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February 6, 1995

VIA FEDERAL EXPRESS

Ms. Karla D. Smith
Regional Counsel
Nuclear Regulatory Commission, Region I
475 Allendale Road
King of Prussia, Pennsylvania 19406-1415

Re: Vincent J. Polizzi
February 8, 1995 Enforcement Conference

Dear Karla:

By letter dated January 11, 1995, Mr. Richard W. Cooper, Director of Reactor Projects for Region I of the Nuclear Regulatory Commission ("NRC"), advised Mr. Vincent J. Polizzi that the NRC would be conducting an enforcement conference to discuss possible escalated enforcement action against him in his individual capacity. The conference is scheduled for Wednesday, February 8, 1995. I have been retained by Public Service Electric & Gas to represent Mr. Polizzi in connection with the NRC's possible enforcement action against him.

Mr. Polizzi is eager to discuss this matter with the NRC, and he will be prepared to discuss, in detail, anything that the NRC wishes to discuss at his enforcement conference. In addition, as part of its deliberations over whether to take enforcement action against Mr. Polizzi in his individual capacity, we ask the NRC to carefully consider the enclosed Declaration of Vincent J. Polizzi and Memorandum in Support of Vincent J. Polizzi. These materials briefly discuss Mr. Polizzi's actions and his legal position in this matter, as well as various extenuating and mitigating factors which we respectfully request the agency to consider before it decides whether it is appropriate to take any enforcement action against Mr. Polizzi in his individual capacity.

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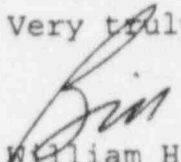
ROSS, DIXON & MASBACK

Ms. Karla D. Smith
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For the convenience of the NRC, I am sending you, via Federal Express an original and five copies of these materials. I would appreciate your forwarding this letter and the enclosed materials to the appropriate NRC officials for their consideration.

Mr. Polizzi looks forward to discussing this matter further on February 8.

Very truly yours,


William H. Briggs, Jr.

WHB/smp
Enclosures

MEMORANDUM IN SUPPORT OF VINCENT J. POLIZZI

MEMORANDUM IN SUPPORT OF VINCENT J. POLIZZI

By letter dated January 11, 1995, Mr. Richard W. Cooper, Director, Division of Reactor Projects for Region I of the Nuclear Regulatory Commission ("NRC"), advised Mr. Vincent J. Polizzi that, based upon the findings of an investigation by the NRC's Office of Investigation ("OI"), it appeared that Mr. Polizzi had violated 10 C.F.R. § 50.5 ("Section 50.5") and 10 C.F.R. § 50.7 ("Section 50.7"). Accordingly, Mr. Cooper invited Mr. Polizzi to attend two enforcement conferences to discuss these allegations on February 8, 1995. The first conference regards possible enforcement action against Public Service Electric & Gas ("PSEG"). The second regards possible enforcement action directly against Mr. Polizzi, in his individual capacity.

This brief memorandum and the accompanying Declaration of Vincent J. Polizzi (the "Polizzi Declaration") are filed in support of Mr. Polizzi insofar as the NRC is considering enforcement action against him in his individual capacity. As set forth in these documents, and as will be discussed in more detail at the upcoming enforcement conferences, neither the facts nor the law support NRC enforcement action against Mr. Polizzi. First, he did not violate Section 50.5 because he did not deliberately engage in any misconduct -- he did not deliberately violate any NRC rule, regulation or order. Second, there are a number of extenuating and mitigating circumstances which we urge the NRC to consider before it decides whether or not to take enforcement action against Mr. Polizzi.

I. Mr. Polizzi did not violate 10 C.F.R. § 50.5.

- A. Section 50.5 requires that an individual deliberately violate an NRC regulation -- here Section 50.7

Section 50.5 gives the NRC authority to take enforcement action directly against unlicensed persons, such as employees of licensees, when those individuals "engage in deliberate misconduct . . . , " which is defined as "an intentional act or omission that the person knows . . . would cause a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation, of any license issued by the Commission"

When the Commission promulgated Section 50.5, it repeatedly made clear that that regulation reached deliberate misconduct, and only deliberate misconduct. 56 Fed. Reg. 40664, et seq. (Aug. 15, 1991). The Commission emphasized that "the rule does not apply in cases of negligence, honest mistake, or ignorance." Id. at 40675. And it eloquently underscored its commitment to this principle:

It would be an erroneous reading of the final rule on deliberate misconduct to conclude that conscientious people may be subject to personal liability for mistakes. The Commission realizes that people may make mistakes while acting in good faith. Enforcement actions directly against individuals are not to be used for activities caused by merely negligent conduct. These persons should have no fear of individual liability under this regulation, as the rule requires that there be deliberate misconduct before the rule's sanctions may be imposed.

Id. at 40681.

Thus, in this case in order to find that Mr. Polizzi has violated Section 50.5, the NRC must first find that he deliberately violated Section 50.7.

B. Mr. Polizzi did not deliberately violate Section 50.7.

Mr. Polizzi readily admits that he made a mistake and an error of judgment. Mr. Polizzi's mistake was, however, an act of negligence taken in good faith, with the best of intentions and with absolutely no knowledge that he might be violating Section 50.7 -- much less with an actual intent to deliberately violate that regulation.

1. **Mr. Polizzi was attempting to insure that the safety concerns at issue were completely and accurately reported.**

At the time of the December 3 events in question, Mr. Polizzi believed that he was acting properly. He was not trying to prevent Bert Williams or Paul Craig from filing a safety concern. To the contrary, his sole motivation on December 3, 1992 was to insure that Mr. Williams' safety concern would be reported as completely and accurately as possible. Polizzi Declaration at ¶ 2. To accomplish this objective, he attempted to convince Mr. Williams to include all the relevant facts in his report; when Mr. Williams and Mr. Craig refused, Mr. Polizzi admittedly, and regrettably, lost his temper. Id. at ¶¶ 9-12.

Mr. Polizzi recognizes that he made a mistake when he became visibly angry and escalated the December 3 disagreement into a confrontation with Mr. Williams and Mr. Craig. However, to find a violation of Section 50.5 Mr. Polizzi must be judged by what he

knew and believed when he acted on December 3, 1992, not by what he knows today. On December 3, 1992, Mr. Polizzi did not intend to intimidate or harass Mr. Williams and Mr. Craig because they wanted to file an incident report (indeed, Mr. Polizzi had processed hundreds, if not thousands, of such reports at Salem); to the contrary, on December 3 Mr. Polizzi was only trying to insure that Mr. Williams included all the facts in the incident report he wanted to file so that the immediate operability aspects of his concern could be quickly and correctly resolved.

2. Mr. Polizzi did not understand that Section 50.7 had any application until an individual filed a complaint with the NRC

In addition, there is a second, but equally important reason why Mr. Polizzi's actions on December 3 cannot have deliberately violated Section 50.7 and thereby been a violation of Section 50.5. At the time of the events at issue here, Mr. Polizzi simply did not understand that there were any Section 50.7 implications to his encounter with Mr. Williams and Mr. Craig -- he understood that Section 50.7 only came into play after an individual complained to the NRC. Polizzi Declaration at ¶¶ 2, 27. Although Mr. Polizzi may have been wrong in his layman's understanding of the law on December 3, 1992, it never even dawned on him until months later that he might be accused of violating Section 50.7 in his dealings with Mr. Williams and Mr. Craig.

Mr. Polizzi's misunderstanding about the law should not be surprising. He had no training in Section 50.7 prior to December 3, 1992. Polizzi Declaration at ¶ 27. Indeed, even if he had been trained prior to the events in question, he would have learned that the law in this area has not always been crystal clear. Until October 24, 1992, when the Energy Policy Act of 1992 was passed, 42 U.S.C. § 5851, the United States Courts of Appeals were divided on whether the law protected whistleblowers who had not complained to the NRC. Compare Brown & Root v. Donovan, 747 F.2d 1029 (5th Cir. 1984) (no protection unless the whistleblower has complained to the NRC) with Kansas Gas & Electric, Co. v. Brock, 780 F.2d 1505 (10th Cir. 1985) (whistleblower is protected from retaliation for internal complaints). The version of Section 50.7 that was in effect on December 3, 1992 was based upon the same statute that divided the federal appellate courts. If judges with months to study briefs and analyze technical legal arguments did not agree to the reach of the law protecting whistleblowers, it is not surprising that a layman like Mr. Polizzi misunderstood the reach of that law.

Since the events of December 3, 1992, however, the NRC has amended Section 50.7 to reflect that the Energy Policy Act of 1992 "extends and/or clarifies protection to new classes of employees . . . to include . . . [e]mployees who bring or are about to bring concerns directly to their employers" 58 Fed. Reg. 52406 (Oct. 8, 1993). However, this amended version of Section 50.7 was not promulgated until October 8, 1993, nearly

one year after the actions at issue here. If the NRC decided to amend Section 50.7 in order to "extend[] and/or clarif[y]" the reach of that regulation, it cannot fault Mr. Polizzi for misunderstanding the reach of Section 50.7 prior to that amendment.

In short, because Mr. Polizzi did not understand that Section 50.7 applied to persons who had not filed complaints with the NRC, the NRC cannot lawfully find that he deliberately violated Section 50.7. Because he did not deliberately violate Section 50.7, he cannot lawfully be found to have violated Section 50.5. Contrary to the familiar refrain, in this case ignorance of the law is very much an excuse ("the rule does not apply in cases of . . . ignorance." 56 Fed. Reg. 40675).

II. Extenuating and Mitigating Circumstances Make This The Wrong Case For Individual Enforcement Action.

Even in cases of deliberate misconduct the Commission has recognized "that enforcement actions against individuals are significant actions that need to be closely controlled and judiciously applied." *Id.* at 40676. To this end it has promised to temper its enforcement power with justice and to withhold enforcement action against an individual based upon various extenuating and mitigating circumstances. Mr. Polizzi asks the NRC to consider the following extenuating and mitigating factors.

A. Mr. Polizzi admits his past mistakes and accepts responsibility for his actions.

As the Commission has recognized "it is proper to consider the individual's attitude toward compliance with safety practices and regulations. Recognition and admission of past errors indicates a more positive attitude than continuing denial or hostility." Id. at 40676. See also, General Statement of Policy and Procedure for NRC Enforcement Actions, Appendix C, Part 50 ("Enforcement Policy"), at § VIII, ¶ 7. Mr. Polizzi has admitted his mistakes to his employer, to the NRC, and to himself, and he has taken full responsibility for his actions. The NRC can rest assured, they will not be repeated.

B. Mr. Polizzi acted in complete good faith, for no personal benefit or gain.

Another factor that the NRC will consider in deciding whether to take enforcement action against an individual is "[t]he benefit to the wrongdoer, e.g., personal or corporate gain." Enforcement Policy at § VIII, ¶ 4. Mr. Polizzi's actions were not taken for any personal gain or benefit. To the contrary, he acted in complete good faith, with the best of intentions. Indeed, he acted out of what is (hopefully) a universally understood and shared concern -- safety complaints should be as complete and accurate as possible. In short, this is not a case where someone has sought personal profit by cutting corners and avoiding regulatory requirements. This is a case where an individual made mistakes while he was acting in what he believed to be the best interest of everyone at the time.

C. Mr. Polizzi does not bear sole blame for the events at issue.

The NRC has also promised to consider "[t]he degree of management responsibility or culpability" in the conduct at issue. Enforcement Policy at § VIII, ¶ 8. While Mr. Polizzi accepts responsibility for his mistakes, it would be wrong for the NRC to conclude that no one else shares that responsibility. We believe that PSEG will concede that prior to December 3, 1992, it did not provide adequate training in the requirements of Section 50.7. At any rate, Mr. Polizzi has never had training in that NRC regulation. Indeed, as set forth above, Mr. Polizzi was not even aware that there were Section 50.7 implications to his conduct until long after the events of December 3.

D. Mr. Polizzi has been punished enough.

The NRC also pledged to consider "[t]he employer's response, e.g. disciplinary action take." Enforcement Policy at § VIII, ¶ 6. There can be no question that Mr. Polizzi has already been punished heavily for the errors which he has made and admitted. He has (1) been removed from his position as the Operations Manager of Salem; (2) been involuntarily transferred to Pittsburgh to perform job duties that are not a part of PSEG's nuclear operations and that remove him both geographically and professionally from PSEG; (3) relocated with his children, while his wife remained behind to complete her schooling in Philadelphia; (4) confessed his errors and publicly admitted his mistakes to his peers, supervisors, and colleagues; (5) lost a pay raise; (6) received a downgraded performance evaluation; and

(7) been required to periodically assess his interpersonal skills. Without question, because of his involvement in this event, Mr. Polizzi's career is in jeopardy; his once bright prospects as a "high potential" PSEG employee are now dim. Regardless of what the NRC does, Mr. Polizzi has been punished severely for the actions that are the subject of this enforcement conference. Further punishment by the NRC would be unjust to Mr. Polizzi and unnecessary to fulfill any legitimate NRC purpose.

- E. Mr. Polizzi has fully cooperated with all investigations and has made no effort to hide any of his actions which are the subject of this enforcement conference.**
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Mr. Polizzi has fully cooperated with all investigations into the matters which are at issue here. He has answered all questions concerning each of these matters, including questions raised by PSEG, by OI, and by others from the NRC. He will continue to cooperate fully; he intends to answer all questions that may be asked him at the February 8 enforcement conference. Mr. Polizzi has made no effort to cover up his mistakes or to hide any actions that are the subject of this enforcement action.

- F. Mr. Polizzi should be judged on his entire record, not just the events that are the subject of this enforcement conference.**
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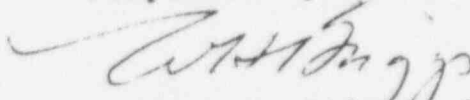
Finally, we ask the NRC to consider Mr. Polizzi's entire record before it takes any enforcement action against him personally. He has worked for nearly 20 years in the nuclear power industry and the nuclear navy. Until the recent event that is at issue here, his record has been spotless. Moreover, his record since these events has been unblemished. The actions that

occurred on December 3 should not be looked at in a vacuum. The NRC should consider Mr. Polizzi's entire record -- his demonstrated ability and outstanding performance over a lengthy career -- before deciding to impose its enforcement authority on Mr. Polizzi.

* * * * *

For the reasons set forth herein, in the Declaration of Vincent J. Polizzi, and for such further reasons that may come before the NRC at the February 8, 1994 enforcement conference, we urge the NRC not to take any individual enforcement action against Mr. Polizzi.

Respectfully submitted,



William H. Briggs, Jr.

DECLARATION OF VINCENT J. POLIZZI

DECLARATION OF VINCENT J. POLIZZI

I, Vincent J. Polizzi, submit this statement to the Nuclear Regulatory Commission ("NRC") for its consideration in connection with the upcoming February 8, 1995 enforcement conference.

INTRODUCTION

1. At the outset, I reiterate what I have previously said to the Office of Investigations ("OI"), to the task force that investigated this matter for Public Service Electric & Gas ("PSEG"), and to my peers and co-workers at PSEG. I lost my temper on December 3, 1992, and made mistakes. Moreover, I lost control of the situation and permitted an event needlessly to escalate when I could have, and should have, handled it myself -- properly, professionally, and without harm to anyone. I cannot overemphasize how much I regret my mistakes and the effect that they have had on me and family -- as well as others.

2. While I acknowledge that I have made mistakes, I want to emphasize that I have never taken any action to deliberately violate NRC rules and regulations. Indeed, at the time of the December 3, 1992 events, I thought I was doing the right thing. My actions were driven by my conviction that safety concerns should be completely and accurately reported. Moreover, it never dawned on me at that time that my conduct might be in violation of 10 C.F.R. § 50.7 ("Section 50.7"). Indeed, it was never even suggested to me that Section 50.7 was implicated in any way by what I did, until several months after the events in question. Nevertheless, in hindsight, it is quite clear to me that I made

decisions that I should not have made. My goal that safety concerns should be completely and accurately reported should not have resulted in anyone feeling intimidated or harassed; nor should it have escalated to a bitter confrontation between upper management at Salem and two Safety Review engineers. I take full responsibility for my actions; I have learned a painful lesson from this experience; the mistakes I made here will never be repeated.

3. In Part I below I will briefly describe my actions and my thinking at the time of the incidents that I understand to be at issue. I am prepared to discuss each incident in greater detail at the February 8 enforcement conference. In Part II below I will briefly set forth some extenuating and mitigating facts which I request the NRC consider before it decides whether to take any enforcement action against me. Again, I am prepared to discuss each of these matters in greater detail on February 8.

DISCUSSION

I. The Underlying Incident.

A. December 3, 1992.

1. I learn of Bert Williams' CFCU concerns.

4. Sometime in the morning of December 3, 1992, I received a message that I had been visited (or perhaps called) by Bert Williams, a member of the Salem Safety Review Group. In response to that message I called Bert. During that phone call, he told me that he had some information which suggested that the Moore and Masoneilan regulators for the containment fan coil units

("CFCUs") at the Salem plant might not be qualified and that they might also be connected to the CFCUs in an improper configuration. I immediately understood that this was a very serious matter that could require an immediate shutdown of the Salem units. Bert and I discussed the matter in a completely professional manner. We both understood the significance of the problem and the need to investigate the matter immediately.

5. Bert and I agreed that we needed input from technical and engineering people in order to assess the effect of Bert's information on the operability of the CFCUs. I immediately spoke with Jay Bailey and Mike Morroni, and I requested each of them to assist in investigating the CFCU concerns. Jay was the Manager of Nuclear Engineering Sciences, Engineering and Plant Betterment ("E&PB"), and I asked him to examine whether Bert's qualification concerns effected the operability of the CFCUs. Mike was the Manager of the Technical Department, and I asked him to look at both the qualification and configuration concerns to determine if either required a finding that the CFCUs were not operable.

6. Jay and Mike promptly looked into the matter. Their investigation revealed that Mr. Williams' concerns would not require an immediate shutdown of the Salem units. Mike reported that the FSAR reflected that the qualification issue did not effect the immediate operability of the CFCUs. Further, Mike and I discussed the fact that the weekly surveillance testing, which required a switching of the Moore and Masoneilan regulators demonstrated that even if the regulators had been connected to

the CFCUs in an improper configuration, there was no operability concern that required an immediate shutdown. Jay also learned that the FSAR reflected that the qualification issue did not effect the immediate operability of the CFCUs. Recognizing the need to follow up on this information, Jay asked Ari Blum to determine if the backup documentation supported the FSAR. I also understood that Bert was provided with the information that Mike and Jay gave me.

7. I was relieved by the information that I learned from Mike and Jay. That information meant that the concerns which Bert had reported -- and which standing alone appeared very significant -- were not, in fact, as serious as they first appeared. When all the evidence was considered, it did not appear that the CFCU concerns would require an immediate shutdown of the Salem units.

2. I meet Williams and Craig in my office.

8. Shortly after I was advised of the information that Jay and Mike had learned, Bert and Paul Craig, another SRG engineer, appeared at my office. The meeting with Bert and Paul started calmly and then gradually escalated through three phases of increasingly strong disagreement -- first, a procedural disagreement; second, a technical disagreement, and finally what I perceived as a personal attack on me. I became increasingly frustrated as the disagreement sharpened, and, I regret to admit, I became increasingly angry over the situation.

9. The meeting began professionally, even cordially. Because I understood that Bert had the same information that I had received from Mike and Jay, I was not sure why Bert and Paul were visiting me. I felt good about what Mike and Jay had learned, however, and I assumed at first that Bert and Paul were simply dropping by to express their relief that we had gotten some good news. About the same time that they entered my office, however, Bert gave me a copy of an incident report that he had drafted on the CFCU concerns. I quickly reviewed the report and returned it to Bert. The report basically repeated what Bert had told me on the phone when we first talked earlier that morning. To my surprise, it did not reflect the additional information that had been uncovered by Mike and Jay. In short, the narrative on Bert's report ignored all the work that we had been doing on this issue for the past several hours.

10. I commented that we needed to include the additional information we had learned to enable the Senior Shift Supervisor (the "SNSS") to make an informed operability determination. My suggestion was met with vague resistance which I did not understand. Bert said that it was not his job to make an operability decision, and I readily agreed to that. I tried to explain to him; however, that we needed to capture all the information that we had in the incident report or else the SNSS would not have all the facts necessary to make the operability finding. Bert continued to refuse to add to his narrative description of the problem, and I became more frustrated with his

refusal. Finally, I remember Bert saying "if I have to write anything, I would have to say the CFCUs were inoperable." At the time I heard this statement, the disagreement between us moved to a second level. Now, Bert was not just disagreeing with the procedural issue of what, if anything, he should put on the report, he appeared to be disagreeing with the technical issue of whether the information provided by Jay and Mike affected the immediate operability of the CFCUs.

11. I became increasingly frustrated with the conversation. I wanted to know why Bert disagreed with the operability conclusions that Jay, Mike, and I had reached -- yet he either could not or would not tell me. His only response to my inquiries was that he was not supposed to make the operability decision (which was never a point of disagreement with me), that he wasn't required to put any more information in the report, and that if he had to, he would say the CFCUs were "inoperable." I became increasingly angry at what appeared to me to be pure stubbornness -- or some other unexplained motivation. Finally, my frustration rose to the level where I said "Give me the fucking thing [meaning the incident report] and I'll document it [meaning add the information that we had learned from Jay and Mike]." He refused. He insisted that the report had to go to the SNSS under NAP 6 procedures. At almost the same time that he was saying this, Paul Craig made what I believe was his only comment during the entire meeting in my office. Paul said, "we won't give it to you, because you don't follow procedures."

12. Frankly, I am sorry to say, this pushed me over the edge. What had appeared to me to be stubbornness or ignorance over procedural and technical matters, now moved to what appeared to be a third level -- a personal attack on me. Because I was so angry, I made a spur of the moment decision to raise the matter to my management. I called Cal Vondra, the Station Manager for Salem and my boss. When I learned that Cal was in, I asked to meet with him to discuss the matter. Along with Bert and Paul I adjourned from my office to Cal's. As we walked out of my office, we passed Jay Bailey who was outside of my office. He asked if he should join us, and I said yes. As we began walking toward Cal's office I noticed that Bert had a smile -- almost a smirk -- on his face that suggested that he found the whole situation amusing. I was livid that he was taking a matter as significant as this so lightly. I told Bert in no uncertain terms to wipe the smile off his face because this was no laughing matter.

3. The meeting in Vondra's office.

13. I led the group from my office to Cal's office, and I arrived at Cal's slightly ahead of the others. I was very angry at this time and I needed to step back from the situation and cool down. Primarily to enable me to get control of myself, but also to advise Cal of the situation, I went into Cal's office alone and shut the door. I spent about ten minutes with Cal. During that period, I calmed down and briefed him on the information Bert had learned that morning, on getting Mike and

Jay involved to examine the operability concerns raised by Bert's information, and on the meeting in my office. After our brief meeting, Cal called Bert, Paul, and Jay into his office to join us and discuss the situation.

14. The meeting in Cal's office lasted about ten or 15 minutes; Cal and Bert did virtually all of the talking. They discussed Bert's CFCU concerns and the information that Mike and Jay had provided which indicated that the CFCUs were not inoperable. They also discussed the proper procedural vehicle for reporting the CFCU concerns. Although the meeting began calmly and professionally, Cal rapidly became frustrated with Bert.

15. Cal suggested that a Discrepancy Evaluation Form ("DEF") might be a more appropriate vehicle for resolving Bert's concern than an incident report. Cal explained that the DEF procedures provided for engineering and technical input that was necessary to resolve a concern. Bert was adamant in refusing to file a DEF, and he indicated that he did not like the DEF process because it took too long. He insisted that he had a right to file his concern as an incident report. At the same time he insisted that he was not required to put any information in his incident report to reflect anything he had learned from Mike and Jay about the effect of his concern on operability. At one point Bert indicated, in response to a comment that Cal made, that he would be satisfied by the SNSS accepting the incident report, declaring the CFCUs inoperable and shutting down both Salem

units. This made no sense at all, given the technical information that we had obtained at that point in time. It only made Cal more frustrated with the situation.

16. Finally, Bert said that if he couldn't file his incident report (without any information to reflect that the matter did not raise an operability concern), he would write up a safety concern. This comment clearly upset Cal. It appeared to me that Bert was now threatening to write up a safety report on Cal because Cal did not agree that the matter should be handled the way Bert wanted it handled. Thus, the conversation in Cal's office was turning from a procedural and technical discussion into a personal attack, much as had the conversation in my office. Cal told Bert not to threaten him. At that time I commented that I had also felt threatened while in my office. That was the only comment that I remember making while Bert, Paul and Jay were in Cal's office.

17. At this point, it was clear that Cal was upset with Bert. He told Bert to file whatever he wanted to file, and then he told Bert and Paul to leave his office. When they hesitated, he told them that if they did not leave, he would have security escort them out. Bert and Paul then left Cal's office and the meeting ended. This was the last direct involvement that I had with either Bert or Paul concerning this incident.

18. As Bert and Paul left, Cal saw Mike Morroni, and invited him into his office. Cal asked Mike to follow-up on the CFCU configuration concerns. Jay Bailey had already asked Ari

Blum to follow-up on the CFCU qualification concerns. Thus, at this time, both Cal and I understood that Mike and Jay would be completing an analysis of both the CFCU concerns that Bert had identified.

4. The December 4 letter.

19. That evening, while I was at home, I received a call from Cal. He was still upset about the meeting with Bert and Paul (as was I). We discussed what we believed at the time was inappropriate behavior by Bert and Paul, and he asked me to draft a letter that he could send to their manager, Larry Reiter. Cal wanted to express his displeasure at Bert and Paul's behavior, and he wanted to explain that he had lost confidence in their judgment and wanted them removed from Salem. We talked about the possible contents of such a letter and, as requested, I drafted a letter the evening of December 3, on my home computer.

20. The next day Cal was off site at an INPO exit meeting, so I took the letter that I had drafted on my home computer the night before to Cal's secretary to be typed in final. Later that day, after the letter was typed, I took the original to give to Cal for his review. Cal was returning from his INPO meeting at the close of business on December 4 and was to meet me and the rest of his Salem managers at that time.

21. Cal reviewed the letter at (or immediately after) that meeting. He made no changes to it and signed it in my presence. He told me to send it out on Monday, December 7, because he was going to be out on vacation that week.

22. The more I thought about the letter over the weekend, the more I became concerned that it was not a good idea to send it to Larry Reiter while Cal was out of the office. I realized that it was sensitive and that it might require some discussions between Cal and Larry. Furthermore, I wanted to give Cal a chance to reflect on the matter further, and if he wanted to, to run the letter up his chain of command before it went out. Accordingly, I did not send the letter out on December 7, as Cal had requested. Rather, I waited until Cal returned from his vacation on December 14. At that time I gave the letter to Cal and told him why I had not sent it out. He seemed to accept my reasons for not sending the letter out, and told me that he would check with his manager before he sent the letter to anyone.

23. I understand that the December 4, 1992 letter was later delivered to Larry Reiter. I am unaware of when this happened, and who Cal may have shown it to before it was delivered.

5. The December 16, 1992 meeting.

24. On December 16, 1992 a meeting was held between Larry Reiter, Cal, myself and the other Salem managers to discuss the events of December 3. At this time I still firmly believed that Bert and Paul had acted inappropriately on December 3. From my perspective, they (primarily Bert) had insisted on filing a report that was incomplete and therefore inaccurate because it did not include any reference to the operability findings that Jay and Mike had made. Moreover, they appeared to disagree with those operability findings while refusing to explain the basis

for their disagreement. Finally, I was also upset that I had personally been accused (primarily by Paul) of "not following procedures" -- which I interpreted as an accusation that I was not being safety conscious. When I went into the meeting, I thought that the purpose was to discuss this inappropriate behavior.

25. As soon as the meeting began, Larry Reiter stated, in effect, that he thought that Cal and I had misunderstood the situation. This made me angry since I had never discussed the events in any detail with Larry, and I walked out of the meeting. Shortly afterward, Cal asked me to return and I did. Although nothing was resolved during that meeting, we began to discuss the fact that there were different perspectives about the events that had happened on December 3.

6. Subsequent events.

26. Over the next month or so, I had no direct involvement with Bert or Paul concerning the events that had happened on December 3, 1992. During this period I began to realize that the company and the individuals needed to put this matter behind us so that we could move on. In late January, however, I learned that the PSEG was asking a task force to investigate this matter. For the first time I realized that my conduct on December 3, 1992 was in question. Even so, however, I did not realize and I was never told that my actions on December 3 may have violated Section 50.7.

27. It never crossed my mind that my conduct could have violated Section 50.7 until I was advised of that fact sometime after the task force began its investigation. I do not recall ever being trained on Section 50.7 prior to December 3, 1992. However, my understanding, at that time, was that Section 50.7 protected persons who raised concerns with the NRC from retaliation by their company. I was never advised that Section 50.7 could be violated because of purely internal disputes that did not involve a "whistleblower" complaint to the NRC. I am now painfully aware that my previous understanding of Section 50.7 was wrong.

II. Extenuating and Mitigating Circumstances.

28. I admit that I made mistakes; I acknowledge poor judgment on my part; and I accept responsibility for these errors. But I emphasize that I only acted with the best of intentions for all; I never sought any personal benefit or gain; I never even realized that my actions might conceivably be interpreted as violations of any NRC requirements until after the fact; and I made no attempt to hide anything that is the subject of this inquiry.

29. The events at issue have left a permanent and painful mark on my career, my life, and my family.

(a) I was forced to take an involuntary assignment that required me to move with my children to Pittsburgh, Pennsylvania, while my wife remained behind to complete her education in Philadelphia.

(b) Whereas I previously was designated as a "high potential" employee by PSEG, with the prospect of promotion to higher positions within the company, my mistakes in this matter have damaged, if not permanently destroyed, my future at PSEG. I was removed from the position as Operations Manager for Salem and placed in an assignment in Pittsburgh, Pennsylvania -- an assignment that is geographically separate from my PSEG colleagues and that gives me no direct responsibility for any of PSEG's nuclear operations. I am, both literally and figuratively "out of the loop." I will continue in this assignment until the end of 1996 and possibly beyond, due to schedule delays. After that, I have no idea what my future will be at PSEG.

(c) My PSEG colleagues are well aware of my mistakes. As part of the corrective action that I was required to take, I had to admit my errors to my colleagues and explain what I would do to insure that I did not repeat these errors. This was a humbling, and frankly embarrassing, experience which I will never forget. While I believe it may enable others to learn from my mistake, it has also irreparably damaged the excellent reputation which I had among my peers.

(d) I did not receive a 1993 raise because of this incident.

(e) My performance evaluation for May 1993 -- March 1994 was downgraded because of this incident.

(f) I am required to provide semi-annual self assessments of my interpersonal skills performance.

(g) In short, I can assure the NRC that it need not take enforcement action against me personally to punish me or to convince me that I made mistakes. I have been punished severely, and I am fully aware of the mistakes that I made which led to this punishment.

30. Finally, I ask the NRC to judge me on my entire record, not just on the events which are the subject of this action.

(a) I have worked in the nuclear power industry since I joined PSEG in June 1980. Immediately prior to that I served as a commissioned officer in the United States Navy on the Nuclear Fleet Ballistic Missile Submarine Ulysses S. Grant.

(b) Since joining PSEG in June 1980, I have worked in its nuclear operations as a member of the Salem engineering staff, as a shift supervisor at Salem, as a senior instrumentation and control supervisor at Salem, as an electrical/I&C systems engineer at Salem, as Assistant to the Vice President of Nuclear Operations in PSEG's corporate headquarters, as a project manager at Hope Creek Nuclear Power Station, as a nuclear electrical engineering manager for PSEG, and, from August 1989 until May, 1993, as the operations manager at Salem. In May, 1993, as a result of the incident at issue here, I was involuntarily reassigned by PSEG to work for the Advance Reactor Corporation ("ARC") at Westinghouse Electric Corporation in Pittsburgh, Pennsylvania. I am currently still in that assignment.

(c) During the 15 years I have worked for PSEG, I have never been accused of violating any NRC rules or regulations. Indeed, until this recent mistake, my record was spotless; I received commendations and promotions, without significant criticism from my employers or the NRC; and I processed hundreds, if not thousands, of incident reports without anything similar to this occurring. Moreover, since this incident and my reassignment to ARC, my performance has been commended as excellent.

CONCLUSION

I appreciate the opportunity to file this statement with the NRC. I ask the agency to let me put my errors behind me and get on with the task of putting my career back together. I look forward to discussing these matters at greater length at the February 8 enforcement conference.

I declare under penalty of perjury that the foregoing is true and correct.

February 3, 1995


VINCENT J. POLIZZ