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**NRC** seeking indictments over dismissed whistle-blowers

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**BODY:**

Federal investigators are seeking unprecedented indictments against Houston Lighting & Power Co. officials for allegedly retaliating against four former workers who raised safety concerns at the South Texas nuclear power plant, the Houston Chronicle has learned.

Sources say the U.S. **Nuclear Regulatory Commission** has referred the cases to the U.S. Department of Justice, urging prosecution. Any indictment of an HL&P official would be the first in the nation under an **NRC** rule that makes it a potential criminal offense to intimidate and harass workers in the nuclear industry.

At the root of HL&P's legal troubles is a nuclear security program of questionable effectiveness. An internal company memorandum says that during a training exercise last year, a simulated terrorist team was able to penetrate the "'vital area" of the South Texas plant, located in Matagorda County near Bay City.

The criminal charges being sought against HL&P by the **NRC** arise mainly from three security department firings on May 4 and 5, 1992.

On May 4, security supervisor David Lamb and security coordinator James Dean were told by security manager Richard Balcom that they were victims of a "'reduction in force" by cost-conscious HL&P. The next day Balcom fired senior security coordinator Bill Worth, ostensibly for the same reason. Those were the only dismissals in the department.

The three men had been complaining to HL&P for years about sloppy security procedures, broken or malfunctioning equipment and the illegal withholding of information from the **NRC**. Exasperated, they had gone to the **NRC** in 1991.

In a confidential report obtained by the Chronicle, the **NRC's** Office of **Inspector General** concluded that Lamb, Dean and Worth appear to have been fired in retaliation for making ""security-related and misconduct"" allegations to HL&P and the **NRC**.

**The inspector general** ""analyzed the process used to justify the terminations and determined that it was conducted in a manner prejudicial to the allegers," the report says.

Investigators also found that ""several HL&P managers" -- including group vice president-nuclear Donald Hall, vice president for nuclear generation Warren Kinsey and security manager Balcom -- ""had some degree of knowledge" that the three security men had made allegations with HL&P's ""confidential" employee-concerns program, called Speakout, and/or the **NRC**.

HL&P spokesman Graham Painter denied that any criminal acts occurred, saying Lamb, Dean and Worth ""were part of a work force reduction. There was no retribution against them for having reported deficiencies to the **NRC**. . . "

As the first anniversary of the HL&P security department firings approaches, however, utility officials have more to worry about than the intimidation-and-harassment cases pending in the Justice Department.

HL&P officials also may be held criminally or civilly liable for allegedly misleading the **NRC** about security-related matters, including power failures that knocked out parts of a force field and the mismanagement of sensitive ""safeguards" information.

And the company -- or even individuals -- may be hit with substantial **NRC** fines, not only for mishandling employee allegations but also for failing to reduce a huge maintenance backlog and correct conditions that led to repeated human errors and equipment failures.

Bill Beach, director of reactor projects for the **NRC's** Region IV office in Arlington, said there are ""in excess of 5,000" items that need maintenance at South Texas, raising questions about whether HL&P has ""lost control" of its maintenance program. One plant source put the backlog at more than 10,000 items.

HL&P spokesman Glen Walker said that most of the items in need of repair are not ""safety-related" and denied that any HL&P officials withheld information from the **NRC**. He said that the utility recognizes maintenance as a problem, however, and has increased staffing and taken other steps to correct it.

Whether the **NRC** suspends HL&P's operating license or takes some other drastic action -- a protracted, voluntary plant shutdown, for example -- depends largely on the findings of a special ""diagnostic" **NRC** inspection team, due to arrive at South

Texas on Monday and complete its work in about a month.

"We are taking this quite seriously," said **NRC** Chairman Ivan Selin, "but there's no sense in speculating about what (the diagnostic team) will find. "

What it is likely to find, according to eight current and former South Texas employees who spoke with the Chronicle, is a work force that is afraid to go to managers with concerns, and managers who do not want to hear bad news. Dozens of other people and documents obtained under the federal Freedom of Information Act paint a similar picture of an autocratic, vindictive management team.

Last fall, the Chronicle began an investigation into alleged intimidation and harassment in the U.S. nuclear industry that lasted five months and included interviews with more than 150 people, among them 35 whistle-blowers. South Texas quickly stood out.

Nuclear industry whistle-blowers who believe that they have been wrongly fired or otherwise punished can file discrimination complaints against their employers with the U.S. Department of Labor. The **NRC** tracks these cases and sometimes investigates safety allegations raised by the whistle-blowers.

As of late January, according to the **NRC**, there were 12 discrimination cases pending against HL&P or its contractors as a result of alleged retaliatory actions taken at South Texas. That is the highest number, by far, in Region IV, which regulates nine nuclear plants in 14 states. It is the third-highest number in the nation. Only the Palo Verde plant near Phoenix and the Watts Bar plant, under construction in eastern Tennessee, are the subjects of more pending cases.

Painter said "lots" of South Texas employees make use of HL&P's Speakout program. "They obviously wouldn't be using it if they didn't feel comfortable with it," he said.

But two current South Texas workers interviewed during the **inspector general's** investigation had disparaging things to say about Speakout. One called it a "lap dog" for HL&P vice presidents and said that when someone made use of the program, "his or her identity was soon known by . . . management. "

The **NRC** takes allegations of whistle-blower intimidation and harassment very seriously. **NRC** inspectors can examine only 1 percent to 5 percent of a nuclear plant, and the agency depends heavily on self-policing by utilities.

"We have damned few inspectors and a lot of licensees (nuclear plants and other **NRC**-regulated users of radioactive materials)," said Ben Hayes, director of the **NRC's** Office of Investigations. "If this commission cannot rely on the licensee to

be truthful and candid, then that is a major safety issue as far as I'm concerned. "

The **NRC** expects nuclear utilities to encourage the reporting of problems by employees. **NRC** officials say, however, that at some plants there seems to be a "'kill the messenger" philosophy: Managers, under great pressure to contain costs, tend to downplay the importance of almost anything brought to their attention.

Employees who press matters find themselves in trouble.

Some are taunted by co-workers. Others are stripped of meaningful duties and isolated from the work force. Others are tormented by obscene calls and death threats.

This sort of psychological warfare is "'worse than taking a physical beating," said **NRC Inspector General** David Williams.

On Monday, two investigators with Williams' office are to arrive in Houston and interview South Texas workers as part of a nationwide inquiry into the **NRC's** handling of intimidation-and-harassment complaints. The inquiry was requested by Sen. Joseph Lieberman, D-Conn., who said he is troubled by "'allegations that the **NRC** has been biased toward the power companies, toward the licensees, and has overrelied on the statements of licensees. "

Some believe that whistle-blowers in the nuclear industry are punished on a much broader scale than the **NRC** realizes or acknowledges, given that some and perhaps most victims don't bother to file Labor Department discrimination cases against their employers.

"'It's almost universal," said Robert Pollard, a former **NRC** official now with the Union of Concerned Scientists.

It is widely known that when one whistle-blower in a nuclear plant is fired or disciplined in a highly visible way, other workers notice and may resolve not to mention any potential safety problems they encounter. The **NRC** calls this a "'chilling effect. "

Current and former South Texas workers say that such an atmosphere has existed at the plant for years.

The three security men who were fired in May 1992 -- along with Jim Neal, 51, who had seen the "'handwriting on the wall" and quit in March of that year -- had tried and failed to get HL&P to fix faulty equipment and follow **NRC** procedures, they said.

Neal recalled, for example, that power failures would cause the "'E-field" -- an energy field along the plant's perimeter that detects intrusion -- to go out for "'extended periods of time. " A utility is required to post armed guards when such an outage

occurs, but Neal said that HL&P didn't do so. Nor, he said, did it report the power failures to the **NRC**.

HL&P's Walker said that the E-field has been repaired and the utility has fulfilled its **NRC** reporting obligations.

A current plant worker, however, said that "in a lot of cases, when it rains, the entire (E-field) system goes down. "

Internal HL&P documents obtained by the Chronicle indicate that employees in the South Texas security department have brought numerous shortcomings to management's attention in recent years.

A Jan. 29, 1992, memo from J.W. Hinson, then administrator of security investigations and compliance, to security manager Balcom identifies 26 security flaws, from inadequate lighting to access by "unauthorized personnel . . . to the armory and/or weapons. "

A Feb. 3, 1992, memo from Neal to Balcom notes that during two security drills four days earlier, officers responded so slowly and inappropriately to a simulated terrorist attack on the plant that the "adversarial team would have been successful in their mission during both drills. "

Walker conceded that the drills "did not go well," but said that the security department's poor showing "led to some improvements that we have now incorporated. "

The need for tight security at nuclear plants became starkly apparent on Feb. 7, when a man just released from the mental ward of a hospital sped through the main security gate at the Three Mile Island plant in Pennsylvania. The man crashed his station wagon through two fences to enter the plant's "protected" area and was found hiding in the turbine building four hours later.

Security, however, has been a weak link at South Texas for some time.

In June 1987, HL&P expected to receive a "low-power/fuel-load" license for Unit 1. But **NRC** inspectors from Region IV found the plant's security program to be in shambles, and licensing was held up for 54 days.

"The training was deficient," said James Kelly, a senior Region IV security inspector at the time. "They hadn't conducted it and said they had. The electronic detection systems did not function as designed. The access-authorization program -- the pass-and-badge portion -- was in disarray. "

Later that year, HL&P's contract security agency, The Wackenhut Corp., was fined \$ 30,000 by the Texas Board of Private Investigators and Private Security Agencies for 157 violations, including making "material misstatements" on applications.

Lamb, 46, and Dean, 38, arrived at South Texas in 1986. Both had worked at Florida Power & Light Co.'s Plant St. Lucie near West Palm Beach, Fla., and had had no trouble with management there, they said.

HL&P, in Lamb's opinion, was indifferent to **NRC** regulations.

In 1988 he, Dean, Neal and Worth (who declined to be interviewed for this article) began complaining about poor access-control and intrusion-detection procedures, broken surveillance cameras and the utility's failure to report these problems to the **NRC** as required.

The whistle-blowers said they were given progressively less to do and faced growing hostility at work.

"If you complained once, they might listen, but generally nothing was done," Lamb said of HL&P. "If you complained twice you started getting the very strong feeling that you should shut up and go someplace else. If you did it a third time . . . you were made to feel that you were not to be trusted, because you were no longer playing by their rules. "

Bill Lancaster, an ex-FBI agent who was a security supervisor at South Texas from 1984 to 1987, confirmed Lamb's description.

"Basically, nobody wanted to hear that there were any problems," said Lancaster, 40, who now works for the U.S. Department of Energy in Ohio.

Lamb and Dean filed Labor Department discrimination cases against HL&P shortly after they were fired. Both won favorable rulings in the initial round of the process but are by no means assured of victory in the end. Such cases routinely take years.

Lamb is working as a salesman, in a field unrelated to nuclear security, at about one-third of his \$ 50,000-a-year salary at South Texas.

"I've gone through most of my savings," he said. "It's put a hardship on my marriage. I've contacted at least one half of the nuclear plants in this country and have gotten rejection letters or verbal rejections from all of them. "

Dean is unemployed. "People in the nuclear industry," he said, "no longer return my calls. "

Said Houston attorney Tanner Garth, who represents Lamb and Dean: "If you get canned in the nuclear industry, good luck. "

Painter denied that HL&P engages in blacklisting. But the nuclear industry is in many ways a small fraternity. People move around a lot. Management philosophies, good and bad, are transferred as well.

For example, Will Jump, South Texas's manager of nuclear licensing, and Dan Sanchez, project manager of its maintenance training program, came from the Palo Verde plant in Arizona. Palo Verde has more whistle-blower discrimination cases pending against it than any other operating plant, and South Texas is second.

Kinsey, HL&P's vice president for generation, and William Cottle, incoming group vice president-nuclear, worked for the federal Tennessee Valley Authority, which shut down all its nuclear plants in 1985 because they were having so many operational and construction problems. One of the plants, Watts Bar, has been a hotbed of alleged retaliation against whistle-blowers.

Sources say that the criminal harassment-and-intimidation case Justice will consider against HL&P relates to the utility's actions against Lamb, Dean, Worth and contract employee Tom Saporito.

Saporito, 39, is a nuclear instrument-control technician who went to work at South Texas on Jan. 13, 1992. He was permanently denied access to the plant -- putting him out of work -- on Feb. 21, 1992, three days after he had met with the **NRC** and 11 days after he had filed a formal petition with the agency, asking that HL&P's license be suspended, modified or revoked because of ""significant" violations.

Saporito, who now lives in Florida and has a Labor Department discrimination case pending against HL&P, said his biggest concern was ""very lax security" at South Texas.

""There was no control of visitors," he said. ""Security was a joke over there. It was the worst security I've seen in my career. "

Saporito, whose whistle-blowing led to two security-related citations against HL&P last June, also had spoken to the **NRC** about the alleged falsification of safety-related documents and a staggering maintenance backlog. ""They were generating (maintenance) work orders in excess of

1,000 a month," he said. ""That's probably 400 percent more than a normal nuclear plant would have. When you have that amount of equipment out of service, you have to ask yourself, "Can the operators really mitigate an accident? ' "

Monday: For whistle-blowers who believe they are victims of retaliation, the legal system can be emotionally and financially draining.

Intimidation and harassment in the nuclear industry.

""Whistle-blower" discrimination cases against nuclear utilities pending before U.S. Department of Labor, by **Nuclear Regulatory Commission** region:

## Region 1

Cases Pending: 17.

Nuclear Plant with most cases: PEach Bottom (Philadelphia Electric Co.); 5

## Region 2

Cases Pending: 82.

Nuclear Plant with most cases:(2)\* Watts Bar (Tennessee Valley Authority): 42.

## Region 3

Cases Pending: 4

Nuclear Plant with most cases: Four plants have four each.

## Region 4

Cases Pending:24.

Nuclear Plant with most cases: South Texas (Houston Lighting & Power): 12.

## Region 5

Cases Pending: 15.

Nuclear Plant with most cases: (Palo Verde (Arizona Public Service Co): 14.

(1). As of Jan. 1993.

(2). Under construction.

Penalties.

SOUTH TEXAS.

Here is a list of penalties paid to the **Nuclear Regulatory Commission** by Houston Lighting & Power (South Texas Plant) and by TU Electric (Comanche Peak plant):

Date: May '80.

Fine: \$ 100,000.

Violations: Inadequacies in quality assurance/quality control programs for safety-related systems.



Harrassment and intimidation of quality assurance/quality control inspectors.

Poor construction practices.

Date: Feb. '88.

Fine: \$ 75,000.

Violations: Operator error causing safety-related valves to remain closed.

Date: March '88.

Fine: \$ 50,000.

Violations: Substandard security procedures, including inadequate officer training.

Date: Aug. '91.

Fine: \$ 75,000.

Violations: Failure to ensure the reliability of equipment with an "Important safety function".

Date: Jan. '92.

Fine: \$ 50,000.

Violations: Falsification of safety-related maintenance records.

Total civil penalties paid by utility: #350,000.

Additional penalties proposed by **NRC** and withdrawn: \$ 50,000.

COMANCHE PEAK.

Date: April '86.

Fine: \$ 40,000.

Violations: Intimidation of quality control inspectors.

Date: Jan. '87.

Fine: \$ 250,000.

Violations: Deficiencies in quality assurance/quality control programs.

Failure to verify qualifications of some quality control

inspectors.

Failure to correct longstanding quality problems.

Date: Jan. '90.

Fine: \$ 30,000.

Violations: Failure to follow procedures regarding safety-related valves.

Date: June '90.

Fine: \$ 25,000.

Violations: Creating the ""perception" that a quality assurance inspector was fired for noting deficiencies.

Date: April '91.

Fine: \$ 40,000.

Violations: ""Widespread" falsification of fire-watch patrol records.

Date: March '92.

Fine: \$ 25,000.

Violations: Plant procedures resulting in misalignment of safety-related valves.

Date: Aug. '92.

Fine: \$ 125,000.

Violations: Operator error causing spent-fuel cooling pool to go without cooling for 17 hours.

Improper response to error.

Total civil penalties by utility: \$ 585,000.

Additional penalties proposed by **NRC** and withdrawn: \$ 40,000.

**GRAPHIC:** Photos: 1. South Texas Nuclear Plant (color); 2. Former HL&P security officials David Lamb, James Dean (color); Graphs: 3. Whistle-blower discrimination cases against nuclear facilities pending (b/w, p. 22, TEXT); 4. List of civil penalties paid to **NRC** by HL&P South Texas Plant, b/w, p. 22, TEXT); 5. Civil penalties paid by utility to Comanche Peak (b/w, p. 22, TEXT); 1. Larry Reese, 2. E. Joseph Deering/Chronicle, 3. Robert Dibrell/Chronicle, Source: **Nuclear Regulatory Commission**, 4-5. B.C.Oren/Chronicle, Source: **Nuclear Regulatory Commission**