

The Light company

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

DCS
PDR

October 21, 1996
ST-HL-AE-5496
File No.: G02.04
10CFR2.201

James Lieberman
Director, Office of Enforcement
U. S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738

South Texas Project
Units 1 and 2

Docket Nos. STN 50-498; STN 50-499

Reply to Notice of Violation and Proposed Imposition of Civil Penalties
Enforcement Action 96-133; Enforcement Action 96-136

South Texas Project (STP) has reviewed the subject Notice of Violation (Notice) and files the attached (Attachment 1) response to Enforcement Action 96-133 (Smith case) and Enforcement Action 96-136 (Keene case). STP is electing to pay the proposed civil penalty, while at the same time requesting the NRC reconsider the amount of the proposed penalty in light of the additional information and clarification provided in this response. STP recognizes the NRC allowed the response to EA 96-136 to be deferred until after the Department of Labor (DOL) Administrative Review Board reviews the Recommended Decision and Order in that case, and when a licensee protests a proposed civil penalty, it need not pay the penalty until NRC decides to impose it. Nevertheless, STP is paying these proposed penalties now to bring these matters to conclusion and limit the extent to which management is distracted from its focus on the safe and reliable operation of the STP units. STP's protest is focused on the factors NRC used to escalate the level of the violation and amount of the civil penalty and is in no way considered as an argument that the behavior found to have occurred by the DOL in these two cases is acceptable.

STP's protest of the civil penalty is based on the following: (1) NRC's conclusions in the Smith case that management was involved and that the violation was shown to be willful do not accurately reflect the facts; (2) NRC's conclusion that appropriate actions were not taken toward the individuals responsible for the alleged discrimination is not accurate; and (3) the extensive nature of STP's actions to address the root cause of these issues was not adequately recognized in assessment of the civil penalty. A detailed discussion of each of these points is provided in Attachment 2.

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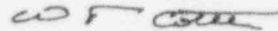
Project Manager on Behalf of the Participants in the South Texas Project

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South Texas Project Electric Generating Station

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In accordance with the instructions related to the civil penalty, a wire transfer of \$200,000 has been made to the Treasurer of the United States. If you have any questions, please contact Mr. M. A. McBurnett at (512) 972-7206 or me at (512) 972-8434.



W. T. Cottle
Executive Vice President
and General Manager, Nuclear

MAM/nl

- Attachments: 1) Reply to Notice of Violation EA 96-133 and EA 96-136
2) Basis for Protest of the EA 96-133 and EA 96-136 Civil Penalty

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

Thomas W. Alexion
Project Manager, Mail Code 13H3
U. S. Nuclear Regulatory Commission
Washington, DC 20555-0001

David P. Loveless
Sr. Resident Inspector
c/o U. S. Nuclear Regulatory Comm.
P. O. Box 910
Bay City, TX 77404-0910

J. R. Newman, Esquire
Morgan, Lewis & Bockius
1800 M Street, N.W.
Washington, DC 20036-5869

M. T. Hardt/W. C. Gunst
City Public Service
P. O. Box 1771
San Antonio, TX 78296

J. C. Lanier/M. B. Lee
City of Austin
Electric Utility Department
721 Barton Springs Road
Austin, TX 78704

Central Power and Light Company
ATTN: G. E. Vaughn/C. A. Johnson
P. O. Box 289, Mail Code: N5012
Wadsworth, TX 77483

David R. Hyster
Vice President, Nuclear Services
Raytheon Engineers & Constructors
P. O. Box 8223
Philadelphia, PA 1910-8223

Rufus S. Scott
Associate General Counsel
Houston Lighting & Power Company
P. O. Box 61067
Houston, TX 77208

Institute of Nuclear Power
Operations - Records Center
700 Galleria Parkway
Atlanta, GA 30339-5957

Dr. Bertram Wolfe
15453 Via Vaquero
Monte Sereno, CA 95030

Richard A. Ratliff
Bureau of Radiation Control
Texas Department of Health
1100 West 49th Street
Austin, TX 78756-3189

J. R. Egan, Esquire
Egan & Associates, P.C.
2300 N Street, N.W.
Washington, D.C. 20037

U. S. Nuclear Regulatory Commission
Attention: Document Control Desk
Washington, D.C. 20555-0001

J. W. Beck
Little Harbor Consultants, Inc.
44 Nichols Road
Cohasset, MA 02025-1166

James Remeika
Assistant Human Resources Counsel
Raytheon Company
141 Spring Street
Lexington, MA 02173-7899

AFFIDAVIT

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
Houston Lighting & Power)
Company, et al.,)

South Texas Project)
Units 1 and 2)

Docket Nos. 50-498
50-499

AFFIDAVIT

I, W. T. Cottle, being duly sworn, hereby depose and say that I am Executive Vice President and General Manager, Nuclear of the South Texas Project, Houston Lighting & Power Company; that I am duly authorized to sign and file with the Nuclear Regulatory Commission the attached Reply to Notice of Violation and Proposed Imposition of Civil Penalties (Enforcement Action 96-133 and Enforcement Action 96-136); that I am familiar with the content thereof; and that the matters set forth therein are true and correct to the best of my knowledge and belief.

W. T. Cottle

W. T. Cottle
Executive Vice President and
General Manager, Nuclear

STATE OF TEXAS)
)
COUNTY OF MATAGORDA)

Subscribed and sworn to before me, a Notary Public in and for the State of Texas,
this 21st day of October, 1996.



Linda Rittenberry
Notary Public in and for the
State of Texas

ATTACHMENT 1

REPLY TO NOTICE OF VIOLATION EA 96-133 AND EA 96-136

REPLY TO NOTICE OF VIOLATION EA 96-133 and EA 96-136

I. Statement of Violation:

10 CFR 50.7 states, in part, that discrimination by a Commission licensee or a contractor of a Commission licensee against an employee for engaging in certain protected activities is prohibited. The activities which are protected are defined in Section 211 of the Energy Reorganization Act, as amended, and include, but are not limited to, reporting of safety concerns by an employee to his employer or the NRC.

Contrary to the above, the Secretary of Labor found in a decision issued March 13, 1996, that Thomas H. Smith was the subject of employment discrimination from October to December 1991, when he was subjected to a hostile work environment in retaliation for raising concerns about scaffolding practices, a protected activity. At the time of the discriminatory action, Mr. Smith was an employee of Ebasco Services, Inc., a contractor of the licensee.

Contrary to the above, a Department of Labor Administrative Law Judge found in a recommended decision and order issued September 29, 1995, that Earl V. Keene was the subject of employment discrimination in 1994 for raising concerns about signing off on electrical maintenance work he did not perform, a protected activity. The discriminatory treatment included being selected for a March 24, 1994 reduction in force, receiving a lower performance appraisal rating, and being subjected to fitness-for-duty testing on May 24, 1994. At the time of the discriminatory actions, Mr. Keene was an employee of Raytheon Engineers and Constructors, Inc., a contractor of the licensee.

II. South Texas Project Position:

STP does not believe there is substantial evidence that Mr. Smith was subjected to a hostile work environment in retaliation for his engaging in protected activities nor that management knew or should have known of the alleged discriminatory acts. In addition, STP disagrees with the Severity Level assigned and is paying the civil penalty under protest as discussed in the transmittal letter. However, in order to conclude this issue, STP acknowledges NRC's position that a violation occurred.

STP does not believe there is substantial evidence that Mr. Keene was subjected to retaliation for his engaging in protected activities. However, in order to conclude this issue, STP acknowledges NRC's position that a violation occurred.

III. Reason for Violation:

Any discriminatory aspects to these occurrences should be attributed to a site culture not sufficiently focused on assuring that individuals can bring forward safety concerns without fear of retaliation.

IV. Corrective Actions:

In 1993, the senior management team at STP was replaced. The new management team made a high priority of ensuring a positive site environment.

Actions were initiated to accomplish the following:

- Improve communications between managers, supervisors, and employees
- Assure employees are aware of the various means for raising concerns and are comfortable using them
- Make the Employee Concerns Program (ECP) more accessible and responsive to employee concerns

Specific initiatives to accomplish these goals included the following:

- Established policies for bringing forth concerns without fear of retaliation
- Initiated Compliments and Concerns sessions where small groups of employees and contractors meet with senior management to discuss issues related to the station
- Increased management presence in the field to encourage communication
- Provided supervisory training for STP supervisors and managers in treating employees with respect and encouraging the identification and resolution of concerns
- Improved the Condition Reporting process so that prompt, effective corrective actions are implemented to correct problems. This also involved lowering the threshold for initiating Condition Reports and improving the trending of conditions.
- Instituted an awards program to provide awards to individuals for bringing forward significant or difficult to detect nuclear safety or quality issues
- Improved the program for reporting employee concerns, including replacing Speakout with the ECP

- Changed ECP to report to the senior executive on site
- Hired a contract manager for initial implementation of the ECP
- Provided videotapes and letters concerning the program to employees and base-line contractors
- Conducted internal and external assessments
- Made the ECP more accessible and responsive to employee concerns by creating four subgroups to evaluate concerns.
- Established an employee advocate position
- Re-established exit interviews
- Enhanced training provided to ECP investigators
- Advertised the program through site communication channels
- Imposed contractual requirements on site contractors for compliance with Section 211 and 10 CFR 50.7, for notification to STP of issues raised under these laws, and for compliance with the concerns program at STP.

STP also took the following actions in response to these specific cases:

- Investigated concerns raised
- Re-evaluated the issues following the DOL decisions
- Sent special instructions to Raytheon
- Re-evaluated past actions
- Made presentations to Raytheon personnel on the ECP

Raytheon also took actions to foster an atmosphere in which its employees feel free to raise concerns without fear of retaliation:

- Communication of a Raytheon Corporate Code of Ethics and required standards of conduct to newly acquired employees at STP

- Communication of employee access to Raytheon company-wide 800 number ethics hotline
- Training at STP with regard to corporate safety programs and goals
- Upper level management participation in stand-downs with site personnel designed to provide an open forum for raising concerns about day-to-day work activities at STP
- Implemented Raytheon's "Employee Concerns Program"
- Posted the program description in the lunch room and office area
- Made the program description required reading for managers, superintendents, supervisors, general foremen, and foremen
- Posted 10 CFR 50.7, "Employee Protection"
- Posted employee concerns section from STP contract with Raytheon
- Conducted monthly discussion on procedure in April, May, and June 1996
- ECP stressed at Team Building session April 25/26, 1996
- ECP discussed at Team Building Session May 10, 1996
- ECP discussed during Human Performance Day, May 14, 1996
- ECP made a part of orientation for employees coming to or back to work at STP
- Raytheon Corporate Ethics video viewed by non-manual labor at STP
- Raytheon Corporate Ethics video viewed by craft employees at STP
- STP 1996 ECP video viewed by Raytheon employees
- "Standards of Business Ethics and Conduct" booklet made available to Raytheon employees
- Posted the Smith decision

- Posted the Notice of Violation - Smith and Keene
- Raytheon personnel assigned to STP are made aware of STP's ECP during inprocessing as part of site access program
- Implemented open door policy to Raytheon site manager at STP

STP has numerous ongoing actions to ensure an open site environment is maintained for reporting employee concerns:

- Periodic external, independent assessments of site culture and ECP effectiveness
- Compliments and Concerns sessions
- Ongoing communications through site newsletter articles and videos
- Employee work group presentations on the ECP
- Monthly random surveys of employees on awareness and willingness to use the ECP
- Maintenance of multiple avenues for expressing concerns
- Supervisor and manager training in addressing employee concerns that encourages identification and resolution of issues
- Pamphlets posted on site bulletin boards to provide information on the ECP and methods to address concerns and access the program
- Continuous Improvement Program that enables employee involvement in the review and improvement of work processes
- Team building utilizing outside consultants to enhance teamwork within and between departments and teams
- Leadership Assessment Tool which provides an opportunity for employees at all levels to provide candid, confidential feedback on supervisor behavior
- Facilitative Leadership course which teaches the value of all inputs and collaborative methods of resolving issues

Additionally, STP has evaluated the ECP program against the recommendations in the NRC's policy statement (SECY 96-056) and determined that all the components recommended in the policy are addressed.

These actions represent an extensive, sustained effort to provide and maintain a site culture in which employees and contractors feel free to raise concerns.

V. Corrective steps that will be taken to avoid further violations

STP will continue to work to further improve the site environment for raising safety concerns. STP will continue to monitor and evaluate the site culture for raising concerns without fear of retaliation and will continue to monitor the effectiveness of supervision, the corrective action program, and the ECP in identifying and resolving issues and concerns.

VI. Date of Full Compliance:

STP is in full compliance.

ATTACHMENT 2

BASIS FOR PROTEST OF THE EA 96-133 AND EA 96-136 CIVIL PENALTIES

BASIS FOR PROTEST OF THE EA 96-133 and EA 96-136 CIVIL PENALTIES

As discussed in the transmittal letter, protest of the civil penalty is based on: (1) NRC's conclusion in the Smith case that management was involved and that the violation was shown to be willful do not accurately reflect the facts; (2) NRC's conclusion that appropriate actions were not taken toward the individuals responsible for the alleged discrimination is not accurate; and (3) the extensive nature of STP's actions to address the root cause of these issues was not adequately considered in assessment of the civil penalty. The following paragraphs provide the detailed basis for the protest.

Management involvement

The Notice states the Smith case is a Severity Level II violation because "...Ebasco managers appear to have been aware of the harassment of Mr. Smith and allowed it to continue for approximately two and a half months." In STP's presentation at the predecisional enforcement conference, we expressed the view that the allegations in the Smith case are directed against Ebasco first-line supervision. STP continues to believe that to be the case. The decision of the Secretary of Labor (SOL) states that "...Ebasco management had notice and did not remedy the abuse." However, the only basis cited by the SOL for this finding is testimony that Ebasco foremen and general foremen had offices in the Ebasco lunch room, a trailer-type building used by Ebasco for craft office space and a craft lunch/break room, and consequently must have seen the cartoons.

The NRC Enforcement Policy indicates that discrimination by first-line supervision is to be assessed at Severity Level III. Although "first-line supervisor" is defined in the Policy Statement only in general terms, the foreman/general foreman level has generally been considered first-line supervision. NUREG-1499, "Reassessment of the NRC's Program for Protecting Allegers Against Retaliation", January 1994, defines "first-line supervisor" to include foreman and general foreman. Accordingly, if a violation occurred, it should be viewed as Severity Level III.

Willful nature of violation

STP also requests NRC reconsider the conclusion that the alleged violation in the Smith case was willful. Although the portion of the DOL hearing record related to the cartoons is sparse (the bulk of the record related to other alleged adverse actions which were not proven), it is apparent that cartoons were posted by more than one individual, regarding more than one person, and on more than one topic. None of the testimony shows that the persons who created the cartoons recognized that the cartoons were offensive and might be viewed as

adverse employment action or might discourage reporting of safety concerns. It is likely that the "cartoonists" and other employees/first-line supervisors saw the offensive cartoons as part of a series of cartoons about co-workers and did not recognize that they might be viewed as discriminatory.

The hearing testimony does not contain any allegation that Mr. Smith or anyone else reported a concern to STP or Ebasco about the cartoons. Indeed, it should be recalled that although Mr. Smith raised other concerns to STP during his tenure at STP, including allegations of discrimination that were not substantiated, to our knowledge he did not report a concern about the cartoons to STP, Ebasco, or the NRC. In similar circumstances, courts have cited such circumstances as a basis for rejecting hostile work environment claims-See *Gary v. Long*, 59F.3rd 1391 (D.C. Circuit 1995).

On this basis, STP does not believe that it is reasonable to consider this to be a willful violation of the law, and the impact of this not being a willful violation should be considered in assessing the need for and amount of the civil penalty.

Corrective actions taken toward individuals

In the Smith case, the SOL's decision was reached in March 1996. Prior to that point, neither the DOL investigation nor the Administrative Law Judge found that an illegal act had occurred. STP had investigated the allegations identified to STP by Mr. Smith and the findings were consistent with that of the DOL investigation and the Administrative Law Judge. As noted above, Mr. Smith did not report his concern about the cartoons.

After receipt of the SOL's decision, it was reviewed and found not to identify specific individuals as having discriminated against Mr. Smith. The testimony indicates the individual cartoons were erased and replaced within a day or two, often by the next shift (day or night). As a result, it is not clear that any particular individual drew a specific cartoon with the intent of harassing Mr. Smith because of his protected activities. Foremen and general foremen occupied the room where the cartoons were drawn and are considered to be the supervisory level that was aware of the cartoons. The practice of posting cartoons was terminated shortly after they appeared when Ebasco first-line supervisors recognized that they were becoming negative in tone and effect. Since the timing of specific cartoons is not recorded, it is not possible to determine if this corrective action was timely. The only person specifically named in testimony as a cartoonist is presently employed by Raytheon at STP as a general foreman, but the decision did not indicate if this individual was responsible for the cartoons of Mr. Smith. No other individuals were identified relative to the cartoons.

In short, the individual identified by DOL as having drawn cartoons had recognized the cartoons were not appropriate and discontinued the practice on his own initiative. There is no finding that he intended to harass Mr. Smith nor that he has discriminated against anyone else in the subsequent five years. He also participated in group presentations on these very issues earlier this year. Therefore, STP believes appropriate actions were taken relative to this individual prior to the enforcement conference.

Mr. Keene filed his case with the DOL in September 1994. The DOL investigation did not find that discrimination occurred. The Administrative Law Judge's recommended decision was rendered in September 1995. The individual considered responsible for including Mr. Keene in the layoff and for his performance appraisal had left Raytheon in October 1994. This individual was subsequently employed by a contractor who performs occasional nonsafety-related work (e.g., office facility maintenance and construction) at STP. The individual considered responsible for requesting the fitness-for-duty testing had left STP in August 1994 for employment with Raytheon elsewhere. This person subsequently left the employ of Raytheon in April 1996. Based on the current employment status of these individuals, STP believes that no further action specific to these individuals is appropriate.

Note that after the enforcement conference, allegations were made about individuals other than those discussed above who are still on site; therefore, Raytheon management met individually with those employees who appeared to have had some involvement in these cases. This was done to assure these individuals personally understood the message previously communicated. These individuals were not considered to have been responsible for the alleged discriminatory acts.

STP's presentation at the enforcement conference discussed a staff briefing that occurred before the May 1996 outage, but perhaps it failed to provide enough detail to convey its nature. We are confident we have conveyed to site personnel that individuals will be and are held accountable. STP believes management is being successful in communicating that it is serious about preventing these types of violations.

Based on the above discussion, STP believes it has taken actions that "...would foster a sense of individual accountability..." and "...assure that the individuals involved in these matters understand the protections afforded employees by the law..." As discussed at the enforcement conference, and in the response to the Notice, STP's corrective action was prompt and comprehensive once STP learned of the alleged discriminatory conduct.

Extensive nature of STP's actions

NUREG-1600 states that the purpose of NRC's enforcement policy is to (1) serve as a deterrent to emphasize the importance of compliance with requirements and (2) encourage prompt identification and prompt, comprehensive corrective action. The NRC letter that transmitted the Notice recognizes STP has taken extensive actions to address the overall environment at the station, but gives STP less than full credit for its prompt and comprehensive corrective action.

Appropriate actions were taken by STP and Raytheon in response to these cases. STP also has taken very aggressive and extensive actions in response to the underlying root cause of these cases. STP described the extensive nature of the corrective actions in the predecisional enforcement conference on July 19, 1996, and these actions are summarized in the response to the Notice of Violation provided as Attachment 1. Many actions had been taken prior to the DOL decision in these cases. These actions include various measures that foster a sense of individual accountability, such as the written policy that makes clear discriminatory conduct will not be tolerated. Training was initiated for managers and supervisors which emphasizes their obligations in this regard. These requirements are enforced with stern discipline when appropriate.

The NRC has acknowledged the strength of the STP programs in numerous fora. The NRC has noted continual improvement in the ECP and the site atmosphere, as evidenced in Inspection Reports starting with the May, 1994 follow-up inspection on the ECP and the August 1994 Integrated Assessment Team report. Additionally, the NRC Agency Allegation Advisor at an Employee Concerns Program managers' meeting in Phoenix in March 1996, singled out STP as a positive example. Representatives from other plants have visited STP for the specific purpose of learning about the STP ECP. As noted above, the NRC letter that transmitted the Notice recognizes the extensive actions taken.

It is unclear how NRC can consider STP to have an effective program focused directly at the root cause of these issues, a program that represents an extensive commitment of management and resources, and yet, at the same time, conclude a civil penalty is needed as a deterrent to noncompliance or to encourage corrective action.