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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 Mr. Balcom.

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, Lamb and Dean 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, Lamb and Dean 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.

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allegations in the Lamb and Dean 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 Lamb and Dean 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 Lamb or Dean to bring concerns to the NRC. Consequently, the claims filed by Lamb and Dean were not substantiated.

Since Worth did not make any complaint nor raise any concern about HL&P's decision to terminate his employment, HL&P has not conducted a separate investigation concerning his selection in the staff reduction. However, the SPEAKOUT investigation conclusions relating to the Lamb and Dean terminations are also relevant to Worth. The investigation reports on the Lamb and Dean DOL claims are attached as Attachment A (Concern 12298 addresses Lamb's Section 210 complaint) and Attachment B (Concern 12299 addresses Dean's 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

Dean, Lamb and Worth were terminated by HL&P in early May 1992 as a result of a reorganization of the NSD. The organizational changes in the NSD followed an evaluation performed in January and February 1992 by the new NSD Director,⁴ Richard L. Balcom (Balcom), of the structure and functional responsibilities of the department. It is not disputed by any responsible party that the reorganization of the NSD was undertaken for any but sound business reasons. The reorganization was designed to focus the department's attention on physical security and to increase effectiveness and efficiency. As a result, various NSD functions that were not necessarily associated directly with physical security (e.g., investigation of alleged wrong-doing) were transferred from NSD 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 NSD, and 23 positions were eliminated from

⁴ Balcom was selected as the Manager, NSD in January 1992. Subsequently, his title was changed to Director, NSD. For simplicity, this Response uses the title "Director."

HL&P's contractor, The Wackenhut Corporation (TWC). In reorganizing the department, HL&P utilized a forced ranking process to select individuals to be transferred or terminated from the NSD. 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 NSD 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 Lamb, Dean and Worth 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 Lamb, Dean and Worth 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. Worth accepted this offer; Lamb and Dean did not.

The following discussion describes the reorganization and downsizing of the NSD in greater detail.

A. The reorganization of the NSD.

In January 1992, Balcom was assigned to the position of Director, NSD at the STPEGS after the resignation of the previous manager. [Tr. 1043-47 (Hall)].⁵ Prior to this assignment, Balcom had been the Director, Quality Assurance (QA) at STPEGS. [Tr. 1208-09 (Balcom)]. Balcom was selected for the position of Director, NSD because of his strong demonstrated managerial skills. [Tr. 1043-43 (Hall)].

Upon becoming Director, NSD, Balcom reviewed the functional responsibilities of the NSD and looked for ways that the department could better focus on its principal mission of providing physical protection for the STPEGS. [Tr. 1383-85 (Balcom); See also Balcom Response at 3-5]. Balcom devoted substantial attention during his first two months as Director, NSD, to evaluating the department's organization and personnel. He met with each of the 21 employees to get their views on the department, and reviewed the NSD responsibilities. [Tr. 1383-85 (Balcom)].

⁵ 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 his review of the department, Balcom identified functions within NSD that were being duplicated or could be more effectively performed by other STPEGS departments. [Id.; Attachment A to Balcom Response at 2-3]. He also concluded that there were too many supervisors in the NSD (7 managers/supervisors out of 22 total employees) and that functional areas assigned to supervisors were not logically grouped. [Att. A to Balcom Response at 1]. He 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 NSD positions by seven and the total number of required TWC personnel by 23. [Tr. 1404-12 (Balcom); Att. A to Balcom Response at 2-4]. Of the seven NSD positions eliminated, three were manager/supervisor positions, and the remaining four were professionals. [Id.] Balcom implemented a contract scope change which reduced the number of TWC managers/supervisors by 13 and the total TWC staff by 23.⁶ [Tr. 1411-12 (Balcom)].

In mid-March 1992, Balcom met with Warren H. Kinsey (Kinsey), Vice President, Nuclear Generation, and Donald P. Hall

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

(Hall), Group Vice President, Nuclear, to make a presentation on the proposed reorganization. [Tr. 1049-51 (Hall); Tr. 1415 (Balcom)]. Balcom explained the proposed changes in the functions performed by the NSD and in the number of positions in the NSD and TWC. Of the seven positions to be eliminated from NSD, one manager and two professionals already had been selected for transfer to another department along with the transfer of certain access authorization functions. Another NSD supervisor had previously announced his resignation. This left one manager/supervisor and two professionals to be transferred or terminated. [Tr. 1051-52 (Hall); Tr. 1412, 1419-20 (Balcom)].

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

B. Forced Ranking Process

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

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

Balcom asked John R. Moore (Moore) and Jay W. Hinson (Hinson)⁹ to assist him in preparing the SPPs for the NSD employees. [Tr. 1232 (Balcom); Tr. 1651-52 (Moore)]. Balcom prepared SPPs for the employees who reported directly to him (including Moore) while Moore and Hinson prepared SPPs for the employees in their respective divisions of NSD. Moore and Hinson 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 (Balcom)]. Balcom did not tell Moore or Hinson how the SPPs would be used, nor did he advise them of the details of the reorganization plan. [Id.]. Both Moore and Hinson 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 (Moore)]. In particular, they did not know how many individuals or which job classifications would be affected. [Id.].

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

⁹ Moore was NSD's Manager, Support Division. Hinson had been NSD's Administrator, Investigations and Compliance, until shortly before the initiation of the evaluation process, when he was transferred to the Nuclear Licensing Department as Manager, Access Authorization Program. Balcom believed Hinson was in the best position to evaluate the performance, skills and behavior of those personnel in his former NSD division. [Att. A to Balcom Response at 5].

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

Balcom 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 (Balcom); Att. A to Balcom Response at 6]. The Manager of HR-N assigned Patricia Jones (Jones), a Senior Personnel Consultant in HR-N, to review the SPPs and assure that the evaluations had been done fairly. [Tr. 1702, 1747 (Jones)]. Jones 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," Moore had awarded one point to each individual to reflect experience within the NSD, while Hinson and Balcom had awarded no points for such experience. Consequently, they decided to deduct one point in this category from each employee rated by Moore. [Tr. 1425 (Balcom); Tr. 1666-68 (Moore)].

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

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

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

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

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

C. Review of Open Positions

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

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

D. Knowledge of Protected Activities

The HL&P personnel who participated in the decision to reorganize NSD (i.e., Lall, Kinsey and Balcom) or in the selection of the HL&P personnel to be affected by the reorganization (i.e., Balcom, Moore, Hinson and Jones) did not know that Dean, Lamb and Worth had brought allegations to the NRC.¹³ [Tr. 1432-36 (Balcom); Tr. 1560-62, 1566 (Moore); Tr. 965 (Hall); Tr. 1096-97, 1156 (Kinsey)]. Most of them were aware that the NRC had investigated concerns relating to security 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 (Hall); Tr. 1096-97, 1156 (Kinsey); Tr. 1432-36 (Balcom); Tr. 1560-62, 1566 (Moore)]. The DFI refers to two occasions specified in the OIG Report in which Balcom knew or suspected that Lamb had raised concerns internally within HL&P, including two concerns Lamb 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 Balcom 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 Lamb, Dean and others did bring concerns to the NRC. However, it is not clear that Worth 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 Lamb, Dean, and Worth." These findings are incomplete or inaccurate in material respects and do not support the assertion that there was any improper discrimination against Lamb, Dean or Worth. The "considerations" identified in the DFI are quoted and discussed below:

1. That Lamb, Dean and Worth 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 security, and pertained to matters under the regulatory jurisdiction of the NRC.

These statements in the DFI and the OIG Report imply that Lamb, Dean and Worth were in some way distinguished from other NSD employees by having engaged in protected activities, and that this caused them to be treated in a manner different from other NSD employees. This is an unjustified assumption and is factually incorrect. Many other NSD employees engaged in protected activities, including discussing various concerns with the NRC, SPEAKOUT and HL&P management. [Tr. 594, 628-29 (Lamb); Tr. 828 (Dean); Tr. 1607-13 (Moore); 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



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FYS [REDACTED]

management (i.e., Balcom, Moore, Hinson & Jones) did not know that Dean or Worth had engaged in protected activity. The only alleged protected activity of which pertinent management was aware was a concern brought directly to Balcom by Lamb (see response to consideration 3, below). However, this activity did not provide Balcom any motive to retaliate, and should not even be viewed as protected activity [REDACTED] Ex 5

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 Lamb, Dean, James J. Drymiller (Drymiller) 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 (Lamb); Tr. 753-54 (Dean)]. At least five NSD employees attended the off-site meetings, including Lamb, Dean, James Neal (Neal), Drymiller and Gregg, but not Worth.¹⁴ [Tr. 629-30 (Lamb)]. [REDACTED] Ex. 6

[REDACTED]

remain NSD employees and have not experienced any adverse employment action. [Tr. 828 (Dean)]. In addition, several other STPEGS security personnel 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 Lamb, Dean and Worth.

The incomplete information in the OIG Report leaves the incorrect impression that Lamb, Dean, Neal and Worth 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 Lamb, Dean and Worth 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 Lamb, Dean or Worth 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 Mr. Richard Balcom, the manager of the Nuclear Security Department, had specific knowledge that Lamb had engaged in a protected activity when Lamb provided Balcom 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 NSD reorganization (Hall, Kinsey and Balcom) or the forced ranking selection of employees to be impacted (Balcom, Moore, Hinson and Jones) did not know of any allegation filed with the NRC by Lamb, Dean or Worth.

[Tr. 965 (Hall); Tr. 1096-97, 1156 (Kinsey); Tr. 1432-36 (Balcom); Tr. 1560-62, 1566 (Moore)]. 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 Hall regarding a grievance filed by an NRC employee. The discussion between Dr. Montgomery and Hall 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 Hall implied that the grievance might somehow be related to any allegations by STP personnel. [Tr. 1072, 1078 (Hall)]. Accordingly, there is no basis for speculating that Hall (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 Moore and Balcom allegedly acquired knowledge that concerns had been brought to SPEAKOUT or HL&P management by Dean and Lamb, but none of these instances can reasonably be regarded as providing a motive to

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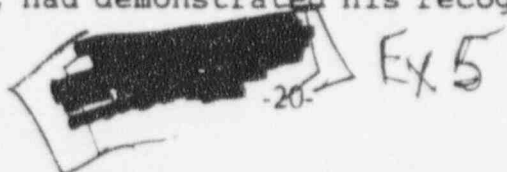
¹⁵ The OIG Report relies, in part, on its assertion that the NRC employee grievance arose out of the results of the OIG investigation 91-42G. However, this information was not communicated to Hall. [Tr. 1072, 1078 (Hall)]. In any event, even this information would not have suggested anything about the identities of the allegeders 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, Balcom described to the OIG a circumstance that led him to assume that Lamb 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 (Balcom)]. There is absolutely no reason to believe that Balcom would have been motivated to retaliate against Lamb for bringing such concerns to SPEAKOUT.¹⁶ Neither concern suggested any impropriety on the part of STPECS management or Balcom, nor did these concerns relate to matters within NRC jurisdiction.

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

¹⁶ Certainly, it is unreasonable to assume that Balcom had any motive to retaliate against anyone who went to Speakout regardless of the nature of the concern. Balcom previously had been the manager responsible for the Speakout program and, through his vigorous support of the program, had demonstrated his recognition of its value to STPEGS.



SPEAKOUT. However, Dean did not describe the substance of the concerns. [Tr. 1568 (Moore)].

Moore told the OIG that Dean's statement did not affect the ratings he gave Dean and Lamb when he completed their SPPs some five months later and that he did not discuss Dean's statement with anyone prior to the OIG interview. Moore's statement is credible.¹⁷ Moore had no reason to be concerned about some unknown issue that Dean and Lamb may have raised with SPEAKOUT or HL&P managers years before. Moreover, Dean's 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  Ex 5

Finally, the OIG Report on page 6 discusses a conversation Lamb and Neal had with Balcom, during which they advised Balcom that there was a mistake of fact in an NRC Inspection Report 50-498/91-21 which they viewed as evidence that someone had lied to the NRC during the inspection. This NRC inspection had occurred in August 1991, six months before Balcom

¹⁷ In October 1991, around the time Dean made this statement in Moore's presence, he also made the same allegation to DOL in a Section 210 complaint. The DOL subsequently found the allegation to be without merit, and Dean 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 NSD. Balcom was not involved in the inspection and did not know who might have made statements on this matter to the NRC Inspectors.

Balcom responded reasonably to the concern expressed by Lamb and Neal. He investigated the concern by reviewing the same HL&P records on the underlying event that were available to the NRC Inspectors during their inspection. He found that the HL&P records were consistent with the facts described by Lamb and Neal 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, Balcom 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 Dean in handling Safeguards Information was neither reportable nor loggable under 10 CFR 73.71. HL&P documentation of the event included a memorandum on the day of the incident discussing the basis for the decision on reporting/logging, 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 Dean or Sheesley. The OIG interviewed both, but only discusses Dean's statement that he "did not recall" discussing the issue with the Inspector. Sheesley told the OIG that he had not discussed the issue with the NRC Inspector. Sheesley's statement is more credible, since he was not involved in the incident or the reporting decision. In fact, Dean's credibility is undermined by his testimony in the DOL hearing which repeated an error of fact that was also contained in the Inspection Report -- that the Safeguards Information was unattended for only 18 minutes, rather than the actual 28. [See Tr. 747, 850-52 (Dean)]. HL&P corrected this and other errors in a letter to the NRC, dated February 2, 1993, ST-HL-AE-4314. See footnote 20 below.

necessary.²⁰ [Att. A to Balcom Response at 11]. Accordingly, Balcom had no reason to resent Lamb's concern, or to retaliate against Lamb because of it. [REDACTED] Ex 5

Moreover, this concern did not raise any issue about the acceptability of the STPEGS security program, nor in any other way affect the safety of STPEGS. Furthermore, the sole basis cited by Lamb and Neal 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 Balcom's performance or the STPEGS security program, 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. [Letter from Kinsey to NRC, dated February 2, 1993, ST-HL-AE-4314]. The NRC acknowledged HL&P's letter and stated that the clarifications did not affect any NRC enforcement decisions. [Letter from NRC to Kinsey, dated March 10, 1993]. This NRC conclusion confirmed Balcom's 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 August 1991 security inspection, 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 Balcom 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 Lamb, Dean and Worth were the only individuals whose employment was terminated following a reorganization of the Nuclear Security Department.

Lamb, Dean and Worth were the only HL&P employees terminated following the reorganization. However, there were also 23 security contractor positions eliminated by HL&P, and consequently employees were terminated by TWC as a result of the reorganization. In addition, one HL&P employee (Moore) was reclassified from division manager to supervisor.²² [Att. A to Balcom Response at 4, 8].

²² The OIG Report attempts to contrast HL&P's decision to demote Moore from manager to supervisor with the decision to terminate Lamb rather than demote him 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 NSD 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 Lamb, Dean and Worth severance packages modeled after the ones used in the STEP program. [Tr. 1753-54 (Jones)].

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5. That Balcom 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 mis-characterization 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 NSD 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 Balcom was solely responsible for the process, in any event. He simply employed the selection process supplied to him 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 NSD employees also was done in good faith. After completion of the selection process, HL&P looked for other positions at STPEGS for Lamb, Dean and Worth.

The OIG's assertion that Balcom 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 (Hall); Tr. 1232, 1421-24 (Balcom); Tr. 1647, 1651-52 (Moore); Tr. 1752-53 (Jones)]. It is

absolutely clear that the process was not solely within Balcom's 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 Nuclear Security 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 Lamb, Dean and Worth. The SPP for each employee was prepared by the manager most familiar with the employee's work experience and qualifications. [Tr. 1421-24 (Balcom); Tr. 1647-52 (Moore)]. The SPPs were then reviewed by Balcom and HR-N. [Tr. 1256-57, 1424 (Balcom); Tr. 1702, 1747 (Jones)]. Balcom's review did not affect Lamb, Dean or Worth differently from other NSD employees. The SPP rating for Worth 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 Lamb, Dean or Worth 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 Worth under "Evaluation of other job related factors" appear to have been changed from zero to minus 2 to ensure that Worth

received fewer total points than another member of the security force.

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

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Balcom met with Moore (who had rated [REDACTED]) and Hinson (who had rated Worth) to resolve the inconsistency. [Id.]. Balcom and Moore 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 (Balcom)].

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

Ex 5



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

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

Ex 6

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

Ex5
even suggest that Balcom, Hinson, Moore or Jones had any knowledge that Worth had engaged in protected activities.

2. That the points awarded to Lamb under "Evaluation of special skills" did not reflect his having been a firearms instructor and a Certified Protection Professional, while another individual received credit for similar skills.

This statement is not correct. No other employee received any points simply for being a firearms instructor or a Certified Protection Professional (CPP). One NSD Professional, Gary Pomeroy (Pomeroy), was given one point under "special skills" with the justification as an "NRA Instructor - Certified Armorer." The basis for this rating was the value to NSD of Pomeroy's certification as an armorer. Pomeroy uses this expertise as an armorer to carry out his assigned responsibilities.

Ex5
Moore did not add any points to Lamb's SPP under "Evaluation of special skills" for his NRA certification as a firearms instructor because NSD did not derive any benefit from Lamb's having this certification. Lamb had not done any firearms 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 (Balcom); Tr. 1551 (Moore)]. The STPEGS firearms training is done by TWC employees, a number of whom are NRA certified instructors. The only NSD employee who does training and is a certified STPEGS instructor is Drymiller, who

²⁴ When HL&P had conducted such training, Moore also had held a NRA certification as a firearms instructor. Moore let his certification lapse after he no longer had a need for it.

gives training to STPEGS employees on security requirements. This also was true at the time the SPPs were completed. However, it did not occur to Moore to give Drymiller any points for this certification either, even though, unlike Lamb's NRA certification, it is valuable to NSD.

Similarly, Moore did not consider Lamb's CPP certificate to be a significant asset to NSD. Balcom agreed with Moore. The CPP designation is awarded by the American Society for Industrial Security (ASIS), based on results of a general examination on various industrial security topics. It does not reflect proficiency in the security requirements specifically applicable to commercial nuclear power plants. At most, it tests for a superficial level of knowledge about security for nuclear facilities (focusing on Department of Energy facilities). [Tr. 1549-51 (Moore); Tr. 1277-78, 1444-46 (Balcom)].

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 Moore's or Balcom's on the value to NSD of these credentials. Other employees in NSD 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 Dean's form regarding the mishandling of Safeguards Information under "Evaluation of other job-related factors," while no comments were made on the form of another individual who had mishandled Safeguards Information.

This OIG finding mischaracterizes the comment on Dean's SPP, omitting significant language which clearly shows that Dean's misconduct was much more serious and frequent than that of any other NSD employees. The full comment on Dean's SPP is "Recurring problems with control of Safeguards Information, incident with Supervisor in 1991." The thrust of this comment is that Dean 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., Safeguards Information handling errors), Dean's history of repeated discipline for mishandling Safeguards Information is simply not comparable to the single isolated error of the other

²⁵ For example, Drymiller is a graduate of the National Federal Bureau of Investigations Academy. Although this is a prestigious credential, and certainly relevant to security, neither Moore nor Balcom viewed it as sufficiently valuable to NSD to affect the SPP ratings. For the same reason Drymiller did not receive credit for his two week course in emergency planning, despite the fact that he uses these skills in the STPEGS Emergency Response Organization; and [REDACTED] did not receive any points for his certificates for completion of training and examination by Per Mar Service and Research Corporation in Domestic Terrorism, Substation Security, and Effective Supervision and Management, all of which are directly applicable to his duties in NSD.

referenced employee, [REDACTED].²⁶ Although Dean was the designated custodian for Safeguards Information and was expected to set an example of care in the handling of such information, he was formally disciplined on three occasions for mishandling Safeguards Information and had been counseled about such errors on other occasions. Ex 6

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, Dean was on disciplinary probation as a result of a disruptive argument with his supervisor. Dean had lost his temper when he disagreed with a direction from his supervisor about a work assignment. Two supervisors and a manager had to take time from other duties to calm him; one of the supervisors said he felt physically threatened by Dean 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. Dean was the only NSD 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 Dean's errors. [REDACTED] had directed another employee to take custody of certain Safeguards Information, but had not taken sufficient steps to assure the communication was clear. In each of Dean's errors, Dean simply failed to take required steps to secure Safeguards Information. Ex 6
Ex 6

In short, this "anomaly" would not have been identified as such, had the OIG not selectively omitted parts of the adverse comment on Dean's SPP. When Moore made the negative comment on Dean's SPP, he knew that Dean was under active discipline, had mishandled Safeguards Information on repeated occasions (thereby violating his primary duty as Safeguards Custodian), and had a history of losing his temper in the work place. [Tr. 1679-81 (Moore)]. No other NSD 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 NSD professionals based strictly on the records, Dean would be selected for termination. [OIG Report at 34].

4. That Lamb's and Worth's scores were inconsistent with their latest performance appraisals, particularly with regard to a comment made on Lamb's form that he was "Not supportive of management decisions with which he 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 (Balcom); Tr. 1661 (Moore)]. 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 17 NSD 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 eleven as "highly competent" (the second highest rating). Thus, although Worth and Lamb had received ratings of "highly competent" on their most recent Performance Appraisals, those ratings were not above average for NSD -- 15 of the 17 employees ranked had received this level or better.

In completing the SPPs, it was necessary for Moore, Hinson and Balcom to distinguish among the eleven 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 Lamb and Worth, three other NSD 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 Lamb's SPP about his being "not supportive of management decisions with which he does not agree." The OIG overlooks the fact that even Lamb had recognized this on his most recent performance appraisal, in which he noted: "I need to communicate management directives more effectively to my staff." Moreover, Lamb's 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. Moore's reason for the comment was recent conduct of Lamb. In the HL&P investigatory interviews, the OIG interviews, and in testimony in the DOL hearing, Moore and Balcom provided examples of Lamb's resistance to management direction. One example involved a management decision that two TWC employees who had been seconded to Lamb should be reassigned to report to the TWC Security Force Supervisor (SFS). Subsequently management found that Lamb had overridden that direction because he disagreed with it. [Tr. 1672-74 (Moore)]. On another occasion,

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

5. That, of the 17 individuals rated, only Lamb, Dean and Worth 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 Balcom nor Hinson assessed any negative point values. However, under the category "other job-related functions," Moore gave negative point values to three employees: Lamb, Dean and Gregg. Moore included comments explaining the bases for these ratings.

Moore's comment supporting the negative point value for Gregg was "excessive absences." When Balcom reviewed the SPPs, he questioned Moore's penalizing Gregg because his absences were due

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

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

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

²⁷ The OIG report contrasts Balcom's decision not to allow Lamb to "bump" a professional, with his allowing Moore to move down from Division Manager to Supervisor. 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 Lamb 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 her review of the SPPs, Jones did not question the negative point values for Lamb or Dean. However, as discussed above in connection with OIG "anomaly" 1, she did identify an inconsistency in the SPP rating of Worth for "performance in present job-function." Hinson had given Worth a low rating in this category because Worth had recently demonstrated a tendency to resist management direction. [Tr. 1428 (Balcom)]. In response to Jones' comments, Worth's rating was increased in the "present job-function" category, and his resistance to management direction was reflected by giving him a negative two point rating in the "other job-related characteristics" category. [Tr. 1739-40, 1755-56 (Jones); Tr. 1428 (Balcom); Tr. 1672-74 (Moore)]. These changes were unrelated to, and did not involve any consideration of any protected activity.

The negative value ratings for these three 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 NSD 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 Lamb, Dean, and Worth, 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 Lamb, Dean and Worth is described above. That description shows that HL&P terminated the employment of Lamb, Dean and Worth 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 (Hall); 1227-29, 1415-16 (Balcom)]. Executive management examined the structure, need, and logic behind the proposed reorganization, and found it to be sensible. Executive management also directed that the Director of Nuclear Security 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. Balcom 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 NSD personnel. Since the personnel decisions were being made only in NSD, it was consistent with the intent of the Evaluation and Decision Process that the SPPs be completed by the NSD managers and reviewed by the Director of NSD. After completing the SPPs, Balcom requested an HR-N review of them. [Tr. 1425 (Balcom)]. 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 Mr. Balcom 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 NSD management to select among the

NSD 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 Lamb, Dean and Worth 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 Mr. Balcom 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 Balcom or any other HL&P employee also would be unjustified. Moreover, there are questions of fairness and public

²⁸ The OIG findings apparently do not question the basis for the decision that the number of NSD 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 NSD, and a careful analysis of the functions and personnel needs of the department. In fact, since the May 1992 reorganization, NSD 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 NSD, and concedes that Dean's performance was the worst among the security professionals rated. Dean had repeatedly violated requirements for the protection of safeguards information. Still, the NRC is considering enforcement action against Balcom and perhaps others based, at least in part, on Dean's 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 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.

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

AFFIDAVIT

William T. Cottle, being duly sworn, hereby deposes and says: I am Group Vice President, Nuclear, of Houston Lighting & Power Company (HL&P); and I am duly authorized to execute the attached Response to the NRC's Demand for Information (DFI). I am familiar with the contents of the attached Response, and the information contained therein is true and correct to the best of my information and belief.

HL&P is submitting two versions of the DFI response, one version containing the names of personnel and attaching certain confidential reports, and a second version with the individuals' names deleted and without the confidential reports as attachments. I hereby apply for the withholding of information contained in the first version of HL&P's DFI response from public disclosure pursuant to 10 CFR §§ 9.17(a)(4), 9.17(a)(6), 9.17(a)(7), 2.790(a)(4), 2.790(a)(6) and 2.790(a)(7). The bases for this request are as follows:

- 1) Much of the information contained in this submittal is personnel information, the disclosure of which could be an unwarranted invasion of personal privacy. In particular, the submittal contains personnel performance evaluation information concerning several named individuals.
- 1) Much of the information in this submittal has been held in confidence by HL&P. In particular, information obtained through interviews with working level personnel has been held in confidence. To the extent HL&P has shared this information with others, it has done so on a strictly confidential basis and only for important business reasons.
- 2) Substantial portions of the information discussed in this submittal and the submittal attachments have been obtained through HL&P's SPEAKOUT program, a confidential employee safety concern program, and are

not otherwise available. Under the SPEAKOUT program, HL&P and contractor employees provide information with the understanding that their identities will not be revealed. Information obtained in a SPEAKOUT interview has been transmitted and received in confidence. Due to the nature of some of the information discussed in this submittal, it may be possible to determine the identity of an individual who provided information to SPEAKOUT. The identity of employees who provide information to SPEAKOUT is customarily held in confidence by HL&P.

- 3) As I understand it, it is also the NRC's policy to protect the identity of persons who provide information in confidence, and this submittal is being made with this understanding.
- 4) The information gained through confidential interviews with employees is not available in public sources and could not be gathered readily from other publicly available information.
- 5) Speakout Reports are normally kept in confidence by HL&P and are made available for HL&P management review only on a "need to know" basis. Disclosure of these reports could reveal statements made in confidence to Speakout under circumstances that indicated the statements would be kept confidential and "private" and would not be disclosed to the public. Therefore, disclosure of these reports would constitute an unwarranted invasion of the privacy of the individuals who were interviewed by Speakout. In addition, the reports address questions of the performance of certain HL&P personnel, the disclosure of which would constitute an unwarranted invasion of the privacy of these personnel.
- 6) This information is of a type that is held in confidence by HL&P. Public disclosure of this information could cause harm to HL&P's competitive position and to the public. In order to operate the South Texas Project Electrical Generating Station (STPEGS) safely, HL&P relies upon employees to come forward with safety concerns. These concerns cannot be addressed unless they are made known and, in many cases, employees are more comfortable bringing forward concerns on a confidential basis so that their identities are protected. Without such protection,

many concerns might go unreported. Public disclosure of this information could adversely affect safety and cause substantial harm to HL&P's commercial position.

William T. Cottle
William T. Cottle
Group Vice President,
Nuclear

STATE OF TEXAS)
)
Harris County)

Subscribed and sworn to before me, a Notary Public in and for the State of Texas, this 15th day of November, 1993.

Linda M. Faulk
Notary Public in and for
the State of Texas

