

Plus LLC
733 Summer Street, Stamford CT 06901

Date: 10th May 2016

To,
Patricia K. Holahan
Director, Office of Enforcement
US Nuclear Regulatory Commission, One White Flint North
11555 Rockville Pike, Rockville, MD 20852-2738

Subject: Answer to a Notice of Violation (EA-13-190)

Dear Ms Holahan,

I wish to appeal the enforcement action on 2 points — firstly, the categorization of the violations as Severity Level III; and secondly, the lack of cognizance of the company's status as a 'Small Business' entity.

With respect to the categorization of the violations, I would like to bring to your attention that the facility and operation of Plus LLC was inspected during a site visit by NRC officers John Miller and Leo Wardrobe on 10th Feb 2016. During the inspection, they reviewed the results from a liquid scintillation test that indicated no contamination. The products, which were found to be satisfactory, are the same as they always were; and the methods of inspection and distribution, which were found to be satisfactory, are the same as they always were. By inference, this implies that there has never been a time where the violations could have resulted in 'moderate safety or security consequences.' I therefore request you to consider that the more apposite categorization is that these violations resulted in no or relatively inappreciable potential safety or security consequences.

With respect to determining the amount of the civil penalty, I thank you for considering the corrective measures we have undertaken. However, I am concerned that Plus LLC's status as a Small Business has not been taken into account. This is evident from the statement that "*NRC determined that the violations resulted in Plus LLC avoiding an estimated \$70,000 in annual license fees over the duration of the violations.*" This estimate is a gross exaggeration that is factually and mathematically incorrect when you consider that Plus LLC has always qualified as a Small Business Not Engaged in Manufacturing as per the definition stipulated by NRC in the certification of small entity status for the purposes of annual fees imposed under 10 CFR Part 171, subjecting the company to a maximum annual fee of \$2800. I therefore submit that the penalty amount resulting from this miscalculation does not meet the condition of proportionality because it inflicts a far more damaging and undue financial burden on a small entity than it would on the type of large organization that would typically qualify for the level of license fees referenced in the calculation. While I understand that NRC wishes to emphasize the importance of compliance with the regulations, I ask in all fairness that the amount of the license fees be correctly calculated and thus any penalty be commensurate with the Small Business status of Plus LLC.

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Thanks in advance for your reconsideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jay Gupta', with a stylized flourish at the end.

Jay Gupta

Enclosures: Affidavit pursuant to CFR 2.390, and redacted copy

CC:

Director, Office of Nuclear Material Safety and Safeguards, US Nuclear Regulatory Commission, Two
White Flint North, 11545 Rockville Pike, Rockville, MD 20852-2738

Document Control Desk, Washington DC 20555-0001

AFFIDAVIT PURSUANT TO CFR 2.390

I, Jay Gupta, being duly sworn, depose and state as follows:

(1) I have reviewed the information described in paragraph (2) which is sought to be withheld, and am authorized to apply for its withholding.

(2) The information sought to be withheld is provided in the 3rd paragraph within the 'Answer to a Notice of Violation (EA-13-190)' dated 10th May 2016. This section contains Plus LLC confidential financial information.

(3) In making this application for withholding of proprietary information of which it is the owner, Plus LLC relies upon the exemption from disclosure set forth in the Freedom of Information Act ("FOIA"), 5 USC Sec. 552(b)(4) and the Trade Secrets Act, 18 USC Sec. 1905, and NRC regulations 10CFR Part 9.17(a)(4), 2.390(a)(4), and 2.390(b)(1) for "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (Exemption 4). The material for which exemption from disclosure is here sought is "confidential financial information", and some portions also qualify under the narrower definition of "trade secret", within the meanings assigned to those terms for purposes of FOIA Exemption 4 in, respectively, *Critical Mass Energy Project v. Nuclear Regulatory Commission*, 975F2d871 (DC Cir. 1992), and *Public Citizen Health Research Group v. FDA*, 704F2d1280 (DC Cir. 1983).

(4) Some examples of categories of information which fit into the definition of proprietary information are:

- a. Information which, if used by a competitor, would provide them an unfair advantage by divulging proprietary information about a private company's financial status.
- b. Information whose public disclosure could undermine the company's bargaining position with its customers and suppliers.

The information sought to be withheld is considered to be proprietary for the reasons set forth in paragraphs 4.a and 4.b above.

(5) The information sought to be withheld is being submitted to the NRC in confidence. The information is held in confidence by Plus LLC. All disclosures to third parties, including any required transmittals to the NRC, have been made, or must be made, pursuant to regulatory provisions or proprietary agreements which provide for maintenance of the information in confidence.

(6) Initial approval of proprietary treatment of a document is made by determining the value and sensitivity of the information in relation to industry knowledge. Disclosure outside Plus LLC is limited to regulatory bodies and others with a legitimate need for the information, and then only in accordance with appropriate regulatory provisions or proprietary agreements.

(7) This information is classified as proprietary because it contains private business data not available elsewhere. This information would provide other parties, including competitors, with information about Plus LLC that can be used to infer the purchasing power and sales performance of the company. It is not possible for a competitor to infer this information through any other source since Plus LLC is a private company which is not required to publicly release financial and operational data. Release of this information would improve a competitor's position by offering them an unfair advantage because it

AFFIDAVIT PURSUANT TO CFR 2.390

would enable Plus LLC's competitor to estimate our financial resources and outcompete us more effectively in negotiations with suppliers and in pricing, thereby leaving us with a financial disadvantage.

Further the deponent sayeth not.

STATE OF CONNECTICUT:

SS

COUNTY OF FAIRFIELD:

Jay Gupta, being duly sworn, deposes and says:

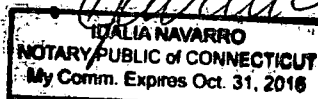
That he has read the foregoing affidavit and the matters stated therein are true and correct to the best of his knowledge, information, and belief.

Executed at Stamford, Connecticut, this 10th day of May, 2016.


Jay Gupta

Director, Plus LLC

Subscribed and sworn before me this 10 day of May, 2016.



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733 Summer Street, Stamford CT 06901

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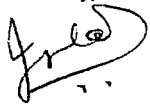
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