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May 14, 1999

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

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 Investigation Case No. 1-97-007)

Dear Mr. Miller:

Mr. Sudigala has reviewed the Letter of Reprimand sent to him on April 6, 1999, along with the accompanying Notice of Violation to Northeast Nuclear Energy Company ("NNECO") regarding NRC Office of Investigation Case No. 1-97-007. Mr. Sudigala specifically denies that his recommendation that resulted in the termination of the Supervisor, Electrical Design Engineering ("Electrical Design Supervisor") was made, in whole or in part, because that supervisor engaged in protected activity. For the reasons discussed below, Mr. Sudigala denies that any of his conduct violated 10 CFR 50.7 and requests that the Letter of Reprimand be rescinded.

The April 6, 1999 letter of reprimand states that the investigation conducted by the NRC Office of Investigation ("OI") and the subsequent independent review conducted by the Millstone Independent Review Team ("MIRT"):

> "support a finding that [Mr. Sudigala's] action in August, 1995 in recommending the dismissal of [the Electrical Design Supervisor] was taken, at least in part, because the supervisor engaged in protected activity at Millstone. This constitutes discrimination which is prohibited by 10 CFR 50.7.

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* * *

> Based on a review of the evidence in this matter, the NRC has concluded that [Mr. Sudigala's] conduct in recommending and obtaining the dismissal of this supervisor contributed to a violation of NRC regulatory requirements."

Mr. Sudigala takes this allegation seriously because he understands his duties and obligations under the NRC regulatory requirements, particularly under 10 CFR 50.7, and adheres to those duties and obligations. He most strongly denies that he discriminated against the Electrical Design Supervisor for any protected activity or that any protected activity contributed to any decisions Mr. Sudigala made regarding the Electrical Design Supervisor's employment. He maintains that the allegations are false and unfair and that they improperly impugn his reputation for honesty, safety consciousness and compliance with regulatory requirements. Mr. Sudigala regrets that the procedural setting of the Letter of Reprimand permits only this letter submission rather than a full airing of the facts, particularly in light of the fact that the NRC had previously closed this matter out in August 1998, with a finding that no action would be taken against either Mr. Sudigala or NNECO of no violation. Specifically, the NRC's August 26, 1998 letter from Wayne Lanning, NRC, to Martin L. Bowling, NNECO, stated:

> OI Case No. 1-97-007 was initiated on March 6, 1997 to determine if a former Unit 2 electrical engineering supervisor was fired on August 2, 1995 for having raised concerns to the Nuclear Safety Concerns Program (NSCP). Based on a review of the matter, <u>the NRC staff concluded there was not sufficient evidence to substantiate the allegation of discrimination</u>. (Emphasis added)

Moreover, the facts do not support the conclusions drawn to support the Letter of Reprimand.

Mr. Sudigala, then Manager of Design Engineering, participated in and recommended the decision to remove the Electrical Design Supervisor as one of the supervisors who reported directly to him. He reached this decision in consultation with his immediate supervisor, the Director of Engineering ("Director"). When he discussed this decision with the Vice President of Engineering Services, ("Vice President"), he was advised that senior management had directed that supervisors and managers with performance problems would

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no longer be demoted or transferred laterally to non-supervisory jobs. He understood that this directive meant that supervisors with performance problems would be dismissed.

It was clear to Mr. Sudigala, from his observation of the Electrical Design Supervisor's performance, his numerous counseling sessions with the Electrical Design Supervisor and the lack of significant performance improvement since his year-end 1994 evaluation that the Electrical Design Supervisor had not performed and could not perform at a level Mr. Sudigala and his Director expected. Thus, the Electrical Design Supervisor was terminated on August 2, 1995.

The Electrical Design Supervisor grieved his termination through the Company's established grievance procedure. Mr. Sudigala understands that the Grievance Panel, comprised of three senior executives of the Company, concluded that the negative assessment of his performance as a supervisor was supported by the facts, but that the termination did not follow the Company's internal process in that it had not been preceded by adequate communications with him regarding his performance deficiencies and an opportunity to improve. The Electrical Design Supervisor [ ]

The allegations investigated by the OI emanated from an exchange between the Electrical Design Supervisor and Mr. Sudigala in November 1994 during an unexpectedly extended outage of Unit 2. Mr. Sudigala had been the Manager of Design Engineering since approximately May 1994. The outage, which began in October 1994, was then expected to be longer than originally planned due to problems in implementing projects scheduled to be completed during the outage, including a significantly troubled project relating to modifications to the Engineered Safeguard Activation System ("ESAS") that was the responsibility of the Electrical Design Supervisor and his group. Mr. Sudigala recalls that by November 1994, the performance of the Electrical Design Engineering Group was being viewed critically by Company management. The ESAS project had been poorly planned, it had been untimely and inadequately presented to the Plant Operating Review Committee ("PORC"), and there had been implementation problems that should not have occurred or should have been anticipated. Mr. Sudigala recalls counseling the Electrical Design Supervisor as to the deficient performance on this project on several occasions prior to the November 1994 exchange.

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After substituting for his Director at a weekly meeting of top management to review the status of the outage and troubled projects, Mr. Sudigala, met with the Electrical Design Supervisor and the lead engineer on the ESAS project. Mr. Sudigala understands that the Electrical Design Supervisor claims that in this meeting, Mr. Sudigala threatened him with loss of his job if the ESAS project extended the outage. Mr. Sudigala described the conversation as attempting to re-emphasize what he had communicated previously to the Electrical Design Supervisor - that the ESAS project was not going well, that it had not been planned or prepared adequately prior to the outage, that it was stalled with no clear direction from the Electrical Design Supervisor's group to progress toward a solution, that the Electrical Design Engineering Group's failure was having an impact on the Unit, and that this failure was under scrutiny by top management. In an effort to put an exclamation point on the communication, he stated words to the effect that they were all going to get fired if they didn't get the project moving in the direction toward a solution.

In a meeting which shortly followed with the Vice President, Mr. Sudigala was counseled for communicating in such a manner. Mr. Sudigala acknowledged then, as he does now, that he could have and should have communicated his concerns about performance on the project in a less emotional and dramatic fashion.

Shortly thereafter, Mr. Sudigala met with the Electrical Design Supervisor to describe to him that the intent was not to threaten his termination, but was merely an effort to emphasize the need for better performance on the ESAS project and the need for Design Engineering to get the project on track and consider itself accountable for achieving results. Mr. Sudigala considered the matter closed and did not hear any further about the alleged threatened termination until the NRC investigation.

The Electrical Design Supervisor's termination 10 months later was not a result of the alleged threat or of his bringing the alleged threat to the attention of the Company's Employee Concerns Program ("ECP") or to the Vice President. It was a result of a combination of the Electrical Design Supervisor's performance as a supervisor and his managers' interpretations of a senior management directive attempting to impart a higher level of performance and accountability in the organization.

The Engineering Design Supervisor began reporting to Mr. Sudigala in May 1994 when Mr. Sudigala became Manager of Design Engineering. Mr. Sudigala was dissatisfied with the performance of the Electrical Design Supervisor's Design Engineering Group,

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including its performance on the ESAS project. The project had been poorly planned, was missing deadlines, and had been inadequately presented to PORC. It experienced implementation problems that should not have occurred or should have been anticipated. Mr. Sudigala's view was that the Electrical Design Supervisor had not aggressively taken control of such an important project to assure that it would be completed in a timely and proper manner. Mr. Sudigala also had several discussions with the Electrical Design Supervisor prior to and shortly after the outage began generally about his performance and more specifically about the ESAS project.

In February 1995, Mr. Sudigala completed a comprehensive performance evaluation of the Electrical Design Supervisor's [ ] The evaluation highlighted the Electrical Design Supervisor's supervisory performance issues and included not only specific project related criticisms, but also criticisms of the Electrical Design Supervisor's supervision and direction of his subordinates and his lack of assertive direction and control over the work in his group. These assessments echoed the prior oral communications by Mr. Sudigala, focusing on coaching and counseling concerning these recurring themes of leadership, diligent follow-up and control to achieve timely and successful completion of engineering projects.

Other events occurred within the Electrical Design Engineering Group between the evaluation and the Electrical Design Supervisor's termination that further eroded management's confidence in his ability to supervise and manage the engineers and the projects in his Group. During 1994 and 1995, his Electrical Design Engineering Group had experienced a series of inexcusable failures resulting from poor engineering performance and poor supervision during an important time for Unit 2. Projects under the Electrical Design Supervisor's supervision were not executed efficiently and effectively. He did not consistently demonstrate an ability to develop solutions to problems with projects. He did not manage resources effectively and rejected the need for help when asked. He also did not consistently demonstrate an aggressive pursuit of problems and solutions or the timely and successful completion of projects. The course of projects under his control were in such a disorganized state that it became necessary to bring in extensive support from outside the unit, including a former employee, consultants and employees from other NU facilities to lead the completion of the ESAS project. The failure of the Fast Transfer project and an incident involving the ATWS system during early July 1995 were prominent examples further reflecting the fact that there were problems with performance, decision-making and project implementation within his Group. Furthermore, even before the outage, Mr. Sudigala

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had observed that the Electrical Design Supervisor did not exhibit a leadership role as the representative of management within the Group, which had a negative effect on the morale of employees in the Group. Thus, the Director and Mr. Sudigala concluded that they needed stronger supervision in the Group and that the Electrical Design Supervisor could not continue as supervisor. Both the Director and Mr. Sudigala were in full agreement with this decision.

Shortly after the ATWS incident and [ ] Mr. Sudigala was advised by the Vice President that top management had stated a new directive designed to instill a heightened level of supervisory accountability for performance and results. This directive meant that a lateral transfer or a demotion were not options where a supervisor's performance was inadequate. Mr. Sudigala understood that this directive meant that to remove the Electrical Design Supervisor as supervisor would mean his termination.

Upon learning this, Mr. Sudigala contacted [ ] His Director told him to refrain from acting on the Electrical Design Supervisor until he returned. When later informed that this directive indeed applied, Mr. Sudigala concurred in the decision because he believed that the Electrical Design Supervisor's performance and abilities as a supervisor were inadequate and that he could no longer continue in the supervisory position.

The Grievance Panel reversed the termination for reasons relating to the Company's internal policies and procedures. They concluded that the Electrical Design Supervisor did not demonstrate the supervisory skills necessary for his position as a Supervisor. However, they also concluded that these deficiencies had not been adequately communicated to him in the nature of a specific performance improvement plan prior to his termination.

Mr. Sudigala agrees that mistakes were made in not following personnel procedures and that the application of the top management directive created a harsh result for the Electrical Design Supervisor. Nevertheless, the assessment of the Electrical Design Supervisor's performance that resulted in the decision to remove him as a supervisor was fair, reasonable and accurate. He was not effective as a supervisor, as reflected by the Group's performance on engineering projects in 1994 and 1995, his lack of leadership within the Group, and the fact that extensive engineering support had to be brought in from outside the unit to lead the completion of an important project during the outage. The facts simply do not support any conclusion that Mr. Sudigala's negative assessment of his supervisory

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

performance, which even preceded the November 1994 exchange, was because he had expressed a concern to the ECP or the Vice President. There is no probative evidence of any connection between the Electrical Design Supervisor's expressing a concern and Mr. Sudigala's assessment of his performance or the decision, 10 months later, to remove him from his supervisory position. On the contrary, Mr. Sudigala's counseling of the Supervisor and the comprehensive evaluation he prepared reflect a manager attempting to coach a supervisor to improved performance. Unfortunately, the improvement did not occur.

In summary, Mr. Sudigala did not take any action against the Electrical Design Supervisor because the supervisor engaged in any protected activity. The decision to terminate the Electrical Design Supervisor was not at Mr. Sudigala's initiative, but, as Mr. Sudigala understood, the result of a management directive that contemplated greater accountability for performance and results. Because he believed the Electrical Design Supervisor should be relieved of his supervisory responsibilities, he concurred in the decision to terminate.

For these reasons, the April 6 letter was not fairly issued and reaches conclusions not supported by the facts. Therefore, Mr. Sudigala requests that the NRC withdraw the April 6 letter and that it, and all references to it, not be placed in the Public Document Room.

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. Sudigala'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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If, for some reason, the Commission declines to withdraw the April 6 letter, and place material in the Public Document Room, Mr. Sudigala, Attachment 1, consisting of a separate copy of this submittal which removes certain personnel-related information found in the original, should be substituted for the original submittal. Attachment 2, consisting of a separate copy of this submittal with the personnel-related information bracketed, is provided solely for NRC review purposes.

Respectfully submitted,

Jay M. Gutierrez
Counsel for Mr. Sudigala

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