

August 8, 2016

EA-13-190

Mr. Jay Gupta
Plus, LLC
1455 Washington Blvd
Stamford, CT 06902

SUBJECT: U.S. NUCLEAR REGULATORY COMMISSION DENIAL OF PLUS, LLC
REQUEST FOR WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE
IN ACCORDANCE WITH 10 CFR 2.390

Dear Mr. Gupta:

By letter dated May 10, 2016, Plus, LLC (Plus) submitted a response to the U.S. Nuclear Regulatory Commission (NRC) Notice of Violation and Proposed Imposition of Civil Penalty (Notice) dated May 3, 2016. In the letter, Plus submitted an affidavit requesting that a certain portion of its response be withheld from public disclosure as confidential financial information and/or trade secrets pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) 2.390. The reasons stated in the affidavit for requesting withholding of this information from public disclosure were that the document contain proprietary information that: (1) if used by a competitor would provide an unfair advantage, and (2) could be used to undermine the company's bargaining position with its customers and suppliers.

The NRC has reviewed your request to withhold the above-referenced information from disclosure in accordance with the criteria in 10 CFR 2.390. Based upon this review, the NRC concludes that you have not provided a sufficient basis to justify withholding of the proffered information from public disclosure. Specifically, your affidavit did not adequately address two of the criteria in 10 CFR 2.390(b)(4):

1. whether the information is of a type customarily held in confidence by its owner and ... whether there is a rational basis therefore (§ 2.390(b)(4)(ii)); and
2. whether public disclosure of the information sought to be withheld is likely to cause substantial harm to the competitive position of the owner of the information, taking into account the value of the information to the owner; the amount of effort or money, if any, expended by the owner in developing the information; and the ease or difficulty with which the information could be properly acquired or duplicated by others (§ 2.390(b)(4)(v)).

First, with regard to 10 CFR 2.390(b)(4)(ii), based on the NRC's dealings with other small business entities, a company's status as a small entity is not the type of information that is customarily held in confidence by its owner. Second, with regard to 10 CFR 2.390(b)(4)(v), you have not made a sufficient showing that revealing Plus's status as a small entity would cause competitive harm. Identifying Plus as a small entity reveals only a possible range of average

gross receipts over the past three years. Your affidavit does not demonstrate how such non-specific information would be likely to lead to competitive harm.

Furthermore, even if the NRC had determined that your request met the criteria in 10 CFR 2.390(b)(4), the NRC must also consider, pursuant to 10 CFR 2.390(b)(5), “whether the right of the public to be fully apprised as to the bases for and effects of the proposed action outweighs the demonstrated concern for protection of a competitive position.” In this case, the public’s interest in understanding the NRC’s basis for reducing the civil penalty amount would outweigh any harm that could result from referring to Plus’s small entity status.

Accordingly, the NRC concludes that the information sought to be withheld from public disclosure does not meet the requirements for withholding under 10 CFR 2.390. Therefore, your request to withhold the paragraph in your May 10 response discussing your company’s small entity status is denied. Your response and the request for withholding will be placed in the NRC’s Agencywide Documents Access and Management System (ADAMS), which is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>, and the NRC’s Public Document Room, on August 16, 2016.

Sincerely,

/RA/

Patricia K. Holahan, Director
Office of Enforcement

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Sincerely,

/RA/

Patricia K. Holahan, Director
Office of Enforcement

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