening at differing plants in the upcoming months. See Ex. D-1

NSS supplied a list showing 1460 I & C technician resumes are currently listed in their database and from 3/2/92 to date 126 I & C technicians have been hired by the firm to work at 7 different nuclear plants. See Ex. D-4 Of the 126 I & C technicians hired 105 were returnees to the site and former NSS ees; 6 were hired at the request of the customer. The balance of 15 ees were new hires of NSS. Mr. Saporito was not hired by the firm, although his resume is on file in the firm's database.

Part 2, Conclusions and recommendations:

NSS is an employer subject to the whistleblower provisions of the ERA.

Thomas Saporito was an employee of NSS for one day, 3/2/92 and has applied for employment with the firm during the period commencing 4/30/92 when certified receipt via mail of Saporito's resume was acknowledged by NSS.

Thomas Saporito has not been hired or referred for consideration of hire by NSS for any I & C technician job opening during the period 4/30/92 to present. NSS's Attorney, Mr. Stephen Grose, and Mrs. Brenda Acker explained Mr. Saporito was not and will not even be considered for referral to any customer until the issue of the revocation of site access at HL&P is resolved. NSS feels Mr. Saporito is unable to gain site access according to NSS standards in light of the HL&P action. I explained Mr. Saporito had gained site access to work for General Technical Services as an I & C technician at the Crystal River Nuclear Station in Florida during the period 5/18/92 until 6/20/92, however NSS explained Mr. Saporito will not be considered for referral and hire until after the HL&P issue is resolved.

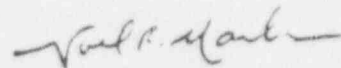
Thomas Saporito has engaged in protected activities within the meaning of the ERA on a continuing basis since 1988 when he was employed at Turkey Point nuclear station in Florida. Saporito was also engaged in protected activity at HL&P's South Texas nuclear station and most recently at Florida Power's Crystal River nuclear station, in May 1992.

NSS is fully aware of Mr. Saporito's engagement in protected activity at HL&P's South Texas nuclear station.

As a result of HL&P's revocation of Mr. Saporito's site access during his employment at the South Texas nuclear power station on 2/20/92, NSS has predisqualified Mr. Saporito from referral for employment in the nuclear industry. NSS contends Mr. Saporito has not been referred for consideration for I & C technician jobs because of other business reasons such as improper resume format, unexplained gaps in employment history, and derogatory statements and bad recommendations in Saporito's employment history. See Ex D- 1, 7

In my opinion NSS's action to predisqualify Mr. Saporito constitutes blacklisting and thus NSS is in violation of the whistleblower provisions of the ERA.

NSS has refused to conciliate the matter and all parties should be notified of the results of the investigation.



Inv. Noel F. Marks  
4/5/93

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N. DAVID RAHAL  
WILLIAM E. MILLER, JR.  
SAMUEL C. HARRY  
CHARLES W. RUBENDALL II  
ROBERT L. WELDON  
EUGENE E. PEPINSKY, JR.  
THOMAS E. WOOD  
JOHN H. ENOS III  
GARY E. FRENCH  
DONNA S. WELDON  
BRADFORD DORRANCE  
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IRS No. 23-0716135

April 15, 1993

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(1943-1966)

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FAX (717) 255-8050

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WRITER'S DIRECT DIAL

255-8052

Michael J. Corcoran, District Director  
Wage and Hour Division  
3329 Penn Place  
20 North Pennsylvania Avenue  
Wilkes-Barre, PA 18701

Re: Saporito v. Nuclear Support Services, Inc.  
(Blacklisting complaint)

Dear Mr. Corcoran:

Enclosed please find a copy of the telegram requesting a hearing in the above matter. Please advise accordingly.

Sincerely,

KEEFER, WOOD, ALLEN & RAHAL

By

*Stephen L. Grose*  
Stephen L. Grose

SLG/sjn  
Enclosure

cc: Mr. Thomas J. Saporito, Jr. (w/encl.)

4/19/93  
Writer advised Grose  
12-Hr involvement in matter  
ended. P.K.

J/22



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RENO, NEVADA 89502-2375

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008558000766 04/13/93

HBGA

KEEFER WOOD ALLEN AND RAHAL  
SJN  
PO BOX 11963  
HARRISBURG PA 17108-1963

THIS IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

7172558057 TDBN HARRISBURG PA 47 04-13 0855A EST  
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CHIEF ADMINISTRATIVE LAW JUDGE, DLR  
CARE UNITED STATES DEPT OF LABOR  
VANGUARD BLDG STE 700  
1111 20TH ST NORTHWEST  
WASHINGTON DC 20036

REGARDING: REQUEST FOR HEARING  
I HEREBY REQUEST, ON BEHALF OF NUCLEAR SUPPORT SERVICES, INC., A  
HEARING REGARDING THE WAGE AND HOUR DIVISION DETERMINATION CONTAINED  
IN ITS LETTER DATED APRIL 8, 1993, CONCERNING THE BLACKLISTING  
COMPLAINT FILED BY MR THOMAS J SAPORITO, JUNIOR AGAINST NUCLEAR  
SUPPORT SERVICES, INC.

STEPHEN L GROSE, ESQUIRE/ATTORNEYS FOR NSSI  
KEEFER WOOD ALLEN AND RAHAL  
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15067

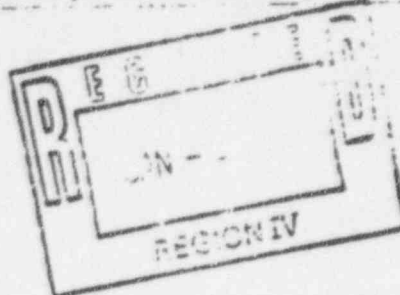
13:12 EST

MGHCOHP

# The Light company

Houston Lighting & Power

South Texas Project Electric Generating Station P. O. Box 289 Wadsworth, Texas 7741



December 31, 1993  
ST-HL-AE-4665  
File No.: G03.12  
10CFR50.7

Mr. J. L. Milhoan  
Regional Administrator, Region IV  
611 Ryan Plaza Drive, Suite 400  
Arlington, TX 76011

South Texas Project  
Units 1 and 2  
Docket Nos. STN 50-498, STN 50-499  
STP Employee Concerns Program

Dear Mr. Milhoan:

As I have discussed with you in the past, one of my highest priorities since coming to the South Texas Project has been to assure that there is an environment at South Texas which encourages employees to bring forth their concerns and that those concerns are received by management in a positive way that recognizes employees who bring forth concerns as contributors to our overall vision and mission for the station. My management team and I have sought to assure that environment through a number of methods including: video tapes provided to all employees and their families, ongoing group and one-on-one meetings with employees, sensitivity training for supervisors and enhanced training for new supervisors, employee bulletins, and climate assessments. An additional action that I took last August was to commission an independent review of our employee concerns program called Speakout.

The review was completed in November and your staff has been provided with copies of the report. Specifically, I asked the independent consultants who conducted the review to compare the Speakout Program with the attributes of the best programs in the

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country and to interview site personnel to gain insights into how the program was perceived by the workforce. The independent review provided corroboration of our earlier climate assessment that the overwhelming majority of the workforce would raise nuclear safety or quality concerns through one of the mechanisms available to them, and identified some areas where improvement could be made. These included improving workforce confidence in the program, clarifying the scope of the program, and clarifying the role of the evaluators/investigators in the program.

After careful consideration of the independent review, I decided to make a number of the recommended changes on an expedited basis. I felt that timely action was important in order to demonstrate responsiveness to the feedback that we received from our employees, and to build on the momentum created by the intensive communications and training programs outlined above. Specifically, I am implementing or have implemented the following actions:

To address workforce confidence:

- 1) The manager of the program now reports directly to me. Additionally, I expect to hire, in the very near future, a contract manager to run the program for the next 18 to 24 months to emphasize the independence of the program.
- 2) An ombudsman or employee advocate function has been added to the program to provide the specific champion for the employees and to assure that their concerns are properly addressed. This function also provides a single point of contact for the employee, should they need help in raising their concern or desire further assurance of confidentiality.

To address the scope of the program:

- 1) The program has been refocused on nuclear safety and quality issues while providing other functions and avenues to address employee concerns not directly related to safety or quality. To emphasize this change, the name of the program has been changed to the Nuclear Safety and Quality Concerns Program (NSQP).

- 2) Other organizations, such as Human Resources and Industrial Safety will be responsible for handling employee concerns not directly related to nuclear safety and quality.
- 3) To assure that employee concerns, of any kind, are properly handled, an umbrella program document has been developed to clearly define how concerns are to be handled, the interface between the different functions that deal with employee concerns, and to clearly define the employee advocate function.

To address the roles of the evaluators/investigators:

- 1) Wrongdoing and similar type investigations are now being handled by an investigatory group outside of NSQP.
- 2) The evaluation methodology within NSQP has been changed to eliminate "law enforcement" type techniques such as tape recording interviews, and affirmation statements.
- 3) The advocate function has been clearly separated from the evaluator function to assure that there is no confusion on the employees' part as to the role of the individual they are dealing with.

I have also instituted other changes such as enhanced training, development of performance measures, additional planned effectiveness reviews, etc. which are designed to provide additional enhancement to the Nuclear Safety and Quality Concerns Program and the overall way that South Texas handles employee concerns.

Your staff recently inspected the South Texas employee concern program. At the time of the inspection, we were in the transition created by my decision to proceed with the implementation of the changes to the program which I felt could not wait. The inspection team found both strengths and weaknesses in the program they observed. Attached to this letter are responses and actions we have taken to address observations made by the inspection team. A separate attachment addresses the additional actions we plan to take to enhance the program and the scheduled dates for those actions.

We recognize, as Chairman Selin did recently in his testimony before a U.S. Senate subcommittee, that employee concern programs vary widely throughout the nuclear industry, and that many plants operate very successfully with several different kinds of programs.

We also recognize, as we believe you and your staff do, that the real key to success is not the form of the program, but rather the employees' confidence in the program and the overall environment in which employee concerns are addressed. In making these changes at South Texas, we have tried to adapt what works well at other facilities to the specifics of our site in order to build the proper environment that assures that employee concerns are addressed in a manner that builds confidence in the overall process and in the station's management.

As with any change, there will be a period of time before the overall effectiveness of these changes can be properly measured and put into perspective. Our action plan, mentioned above, provides the time frames for those assessments. In the mean time, my management team and I are dedicated to continuing to provide the proper environment for the raising and addressing of employee concerns.

If you have any questions on this issue, please feel free to contact me or Joe Sheppard (512-972-8757)

Sincerely,

*W. T. Cottle*

W. T. Cottle  
Group Vice President,  
Nuclear

c: J. M. Taylor

Attachments:

1. Responses to NRC Inspection Team Observations
2. Employee Concern Program Enhancement Schedule
3. OPGP03-ZA-0504, Employee Concerns Program
4. NGP-130, Reporting Safety-Related Concerns and Problems



Houston Lighting & Power Company  
South Texas Project Electric Generating Station

ST-HL-AE-4665  
File No.: G03.12  
Page 5

C:

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Attn: Document Control Desk  
Washington, D. C. 20555

Attachment 1

RESPONSES TO NRC INSPECTION TEAM OBSERVATIONS

1. Additional guidance on protection of concernee identity should be provided

Procedures used by the employee concerns program are under revision to more completely describe the specific methods to be used to protect the identify of those who request that their concerns be handled on a confidential basis. These revisions are scheduled to be complete by January 15, 1994.

2. Policy on raising concerns/contacting NRC should be clarified

Nuclear Group Policy 130 has been changed to emphasize that employees with concerns are free to contact the Nuclear Safety and Quality Concerns Program ("NSQP") or the NRC at any time. This revised policy was approved on December 23, 1993 and is attached for your information.

3. Complete closure of multiple concerns should be assured

Routine tracking and coordination of concerns until the investigations are concluded is normally adequate. Additional assurance will be provided by the assessments and the oversight group.

4. Interviewer training should be enhanced

The 1994 Human Resources Development Plan includes provisions and a budget for providing formal training on interview techniques to NSQP personnel responsible for receiving and evaluating employee concerns. This training is expected to be completed during 1994. Training will focus on how to establish a good rapport with concernees, ensure that all pertinent information relating to a particular concern is elicited, and provide satisfactory feedback to the concernee on the progress and results of evaluation of the concern. The investigative group outside of NSQP will complete 26 hours of formal classroom training on investigative principles and techniques by January 13, 1994.

5. Site exit interview process should be more effective

Procedural changes have been made which require an interviewer from the Nuclear Safety and Quality Concerns Program to participate in the exit process for each person concluding a term of employment at the STP site. This will provide an opportunity for those individuals to express any concerns about nuclear safety or quality. The NSQP interviewers will utilize a structured set of questions designed to elicit any concerns that the individual who is

6. Professional and private environment for receiving concerns should be assured

The location of the NSQP interview offices has been changed to the Central Processing facility so that it is more accessible to potential concernees and less obvious to other site personnel that the NSQP interview offices are being visited. The layout of these offices will assure privacy for those who bring forward concerns. In addition, NSQP interviewers and support staff will receive training and instructions on interfacing with concernees in a professional, courteous and helpful manner, as well as on the necessity to assure that concerns are being handled confidentially and that this confidentiality is perceived by concernees.

7. Training on the Employee Concerns Program procedures should be provided to those implementing the program

An overall program description and procedure for the employee concerns program has been developed and was approved on December 31, 1993. This procedure describes the function of each of the subgroups within the Employee Concerns Program; provides guidance on how the activities of those groups should be coordinated; and includes specific guidance on such matters as definitions, protection of confidentiality, and means for responding to concernees. This procedure is attached for your information. Instructions for use by each of the subprograms which comprise the Employee Concerns Program are under development and are expected to be finalized by January 15, 1994. Training on the overall procedure and the subgroup instructions will be performed during the first quarter of 1994.

8. Employee confidence in the concerns programs needs to be improved

Several steps have been taken or are underway to improve employee confidence in STP concern programs. These include:

- a. Establishment of the NSQP with an independent program manager reporting directly to the Group Vice President, Nuclear.
- b. Addition of the Concerns Coordinator position to act as an advocate for concernees.
- c. Establishment of a rewards program for those who bring forward, especially significant or hard-to-detect issues.
- d. Separation of the interviewer/advocate function from the evaluation function for employee concerns.

- e. Discontinuance of the use of "law enforcement" investigation techniques, except in cases where those techniques are clearly warranted.
- f. Transfer of investigations of wrongdoing, falsification, and discrimination to the Access Authorization Investigation Division.
- g. Discontinuance of the use of tape recordings and affirmation statements, except in certain investigations performed by the Access Authorization Investigation Division.
- h. Enhanced procedures and training for employee concerns program personnel (see Item 4), including training regarding preservation of concernee confidentiality.
- i. Establishment of an oversight group to assure the adequacy of concern evaluations and response to concernees (see Item 3 and 11).

HL&P will be conducting follow-up evaluations to gauge the effectiveness of these actions. An internal evaluation will be conducted in April and May 1994; an external evaluation will occur July-August 1994.

9. Definitions of nuclear safety concerns should be provided

This definition has been broadened in procedures to include discrimination, harassment or intimidation because an individual has brought forward a safety concern

10. Definitions of Discrimination, Harassment or Intimidation should be provided

Employee concern program procedures have been revised to include clear definitions of discrimination, harassment, intimidation, wrongdoing, falsification and other terms used in the procedure.

11. Feedback letters to employees should be more detailed

In order to assure that responses to concernees are sufficiently detailed and responsive to explain the basis for the results of evaluation of concerns, an oversight panel has been established to review the evaluation of concerns and response. This should improve the quality of responses provided to concernees.

12. Responses to all concernees whose identity is known should be assured

Procedures are being established to require that concernees be provided with a response unless the concernee specifically requests not to receive a response. Certified mail will be used to provide assurance that the concernee receives the feedback letter.

13. Physical location of Concerns Program Offices should facilitate employee access

The NSQP interviewer office has been relocated to the Central Processing Facility (CPF). Because all employees must routinely travel to the CPF for drug testing, badging, etc., this is considered a location conducive to use by employees. Also, because of the amount of employee traffic to the CPF, those who visit it in order to speak to NSQP personnel will not "stand out." This change will make visits to the NSQP office more convenient and secure.

14. Simple Easy methods for raising concerns should be available

A Concerns Coordinator position has been established to affirmatively assist employees in bringing forward their concerns and assure that concerns are addressed by the correct organization. The concerns coordinator will act as an advocate for the concernee to assure that concerns are completely and fairly evaluated and appropriate feedback is provided to the concernee. The availability of the Concerns Coordinator as a single point of contact is being prominently communicated to employees through training, site postings, and other means of communication. The availability of the Concerns Coordinator provides a simple, easy to understand avenue for raising concerns with minimal effort on the part of concernees.

Attached for your information is the revised overall employee concerns program procedure, which reflects a number of these changes.



ATTACHMENT 2

EMPLOYEE CONCERN PROGRAM ENHANCEMENT SCHEDULE

1. Initial communications of program changes - Complete
2. Development of umbrella program description/procedure - Complete
3. Development of sub-program instructions - In-progress; Final 01/15/94
4. Additional communications to station personnel - First Quarter 1994
5. Modify General Employee Training - First Quarter 1994
6. Modify Supervisory Training - First Quarter 1994
7. Implement performance measurement system - First Quarter 1994
8. Initial program effectiveness assessments
  - Internal (April-May 1994)
  - External (July-August 1994)

Enclosure 7

# The Light company

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

February 11, 1994  
ST-HL-AE-4685  
File No.: G03.12  
10CFR50

Mr. L. J. Callan  
Regional Administrator, Region IV  
U.S. Nuclear Regulatory Commission  
611 Ryan Plaza Drive, Suite 400  
Arlington, TX 76011-8064

South Texas Project  
Units 1 & 2  
Docket Nos. STN 50-498; STN 50-499  
Status of Upgrades to STP Employee Concerns Program

Reference: Letter from W. T. Cottle (HL&P) to J. L. Milhoan  
(NRC) dated December 31, 1993 (ST-HL-AE-4665)

Dear Mr. Callan:

On December 31, 1993, HL&P submitted a description of the actions being taken to upgrade the Employee Concerns Program at the South Texas Project. These actions were based on recommendations made by a group of outside consultants commissioned in August 1993 to perform a detailed review of the former SP&KOUT program, as well as findings and observations made by an NRC inspection team in December 1993. These changes are designed to ensure that groups with appropriate expertise investigate various types of concerns, while at the same time providing employees with a simple, easy-to-use, single point-of-contact to assist them in raising concerns and preserving confidentiality.

A number of these actions were still underway at the time the December 31, 1993 letter was submitted; many of these have now been completed. Mr. Robert F. Englemeier, formerly Site Quality Manager at the St. Lucie nuclear power plant, has been retained to manage the Nuclear Safety and Quality Concerns Program ("NSQP"). Mr. Englemeier arrived at STP on January 31, 1994, and reports directly to the Group Vice President, Nuclear. Procedures governing the activities of each of the subgroups within the Employee Concerns Program have been developed and

approved, and program personnel have been trained on them. The status of particular items discussed in the December 31, 1993 letter includes:

Item No. 1: Revisions to procedures used by the employee concerns program to more completely describe the specific methods used to protect the identity of those who wish their concerns to be handled on a confidential basis have been completed. The specific methods describe who has responsibility for maintaining confidential files, process for assigning numbers to concern to protect identity and caution statement for ensuring an individual's identity does not get inadvertently linked with an investigation.

Item No. 2: As of January 27, 1994, a program of 26 hours of formal training on investigative principles and techniques was completed by each of the four investigators within the Access Authorization Investigation Group. Five days of formal training on interview techniques is scheduled to be provided for one NSQP evaluator during February 14-18, 1994; training for the remainder of the NSQP staff is still being planned (the NSQP interviewers generally already have substantial interviewing experience).

Item No. 5: An interviewer from the NSQP has participated in the exit process for each person concluding a term of employment at the South Texas Project site since November 29, 1993. Since that time, the interviewer has participated in 178 interviews, during which eight concerns have been received of which six required evaluations for nuclear safety or quality significance. This compares with one concern received during the exit interview process in the six months preceding November 29, 1993. The remaining two concerns, while not implicating nuclear safety or quality, are being evaluated for action by the Access Authorization Investigations Group and the Industrial Safety & Health Division.

Item No. 6: NSQP interview and support staff have completed one hour of training and instruction on interfacing with concernees in a professional, courteous, and helpful manner, as well as on the necessity to assure that concerns are handled confidentially and that this confidentiality is perceived by concernees. This training was completed on January 6, 1994, and specifically covered the revised procedures used in the STP employee concerns programs to assure concernee confidentiality.

Item No. 7: Formal procedures for use by each of the subprograms which comprise the employee concerns program have been finalized and approved. The staff of each subprogram has completed training on the overall employee concerns program procedure and their subgroup procedures. The nuclear training department is developing modifications to General Employee Training and Supervision Skills Training to cover the revised employee concerns program. These modifications are scheduled to be ready so that formal instructions can begin on the new employee concerns program during the first quarter of 1994.

Item No. 14: The availability of the Employee Advocate as a single point of contact was communicated to site employees in the "STP On Line" newsletter. In addition, the NSQP manager has addressed approximately 400 site employees to date in group settings to explain the employee concerns program and introduce the Employee Advocate. Additional meetings with employees are being planned. In addition, HL&P plans to send a videotape to the homes of site employees detailing the workings of the new employee concerns program and describing methods for raising concerns through the program. This videotape is expected to be completed and distributed by mid-March 1994.

Employees have demonstrated significant confidence in the new employee concerns program. During January 1994, 27 employees raised concerns through the new program (approximately 3% of the concerns potentially relate to nuclear quality or safety). This compares with an average of approximately 14 employees per month raising concerns under the old SPEAKOUT program. HL&P is closely monitoring the effectiveness of the program and intends to conduct both internal and external evaluations of its effectiveness during the next several months. Our management remains committed to assuring an environment which encourages employees to bring forth their concerns and in which managers and supervisors recognize those who bring forward concerns as contributors to the success of the facility.

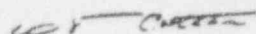


Houston Lighting & Power Company  
South Texas Project Electric Generating Station

ST-HL-AE-4685  
File No.: G03.12  
Page 4

We will provide further reports on the status of our actions as they are completed. In the meantime, please do not hesitate to call me or Mr. Englmeier should you need further information.

Sincerely,



W. T. Cottle  
Group Vice President, Nuclear

JJS/eis

Houston Lighting & Power Company  
South Texas Project Electric Generating Station

ST-HL-AE-4685  
File No.: G03.12  
Page 5

C:

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