

The Light company

Houston Lighting & Power

P.O. Box 1700 Houston, Texas 77251 (713) 228-9211

November 15, 1993

ST-HL-AE-4628

File No.: D43

10 CFR 50.7

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

Attention: Mr. James Lieberman
Director, Office of Enforcement

South Texas Project Electric Generating Station (STPEGS)
Docket Nos. 50-498, 50-499 EA-93-043
Response to September 29, 1993, Demand for Information

Dear Mr. Lieberman:

Enclosed please find Houston Lighting & Power Company's (HL&P's) response to the NRC's Demand for Information (DFI) regarding the termination of three former HL&P employees, dated September 29, 1993. In accordance with my telephone conversation with Mr. James Sniezek, the time for response to the DFI was extended to November 15, 1993. HL&P is submitting two versions of its DFI response as noted in the attached affidavit. One version contains the names of individual personnel and other confidential information; HL&P requests that this version be withheld from disclosure pursuant to 10 CFR 2.790 and 9.17. The second version is identical except that individuals' names and certain attachments tending to disclose confidential information have been removed.

As reflected in the response to the DFI, the review by current STPEGS management has found that the termination of these employees was the result of a department reduction in force which was carried out in conformity with a standard company procedure. It was not related to any protected activity in which they may have participated, but was the result of a consistently applied forced ranking process. Accordingly, regulations protecting the rights of employees have not been violated and no enforcement action in connection with this matter is warranted.

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I want to assure you that HL&P continues to make every effort to ensure that South Texas Project personnel are fully supported in bringing forward any safety or quality issues that they may identify, and that all personnel understand that harassment, intimidation, or retaliation for taking such action will not be tolerated. These efforts include training of working level personnel, managers and supervisors; site postings, bulletins, and newsletter articles; clarified policies; video presentations; meetings between groups of personnel and senior management; and upgrades to our program for handling of employee concerns. Section IV.C of the response to the DFI describes these efforts in more detail.

The maintenance of an open atmosphere where all personnel feel encouraged to bring forward their concerns and those concerns are properly and straightforwardly addressed is a strong personal priority of mine. I believe that preservation of such an atmosphere is essential to the safe, reliable, and economical operation of the plant over the long term.

Should you have any questions regarding these submittals, please contact me at (512) 972-8434.

Sincerely,



William T. Cottle
Group Vice President,
Nuclear

Enclosures

Houston Lighting & Power Company

November 15, 1993

ST-HL-AE-4628

10 CFR 50.7

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UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)
) Docket Nos. 50-498 and 50-499
Houston Lighting & Power Company) License Nos. NPF-76 and NPF-80
South Texas Project) EA 93-043
) November 15, 1993

Response of Houston Lighting & Power Company
to Demand for Information dated September 29, 1993

I. Introduction

On September 29, 1993, the United States Nuclear Regulatory Commission (NRC) issued a Demand for Information (DFI) to Houston Lighting & Power Company (HL&P), and a separate DFI to

██████████ HL&P's ██████████

██████████ Both DFIs are based on the results of an investigation conducted by the NRC's Office of Inspector General (OIG) concerning alleged violations of 10 CFR 50.7. The DFIs state that the findings of the OIG investigation, taken together, indicate apparent violations of 10 CFR 50.7 as a result of employment actions in 1992 with respect to ██████████ former HL&P employees, ██████████

██████████ The DFIs require HL&P and ██████████ respectively, to respond to the findings and to provide information in response to certain specific requests.

This is HL&P's Response to the DFI issued to it. ██████████

██████████ is submitting a separate response to the DFI directed to ██████████

██████████ Response). Both responses show that the employment actions

were not motivated by any protected activities of the former employees, that the employment actions did not violate any NRC requirements, and that no basis exists for enforcement against either HL&P or [REDACTED]

HL&P's Response is based on the results of an internal company investigation and additional information acquired since the completion of that investigation. As noted in the NRC's letter transmitting the DFI, [REDACTED] filed complaints with the United States Department of Labor (DOL) alleging violations of Section 210 of the Energy Reorganization Act of 1974 (Section 210).¹ Discovery in the DOL proceeding was conducted after completion of the OIG investigation. The DOL hearing on these complaints began on August 26, 1993, recessed on September 3, 1993, and then continued from November 1 through 11, 1993, a total of 16 hearing days. This Response is based on sworn testimony and other evidence received into the record of the DOL hearing, information obtained during discovery and the results of HL&P's investigations. HL&P believes its Response is based on a substantial body of evidence that was not considered by the OIG investigators. Moreover, most of the evidence relied upon by HL&P was given under oath and subject to cross examination, unlike most of the information that formed the basis for the OIG findings.

¹ Subsequently, Section 210 was amended and renumbered Section 211. However, since the complaints were filed prior to the amendments, this Response uniformly refers to the statute as Section 210.

The DFI summarizes the findings of an OIG investigation conducted in 1992-93. The NRC has not provided HL&P with a copy of the OIG investigation report, and has denied a request for that report submitted by counsel for HL&P (FOIA 93-435). However, in discovery in the DOL proceeding, HL&P obtained from the Complainants a document purporting to be the OIG investigation report. This report was admitted into evidence in the DOL hearing as Complainants' Exhibit 2. HL&P does not know whether it is a true, complete and final version of the OIG investigation report, nor how the Complainants obtained the report². Nevertheless, this Response references Complainants' Exhibit 2 to the limited extent necessary to provide a comprehensive response to the questions in the DFI. For purposes of clarity, the Exhibit is referenced as "the OIG Report."

In May 1992, [REDACTED] filed complaints with the DOL alleging claims under Section 210. In accordance with HL&P's general practice, the South Texas Project Electrical Generating Station (STPEGS) SPEAKOUT organization³ investigated the

² Complainants apparently had the report in their possession for six months or more prior to the start of the trial of the DOL case. Complainants provided it to HL&P less than two weeks before trial. Failure to permit equal access to the report seriously hampered HL&P's efforts to review it for accuracy prior to its admission into evidence.

³ Since 1984, HL&P has maintained an organization at the South Texas Project to investigate employee concerns. This organization, now called Speakout, is staffed with trained investigators who are independent of line management.

allegations in the [REDACTED] DOL complaints. SPEAKOUT interviewed appropriate witnesses at STPEGS and reviewed relevant records. The SPEAKOUT investigation concluded that the staff reduction leading to the termination of employment of [REDACTED] was a consequence of a reduction in force unrelated to their participation in protected activities. Specifically, SPEAKOUT determined that the individuals who participated in the selection process were not aware of, and did not consider, any actions by [REDACTED] to bring concerns to the NRC. Consequently, the claims filed by [REDACTED] were not substantiated.

Since [REDACTED] did not make any complaint nor raise any concern about HL&P's decision to terminate [REDACTED] employment, HL&P has not conducted a separate investigation concerning [REDACTED] selection in the staff reduction. However, the SPEAKOUT investigation conclusions relating to the [REDACTED] terminations are also relevant to [REDACTED] the investigation reports on the [REDACTED] DOL claims are attached as Attachment A (Concern 12298 addresses [REDACTED] Section 210 complaint) and Attachment B (Concern 12299 addresses [REDACTED] Section 210 complaint). For the reasons set forth in the enclosed affidavit, HL&P requests that Attachments A and B be withheld from public disclosure.

HL&P's investigations (Attachments A and B), information HL&P obtained through discovery, and sworn testimony in the DOL hearing associated with the 210 complaints show that the OIG's conclusions, as summarized in the DFI, are wrong. The OIG findings are founded on errors, omissions and inferences that cannot

reasonably and fairly be drawn from the evidence. This Response provides the background information necessary to place the OIG findings in context; discusses the OIG findings, as summarized in the DFI; and provides the additional information sought by the DFI.

II. Background Information

[REDACTED] were terminated by HL&P in early May 1992 as a result of a reorganization of the [REDACTED]. The organizational changes in the [REDACTED] followed an evaluation performed in January and February [REDACTED] by the new [REDACTED] [REDACTED] of the structure and functional responsibilities of the department. It is not disputed by any responsible party that the reorganization of the [REDACTED] was undertaken for any but sound business reasons. The reorganization was designed to focus the department's attention [REDACTED] and to increase effectiveness and efficiency. As a result, various [REDACTED] that were not necessarily associated directly with [REDACTED] [REDACTED] were transferred from [REDACTED] to other STPEGS departments. In addition, the number of levels of management was reduced from three to two.

Seven management/supervisory and professional positions were eliminated from [REDACTED] and [REDACTED] positions were eliminated from [REDACTED]

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[REDACTED] was selected as the [REDACTED] in January 1992. Subsequently, his title was changed to [REDACTED]. For simplicity, this Response uses the title [REDACTED]

[REDACTED] In reorganizing the department, [REDACTED] utilized a forced ranking process to select individuals to be transferred or terminated from the [REDACTED]. This same process had been used by HL&P earlier in 1992 to accomplish a general corporate downsizing plan. This process is an appropriate professional personnel model, and it was used properly in the [REDACTED] reorganization in a manner consistent with the way it had been implemented in the general corporate downsizing.

Moreover, the HL&P personnel who participated in the reorganization and forced ranking decision making did not know that [REDACTED] had made allegations to the NRC and did not consider any protected activity during the evaluations and decision making process. In short, neither the decision to reorganize nor the selection of individuals to be transferred or terminated was motivated by retaliation for any protected activity in which anyone may have engaged.

Even after [REDACTED] were selected for transfer or termination, efforts were made to locate suitable alternative positions for them at STPEGS. However, no open positions for which they were qualified were available. When the search for alternative placement failed to identify suitable positions, HL&P offered the selected individuals a package of benefits similar to the package offered to employees in the corporate staff reduction. [REDACTED] accepted this offer; [REDACTED] did not.

The following discussion describes the reorganization and downsizing of the [REDACTED] in greater detail.

A. The reorganization of the [REDACTED]

In January 1992, [REDACTED] was assigned to the position of [REDACTED] at the STPEGS after the [REDACTED] manager. [Tr. 1043-47 [REDACTED]].⁵ Prior to this assignment, [REDACTED] had been the [REDACTED] at STPEGS. [Tr. 1208-09 [REDACTED] [REDACTED] was selected for the position of [REDACTED] because of [REDACTED] strong demonstrated managerial skills. [Tr. 1043-43 [REDACTED]].

Upon becoming [REDACTED] [REDACTED] reviewed the functional responsibilities of the [REDACTED] and looked for ways that the department could better focus on its principal mission of [REDACTED] the STPEGS. [Tr. 1383-85 [REDACTED]; See also [REDACTED] response at 3-5]. [REDACTED] devoted substantial attention during [REDACTED] first two months as [REDACTED] to evaluating the department's organization and personnel. [REDACTED] met with each of the [REDACTED] employees to get their views on the department, and reviewed the [REDACTED] responsibilities. [Tr. 1383-85 [REDACTED]].

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The references in this Response to transcript pages refer to sworn testimony in the DOL hearing. The references identify the hearing transcript pages and the testifying witness. HL&P has loaned to NRC's Director of Enforcement a copy of the DOL hearing transcript for the first seven hearing days. Transcripts of the balance of the DOL hearing are not yet available. However, HL&P counsel have not identified any evidence received in the balance of the DOL hearing that would lead to conclusions different from those expressed in this Response.

As a result of [redacted] review of the department, [redacted] identified functions within [redacted] that were being duplicated or could be more effectively performed by other STPEGS departments. [Id.; Attachment A to [redacted] Response at 2-3]. [redacted] also concluded that there were too many supervisors in the [redacted] [redacted] managers/supervisors out of [redacted] total employees) and that functional areas assigned to supervisors were not logically grouped. [Att. A to [redacted] Response at 1]. [redacted] therefore developed a proposed reorganization that eliminated certain functions, regrouped the remaining functions and identified the number of supervisory, professional and clerical personnel required for the revised organization. These changes reduced the total number of [redacted] positions by [redacted] and the total number of required [redacted] [Tr. 1404-12 [redacted]; Att. A to [redacted] Response at 2-4]. Of the [redacted] positions eliminated, [redacted] were manager/supervisor positions, and the remaining [redacted] were professionals. [Id.] [redacted] implemented a contract scope change which reduced the number of [redacted] managers/supervisors by [redacted] and the total [redacted]⁶ [Tr. 1411-12 [redacted].

In mid-March 1992, [redacted] met with [redacted]
[redacted]

⁶ The analyses that formed the bases of the reorganization are described in detail in [redacted] Response to the DFI addressed to him, [redacted] testimony in the DOL hearing, [see especially Tr.1388-1416 [redacted], and in Attachments A and B to this Response. Consequently, only a brief summary of reasons for the reorganization is provided here.

[REDACTED] to make a presentation on the proposed reorganization. [Tr. 1049-51 [REDACTED]; Tr. 1415 [REDACTED]]. [REDACTED] explained the proposed changes in the functions performed by the [REDACTED] and in the number of positions in the [REDACTED] of the [REDACTED] positions to be eliminated from [REDACTED], [REDACTED] manager and [REDACTED] professionals already had been selected for transfer to another department along with the transfer of certain access authorization functions. Another [REDACTED] supervisor had previously announced [REDACTED] resignation. This left [REDACTED] manager/supervisor and [REDACTED] professionals to be transferred or terminated. [Tr. 1051-52 [REDACTED] Tr. 1412, 1419-20 [REDACTED]].

At the meeting, [REDACTED] approved the reorganization, including the proposed reduction in the number of [REDACTED] personnel. [Tr. 1050-51 [REDACTED]]. They did not discuss which specific individuals would be affected by this restructuring. [Tr. 1053-54 [REDACTED]; Tr. 1227-29 [REDACTED]]. [REDACTED] directed [REDACTED] to contact the STPEGS Human Resources - Nuclear Department (HR-N) for guidance on how to proceed with the reorganization. [Tr. 1052 [REDACTED]; Tr. 1415 [REDACTED]].

B. Forced Ranking Process

In accordance with [REDACTED] instructions, [REDACTED] requested assistance from HR-N in developing objective criteria to select from the staff [REDACTED] individuals to transfer or terminate as a result of the reorganization. [Tr. 1229-31 [REDACTED]]. In response, HR-N provided an "Evaluation and Decision Process"

package that had been developed for the HL&P STEP program.⁷ [Tr. 1340 ██████████ The package included a Special Performance Profile (SPP) form and instructions on how to use it.⁸ [Tr. 1231 ██████████ ; Att. A to ██████████ Response at 5].

The SPP form rates each employee with respect to five broad areas of work-related performance, skills and behavior. To implement the Evaluation and Decision Process, an SPP form must be completed by the appropriate supervisor for each employee within the affected department. After all employees within the department have been rated, a forced ranking is completed for each occupational category (i.e., clerical, professional and manager/supervisor), and the rankings in each occupational category are utilized to determine the employees to be terminated or transferred. [Att. A to ██████████ Response at 5-6].

⁷ The STEP program -- Success Through Excellence in Performance -- involved a reduction of force in the Company affecting approximately 1300 employees through a combination of terminations and early retirements. During the STEP program, the Evaluation and Decision Process package provided a structured method for selecting employees to be retained, transferred or terminated in each affected department.

⁸ As explained in the instructions, the SPP is not the same as the Performance Appraisal form that is completed for each HL&P employee annually. The Performance Appraisals evaluate each individual's performance against the requirements of a particular job, while the SPP evaluates the potential value to the new, reduced organization of each employee as compared to other employees in comparable positions within the organization. [Att. A to ██████████ Response at 5].

[redacted] asked [redacted] and [redacted] to assist [redacted] in preparing the SPPs for the employees. [Tr. 1232 [redacted]; Tr. 1651-52 [redacted]. [redacted] prepared SPPs for the employees who reported directly to [redacted] while [redacted] and [redacted] prepared SPPs for the employees in their respective divisions of [redacted]. [redacted] received HL&P's standard printed directions on how to complete SPPs and completed their respective assigned SPPs without any discussion, among themselves or with others, about how individual employees should be rated. [Tr. 1647 (Moore); Tr. 1235-36 [redacted]]. [redacted] did not tell [redacted] how the SPPs would be used, nor did [redacted] advise them of the details of the reorganization plan. [Id.]. Both [redacted] have since stated that they each inferred that the SPPs might be a basis for a reorganization, possibly involving a reduction of force, but they did not know any of the details. [Tr. 1528-29 [redacted]]. In particular, they did not know how many individuals or which job classifications would be affected. [Id.].

After all of the SPPs were completed, [redacted] reviewed the forms. As suggested by the instructions for this process, [redacted]

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[redacted] was [redacted] had been [redacted] until shortly before the initiation of the evaluation process, when he was transferred to the [redacted]. [redacted] believed [redacted] was in the best position to evaluate the performance, skills and behavior of those personnel in his former [redacted] division. [Att. A to [redacted] Response at 5].

considered whether the ratings prepared by [REDACTED] were done on a consistent basis and whether the ratings were consistent with [REDACTED] own evaluation of the [REDACTED] employees. [Tr. 1424-25, 1431 [REDACTED]]. [REDACTED] found [REDACTED] SPP ratings to be generally consistent with [REDACTED] own evaluations. [Att. A to [REDACTED] Response at 6]. However, [REDACTED] did find a few inconsistencies in the number of points awarded for similar employee characteristics by [REDACTED]. [Tr. 1424-25 [REDACTED]; see also Att. A to [REDACTED] response at 5-6]. Therefore, [REDACTED] met with [REDACTED] and they resolved the inconsistencies.¹⁰ [Tr. 1424-25 [REDACTED]; Tr. 1655-56 [REDACTED].

[REDACTED] then submitted the SPPs, as corrected, to HR-N for its review along with ranked lists of the employees' scores for each occupational category (i.e., clerical, professional and manager/supervisor). [Tr. 1425 [REDACTED]; Att. A to [REDACTED] Response at 6]. The Manager of HR-N assigned [REDACTED] [REDACTED], to review the SPPs and assure that the evaluations had been done fairly. [Tr. 1702, 1747 [REDACTED]]. [REDACTED] compared the ratings on the SPPs with the respective employees' personnel records, including the annual Performance Appraisals for several prior annual cycles. [Tr. 1703-

¹⁰ By way of example, in the SPP category "special skills," [REDACTED] had awarded one point to each individual to reflect experience within the [REDACTED] while [REDACTED] had awarded no points for such experience. Consequently, they decided to deduct one point in this category from each employee rated by [REDACTED] [Tr. 1425 [REDACTED] Tr. 1666-68 ([REDACTED]).

1704, 1752 [REDACTED] After completing her review, [REDACTED] advised [REDACTED] of an apparent inconsistency between the SPP ratings of two professionals.¹¹ [Tr. 1753-56 [REDACTED]; Tr. 1341-42, 1427-30 [REDACTED]]. The inconsistency was resolved by [REDACTED] to the satisfaction of [REDACTED]. [Tr. 1755-56 [REDACTED]].

[REDACTED] received the lowest SPP rating in the management/supervisor category. [Tr. 1757 (Jones)]. Therefore, [REDACTED] was selected as [REDACTED] manager/supervisor to be transferred or terminated from [REDACTED].

[REDACTED] received the lowest SPP rating in the professional category; [REDACTED] tied for the second lowest rating. [Tr. 1434 [REDACTED]]. Since [REDACTED] individuals from the professional category were to be transferred or terminated, [REDACTED] having the lowest rating, was selected as one. [REDACTED] selected [REDACTED] as the second individual, based on [REDACTED] belief that there was greater assurance that [REDACTED] would maintain an acceptable level of performance. [Id.; Att. A to [REDACTED] Response at 9]. Although [REDACTED] had less potential for advancement than [REDACTED] [REDACTED] was a more dependable worker than [REDACTED] who had a history of repeated performance problems and was under active discipline (i.e., probation). [Tr. 1292 [REDACTED]; Att. A to [REDACTED] Response at 9]. In fact, less than six months earlier [REDACTED] had received the most

¹¹ Although [REDACTED] identified other apparent inconsistencies, [REDACTED] did not mention them to [REDACTED] because [REDACTED] concluded that none of them would affect the overall ranking within the occupational categories. The inconsistency identified to [REDACTED] by [REDACTED] is discussed below at 28-30.

severe HL&P employee discipline short of termination after [REDACTED] loss of composure disrupted work and caused [REDACTED] supervisor to feel physically threatened. [Tr. 1344 [REDACTED] Tr. 1680-81 [REDACTED]].

C. Review of Open Positions

After the proposed reorganization was approved by [REDACTED] HR-N management advised the Manager of Employment Recruitment, [REDACTED] that three [REDACTED] personnel would need new positions outside of [REDACTED]. [Tr. 1753 [REDACTED] See also Att. A to [REDACTED] response at 11]. Prior to the time decisions were made as to specific employees, [REDACTED] reviewed the qualifications required for open STPEGS positions to determine whether the backgrounds [REDACTED] [REDACTED] would meet them. After [REDACTED] were selected, but before they were notified, [REDACTED] again checked the availability of positions at the STPEGS for which these individuals were potentially suitable. [Att. A to [REDACTED] Response at 11]. During these reviews, [REDACTED] was unable to identify any open positions at STPEGS suitable for [REDACTED]. Specifically, there were no open positions for which a [REDACTED] background was desired or would be particularly useful.¹² [Id.]. In addition, [REDACTED] also had inquired directly of the [REDACTED] whether any positions were available in the [REDACTED] for persons with [REDACTED]. [Id.]. The [REDACTED] advised [REDACTED] that there was no need for additional [REDACTED] [REDACTED] in the [REDACTED] division. [Id.].

¹² None of these individuals possesses a college degree or has relevant work experience other than in [REDACTED].

D. Knowledge of Protected Activities

The HL&P personnel who participated in the decision to reorganize [REDACTED] or in the selection of the HL&P personnel to be affected by the reorganization [REDACTED] did not know that [REDACTED] had brought allegations to the NRC.¹³ [Tr. 1432-36 [REDACTED] Tr. 1560-62, 1566 [REDACTED]; Tr. 965 [REDACTED]; Tr. 1096-97, 1156 [REDACTED]. Most of them were aware that the NRC had investigated concerns relating to [REDACTED] in the summer of 1991, including various technical issues. However, they did not know, nor did they try to find out, the sources of these concerns. [Tr. 965 [REDACTED]; Tr. 1096-97, 1156 ([REDACTED]; Tr. 1432-36 [REDACTED]; Tr. 1560-62, 1566 [REDACTED]. The DFI refers to two occasions specified in the OIG Report in which [REDACTED] knew or suspected that [REDACTED] had raised concerns internally within HL&P, including two concerns [REDACTED] might have brought to the STPEGS SPEAKOUT organization. The discussion below responding to the OIG findings enumerated in the DFI explains why these events would not have motivated [REDACTED] or HL&P to retaliate, and indeed, should not even be viewed as protected activities.

III. Response to Specific OIG Findings

¹³ HL&P has learned during the DOL proceeding that [REDACTED] and others did bring concerns to the NRC. However, it is not clear that [REDACTED] did so.

Pages 2-4 of the DFI list the OIG findings forming the basis for the conclusion that "it appears that discrimination may have occurred against [REDACTED]" These findings are incomplete or inaccurate in material respects and do not support the assertion that there was any improper discrimination against [REDACTED] The "considerations" identified in the DFI are quoted and discussed below:

1. That [REDACTED] made allegations to HL&P management, to the South Texas Project employee concerns program (SPEAKOUT), and to the NRC.
2. That these allegations related to personal misconduct and facility [REDACTED] and pertained to matters under the regulatory jurisdiction of the NRC.

These statements in the DFI and the OIG Report imply that [REDACTED] were in some way distinguished from other [REDACTED] employees by having engaged in protected activities, and that this caused them to be treated in a manner different from other [REDACTED] employees. This is an unjustified assumption and is factually incorrect. Many other [REDACTED] employees engaged in protected activities, including discussing various concerns with the NRC, SPEAKOUT and HL&P management. [Tr. 594, 628-29 ([REDACTED]) Tr. 828 ([REDACTED]) Tr. 1607-13 ([REDACTED]) see Complainants' Exhibit 16 and Defendant's Exhibit 13]. Nor is there any particular protected activity that ties these three individuals together in a way that suggests that management might have singled them out for dismissal as a group. By grouping together its discussion of these employees, the OIG Report obscures the fact that pertinent HL&P

management [REDACTED] did not know that [REDACTED] had engaged in protected activity. The only alleged protected activity of which pertinent management was aware was a concern brought directly to [REDACTED] by [REDACTED] (see response to consideration 3, below). However, this activity did not provide [REDACTED] any motive to retaliate, and should not even be viewed as protected activity.

The OIG investigators interviewed at least 12 HL&P employees in connection with its 1991 investigation (91-42G). Moreover, the DOL hearing record shows that the 1991 OIG investigation and the related NRC Inspection 50-498/91-21 arose out of an anonymous letter sent to NRC (written by [REDACTED] and perhaps others) and a subsequent meeting between NRC representatives and HL&P employees at an off-site location in the vicinity of STPEGS. [Tr. 254-55, 302, 594, 628-29 [REDACTED]; Tr. 753-54 [REDACTED]]. At least [REDACTED] employees attended the off-site meetings, including [REDACTED] but not [REDACTED]¹⁴ [Tr. 629-30 (Lamb)]. [REDACTED] subsequently resigned from HL&P in [REDACTED] [REDACTED] remain [REDACTED] employees and have not experienced any adverse employment action. [Tr. 828 [REDACTED]]. In addition, several other STPEGS [REDACTED] provided information to OIG during that investigation.

¹⁴ HL&P management did not learn of the anonymous letter to NRC, the off-site meeting (let alone its participants), or even the results of OIG investigation 91-42G, until long after the terminations of [REDACTED]

The incomplete information in the OIG Report leaves the incorrect impression that [REDACTED] were the only allegeders in 1991, and that because of their participation in that investigation they were targeted as a specific group of allegeders to be retaliated against. In fact, however, many other employees participated in bringing forward allegations and providing information to OIG and have not suffered any adverse employment action. Far from supporting OIG's speculations to the contrary, these facts clearly show that [REDACTED] must have been selected for termination or transfer based on factors other than their respective roles with respect to the OIG 1991 investigation.

The discussion below, in connection with the other OIG findings quoted in the DFI, shows that the HL&P managers who participated in the reorganization and selection process did not have any motive to retaliate against [REDACTED] and had no knowledge of the allegations that they had made to the NRC.

3. That certain HL&P supervisors and managers had knowledge of some or all of the allegations made to SPEAKOUT or to the NRC, and that [REDACTED] the [REDACTED] [REDACTED] had specific knowledge that [REDACTED] had engaged in a protected activity when [REDACTED] provided [REDACTED] with information about possible false information provided to NRC inspectors.

Contrary to the assertion in the OIG Report, the individuals who participated in some way in the [REDACTED] reorganization [REDACTED] or the forced ranking selection of employees to be impacted [REDACTED] did not know of any allegation filed with the NRC by [REDACTED]

[Tr. 965 [REDACTED]; Tr. 1096-97, 1156 [REDACTED]; Tr. 1432-36 [REDACTED] Tr. 1560-62, 1566 [REDACTED]]. The OIG Report provides no factual basis for its conclusion/speculation. The only "evidence" cited is a telephone conversation between the NRC Region IV Deputy Regional Administrator (James Montgomery) and [REDACTED] regarding a grievance filed by an NRC employee. The discussion between Dr. Montgomery and [REDACTED] concerned the possibility that the NRC employee might contact STPEGS employees in connection with the grievance. There was no discussion indicating that any HL&P employee had raised a concern, and nothing communicated to [REDACTED] implied that the grievance might somehow be related to any allegations by STP personnel. [Tr. 1072, 1078 [REDACTED]]. Accordingly, there is no basis for speculating that [REDACTED] (or any other STPEGS personnel) may have learned from such a conversation that an HL&P employee had contacted NRC, much less identified any particular individual.¹⁵

The OIG Report cites certain instances in which [REDACTED] and [REDACTED] allegedly acquired knowledge that concerns had been brought to SPEAKOUT or HL&P management by [REDACTED] but none of these instances can reasonably be regarded as providing a motive to

¹⁵ The OIG Report relies, in part, on its assertion that the NRC employee grievance arose out of the results of the OIG investigation 91-42G. However, this information was not communicated to [REDACTED] [Tr. 1072, 1078 [REDACTED]]. In any event, even this information would not have suggested anything about the identities of the allegers or the fact that they might be HL&P employees.

retaliate. Indeed, these instances should not be considered knowledge of protected activity.

First, as related on page 16 of the OIG Report, [REDACTED] described to the OIG a circumstance that led [REDACTED] to assume that [REDACTED] had brought to SPEAKOUT two concerns related to the Maintenance Department. These concerns involved (1) the alleged misuse of HL&P property and (2) an alleged breach of an HL&P investigator's responsibility to maintain as confidential information gathered during an internal investigation. [Tr. 1294-96; 1436-37 [REDACTED]]. There is absolutely no reason to believe that [REDACTED] would have been motivated to retaliate against [REDACTED] for bringing such concerns to SPEAKOUT.¹⁶ Neither concern suggested any impropriety on the part of STPEGS management or [REDACTED] nor did these concerns relate to matters within NRC jurisdiction.

On pages 17-18, the OIG Report discusses a statement by [REDACTED] to OIG investigators. [REDACTED] told OIG of an interview of [REDACTED] during an HR-N investigation in October 1991 to determine whether to discipline [REDACTED] for misconduct involving a disruptive argument with his supervisor. During the interview, [REDACTED] claimed that the proposed disciplinary action was in retaliation for concerns [REDACTED] and [REDACTED] had raised two and a half years earlier to HL&P management and

¹⁶ Certainly, it is unreasonable to assume that [REDACTED] had any motive to retaliate against anyone who went to Speakout regardless of the nature of the concern. [REDACTED] and, through [REDACTED] vigorous support of [REDACTED] had demonstrated his recognition of its value to STPEGS.

SPEAKOUT. However, [REDACTED] did not describe the substance of the concerns. [Tr. 1568 [REDACTED]].

[REDACTED] the OIG that [REDACTED] statement did not affect the ratings [REDACTED] gave [REDACTED] when [REDACTED] completed their SPPs some five months later and that [REDACTED] did not discuss [REDACTED] statement with anyone prior to the OIG interview. [REDACTED] statement is credible.¹⁷ [REDACTED] had no reason to be concerned about some unknown issue that [REDACTED] may have raised with SPEAKOUT or HL&P managers years before. Moreover, [REDACTED] statement in the interview was too vague to constitute knowledge of protected activity since it contained no indication that the earlier concerns related to compliance with NRC requirements.¹⁸

Finally, the OIG Report on page 6 discusses a conversation [REDACTED] had with [REDACTED], during which they advised [REDACTED] that there was a mistake of fact in an NRC Inspection Report [REDACTED] which they viewed as evidence that someone had lied to the NRC during the inspection. This NRC inspection had occurred in [REDACTED] six months before [REDACTED]

¹⁷ In October 1991, around the time [REDACTED] made this statement in [REDACTED] presence, [REDACTED] also made the same allegation to DOL in a Section 210 complaint. The DOL subsequently found the allegation to be without merit, and [REDACTED] did not appeal.

¹⁸ It should be recognized that most concerns brought to SPEAKOUT do not relate to matters within NRC jurisdiction. SPEAKOUT has routinely addressed such issues as work place amenities, compliance with HL&P personnel policies, and industrial safety. Accordingly, the fact that an individual has brought a concern to SPEAKOUT does not imply that the concern related to any matter within NRC jurisdiction.

transferred into [REDACTED] [REDACTED] was not involved in the inspection and did not know who might have made statements on this matter to the NRC Inspectors.

[REDACTED] responded reasonably to the concern expressed by [REDACTED] [REDACTED] investigated the concern by reviewing the same HL&P records on the underlying event that were available to the NRC Inspectors during their inspection. [REDACTED] found that the HL&P records were consistent with the facts described by [REDACTED] and provided an adequate basis for the HL&P action reviewed during the NRC inspection.¹⁹ Since the NRC Inspection Report included the facts that were essential to understanding the basis for HL&P's earlier action, [REDACTED] concluded that the error in the Inspection Report was not material, and that no further action by HL&P was

¹⁹ The incident involved a decision that an error by [REDACTED] [REDACTED] was neither reportable [REDACTED] HL&P documentation of the event included a memorandum on the day of the incident discussing the basis for the decision on reporting [REDACTED] and indicating that the decision was discussed with the NRC Senior Resident Inspector. The OIG Report states that the NRC Inspector who wrote the questioned Inspection Report stated that the information came from either [REDACTED] [REDACTED]. The OIG interviewed both, but only discusses [REDACTED] statement that [REDACTED] "did not recall" discussing the issue with the Inspector. [REDACTED] told the OIG that [REDACTED] had not discussed the issue with the NRC Inspector. [REDACTED] statement is more credible, since [REDACTED] was not involved in the incident or the reporting decision. In fact, [REDACTED] credibility is undermined by [REDACTED] testimony in the DOL hearing which repeated an error of fact that was also contained in the Inspection Report -- [REDACTED]

[REDACTED] [See Tr. 747, 850-52 [REDACTED]]. HL&P corrected this and other errors in a letter to the NRC, dated [REDACTED] [REDACTED]. See footnote 20 below.

necessary.²⁰ [Att. A to [REDACTED] Response at 11]. Accordingly, [REDACTED] had no reason to resent [REDACTED] concern, or to retaliate against [REDACTED] because of it.

Moreover, this concern did not raise any issue about the acceptability of the STPEGS [REDACTED], nor in any other way affect the safety of STPEGS. Furthermore, the sole basis cited by [REDACTED] for believing someone had lied was that there was an error in the NRC Inspection Report. Although the concern might conceivably raise some issue about personnel integrity, in fact, there was no evidence that the errors resulted from false information being provided to NRC. It appeared then, and appears today, more likely to have been an honest mistake.²¹ Since the conversation did not identify any deficiencies in [REDACTED] performance or the STPEGS [REDACTED] there is no logical

²⁰ As a result of the questions asked by the OIG during this investigation, HL&P sent a letter to the NRC identifying six statements in this inspection report that required clarification. [REDACTED]

[REDACTED] The NRC acknowledged HL&P's letter and stated that the clarifications did not affect any NRC enforcement decisions. [REDACTED]

[REDACTED] This NRC conclusion confirmed [REDACTED] judgment that the error was not material. The OIG Report cites HL&P's letter as an admission that the Inspection Report contains inaccuracies, but does not mention the NRC response.

²¹ After the OIG questioned various HL&P employees about their roles in providing information to the NRC inspectors during the [REDACTED] HL&P hired an independent investigator to determine the causes of errors in that Inspection Report. The investigator concluded that the errors probably resulted from misunderstanding or confusion, not false statements to the NRC.

basis for concluding that it provided [REDACTED] with a motive to retaliate. Moreover, in view of the lack of any specificity about who might have lied to the NRC, and the fact that the underlying Inspection Report statement lacked regulatory significance, this conversation should not even be considered protected activity.

4. That [REDACTED] were the only individuals whose employment was terminated following a reorganization of the [REDACTED].

[REDACTED] were the only HL&P employees terminated following the reorganization. However, there were also [REDACTED] positions eliminated by HL&P, and consequently employees were terminated [REDACTED] as a result of the reorganization. In addition, one HL&P employee [REDACTED] was reclassified from [REDACTED].²² [Att. A to [REDACTED] Response at 4, 8].

²² The OIG Report attempts to contrast HL&P's decision to demote [REDACTED] from manager to supervisor with the decision to terminate [REDACTED] rather than demote [REDACTED] from supervisor to professional. However, the STEP program (see footnote 7 above) was uniformly applied throughout HL&P in this same manner. Managers and Supervisors were all considered part of the same occupational group, distinct from the categories consisting of professionals and clerical employees, respectively. HL&P patterned the methodology for implementing the [REDACTED] reorganization as closely as possible to the STEP program because both occurred around the same time and the STEP program had been widely used within the company. Another illustration of this pattern is HL&P's decision to offer [REDACTED] severance packages modeled after the ones used in the STEP program. [Tr. 1753-54 [REDACTED]]

5. That [REDACTED] was directly responsible for the process used to justify the termination of employment of these individuals.

The phrase "the process used to justify the termination" incorrectly and unjustifiably implies that the decision to terminate these individuals was made before the process was initiated, i.e., that the process was used as an ex-post facto justification for the decision. This is a total mischaracterization of what occurred, and is inconsistent with the statements and testimony of every individual having any direct knowledge of the selection process. The reorganization of [REDACTED] was not done to justify the termination of employment of any specific employee; it was done for clear business reasons that were amply and clearly described in HL&P's records and the DOL hearing record.

It also is not accurate to charge that [REDACTED] was solely responsible for the process, in any event. [REDACTED] simply employed the selection process supplied to [REDACTED] by HR-N, the same selection process that had been used throughout the balance of the Company to effect a corporate-wide staff reduction. The implementation of this selection process for [REDACTED] employees also was done in good faith. After completion of the selection process, HL&P looked for other positions at STPEGS for [REDACTED]

The OIG's assertion that [REDACTED] was "responsible for the process" also ignores the fact that the process was implemented with, and the selection of personnel was done with input, review, and concurrence by others. [Tr. 1050-51 [REDACTED]; Tr. 1232, 1421-24 [REDACTED]; Tr. 1647, 1651-52 [REDACTED]; Tr. 1752-53 [REDACTED]]. It is

absolutely clear that the process was not solely within [REDACTED] control, but was a group effort conducted pursuant to standard procedures widely used elsewhere within HL&P.

6. That the process used to justify the termination of employment of these individuals (specifically, the preparation of the Special Performance Profile forms used to rate all employees in the [REDACTED] Department) was conducted in a manner which was prejudicial to these individuals."

As discussed above, the phrase "process used to justify the termination of these individuals" is improper. The preparation of the SPPs was conducted in an appropriate manner and consistent with HL&P's process throughout the balance of the Company, and was not "prejudicial" to [REDACTED]. The SPP for each employee was prepared by the manager most familiar with the employee's work experience and qualifications. [Tr. 1421-24 [REDACTED]; Tr. 1647-52 [REDACTED]]. The SPPs were then reviewed by [REDACTED] and HR-N. [Tr. 1256-57, 1424 [REDACTED]]; Tr. 1702, 1747 [REDACTED]]. [REDACTED]'s review did not affect [REDACTED] differently from other [REDACTED] employees. The SPP rating for [REDACTED] was only reduced after HR-N's review, as discussed more fully below.

The DFI lists five "anomalies" that the OIG found with regard to the preparation of the SPPs. These "anomalies" are not indicative of any prejudice against [REDACTED] based on any protected activity and, in fact, are not "anomalies" at all. The following discussion addresses each purported "anomaly".

1. That the points awarded to [REDACTED] under "Evaluation of other job related factors" appear to have been changed from zero to minus 2 to ensure that [REDACTED]

received fewer total points than another member of the [REDACTED]

The evaluation of [REDACTED] in the SPP category of "other job-related factors" was not motivated by a desire to ensure that [REDACTED] received fewer total points than other members of the [REDACTED]. The OIG Report apparently based this finding on the adjustments made to the ratings of [REDACTED] in response to a comment received from [REDACTED]. [REDACTED] pointed out that [REDACTED] and [REDACTED] had received similar ratings on their most recent Performance Appraisals, and [REDACTED] had previously had a higher rating than [REDACTED]. [Tr. 1342, 1427-28 [REDACTED]]. On the SPPs, in the area of "performance in present job-function" [REDACTED] was given five points and [REDACTED] was given four points.

[REDACTED] met with [REDACTED] (who had rated [REDACTED]) and [REDACTED] (who had rated [REDACTED]) to resolve the inconsistency. [Id.]. [REDACTED] and [REDACTED] decided that the rating of [REDACTED] had not properly reflected the direction in the SPP instructions that the rating for "performance in present job-function" take into account "sustained performance." Consequently, [REDACTED] rating was adjusted down by one point to four in "performance in present job-function" [Tr.1342, 1427-28 [REDACTED]].

[REDACTED] explained the rating [REDACTED] had given [REDACTED]. All four of the individuals [REDACTED] had rated on the SPPs had received identical overall evaluations on their most recent performance appraisals. For the SPP forced ranking process, [REDACTED] rated all four individuals as average. [REDACTED] gave [REDACTED] four points, which was

at the low end of average, because [REDACTED] had recently tended to resist management direction.²³ To address [REDACTED] comment, [REDACTED] changed [REDACTED] rating in the category "other job-related functions". [Tr. 1428 [REDACTED]]. [REDACTED] decided that a negative two points rating was the appropriate level to reflect the seriousness [REDACTED] attached to the issue. Since this factor was now adequately addressed under "other job-related functions," [REDACTED] rating in the "performance in present job-function" was increased to five to be equal to the rating [REDACTED] gave to two of the other three individuals [REDACTED] rated. [REDACTED] noted that this change was consistent with the way a similar factor had been reflected in the rating of [REDACTED]. [Tr. 1428 [REDACTED]].

After these changes, [REDACTED] remained with a lower point total than [REDACTED] (the changes did not affect their relative positions). However, the reason for the changes was to resolve identified inconsistencies in how [REDACTED] and [REDACTED] had done the original ratings. It had no connection to any protected activity in which [REDACTED] may have engaged. In fact, the OIG Report does not

²³ The rating was based on the assessment of [REDACTED] that [REDACTED] did not support management decisions. In the HL&P investigation, [REDACTED] identified an example of [REDACTED] non-support of management: [REDACTED] disagreed with a management decision on a technical issue and wrongly represented to another STPEGS department that [REDACTED] view was that of [REDACTED] management. [REDACTED] agreed with [REDACTED] judgment. [Tr. 1428 ([REDACTED])]. [REDACTED] identified a different example in which [REDACTED] insisted that the task be expanded despite [REDACTED]'s rejection of the suggestion. Attachment A at 12-13.

even suggest that [REDACTED] had any knowledge that [REDACTED] had engaged in protected activities.

2. That the points awarded to [REDACTED] under "Evaluation of special skills" did not reflect [REDACTED] having been a [REDACTED] instructor and a Certified [REDACTED] while another individual received credit for similar skills.

This statement is not correct. No other employee received any points simply for being a [REDACTED] instructor or a Certified [REDACTED]. One [REDACTED] Professional, [REDACTED], was given one point under "special skills" with the justification as an [REDACTED] Instructor - Certified [REDACTED]. The basis for this rating was the value to [REDACTED] of [REDACTED] certification as an [REDACTED]. [REDACTED] uses this expertise as an [REDACTED] to carry out [REDACTED] assigned responsibilities.

[REDACTED] did not add any points to [REDACTED] SPP under "Evaluation of special skills" for [REDACTED] certification as a [REDACTED] instructor because [REDACTED] did not derive any benefit from [REDACTED] having this certification. [REDACTED] had not done any [REDACTED] training at STPEGS in several years, and there was little or no likelihood that an HL&P Supervisor would ever do such instruction.²⁴ [Tr. 1277, 1446-47 [REDACTED]; Tr. 1551 [REDACTED]]. The STPEGS [REDACTED] training is done by [REDACTED] employees, a number of whom are [REDACTED] certified instructors. The only [REDACTED] employee who does training and is a certified STPEGS instructor is [REDACTED], who

²⁴ When HL&P had conducted such training, [REDACTED] also had held a [REDACTED] certification as a [REDACTED] instructor. [REDACTED] let [REDACTED] certification lapse after [REDACTED] no longer had a need for it.

gives training to STPEGS employees on [REDACTED] requirements. This also was true at the time the SPPs were completed. However, it did not occur to [REDACTED] to give [REDACTED] any points for this certification either, even though, unlike [REDACTED] certification, it is valuable to [REDACTED]

Similarly, [REDACTED] did not consider [REDACTED] certificate to be a significant asset to [REDACTED]. [REDACTED] agreed with [REDACTED].

The [REDACTED] designation is awarded by the [REDACTED] [REDACTED], based on results of a general examination on various [REDACTED] topics. It does not reflect proficiency in the [REDACTED] requirements specifically applicable to commercial nuclear power plants. At most, it tests for a superficial level of knowledge about [REDACTED] for nuclear facilities (focusing on Department of Energy facilities). [Tr. 1549-51 [REDACTED]; Tr. 1277-78, 1444-46 [REDACTED]].

This OIG finding illustrates further the lack of objectivity in the Report. The Report cites no basis for suggesting that OIG's judgment be substituted for [REDACTED] or [REDACTED] on the value to [REDACTED] of these credentials. Other employees in [REDACTED] also had certifications that were not reflected on the SPPs because they were not viewed as sufficiently valuable, or were

simply overlooked.²⁵ Accordingly, there in fact exists no "anomaly" in connection with this matter.

3. That negative comments were made on [REDACTED] form regarding the mishandling of [REDACTED] under "Evaluation of other job-related factors," while no comments were made on the form of another individual who had mishandled [REDACTED]

This OIG finding mischaracterizes the comment on [REDACTED] SPP, omitting significant language which clearly shows that [REDACTED] misconduct was much more serious and frequent than that of any other [REDACTED] employees. The full comment on [REDACTED] SPP is "Recurring problems with [REDACTED], incident with Supervisor in 1991." The thrust of this comment is that [REDACTED] was the subject of repeated employee discipline for performance problems.

Even if the SPP comment was as narrow as portrayed by the OIG (i.e., [REDACTED] handling errors), [REDACTED] history of repeated discipline for mishandling [REDACTED] is simply not comparable to the single isolated error of the other

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For example, [REDACTED] is a graduate of the [REDACTED] [REDACTED]. Although this is a prestigious credential, and certainly relevant to [REDACTED], neither [REDACTED] nor [REDACTED] viewed it as sufficiently valuable to [REDACTED] to affect the SPP ratings. For the same reason [REDACTED] did not receive credit for [REDACTED] two week course in emergency planning, despite the fact that [REDACTED] uses these skills in the STPEGS Emergency Response Organization; and [REDACTED] did not receive any points for [REDACTED] certificates for completion of training and examination by [REDACTED] in [REDACTED] and Effective Supervision and Management, all of which are directly applicable to [REDACTED] duties in [REDACTED].

referenced employee, [REDACTED].²⁶ Although [REDACTED] was the designated [REDACTED] and was expected to set an example of care in the handling of such [REDACTED], [REDACTED] was formally disciplined on three occasions for mishandling [REDACTED] and had been counseled about such errors on other occasions.

Most important, however, is that part of the SPP comment regarding the "incident with Supervisor in 1991" -- which the OIG Report entirely omits. At the time of the SPP rating, [REDACTED] was on disciplinary probation as a result of a disruptive argument with [REDACTED] supervisor. [REDACTED] had lost [REDACTED] temper when [REDACTED] disagreed with a direction from [REDACTED] supervisor about a work assignment. Two supervisors and a manager had to take time from other duties to calm [REDACTED]; one of the supervisors said [REDACTED] felt physically threatened by [REDACTED] during the incident. After an extensive investigation by HR-N, HL&P management decided to impose the most severe HL&P employee discipline short of firing, Decision-Making-Leave. HL&P's Constructive Discipline Program provides that Decision-Making-Leave is considered "active" for a period of one year. Active discipline is a form of probation. [REDACTED] was the only [REDACTED] employee under active discipline at the time the SPPs were completed.

²⁶ Even the one error made by [REDACTED] involved mitigating circumstances and is not comparable to any of [REDACTED] errors. [REDACTED] had directed another employee to take [REDACTED], but had not taken sufficient steps to assure the communication was clear. In each of [REDACTED] errors, [REDACTED] simply failed to take required steps to [REDACTED].

In short, this "anomaly" would not have been identified as such, had the OIG not selectively omitted parts of the adverse comment on [REDACTED] SPP. When [REDACTED] made the negative comment on [REDACTED] SPP, [REDACTED] knew that [REDACTED] was under active discipline, had mishandled [REDACTED] on repeated occasions (thereby violating his primary duty as [REDACTED]), and had a history of losing [REDACTED] temper in the work place. [Tr. 1679-81 [REDACTED]. No other [REDACTED] employee had comparable recurrent performance problems. Moreover, despite the fact that OIG considers this an "anomaly," even its Report admits that under any assessment of the performance of [REDACTED] professionals based strictly on the records, [REDACTED] would be selected for termination. [OIG Report at 34].

4. That [REDACTED] and [REDACTED] scores were inconsistent with their latest performance appraisals, particularly with regard to a comment made on [REDACTED] form that [REDACTED] was "Not supportive of management decisions with which [REDACTED] does not agree."

This conclusion reflects a serious misunderstanding on the part of the OIG investigators, who apparently lack experience with management systems that are widely used to accomplish reductions of force in American industry. Annual Performance Appraisals and SPPs have different purposes: a Performance Appraisal compares an employee's work over the past year to objectives established for that employee in his specific current position; the SPP compares employees to each other and is intended to rank them in order of their respective overall importance and contribution to the organization. In addition, many employees

normally receive the same grades in annual performance appraisals, whereas the function of SPPs is precisely to determine differences in employees' value to the organization. The directions that accompanied the SPP forms specifically state ". . . the objective is to distinguish between the performance contributions of the employees . . . so as to arrive at a forced ranking; therefore, tie scores should be avoided to the extent possible." [Tr. 1233-35 [REDACTED]; Tr. 1661 [REDACTED]]. Obviously, this process results in the assignment of different forced rankings among individuals who have received the same performance grades in annual appraisals. Accordingly, attempts to make direct comparisons between Performance Appraisals and SPPs are not appropriate.

The HL&P Performance Appraisal system uses five categories to rate employee performance during the previous year. However, of the [REDACTED] employees included in the forced ranking, in their most recent Performance Appraisal four had been rated as "Outstanding Performer" (the highest rating on a Performance Appraisal) and [REDACTED] as "highly competent" (the second highest rating). Thus, although [REDACTED] had received ratings of "highly competent" on their most recent Performance Appraisals, those ratings were not above average for [REDACTED] -- [REDACTED] of the [REDACTED] employees ranked had received this level or better.

In completing the SPPs, it was necessary for [REDACTED] [REDACTED] to distinguish among the [REDACTED] individuals who had received "highly competent" ratings on their most recent Performance Appraisals. They did so by assigning points in the

range of four to eight based on their evaluations of recent performance. In addition to [REDACTED] other [REDACTED] personnel had a rating of "Highly Competent" in their most recent Performance Appraisal, but received only five points in the SPP category for "performance in present job-function." Thus the "anomaly" OIG finds is not anomalous and there is no reason to infer that it is based on any protected activities.

The quoted OIG finding implies that there was some particular inconsistency between past Performance Appraisals and the comment on [REDACTED] SPP about [REDACTED] being "not supportive of management decisions with which [REDACTED] does not agree." The OIG overlooks the fact that even [REDACTED] had recognized this on [REDACTED] most recent performance appraisal, in which [REDACTED] noted: "I need to communicate management directives more effectively to my staff." Moreover, [REDACTED] most recent performance appraisal was done in February 1991 (over a year before the SPPs were completed). The SPP instructions directed that the employee's most recent conduct be reflected in the SPPs. [REDACTED] reason for the comment was recent conduct of [REDACTED]. In the HL&P investigatory interviews, the OIG interviews, and in testimony in the DOL hearing, [REDACTED] and [REDACTED] provided examples of [REDACTED] resistance to management direction. One example involved a management decision that two [REDACTED] employees who had been seconded to [REDACTED] should be reassigned to report to the [REDACTED]. Subsequently management found that [REDACTED] had overridden that direction because [REDACTED] disagreed with it. [Tr. 1672-74 [REDACTED]]. On another occasion,

██████ directed that ██████ end the practice of having ██████ secretarial employees seconded to ██████ ██████ considered ██████ arguments against this decision to go beyond the bounds of reasonable expression of a differing opinion. [Tr. 1431-32 ██████]. The comment on ██████ SPP was based on ██████ conduct, not on any protected activity.

5. That, of the ██████ individuals rated, only ██████ and ██████ received negative point values under specific factors.

This OIG finding suggests deliberate manipulation of the SPP process, presumably by persons with knowledge of protected activities by these individuals. The process by which these negative point values were allocated shows this to be entirely without foundation. The negative point values were not assessed at the same time, were not done with knowledge of the effect on the outcome of the ratings, and were done by persons having no knowledge of any protected activity. In addition, assignment of these values was fully warranted based on these individuals' performance.

In the initial SPP ratings, neither ██████ nor ██████ assessed any negative point values. However, under the category "other job-related functions," ██████ gave negative point values to three employees: ██████ ██████ included comments explaining the bases for these ratings.

██████ comment supporting the negative point value for ██████ was "excessive absences." When ██████ reviewed the SPPs, ██████ questioned ██████ penalizing ██████ because ██████ absences were due

to a documented medical condition (war injury) and fully consistent with HL&P medical leave policy. [REDACTED] agreed, and the negative point value for [REDACTED] was eliminated. [Tr. 1425-26 [REDACTED]; Tr. 1685-86 [REDACTED]].

Therefore, when [REDACTED] received the SPPs for [REDACTED] review for consistency, negative point values were indicated only for [REDACTED] and [REDACTED]. As discussed above in connection with OIG "anomaly" 3, the negative point value for [REDACTED] was fully justified by a long history of performance problems that had resulted in [REDACTED] receiving employee discipline on four occasions and being under active discipline at the time the SPPs were completed.

The negative point rating for [REDACTED] also was fully justified, as discussed above in connection with OIG "anomaly" 4, by [REDACTED] recent non-supportive attitude with respect to management directions. In any event, this negative point value on [REDACTED] SPP did not affect the outcome. Even if [REDACTED] had not received negative points, [REDACTED] point total would have been the lowest among [REDACTED] managers/supervisors, and [REDACTED] would have been selected as the one to be transferred or terminated.²⁷ Therefore, there is no basis for

²⁷ The OIG report contrasts [REDACTED] decision not to allow [REDACTED] to "bump" a professional, with [REDACTED] allowing [REDACTED] to move down from [REDACTED]. This ignores the fact that the SPP process required supervisors and managers to be rated as a group, separate from professionals. The decision not to allow [REDACTED] to "bump" a professional was consistent with the corporate downsizing (STEP) program, as generally implemented by HL&P.

suggesting that the negative point rating was a manipulation to affect the outcome.

In [REDACTED] review of the SPPs, [REDACTED] did not question the negative point values for [REDACTED]. However, as discussed above in connection with OIG "anomaly" 1, [REDACTED] did identify an inconsistency in the SPP rating of [REDACTED] for "performance in present job-function." [REDACTED] had given [REDACTED] a low rating in this category because [REDACTED] had recently demonstrated a tendency to resist management direction. [Tr. 1428 [REDACTED]]. In response to [REDACTED] comments, [REDACTED]'s rating was increased in the "present job-function" category, and [REDACTED] resistance to management direction was reflected by giving [REDACTED] a negative two point rating in the "other job-related characteristics" category. [Tr. 1739-40, 1755-56 [REDACTED]; Tr. 1428 [REDACTED]; Tr. 1672-74 [REDACTED]]. These changes were unrelated to, and did not involve any consideration of any protected activity.

The negative value ratings for these [REDACTED] individuals did not reflect any effort to manipulate the outcome. The ratings were done without any consideration of protected activity, nor even any knowledge of such activity. Rather, the ratings were based on specific negative conduct of the employees. The behavior and performance of other [REDACTED] employees had not reflected such problems. The fact that the only employees assigned negative point values were those who resisted implementing reasonable management directions or had repeated disciplinary problems is not an "anomaly" but evidence of a fair and consistent evaluation.

IV. Additional Information Required by the DFI

Section III. A of the DFI requires HL&P to respond to two more specific areas of the OIG findings:

A.1. The basis for the employment actions affecting [REDACTED], the degree of senior management oversight typically given such actions, and the results of any investigations the Licensee has conducted to determine the levels of management involved in these employment actions and whether discrimination, as prohibited by 10 CFR 50.7, occurred in these cases.

The basis for the employment actions affecting [REDACTED] and [REDACTED] is described above. That description shows that HL&P terminated the employment of [REDACTED] as a result of a reduction in force carried out in conformity with standard business procedures and implemented in a regular manner.

Executive management reviewed and approved the proposed reorganization, but not the specific personnel actions taken. [Tr. 1050-54 [REDACTED]; 1227-29, 1415-16 [REDACTED]]. Executive management examined the structure, need, and logic behind the proposed reorganization, and found it to be sensible. Executive management also directed that the [REDACTED] consult with HR-N regarding the process to be used to select personnel for transfer or termination. That level of executive management involvement is consistent with standard HL&P practice.

It is the responsibility of the manager of the affected department to make specific personnel decisions. Department managers consult HR-N to assure that their planned actions are consistent with Company and STPEGS personnel policies. [REDACTED] did

consult HR-N about the process to use to select employees. This reorganization occurred immediately after HL&P had gone through a corporate downsizing effort that had utilized a structured Evaluation and Decision Process to determine which employees would be retained. In this context, HR-N recommended that the same process be used to make the evaluation of the [REDACTED] personnel. Since the personnel decisions were being made only in [REDACTED] it was consistent with the intent of the Evaluation and Decision Process that the SPPs be completed by the [REDACTED] managers and reviewed by the [REDACTED]. After completing the SPPs, [REDACTED] requested an HR-N review of them. [Tr. 1425 [REDACTED]]. This also was consistent with HL&P practice.

The results of HL&P's investigations of these employment actions are discussed above, and in Attachments A and B. The investigations found that discrimination, as prohibited by 10 CFR 50.7, did not occur in these cases.

A.2. An explanation of why the NRC should not take enforcement action for violations of 10 CFR 50.7, including an enforcement action directed to [REDACTED] and any other HL&P employees involved in discrimination as prohibited by 10 CFR 50.7.

HL&P's investigations concluded that discrimination, as prohibited by 10 CFR 50.7, did not occur in these cases. Therefore, no enforcement action of any kind is appropriate. OIG's conclusion that such discrimination did occur is not based on any evidence not considered in HL&P's investigation; it simply reflects improper inferences based on misunderstanding of the Evaluation and Decision Process (SPPs) used by [REDACTED] management to select among the

█████ personnel.²⁸ The discussion in Section III of this Response shows that the OIG conclusion is based on mistake and mischaracterization of fact, unwarranted inferences, and misunderstanding with respect to the purpose and use of various personnel processes which, in this case, were faithfully implemented by professional managers using the same process employed by the Company to effect a general reduction in force. A fair hearing on these matters will confirm these facts and find that the termination of ██████████ was done in good faith and not based on discrimination prohibited by 10 CFR 50.7.

- B. Any other information that the Licensee believes is relevant to the NRC's enforcement determinations, including why the NRC should not take enforcement action under the Deliberate Misconduct Rule, 10 CFR 50.5, against ██████████ and any other HL&P employees involved in discrimination as prohibited by 10 CFR 50.7.

As discussed above, enforcement is not appropriate because there has been no violation of NRC requirements, and HL&P's investigation found that no misconduct occurred. Therefore enforcement against ██████████ or any other HL&P employee also would be unjustified. Moreover, there are questions of fairness and public

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The OIG findings apparently do not question the basis for the decision that the number of ██████ personnel be reduced, nor is there any basis for questioning that decision. The reduction was consistent with long expressed views of STPEGS executive management, the advice of an independent consultant, longer term trends in ██████, and a careful analysis of the functions and personnel needs of the department. In fact, since the May 1992 reorganization, ██████ has been able to eliminate one more professional position.

policy that also weigh heavily against initiating any enforcement against such individuals.

NRC must be aware that even the public suggestion by NRC that an employee may have committed deliberate misconduct is sufficient to damage, if not end, that individual's career opportunities in the nuclear industry. This is particularly true for managers, whose prospective employers would not hire an individual in whom NRC may lack confidence. In these circumstances, it is not possible for an individual to be completely vindicated, even after prevailing in a hearing. Consequently, fairness requires that a high degree of care be exercised before the NRC proposes enforcement action against an individual. Action should not be proposed until there is reasonable certainty, based on a fair and complete review of the facts, that such action is warranted.

In addition, NRC should recognize that its enforcement action against employees of a licensee, particularly against managers, has the potential to inhibit effective management and undermine the authority of executive management. A licensee manager facing the need to take action with respect to an organization that is over-staffed or an employee whose behavior is unacceptable, necessarily weighs the fact that a "retaliatory motive" might nonetheless be imputed to him after the fact by

inference or circumstantial evidence.²⁹ The threat of NRC enforcement action directed specifically against the manager individually would far more seriously impair the manager's decisional process. Even when directed by executive management to reduce staff size, licensee managers would hesitate to take the required action, and consequently, management's ability to determine the allocation of resources would be seriously impaired.³⁰

- C. A description of the actions that the Licensee has taken or planned to ensure that employees at the South Texas Project feel free to raise safety and compliance concerns without fear of reprisal. In response to this item, you may make references to similar discussions in recent HL&P correspondence to the NRC.

HL&P has always encouraged its employees to bring forth all nuclear safety or quality concerns and has assured that these concerns are promptly and properly addressed. Policy statements, site postings, training and the SPEAKOUT employee concerns program set forth HL&P policy that employees are expected to raise

²⁹ For example, in this case the OIG apparently does not question the need to reduce the size of the [REDACTED], and concedes that [REDACTED] performance was the worst among the [REDACTED] professionals rated. [REDACTED] had repeatedly violated requirements for the [REDACTED]. Still, the NRC is considering enforcement action against [REDACTED] and perhaps others based, at least in part, on [REDACTED] termination.

³⁰ HL&P also notes that public comments on the proposal to adopt 10 CFR 50.5 questioned NRC's authority to take enforcement against non-licensed individuals. See 56 Fed. Reg. 40,664, 40,666 (August 15, 1991). To the best of HL&P's knowledge, the questions about NRC's authority have not been resolved by the courts. See *id.* at 40,667.

concerns, that management is required to receive and address such concerns promptly, and that retaliation against individuals raising concerns will not to be tolerated. More recently over the last year, HL&P has further reiterated its commitment to assure improved open communication of nuclear safety concerns at STPEGS. Recent actions include the following:

- * Each employee granted unescorted access to STP receives initial and requalification General Employee Training (GET) which discusses management's policy encouraging all employees to identify concerns and stressing that each employee has an affirmative obligation to bring perceived safety concerns to the attention of responsible parties. Since August 1991, new employees also receive a presentation on "Professionalism and Standards of Performance" which includes discussion of the various methods available to station personnel for reporting safety concerns;
- * In March 1993, HL&P installed fourteen SPEAKOUT concern deposit boxes at various on-site locations to facilitate the reporting of concerns and promote an additional assurance of anonymity;
- * In March 1993, the SPEAKOUT offices were relocated to make them more accessible to employees;

- * HL&P has posted summaries of responses to selected SPEAKOUT concerns describing investigation results and corrective actions;
- * Articles in "STP On-Line," a weekly bulletin for STP personnel, have encouraged the reporting of safety concerns by employees and contractors;
- * In January, 1993 HL&P conducted an employee survey which confirms that STP employees are not reluctant to report potential safety or quality concerns to the company: more than 99% of over 2100 STP employees who responded to the survey reported they would first raise potential safety concerns inside the company and more than 95% feel no need to rely on the confidential SPEAKOUT program in doing so;
- * In April 1993, HL&P sponsored a training seminar on "Nuclear Management Practices to Encourage the Free Flow of Nuclear Safety Information and Assure Employee Protection," which was attended by all senior level site management and included role-playing of employee-supervisor interactions to stimulate discussion and awareness;
- * HL&P issued an "open letter" to all STP personnel emphasizing the promotion of an atmosphere of trust, openness and teamwork, in particular with respect to the reporting and response to safety issues;

- * HL&P directed the Manager of SPEAKOUT to provide the Group Vice President, Nuclear, with weekly briefings on pending investigations, specifically highlighting concerns which potentially could involve a "chilling effect;"
- * HL&P conducted a seminar for its site managers and supervisors to reinforce the need for receptiveness and sensitivity in responding to employee concerns, and recently the seminar was also required to be reviewed by on-site managers and supervisors of STP contractors;
- * HL&P updated and clarified its policy on safety concerns identification and response, which has been distributed in informational videotapes and in site bulletins;
- * HL&P commissioned an independent evaluation of the STP SPEAKOUT program to identify ways to enhance its effectiveness and assure that it is perceived by site personnel as an effective program, and is in the process of making several improvements based upon the recommendations of that evaluation; and
- * HL&P has initiated the review of HL&P agreements with site contractors to assure that they reflect HL&P policies on the protection of individuals raising safety concerns. HL&P has also initiated a review of training provided to site contractor

supervisors and employees to assure that it is adequate to communicate sound understandings and adherence to HL&P policies regarding safety concerns.

Many of the above measures and other actions taken to enhance STPEGS communications and the employee concerns program at STPEGS are described in more detail in HL&P letters to the NRC, dated May 21, 1993, September 8, 1993, and September 30, 1993.