

211 Apache Court
Newark, DE 19702
February 25, 1994

Mr. James Lieberman, Director
Office of Enforcement
Nuclear Regulatory Commission
Washington, DC 20555

Subject: Request for Auditing and Certification of the Substantial Evidence
Related to Employee Protection Case of Energy Reorganization Act
of 1974, as Amended.

- References:
1. Recommended Decision and Order, Case No.: 93-ERA-38
by ALJ Nicodemo De Gregorio, Department of Labor, Dec. 8, 1993.
 2. Brief on Appeal to Recommended Decision and Order,
Teh K. Hu to Secretary of Labor, Jan. 3 1994.
 3. Complainant's Post-Hearing Brief, Teh K. Hu, Sept. 24, 1993;
Revised Tables 1 and 2 on Oct. 7, 1993.
 4. Notice and Order Establishing Briefing Schedule, 93-ERA-38,
Office of Administrative Appeals, Department of Labor,
Feb. 16, 1994.

Dear Mr. Lieberman:

This is a request for auditing and certification of the substantial evidence
related to employee protection case of Energy Reorganization Act of 1974, as
amended.

In Reference 1, Judge De Gregorio of Department of Labor stated that: "I give
great weight to the evidence that indicates that Mr. Hu had a history of poor
performance reports long before the PIP (performance improvement plan) was
implemented, because several PSE&G employees that testified to rating Mr. Hu's
performance below standard ..." (RDO at 10, 11). While the testimony given by
the Employee Relations Coordinator of PSE&G Human Resources Department during
the hearing that: "PIP's have been used by PSE&G ... and are a routine measure
used to help employees" (Tr. at 440; RDO at 11). Thus, a logical and reasonable
way to make the final employment decision to those who received such help should
be based on the direct outcome or results from PIP. However, this substantial
evidence was excluded from the Recommended Decision and Order (RDO).

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The substantial evidence referred to here is the analyses, made by Petitioner, based on the records of work assignments released by PSE&G at the hearing (it is designated as Respondent's Exhibit No. 19, or simply as R. Ex. 19 or R-19; totalled at 124 pages). The substantial evidence was also mentioned in Reference 2, where it summarized the satisfactory rates for the assignments. The analyses were contained in Section 2 of Reference 3, Complainant's Post-Hearing Brief (pp. 5-17).

The purpose of this request is to certify the performance satisfactory rates in Reference 3, based on R. Ex. 19, so that it is hoped that Department of Labor will consider this substantial evidence during the review process.

The estimated time required for auditing is at three to four hours. The Petitioner will attend the auditing meeting at NRC Region I Office, or other selected place, to answer possible questions.

According to "Memorandum of Understanding Between NRC and Department of Labor, Employee Protection" (Federal Register, Dec. 3, 1982, page 54585), DOL will provide NRC a copy of the complaint, decisions and orders associated with the investigation and any hearing on the complaint. However, if it is told to do so by your Office, the Petitioner will provide NRC with the related documents, which he has, for auditing.

The RDO of this case is expected to be fully reviewed by the Office of Administrative Appeals, Department of Labor, upon receipt of further briefs from Respondent and Petitioner, according to Reference 4.

Auditing existing performance of nuclear utility employee by NRC is believed comparable to examining the reactor operator. In addition, this case is related to employee protection of Energy Reorganization Act. Therefore, this request is believed to be as reasonable.

Your approval for this request is appreciated.

Sincerely,

Teh K. Hu
Teh K. Hu
Petitioner

cc: Office of Administrative Appeals, DOL
Enforcement Coordinator, NRC Region I Office
Secretary of Labor
ALJ, DOL
PSE&G
Winston & Strawn