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May 14, 1999

VIA FEDERAL EXPRESS

Mr. Hubert J. Miller
Regional Administrator
Region I
U.S. Nuclear Regulatory Commission
475 Allendale Road
King of Prussia, PA 19406-1415

Re: Letter of Reprimand
(NRC Office of Investigations Case No. 1-96-002)

Dear Mr. Miller:

Mr. Risley has reviewed the Letter of Reprimand issued by the Nuclear Regulatory Commission ("NRC") on April 6, 1999. In that letter, the NRC asserts that Mr. Risley unlawfully retaliated against a former engineering supervisor with Northeast Nuclear Energy Company for engaging in protected activities.

Mr. Risley denies the allegation.

As set forth in Attachment 1, "Response of H.P. Risley Requesting the Withdrawal of the Commission's Letter of April 6, 1999," the information upon which the NRC's Letter of Reprimand is premised provides no basis, in law or fact, to support a finding that Mr. Risley violated the Commission's regulations. Moreover, in an unwarranted rush to judgment, the NRC failed to provide Mr. Risley with an

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opportunity to confront the information which underlies the Commission's action. Accordingly, Mr. Risley requests that the NRC withdraw the April 6, 1999 Letter of Reprimand or, in the alternative, provide Mr. Risley with an opportunity, such as in a predecisional enforcement conference, or some other appropriate forum, to confront whatever information led the NRC to issue its letter of April 6, 1999.

Many compelling facts establish the propriety of Mr. Risley's actions and warrant the immediate withdrawal of the Commission's letter of April 6, 1999. That letter, and the process which led to that letter, have no place in the fair administration of the Commission's responsibilities. Mr. Risley has been accused of a serious offense, but has not been provided with a clear description of the specific offense, the information upon which the charge is based, or the opportunity to confront the information. Despite this, the Commission has already determined his culpability, as well as his sanction. Now, it seeks Mr. Risley's comments.

Due process requires, however, that Mr. Risley receive a meaningful explanation of the allegation and the right to respond to the allegation before the agency reaches a decision and takes action. That has not happened here. Essentially, Mr. Risley has been tried, convicted, and sentenced in absentia on the vague charge that he took some unspecified "actions in 1993 in connection with" a corporate reorganization. That the Commission now seeks his views -- after the letter of reprimand has been issued, after its publication date has been announced, and after many people in the nuclear industry have learned of this matter -- does not provide the due process required by law and the Commission's Enforcement Policy. Nor can this after-the-fact submission undo the harm to Mr. Risley's reputation caused by the false accusation. Although the Commission cannot undo the damage, it can -- and must -- correct the record.

The essence of the allegation against Mr. Risley is that he was somehow responsible for a Supervisor in the Engineering Mechanics Group not retaining a supervisory position in the 1993 Engineering reorganization. Contrary to this allegation, Mr. Risley was not responsible for that action. This Supervisor -- and every other supervisor, manager, and director -- lost his position as part of a restructuring of the corporate engineering organization. Mr. Risley played no role in the creation, design, or implementation of the restructured organization. The only point at which Mr. Risley became involved was at the end of the supervisory selection process. But, by this time, the process used to select persons to fill the new supervisory positions had

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already been constructed and its implementation was well underway. Just as he had no role in designing the new engineering organization, so too Mr. Risley had no role in designing the personnel selection process.

Mr. Risley's sole involvement in the selection process was to serve as one of the attendees at the supervisory selection meetings. He did not organize or chair the meetings and he did not make the selection decisions. The process employed was straightforward. The group focused on a position and participants raised the names of people who merited consideration. The group then discussed the names advanced and collectively decided upon the best person for the job. The group then moved to the next position and repeated the process. Although the process may be subject to criticism, it was the product of an experienced organizational effectiveness consultant, a representative of the Human Resources Department, and senior Company management. It was not Mr. Risley's process.

Notwithstanding the vagueness of the allegation against Mr. Risley, it appears that the Commission believes that Mr. Risley took some undisclosed action to cause the non-selection of this Supervisor. He did not. The simple truth is that none of the attendees at the selection meeting raised this Supervisor's name as a potential candidate for one of the new supervisory positions. Because his name was not raised, his qualifications were not discussed. To assert that Mr. Risley was somehow responsible for the decision of others not to raise a particular name is preposterous. Mr. Risley possessed no greater responsibility than anyone else for advancing this Supervisor's name.

The Commission's allegation against Mr. Risley implies that Mr. Risley did not raise this Supervisor's name for a position because that Supervisor engaged in protected activity. Of course, Mr. Risley is incapable today, as he was incapable in 1993, of knowing the unexpressed thoughts of his colleagues. Mr. Risley's reasons for not raising this Supervisor's name, however, are clear and legitimate. This Supervisor was not the best person available. That is not to say he was a bad performer. Overall, his performance was acceptable. But as a supervisor, his performance was not as strong as his peers in certain key areas.

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Moreover, the facts demonstrate conclusively that Mr. Risley had no reason or desire to retaliate against this Supervisor. Mr. Risley had no knowledge of any protected activity engaged in by this Supervisor concerning the Motor Operated Valve project. Although Mr. Risley was aware of this Supervisor's general concern about the operability of the TBSCCW heat exchanger and the adequacy of the [] repair of the reactor coolant pumps, in each case, Mr. Risley welcomed this Supervisor's input and concurred with his technical assessment. In short, Mr. Risley harbored no ill-feelings against this Supervisor for the positions he took.

The Commission's letter of April 6, 1999, is unfair, unjust, and factually without merit. For these reasons, Mr. Risley urges the Commission to withdraw the letter and to refrain from placing it, or any reference to it, in the Public Document Room. If, upon considering the matters submitted by Mr. Risley, the Commission does not feel compelled to withdraw the letter, Mr. Risley requests a meeting or conference to discuss this matter.

This submittal discusses the work performance of certain individuals which is normally held in strict confidence by the Northeast Utilities System, and to the best of Mr. Risley's knowledge, this information has not been disclosed publicly and is not otherwise available in public sources. This information would also be contained in company personnel files and other similar confidential files. The public disclosure of this information would constitute a clearly unwarranted invasion of personal privacy and thus, is appropriate to be withheld under the provisions of 10 C.F.R. § 2.790(a)(6).

In addition to the protections from public disclosure for such information contained in the federal Freedom of Information Act and NRC regulations, Connecticut state law (Section 31-128f) prohibits the disclosure of information from an employee's personnel file without the employee's written authorization, unless the disclosure is made, among others "pursuant to a lawfully issued administrative summons or judicial order . . . , or in response to a government audit or investigation or defense of personnel-related complaints against the employer" Because these exceptions may not exist here, the public disclosure of this submittal could cause a violation of the Connecticut statute.

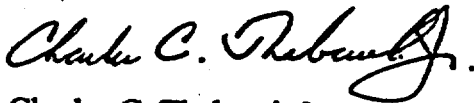
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Mr. Risley has requested that the Commission's Letter of April 6, 1999 be withdrawn and that it, and all references to it, not be placed in the Public Document Room. If, for some reason, the Commission declines that request, Mr. Risley has attached Attachment 2, which removes certain personnel-related information found in Attachment 1. Attachment 3 is merely a copy of Attachment 1, with the redacted information highlighted by brackets.

Respectfully submitted,



Charles C. Thebaud, Jr.
Counsel for Mr. H. P. Risley

Enclosure

cc: Shirley Ann Jackson, Chairman
Nils J. Diaz, Commissioner
Greta Joy Dicus, Commissioner
Edward McGaffigan Jr., Commissioner
Jeffrey S. Merrifield, Commissioner
J. Lieberman, Director, NRC Office of Enforcement

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ATTACHMENT 1

**Response of H.P. Risley
Requesting the Withdrawal of the
Commission's Letter of April 6, 1999**

May 14, 1999

Introduction

The Commission should withdraw the Letter of Reprimand issued to Mr. H.P. Risley. Contrary to the Commission's assertions, Mr. Risley did not violate the employee protection provisions of the Commission's regulations (10 C.F.R. § 50.7) and should not be subjected to the sanction of a Letter of Reprimand.

The Commission has not provided the evidence to establish the required elements of a retaliation claim against Mr. Risley. Although an individual who had previously engaged in protected activity was not selected as a supervisor during a reorganization of the NNECO engineering organization in 1993, the facts show that Mr. Risley had little knowledge of the protected activity and had no involvement or responsibility in the restructuring of the organization, the process by which supervisors were selected, or the criteria by which candidates were judged. Additionally, there is no credible evidence which would demonstrate that Mr. Risley was motivated to retaliate against this individual. Mr. Risley's involvement in the selection process limited to his attendance at two meetings with a number of other officers and directors. None of the attendees raised the individual's name as a viable candidate for a supervisory position. Mr. Risley was not the individual's manager and he had absolutely no reason or obligation to advance his name for a supervisory position. In short, there is nothing in the Letter of Reprimand or the Report of the Millstone Independent Review Team that supports a finding that Mr. Risley acted in any way contrary to the Commission's regulations.

I. Personal Background

Mr. Risley has worked for almost thirty years in the commercial nuclear industry. Starting as a startup engineer, Mr. Risley rose to a number of lead management positions in which he was responsible for such areas as Design Engineering, Technical Support Engineering, System Engineering, Reactor Engineering, Programs Engineering, Project Services, and Generation Test Services. Mr. Risley also spent two years, from March, 1996 to June, 1998, working with the nuclear industry's independent Institute of Nuclear Power Operations during which time he performed the evaluation and assessment of over thirteen U.S. nuclear power plants in areas including engineering, human performance, safety culture, and operating experience. Mr. Risley is currently self-employed and works as a consultant to various nuclear utilities.

Mr. Risley's long career as an engineer and engineering manager in the nuclear industry has given him the opportunity to raise and address innumerable technical issues

and concerns. Indeed, Mr. Risley has been involved in some of the most important areas of nuclear power operations including the start up of three different nuclear plants. Throughout his long career, Mr. Risley has always respected the right of all nuclear workers to question raise issues and concerns and has consistently encouraged all of his employees to do so.

II. The 1993 Reorganization Process

A. The Structure of the New Engineering Organization

In the early 1990s, NNECO determined that its corporate-centered engineering organization needed to become more efficient and responsive to the needs of Millstone. As a result, NU's Chief Nuclear Officer directed the formation of a task force to study other successful nuclear companies to gain insight into the development of the optimal engineering structure. The task force was comprised of a select group of NNECO management personnel, with the expert assistance of a consultant from the firm of Towers Perrin. NNECO used Towers Perrin because that firm had recently performed similar consulting services for another utility. The mission of the task force was to design the best engineering organization for NU. It was not charged with the task of identifying persons to fill the management positions in the new organization. Nor did the task force have as a goal the reduction of a certain number of positions or personnel. Likewise, the task force did not determine the effect of the proposed organization on the persons serving in management or supervisory positions in the existing organization. Finally, the new organization's structure would determine staffing levels -- not an artificial target or cost reduction percentage.

The task force performed its mission and recommended a new engineering organization to senior management. Following discussions and deliberations, senior management approved the recommendation in about August 1993. Those deliberations did not include either an assessment or identification of persons whose management positions would be adversely affected by the reorganized engineering department. The new organization was radically different from the centralized engineering organization of the past. The corporate-centered engineering function virtually disappeared as the vast majority of engineering assets were assigned directly to the operating units at Millstone Station and Connecticut Yankee. The new organization retained some corporate engineering functions, but only a select few and only those which could not be logically or efficiently provided directly to the units. This reorganization not only changed the organizational structure and reporting relationships for most of the employees, it also

changed the physical location of their work, changing from a centrally-located engineering organization to a plant-centered organization. Thus, the majority of the engineers moved from the corporate headquarters in Berlin, Connecticut to a new office building located at the Millstone Station, about fifty miles south-west of Berlin, while others moved from Berlin to NU's Connecticut Yankee nuclear plant in Haddam Neck, Connecticut.

B. The Staffing Process

Having determined the structure of the new engineering organization, NNECO began the process of staffing the positions. None of the positions in the new organization were pre-ordained. All were open. Indeed, the underlying philosophy of the process meant that all supervisors, managers, directors, and the vice-president of engineering, of the "old" organization were, in essence, relieved of their positions, and all of these persons went through the competitive selection process.

The process began with the officers considering the director-level positions. Following the selection of the directors, the same officer team selected the managers. To assist in the selection of the supervisors, of whom the officers had little, first-hand knowledge, the officers invited the four newly chosen Unit Engineering Directors to join the discussion.

The selection process used by NNECO has its origins in the 1992 Performance Enhancement Program ("PEP"). Based on the self-critical reports issued by four internal task forces, NNECO realized in 1991, that it needed to enhance the overall quality of its leadership team and the personal skills of its leaders. The PEP required the development and implementation of dozens of specific action plans. One Action Plan sought to improve the leadership skills of those serving in management positions. As part of this Action Plan, NNECO retained the services of the Hay Group to conduct individual assessments of the quality and skills of the nuclear leadership team. Over several months, the Hay Group conducted assessments and interviews of all persons serving as managers, directors, and officers. These "360 degree" assessments included evaluations of a number of leadership criteria of these leaders by their superiors, peers, and subordinates. The persons received the assessment results and, from them, developed individual performance improvement programs. Central to this effort was the recognition that effective leadership requires more than technical competency.

By the time senior management was prepared to staff the new engineering organization, the Hay Group had performed its individual assessments of the leaders. The officers recognized the availability of this valuable, independent assessment information and relied heavily on it in filling the vacancies in the new engineering organization. For example, to fill the director positions, the officers and the Hay Group identified the competencies needed. These competencies were: technical qualifications; support for the strategic objectives (long term objectives of the corporation); cultural alignment (the ability and receptiveness to change); cross-functional skills (the ability to perform a diverse range of responsibilities); and compatibility (the ability to work with others). Together with these competencies, the officers received two sets of numerical scores derived from the Hay Group's assessment of the potential directors. Of all the categories, the Hay Group's independent assessments were the most heavily weighted. Indeed, both of these two Hay Group scores were assigned the highest possible weight of "10," whereas the support for strategic objectives, cultural alignment, compatibility, and cross-functional competencies only received weights of "5," "5," "5," and "3," respectively. In each instance, the officers chose as the director, the person with the highest overall score.

The process used to select the managers also relied upon the use of the Hay Group assessments and the scoring of the individuals against the same competencies previously identified. Again, the officers selected the persons with the highest scores.

Although the Notice of Violation cites the Company and reprimands Mr. Riskey for selections made at the supervisory level, the preceding discussion is nonetheless important for several reasons. First, the deliberate process used to select the managers and directors refutes any suggestion that the Company used the reorganization as a ruse or vehicle to neutralize employees who raised safety concerns. Its purpose was pure and its process rational and legitimate. Second, the integral involvement of the Hay Group in the evaluation of the employees, as well as the Hay Group's involvement in the subsequent selection process at all levels of management, demonstrates the Company's willingness to rely on independent, unbiased assessments of its leaders and to employ contemporary methods and standards in the selection of the leadership team. Third, the attention paid to non-technical leadership qualities confirms the Company's recognition of the need to develop effective leadership skills to change the culture at Millstone.

The selection of the supervisors followed the same principles that governed the selection of the management, and, as with the selection of the management, none of the existing supervisors were excluded from consideration. The officers soon realized, however, that they lacked the specific knowledge necessary to make the best decisions.

As a result, the officers invited the four newly chosen Unit Engineering Directors to join the discussions. The whole selection team soon determined that there were many non-supervisors whose performance merited consideration for supervisory positions. The officers and directors had sufficient knowledge to evaluate the qualities of the existing supervisors, but they were not confident that they possessed the required knowledge of the non-supervisors. Consistent with the selection of the directors and managers, the officers directed that the Hay Group conduct an assessment of the non-supervisors to provide additional, independent information for their consideration. Although the Hay Group could not conduct the lengthy, 360 degree performance assessments, as it had during the summer months for upper management, it did conduct assessments which focused on the same leadership competencies and skills previously identified as essential for new leadership. With this information, the Hay Group then ranked the prospective candidates in quartiles and provided the results to the reassembled officers and directors for their consideration.

The selection of the supervisors began with the identification of the position to be filled and the receipt of the names of potential candidates for the position. Mr. Risley recalls that all potential candidates, including both existing supervisors as well as nonsupervisor candidates, were listed on sheets prepared by facilitators from the Hay Group and that no existing supervisor, including the two who allege that some protected activity led to their removal from supervisory positions, was excluded from consideration by any member of the panel. Under the administrative direction of the Chief Nuclear Officer with the assistance of the Hay Group and a representative from Human Resources, the group then considered the Hay Group assessment (if the person was not already a supervisor), discussed the candidates, and reached a consensus on the person best qualified for the position under consideration. Like the discussions for the director and manager positions, the group's discussions focused on the qualities and skills needed to improve the effectiveness of the services provided by this new, unit-focused engineering organization. Given the sweeping nature of the organizational changes, the officers and directors did not conduct an individual evaluation of the existing supervisory team. No specific attendee was responsible for the advancement of candidates from their former or future organizations. Candidates names surfaced if any attendee believed that the person should be considered for the position. To the extent any existing supervisor received consideration, that consideration arose because one of the attendees mentioned the name as a possible candidate. Therefore, if a supervisor's name was not mentioned, the group did not discuss that person or consider that person's performance or qualifications.

As noted, the changes were vast. The large, Berlin-based Engineering Department ceased to exist, as the vast majority of its members were assigned directly to the operating units at Millstone and Connecticut Yankee in revamped unit engineering departments. The new organizational structure also substantially changed the responsibilities of many jobs and completely eliminated other supervisory positions. In fact, there were sixteen fewer supervisory positions in the new organization. Almost one-half of the remaining fifty-nine supervisory job descriptions changed in some substantive way. Sixteen supervisory positions were filled by persons who were not existing supervisors. Nineteen existing supervisors were either demoted or moved from supervisory positions. Only seven existing supervisors rotated into new supervisory positions. Two managers were demoted and took supervisory positions.

The reorganization had an adverse effect on many people -- not just the two who allege that some protected activity led to their removal from supervisory positions. Indeed, one of the vice presidents in the old organization was not re-selected to be a vice president in the newly created organization. However, the facts remain that Mr. Risley was not a member of the task force that designed the reorganization; he did not create the reorganization implementation process; and he did not establish the criteria used in evaluating candidates for the newly created positions.

III. The Proposed Letter of Reprimand Is Unlawful

A. The Allegation Is Legally Deficient

The Letter of Reprimand issued to Mr. Risley alleges that Mr. Risley's "actions in 1993 in connection with the demotion and removal from supervisory responsibilities of the Supervisor, Engineering Mechanics were taken, at least in part, because the supervisor engaged in various protected activities at Millstone." The Letter fails to identify or describe any actions allegedly taken by Mr. Risley which form the basis for this allegation. Additionally, the Letter fails to describe the protected activity which supposedly motivated Mr. Risley to take the unspecified action.

The Notice of Violation issued to NNECO on April 6, 1999, provides a glimmer of insight in that it alleges that the protected activity engaged in by that Supervisor was related to the Motor Operated Valve program, the turbine-building secondary closed cooling water heat exchanger, and reactor coolant pumps at Millstone. The NOV also indicates that "the then Director of the Engineering Department"

“supported” the Vice President for Nuclear Engineering Services in the decision to remove that Supervisor from his supervisory responsibilities in November 1993.

The Report of Investigation issued by the Millstone Independent Review Team on March 12, 1999, does little to clarify the basis for the allegation against Mr. Risley. Indeed, the Report notes that “in order to receive any consideration, a candidate had to be proposed” by one of the attendees at the selection meeting. Report, at 12. The Report concludes, however, that, because the two former supervisors’ names did not arise during the supervisory selection meeting, in either a positive or negative way, “neither received any consideration at all.” *Id.* Thus, it appears that Mr. Risley has been charged with remaining silent during a meeting and that his silence somehow constitutes unlawful support for the unarticulated thoughts of the former Vice-President. The Report is, of course, silent on how Mr. Risley would be privy to the alleged thoughts of the former Vice President or any of the other attendees. It also fails to explain how Mr. Risley’s silence about a topic that was never mentioned or discussed at a meeting can constitute sufficient evidence to find the specific intent to discriminate. In the end, Mr. Risley appears to have been charged with a thought crime, the basis of which is unstated -- much less established by any credible evidence.

Under any reasonable standard, these allegations cannot withstand scrutiny. The substantive paucity of the charge itself demands the immediate retraction of the letter.

B. The Commission Has Not Followed Its Procedures and Unlawfully Prejudged This Matter

The Commission’s decision to issue Mr. Risley a Letter of Reprimand without providing Mr. Risley with any opportunity to present information relevant to the Commission’s “findings” contrasts sharply with the due process protections afforded individuals in the NRC’s Enforcement Policy and the U.S. Constitution. The Enforcement Policy makes clear that enforcement against individuals will not normally be taken unless and until the individual has had the opportunity to provide the Commission with “information that will assist the NRC in determining the appropriate enforcement action, such as a common understanding of facts, root causes and missed opportunities associated with the apparent violations.” General Statement of Policy and Procedure for NRC Enforcement Actions. In this regard, the Policy notes that where enforcement involves possible deliberate misconduct or an unlicensed individual, such an opportunity will “normally be provided.” *Id.*

The Independent Review Team praised the existence of the due process protections provided in the Enforcement Policy. In particular, the Team emphasized the importance of giving individuals accused of deliberate misconduct the opportunity to address the matters which form the basis for the actions. U.S. Nuclear Regulatory Commission Millstone Independent Review Team Report of Review, dated March 12, 1999, at 20. Considering that the events which form the basis for Mr. Risley's letter took place six years ago, and considering that Mr. Risley's intent lies at the heart of the matter, his input is essential to the compilation of a complete record. It is no less essential to the search for truth.

Inexplicably, the Commission has ignored its Enforcement Policy and ignored the pointed observations of the Independent Review Team. Instead, the Commission has pre-judged Mr. Risley's motives, decided upon his culpability, and administered punishment without advising him of the charges, without informing him of the evidence, and without affording him an opportunity to address the issues. It is no solace to Mr. Risley -- and no substitute for due process -- that the Commission has allowed him to submit a response to vague allegations at this late date. The essence of due process is to be advised of the charges in a meaningful way and to have the opportunity to address these matters before the decision maker considers the evidence. As the Independent Review Team noted, it is only with such information that the Commission can make a "fully informed enforcement decision." *Id.* The Commission's unwarranted and unfair rush to judgment in this case has deprived Mr. Risley of his right to due process and placed the Commission in the untenable position of deciding an important matter on the basis of an incomplete record.

IV. Mr. Risley's Actions Were Lawful In All Respects

To establish intentional wrongdoing under 10 CFR 50.5, for a violation of 10 CFR 50.7, the Commission must prove: (a) that the Supervisor engaged in protected activity; (b) that Mr. Risley was aware of that protected activity; (c) that the Supervisor suffered some adverse employment action; and (d) that Mr. Risley took that action because the Supervisor engaged in the protected activity. There is no question that the Supervisor engaged in protected activity and that Mr. Risley was aware of some of it. There is also no question that the Supervisor did not retain a supervisory position in the 1993 reorganization. At that point, however, the proof ends. There is no evidence that Mr. Risley took any adverse action against the Supervisor and there is no evidence that

Mr. Risley ever acted in any way to retaliate against the Supervisor because he engaged in protected activity.

- A. **Mr. Risley Was Aware of Some of The Protected Activity Engaged In By The Supervisor, But That Protected Activity Did Not Adversely Affect Mr. Risley's Opinion Of The Supervisor**

As noted previously, the NOV issued to NNECO asserts that the Supervisor's protected activity led to his failure to secure another supervisory position. Not only did that protected activity play no role in the Company's action, to the extent that Mr. Risley was aware of it, it had a positive effect on Mr. Risley's opinion of the Supervisor.

Mr. Risley did not know of any protected activity engaged in by the Supervisor concerning the MOV project. During the time that the Supervisor was responsible for the MOV program, another person -- not Mr. Risley -- was the responsible director. When Mr. Risley assumed a portion of that other Director's responsibilities in late-September 1993, the Supervisor was no longer in charge of that project, having been replaced in the first quarter of 1992. At the time of the 1993 reorganization, Mr. Risley was aware that the MOV program was experiencing difficulty and that the problems with schedule compliance were pronounced. He did not, however, have any knowledge of the Supervisor's specific views of the project, or the Supervisor's assessment of the problems associated with any issue. Nor did Mr. Risley play any role in the 1992 reassignment of the responsibility for the MOV program from the Supervisor to another person. In short, to the extent that the Supervisor engaged in protected activity concerning the MOV project, Mr. Risley had no knowledge.

Mr. Risley was aware, however, that the Supervisor was concerned about a [REDACTED] TBSCCW heat exchanger in Unit 1. However, Mr. Risley only became aware of the Supervisor's concerns long after they were first voiced. In fact, Mr. Risley's only involvement with the issue was in making the changes necessary to correct the problem. In this regard, as Director, Project Services, Mr. Risley was invited to a meeting in the summer of 1993 to discuss the modifications needed to correct the [REDACTED]. He attended the meeting and thereafter worked with the Supervisor and others to complete the necessary modifications. He did not consider the Supervisor's involvement unusual, contentious, or in any way a reflection of undesirable qualities. Mr. Risley viewed the work then, as he does now, as a straightforward response to an issue properly raised and resolved.

Similarly, Mr. Risley was generally aware that the Supervisor questioned [redacted] of reactor coolant pumps, and was involved in various technical discussions concerning the issue. However, the ultimate responsibility for the issue rested with the Director of Operations, not with Mr. Risley, who had no decision making authority on the matter. Nonetheless, Mr. Risley viewed the Supervisor's critical assessment of the [redacted] as correct and complimented the Supervisor for his work. Once again, the Supervisor's questioning of the [redacted] had a positive -- not negative -- effect on Mr. Risley's view of the Supervisor.

B. There Is No Causal Connection Between Any Protected Activity Engaged In By The Supervisor And Any Decision Made By Mr. Risley

A violation of 10 CFR § 50.7 requires that the decisionmaker take adverse action against an employee because that employee engaged in protected activity. This means that the decisionmaker must possess the specific intent to discriminate. The evidence already discussed reveals several fatal flaws in any conclusion which suggests deliberate wrongdoing by Mr. Risley.

The facts are undisputed that Mr. Risley was not responsible for the Supervisor's removal from a supervisory position or his nonselection for a supervisory position in the reorganization. First, Mr. Risley was not a member of the task force that designed the new organization. Second, Mr. Risley did not create the personnel selection process. Third, Mr. Risley did not establish the criteria used in evaluating candidates for the newly-created supervisory positions. Indeed, the Review Team's Report essentially concedes that Mr. Risley did not make any decision to remove the Supervisor from a supervisory position. Moreover, the evidence is uncontested that no one at the selection meeting raised the Supervisor's name or discussed his qualifications. Why Mr. Risley should be held responsible for the inability of a group of his peers and superiors to think of the Supervisor's name to fill some unstated position is a mystery. Mr. Risley was not the Supervisor's permanent director and had no special reason to consider the Supervisor or advance the Supervisor's name for a position. Mr. Risley had assumed temporary responsibility for some of duties of the Engineering Department Director after that Director was placed in charge of the MOV project in the end of September 1993, but that interim assumption of limited responsibility, did not carry with it the obligation to rate the Supervisor or oversee the Supervisor's professional development. Indeed, by the time the selections were made in late October and early November 1993, Mr. Risley had only assumed some of the Director's responsibilities for about one month. And during that one month, Mr. Risley retained all of his existing responsibilities as Director, Project

Services -- a large organization that did not include the Supervisor. By the time the selections were made, Mr. Risley simply had no obligation, or even a reasonable basis, to advance the Supervisor as a candidate.

The facts demonstrate that Mr. Risley's role in the selection meeting was minor, at best. Like the other newly chosen Unit Engineering Directors, he learned of his selection when he was invited to attend the supervisory selection meeting. He was then invited to join in discussions that had already begun, in a process that was already established and well under way. He simply followed a process that he had no hand in developing.

It well may be that a better process, or more thoroughness, or even a greater sense of fairness, would have led the officers and directors to consider systematically all incumbent supervisors. They did not. But they did not do it for any incumbent, unless someone raised the name. That lack of perfection, however, is not a substitute for the specific intent needed to support a finding of discrimination.

Disregarding the need to identify specific intent by Mr. Risley, the Review Team concluded that "the officials involved in the selection process did not supply a credible explanation why neither allegor was worthy even of consideration for retention in supervisory positions. . . ." Report, at 12. Several problems flow from this conclusion. First, the assertion that "the officials involved in the selection process" were at fault undercuts the Commission's decision to reprimand Mr. Risley. As already discussed, the evidence indicates that he played no greater role than anyone else at the meeting in recommending candidates for supervisory positions. Moreover, neither Mr. Risley nor anyone else was responsible for the Supervisor at that meeting. If anyone was to be the logical spokesperson for the Supervisor, it would have been his actual Director. Unfortunately, however, that Director was not included in those selection meetings because, unbeknownst to him, he had not been selected to retain his job. Singling Mr. Risley out as the person responsible for not elevating the Supervisor's name has absolutely no basis in fact.

Second, disregarding the fact that the Review Team has improperly implied wrongdoing in the failure of a group to think about an issue that was not raised, the evidence overwhelmingly refutes the implication. Indeed, the record is replete with evidence which establishes why the Supervisor did not retain a supervisory position. That evidence establishes beyond any doubt that only legitimate business reasons led to the

Supervisor's displacement as a supervisor. And the evidence confirms that Mr. Risley possessed no discriminatory intent at all by his participation in the selection meeting.

1. The Supervisor's Organization Ceased to Exist

As previously discussed, the purpose of the reorganization was to make the engineering function more efficient and more responsive to the units at Millstone. To accomplish this, the vast majority of the corporate-based engineers were reassigned to new positions at Millstone. The Supervisor and his team were among them.

Before the reorganization, the Supervisor was the Supervisor, Engineering Mechanics, reporting to a Manager. The Supervisor had three peer Supervisors who also worked under the same Manager. They were: (a) the Supervisor, [REDACTED] (b) Supervisor, [REDACTED] and (c) Supervisor, [REDACTED]. After the reorganization, [REDACTED] The groups under the Supervisors of [REDACTED] and placed under a person who had not been a Supervisor before the reorganization. The Supervisor at issue here and his people were treated no differently. Because of the need for more direct support to the units, eight of the Supervisor's eleven employees were reassigned directly to the [REDACTED] and one was assigned directly to [REDACTED]. Of these [REDACTED] direct assignments to these units, [REDACTED] assignments and [REDACTED] assignments. Clearly, the reassignment of the Supervisor's workgroup, and the subsequent loss of his supervisory position was not an isolated event. His peers went through the same experience for the same, legitimate purpose -- to make engineering more accessible and responsive to the changing needs of the units.

The Supervisor lost his supervisory position when the company decided to implement the recommendation of the reengineering task force. Mr. Risley played no role in that decision and he cannot be held accountable for it under any circumstances.

2. The Supervisor's Performance and Professional Background Did Not Recommend Him For Another Supervisory Position

Having established that the Supervisor's position was one of many which were eliminated in the reorganization, and having established that Mr. Risley was not the decision maker, the focus shifts to the reasons why the group attending the selection meeting did not consider the Supervisor for some other supervisory position. Mr. Risley,

of course, cannot address what thoughts others may or may not have entertained at the time. And, as Mr. Risley has already indicated, he did not specifically consider and reject the Supervisor for any particular position. We can, however, examine the Supervisor's objective performance record to look for evidence of traits or trends which would have affected his professional reputation and influenced the attendees.

At the time of the reorganization in 1993, the Supervisor had only served as a supervisor for slightly over [redacted]. Before that time, he had been a [redacted]. After the 1993 reorganization, he again became [redacted] who frequently have advanced degrees in narrow engineering disciplines. The Supervisor has a [redacted]

When the engineering organization had a position for a supervisor of a [redacted] his discipline was sufficiently direct to place him in charge of the work in the group. In the 1993 reorganization, however, the Company transferred the skills in that group directly to the units, under the supervision of a broader-based design engineering supervisor, with expanded and different responsibilities. The Supervisor simply did not have the breadth of experience at the plant needed for the position.

The Supervisor's performance, although acceptable overall, did not place him at or near the top of his peers and his particular strengths did not match those needed for supervisory positions at the plant. The Supervisor's annual performance evaluations reflect acceptable -- but not exceptional -- performance. Indeed, several evaluations highlight areas for improvement. Even before he became a supervisor, the Supervisor's annual evaluation noted that he needed to improve the timeliness of his assignments and in the control and monitoring of his work assignments. (See the comments on the Supervisor's 1989 performance review.) The following year, the Supervisor's Manager noted that the Supervisor "needs to increase sensitivity to commitment follow [through] and procedure compliance." The Manager made the exact same observation in the [redacted] and also noted that "[a]dditional follow-up is required to make appropriate corrections to the MOV program." In evaluating the Supervisor's performance during [redacted] the Manager repeated the same theme, finding that the Supervisor "[needs] to improve in work monitoring and control and commitment follow." In fact, in grading the competency of "Monitoring & Controlling Work Progress," the Manager gave the Supervisor an "NI," reinforcing the comment that the Supervisor needs improvement. In that same evaluation,

the Manager also noted that, "[i]mproved resource planning and follow up is recommended." Mr. Risley did not prepare any of the Supervisor's performance evaluations.

This brief recitation of some of the relevant comments on the Supervisor's performance evaluations does not imply that he was not an acceptable supervisor. He was. But it is also quite clear that, for four consecutive years, his Manager kept emphasizing the need for improvement in key supervisory areas to no apparent avail. These comments prove that schedule adherence, commitment follow through, and work control were weak areas in the Supervisor's performance.

Moreover, the Supervisor's strengths [redacted] were not the key attributes required for success in plant engineering supervisory positions. In contrast to the Supervisor's strengths, those positions require planning, follow through, adherence to schedule, and a practical sense of how to get work accomplished in a plant setting. These were simply not the Supervisor's strong suit.

This assessment of the Supervisor is not revisionist history. As noted, his performance evaluations over an extended period before the 1993 reorganization reflect these observations. So too does the uncontested record of the performance of various projects he supervised before that reorganization. Consider, for instance, the Supervisor's performance while responsible for the Company's implementation of GL89-10, the Generic Letter addressing MOVs. By early 1992, several years into the time for compliance with GL89-10, the Company was no where near on schedule. In fact, there was no effective plan that would ensure successful compliance. To put the program on schedule, engineering management had to reassign responsibility for the project to a manager in 1992, and in late-1993 to a former director. Similarly, during this same time frame, the Supervisor was responsible for the Company's [redacted]

[redacted] The mention of these programs does not suggest that the Supervisor was a failure or that he was solely responsible for the condition of these programs. To be sure, many bear some portion of the responsibility. But as the Supervisor responsible, so does he.

Given: (1) the reassignment of the Supervisor's personnel and the related technical areas of expertise to provide support directly to the units; (2) the displacement of many of his peers from supervisory positions to non-supervisory positions throughout the Company; (3) the broad range of supervisory and technical skills needed to

successfully supervise plant engineers of varying disciplines; (4) the Supervisor's narrow area of experience and expertise; (5) the Supervisor's strength and [redacted] and (6) the Supervisor's documented problems with follow through, work control, and schedule adherence, it is hardly surprising that neither Mr. Risley, nor the other members of the selection panel, specifically nominated the Supervisor for a supervisory position in the new engineering organization.

C. Conclusion

The destruction of a person's career cannot be founded upon an inference drawn from whole cloth. Neither legal precedent nor fundamental notions of fairness will support a charge of discrimination based on one person's silence about the qualifications of an employee whose identity and qualifications were never raised or discussed by any of the attendees at a selection meeting. The law requires that a finding of intentional discrimination be grounded in at least some credible evidence proving that the decision maker possessed the specific intent to discriminate. Had the Supervisor been discussed at the meeting and had Mr. Risley spoken against him for unjustified reasons, the matter might be debatable. But no such discussion took place. To conclude that Mr. Risley secretly possessed the desire to retaliate against the Supervisor and that his silence is somehow probative of his intent is simply nonsense. Mr. Risley did not remove the Supervisor from his position and Mr. Risley did not decline to place him in another supervisory position. The recommendation to reorganize was made by a task force, with no input from Mr. Risley. And the supervisory selections were the consensus of the group, with Mr. Risley playing no greater role than any of the other participants -- and, in fact, as a newcomer to the process, a lesser role than many.

That no one in the group attending the selection meeting thought of the Supervisor as the various jobs were discussed tells a lot about their perception of the qualifications of the Supervisor for the positions. The Commission has not charged the other attendees with discrimination, with the exception of the former Vice-President. If the Supervisor's skills and qualifications were truly the perfect match for some other supervisory position, surely these unbiased persons would have raised his name for consideration. They did not because his skills and qualifications simply did not match the requirements of the positions. In short, he was not the best person available, for good and legitimate reasons.

**V. If Left Standing, The Letter of Reprimand Will Have
A Devastating Effect On Mr. Risley and His Career**

The Commission's Letter of Reprimand will have a devastating effect on Mr. Risley's career in the nuclear industry. Mr. Risley is currently self-employed as a consultant to nuclear utilities. [redacted] continue to work to supplement the limited pension benefits afforded persons taking early [redacted] In addition to his extensive experience, Mr. Risley's most important asset is his reputation for integrity. Although the Letter of Reprimand will not erase Mr. Risley's years of experience, it can, and will, strip away his reputation for integrity and, thereby, impede drastically his ability to earn a living. In particular, given the Commission's letter, the nuclear industry will likely view Mr. Risley as one who does not respect the right of individuals to raise safety concerns. That view is wrong, but prospective clients will be hard pressed to hire a person who has been cited by the Commission. Given the compelling facts supporting Mr. Risley's innocence, the harm that Mr. Risley has already suffered is manifestly unfair. The Commission should not compound the harm by leaving the letter intact.

VI. Conclusion

The overwhelming weight of the evidence establishes that Mr. Risley did not discriminate against the Supervisor of Engineering Mechanics. In particular, Mr. Risley took no adverse action against the Supervisor -- much less adverse action for an improper reason. Rather, the Supervisor was one of many officers, directors, managers, and supervisors who lost a position in the engineering reorganization. Mr. Risley's role in the selection process was no different from the role of his fellow Unit Engineering Directors, and far less than the consultants and officer attendees. Like the other directors, Mr. Risley attended a previously scheduled selection meeting, and participated in a process that was already established and on-going. Like the other attendees, Mr. Risley considered the persons whose names surfaced as potential candidates for the positions. He was not responsible for the collective thoughts of the group or the individual motives of the attendees. Nor was he responsible for advancing the name of this Supervisor, who was not a member of his organization, and with whom he had had relatively little professional contact.

~~CONTAINS PERSONAL PRIVACY
MATERIAL PROTECTED FROM
DISCLOSURE BY 10 C.F.R. § 2.790~~

The Commission cannot in good conscience taint the career of Mr. Risley on the basis of an undisclosed inference that Mr. Risley harbored a retaliatory motive. He did not. Moreover, he took no action to preclude the Supervisor's selection for a position.

For these reasons, the Commission should withdraw its letter of April 6, 1999.