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CHAIRMAN AND CHIEF EXECUTIVE OFFICER

April 15, 1992

Mr. James M. Taylor
Executive Director of Operations
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852

Dear Mr. Taylor:

This is in response to your letter dated April 6, 1992, which transmitted the Executive Summary of the NRC Staff Special Review Group (SRG) report. We appreciate the opportunity to provide our thoughts on the findings and recommendations in that document. Of course, we are not privy to the full SRG report or a substantial portion of the written material that the SRG reviewed, and thus cannot know the detailed findings of the SRG or the underlying bases for them. Recognizing that the SRG was assigned the task of reviewing matters spanning in excess of six years, we ask you to carefully consider whether any findings or recommendations actually apply to current conditions. We have our views on these matters, but as noted, you have access to information unavailable to us. Despite that, we believe that there are several points to be offered for your consideration as you determine if NRC action is warranted in light of the SRG report. These are provided in the attachment to this letter.

I would welcome the opportunity to meet with you at your pleasure to discuss these issues, if that would be helpful.

Very truly yours,

Attachment

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GENERAL COMMENTS ON SRG FINDINGS

The charter of the SRG effort describes the SRG's objective as the determination, on the basis of a review of a broad scope of written material, of both past and present conditions at NU's nuclear facilities with respect to the atmosphere for identifying and reporting quality discrepancies or safety concerns. As to the freedom our employees feel to report safety concerns, the SRG determined (as we interpret the Executive Summary) that the atmosphere at our facilities has generally been one of trust in the management chain, and that there has not been a "chilling effect" on the willingness of employees to report concerns. We are gratified by this result because it signifies that relationships up the chain-of-command are generally healthy. It also affirms the results of a special inspection conducted by the NRC Staff on this matter in the fall of 1990.

Regarding present conditions, the SRG stated that it could not conclusively determine whether conditions had changed, apparently because of the recent restructuring of our nuclear management team and the pending efforts to enhance our nuclear performance. From our perspective, these are not uncertainties that should lead the NRC to question the positive atmosphere at our facilities, but rather are aggressive, thoughtful measures which should have the effect of improving upon that atmosphere. We are confident that the restructuring of our nuclear organization has already begun to yield important benefits such as a shorter chain-of-command and enhanced teamwork and communications. In any event, we are proceeding with diligence to develop and implement our Performance Enhancement Program (PEP), with the assistance of the Atlas Consulting Group, which is designed to address, among many other things, such management issues. We will continue to keep the NRC Staff fully apprised of the progress of those efforts.

As to whether the atmosphere at our nuclear facilities encourages the reporting of nuclear concerns, the SRG found that there have been weaknesses in several respects. While this finding is a matter of serious concern to me, I am encouraged that the weaknesses described generally appear to be historic rather than current. Indeed, our internal task group efforts pinpointed weaknesses last year that appear similar to those described by the SRG, and during the last several months we have taken several important steps to improve our performance, including a broad management reorganization, a major commitment to increase the resources available to our nuclear program, and the delivery of the message by management to our employees, directly and without qualification, that nuclear safety through excellence in operations

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is the top priority of our nuclear program. Beyond that, these are matters which are within the broad mandate of our ongoing PEP, and we fully expect that any current weaknesses will be the subject of improvement actions.

More specifically, as to the issue of "micromanagement" raised by the SRG, NU acknowledges that its nuclear management has always been intimately involved in nuclear safety activities performed under NU's operating licenses. Since 1978, our chief nuclear officers have all previously held management positions within our operating nuclear units, having risen from the ranks of our nuclear organization. They and all of NU's other nuclear officers and managers have been expected to have a close working knowledge of our nuclear activities, and to participate in those activities directly and actively. Frankly, NU has viewed the technical knowledge and involvement of its nuclear management over the years as a significant benefit to the program.

To be sure, NU's managers are challenged every day to strike the balance between proper oversight and involvement on the one hand, and over-involvement on the other. NU's view on this generally, without knowing the specifics of the concern, is that it is better to err on the side of over-involvement than inattention. Nevertheless, it is clear that we must be sensitive to this criticism in order to assure that this balance is properly struck.

The SRG's finding of indications of a lack of teamwork among the nuclear officers reports history, not the state of things today. NU has undertaken a major team building effort since this issue surfaced, as well as a major management reorganization. In 1989, we retained the services of a human behavioral consultant to facilitate teamwork and improve working relationships at the management level. This effort continues today, and is an important input into the overall PEP effort. In addition, two levels of management in the operations organization have been removed. The current nuclear management team has a close working relationship which is based upon active communication and cooperation.

NU's effort to contain costs and more efficiently utilize resources has not been universally popular, as can be expected when people are called upon to bear burdens or make sacrifices. This does not mean that the objective of controlling costs, in a manner consistent with the first principle of assuring safety, is wrong or improperly motivated. On the contrary, this objective is really properly expected by our financial regulators. I admit, however, that we have learned lessons from the cost containment experience. For example, it has heightened our awareness of the need for clear communications with our employees during stressful periods, such as the cost containment effort. In fact, any contribution that this effort may have had to our recent performance trend is the subject

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of attention in the PEP. Further, NU has recently made major new commitments to increase the resources in our nuclear program by adding approximately \$10 million annually to our O&M budget, which includes approximately 200 new employees, and we are fully prepared to apply additional resources to our nuclear program if that is indicated by the results of the PEP.

The SRG perceived that there is an overemphasis on use of the chain-of-command from among the four options for reporting safety concerns (the others being the Nuclear Safety Concerns Program, the Nuclear Review Team, and the NRC). Our impression has been that the NRC Staff has always encouraged licensees to maximize the chain-of-command as the first and best option available to employees to report concerns. We have read NRC Form 3 and past correspondence with the Staff to express that preference, and we read the related attribute listed by the Staff in Attachment 1 to the SRG Executive Summary to reflect the same preference ("...the preferred vehicle for most employees...is through the normal line organization."). Prior communications between our respective organizations have reinforced this preference as well. Further, it makes sense to us that this is the best approach because it is the most direct and efficient way to place in the hands of the licensee's management any issue of concern that may bear on nuclear safety so that it can be addressed promptly.

We have gone to substantial lengths to emphasize to our employees that the line organization is the preferred vehicle, while always presenting the other options as available for those who prefer to pursue them for any reason. We have sought to maintain a healthy level of trust in the management chain in order to assure that an environment exists in which this preferred vehicle can flourish. The SRG's favorable finding on the "chilling effects" issue, and past NRC Staff findings bearing on the issue, appear to us to confirm that our employees generally are comfortable using the chain-of-command. In light of this background, we must confess to some confusion on this point. It would be useful to us if the NRC Staff would help us to better understand the SRG's perception, so that this criticism can be addressed as we move ahead with the PEP.

The SRG found that there is a very high threshold for a concern to be identified as a "nuclear safety concern" under the procedures of our Nuclear Safety Concerns Program (NSCP). When the NSCP was enhanced and its procedures revised in 1990, care was taken to avoid disrupting the routine handling of nuclear issues by employees and their management chain. This process generally was (and is) working well, and we did not want to signal a change in it. Rather, we envisioned that the NSCP should serve those employees who were not able to work within that process. The NSCP procedures attempted to draw that distinction.

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We are confident in the NSCP's ability to maintain anonymity, because the NSCP has an intricate process to assure that anonymity and confidentiality are maintained to the maximum extent possible. However, it is important to the success of the NSCP that we deal with the perception problem described by the SRG. We recognize that both the maintenance of anonymity and the perception of anonymity are important elements in a successful nuclear concerns program.

With regard to these and "other weaknesses in our NSCP identified by the SRG, we intend to explore ways to clarify the NSCP procedures to assure that they clearly invite to the NSCP anyone who wishes to pursue alternative means to resolve a nuclear safety concern. These matters are included within the scope of the PEP effort, and we are committed to enhancing the NSCP as we determine ways to make it as "user friendly" as possible.

OBSERVATIONS ON SRG RECOMMENDATIONS

With respect to the recommendations of the SRG, allow me to offer the following reactions. First, the relationship between the NU Board of Trustees and senior NU management is founded upon openness and candor. The Board has been fully briefed by management on an ongoing basis as to the various developments affecting our nuclear program, including the variety of issues arising out of NU's internal task group efforts and the purpose and direction of the PEP. The Board has also been briefed by management on the results of the SRG effort and the findings and perceptions of the SRG reflected in the Executive Summary, and further updates will be provided as in the past. We will of course fully cooperate with you in facilitating a meeting between the Board and you, should you determine that this would be of value to the Board.

Second, as you know, NU has actively apprised your Staff of the conception, development, and conduct of the PEP. Mr. Opeka and his staff, together with Mr. Stinson, President of Atlas Consulting Group, met with the Staff most recently on March 27, 1992, in Region I offices to brief the Staff on the progress of the PEP. These enhancement efforts, and the internal task group and other self-assessment efforts that fed into them, have been self-initiated, broadly and aggressively. The success of our nuclear program is the objective of these efforts, and we are committed to seeing them through in the same spirit in which we voluntarily initiated them. There is no need for the NRC to formalize or impose, by license amendment or otherwise, efforts that we have undertaken and will pursue on our own, all the while keeping the Staff fully apprised. (Incidentally, we should add that any recommendation of NU's internal task group efforts not already implemented are appropriately included in the scope of issues to be

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addressed in the PEP. Accordingly, there is no action needed on behalf of the NRC to effect that result.)

In its third and fourth recommendations, the SRG recommends that the Staff conduct special inspections to assure that the PEP is properly implemented. Of course, we are not averse to Staff inspections, as the Staff deems appropriate. Given our commitment to open dialogue with the Staff as implementation of the PEP moves forward, and the ongoing routine oversight of our nuclear program by the Staff, we are confident that the Staff will have ample information with which to monitor the progress of that effort. If the Staff does decide to conduct such inspections, we would urge that the Staff coordinate the timing of such inspections with us to avoid, or at least minimize, the impact on the PEP efforts occasioned by premature inspections or inspections which may unduly divert our resources and attention from the tasks at hand.

Regarding the fifth recommendation, the self-assessment function at NU, as we explained during our March 27 meeting at Region I, performance assessment was identified as one of three major root causes of our performance decline. It is currently the subject of significant internal effort in the PEP. After action plans within the scope of the PEP are finalized during the second quarter of 1992, we will provide the Staff with our analysis of why our assessment function failed to identify and effectively resolve performance deficiencies.

As to the sixth recommendation, the attorney-client privilege issue, I am advised that the privilege was asserted by the company with respect to a small number of communications between NU's management and counsel. I am also advised that this action was taken to preserve the integrity of the confidential relationship between management and counsel, and was strictly limited to situations where one of the parties to the communication was an attorney acting in his capacity as legal counsel and present for the purpose of rendering legal advice. As our attorneys explained to the Office of Investigations at the time, a major concern underlying the assertion of the privilege in those limited instances was the risk that, if we failed to do so, we might compromise important legal rights in collateral litigation in which the NRC is not a party.

This action was not taken to inconvenience the NRC Staff in its inquiry. I am told that the documents the NRC requested with respect to those communications were ultimately produced by the company in response to an NRC subpoena despite our concern regarding the privilege. In our view, the privilege was asserted by the company in a limited and circumscribed way, and there is no need for further NRC inquiry into this issue. (With respect to any assertion of the privilege by company employees as to

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communications between their personal counsel and themselves within their own attorney-client relationship, that is a private right of the individual over which the company exercises no control.)

SUMMARY

As I think you know, we are making a sincere, major effort to critically self-evaluate our performance, to learn from that effort the underlying causes of any decline in our performance, and to structure and implement a plan to address the causes and improve performance in a tangible way. All the while, we are openly sharing relevant information with the Staff on what we believe is a very timely basis. We are not pleased by the events of the recent past, and we certainly are not complacent with our nuclear program. While I am confident that we can restore our nuclear program to its former level of performance excellence, it will take hard work and the dedication of significant resources to accomplish this, and we have made the necessary commitments.

In our view, the findings and perceptions in the SRG Executive Summary generally deal with issues already the subject of our self-evaluations. Those findings and perceptions will be useful in sharpening the focus in some of our ongoing efforts to enhance performance, but they should not lead the NRC Staff to take action in addition to the oversight of our efforts that the Staff has been exercising routinely.

In closing, allow me to express a frustration that we at NU have with the regulatory process with which you and we must deal. When the issues to be addressed between the NRC Staff and the licensee are technical in nature, we find the process to be open and relatively efficient. We express our views and the Staff expresses its views, and then technical experts analyze and reach conclusions. The discourse is open and candid, and the Staff and licensee take actions based upon a common set of facts.

Unfortunately, when the issues to be addressed involve allegations (or even mere perceptions) of wrongdoing, the process is altogether different. It is characterized by a lack of information available to the licensee. Of course we understand that the nature of the issue being addressed in such cases compels some measure of discretion on the part of the Staff. It would be constructive, however, if the process were to permit at least a somewhat more open dialogue so that the licensee could better understand the issues and be able to take prompt corrective actions tailored to address them. We would certainly welcome any specific observations or suggestions you may be able to offer in this regard.

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In any event, I wish for you to know that the company's recent experience with declining performance and all that attended it has been painful. We have learned and are learning still from that experience. At the risk of being repetitious, let me state that we are committed to applying the considerable talent that we have in our nuclear program, and other necessary resources, to restore NU to a position of excellence in nuclear operations.

JOHN F. OPEKA

TO: T. T. Martin

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DATE: 10/12/94

Dear Tim:

I thought you may be interested in the results of my meetings with several Congressional and NRC personnel last month. I am enclosing a copy of the letters summarizing our meetings for your information.

John

Enclosure

cc: R. W. Cooper w/enclosure