

Final Edited

**REPORT OF NORTHEAST UTILITIES
CONCERNING ALLEGATIONS OF
PAUL M. BLANCH**

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REPORT OF NORTHEAST UTILITIES
CONCERNING ALLEGATIONS OF PAUL M. BLANCH

I. INTRODUCTION AND OVERVIEW

This report was prepared by counsel on behalf of Northeast Utilities ("NU" or "the Company") in connection with allegations of discrimination made by Paul M. Blanch. We understand that the Nuclear Regulatory Commission (NRC) Office of Investigations (OI), which conducted an investigation of those allegations, has recently provided its written report to the Office of Enforcement (OE) in connection with its investigation. We prepared this report for the NRC Staff's consideration, in order to ensure that the Staff has all relevant and material facts before it as it reviews OI's report.

When viewed in context, we believe that the facts show that no discrimination (as contemplated by Section 210 (now Section 211) of the Energy Reorganization Act or 10 C.F.R. § 50.7) against Mr. Blanch occurred, and that his allegations are the product of personal disagreements with management judgment as to a number of issues, including personnel and resource allocation in addressing the Rosemount transmitter issue.

The description below of the events in question is based on a review of the full record, i.e., (1) the OI transcripts made

available to the witnesses^{1/}; (2) the documents provided to OI pursuant to document requests; and (3) additional facts not contained in the OI transcripts. Where these additional facts are discussed, we have sought to present how each witness would have testified, had the information that is offered been solicited in the OI interview. (OI in general restricted the opportunity for witnesses to present, voluntarily, and through follow-up questions propounded by their own counsel, testimony relating to issues not raised by OI's direct examination.)

We report in this brief a view of all the evidence in what we believe is a fair and reasonable manner. We assume that testimony exists that conflicts with the testimony we have relied upon, and that documents exist that could be interpreted differently from the way they are interpreted here. It would be a rare case indeed where all witnesses agree on the facts. This is not such a case. But to the extent there presumably is some testimony suggesting that NU management has acted out of any inappropriate motive with respect to Mr. Blanch, we believe that

^{1/} Except for the few OI transcripts that have been released, we were disadvantaged by not having the OI transcripts of witnesses in hand while writing this brief. OI transcripts were provided to only a handful of NU management witnesses who testified (specifically, the individuals involved in some fairly direct way in events relating to the actual conduct of the internal audit (see Section III.K)). The vast majority of the OI transcripts have been available only for the perusal of the witnesses (and counsel) for a few hours. Due to scheduling difficulties, most of those transcripts have not yet been reviewed at all as of the filing of this report. Thus, for a number of NU management witnesses to whose OI testimony we allude in this brief, the discussion is based largely or wholly on best recollections of what was said during the OI interviews.

a balanced assessment of the totality of the evidence going to credibility -- most particularly that relating to bias, opportunity to observe, context, and consistency -- compels acceptance of the testimony of the numerous witnesses and documentary evidence establishing that no such actions occurred.

The principal events that are the subject of Mr. Blanch's assertions that he was the focus of discrimination occurred between February 1989 and October 1989. It is the Company's position that the events about which Mr. Blanch complains each occurred as the results of reasonable and entirely lawful management judgments and prerogatives. Company management declined to participate in an EPRI project in which Mr. Blanch was interested because it involved unnecessary costs to the Company. A decision against funding a BWROG subcommittee in which Mr. Blanch was interested was also based on resource allocation considerations. The assumption by Mr. Blanch's supervisor of lead responsibility for Rosemount work was unremarkable in that he was in any event ultimately responsible for such work. (Mr. Blanch was not "excluded" from this work, but rather was asked to contribute in accordance with his expertise and place within the nuclear organization.) Further, management did not discriminate against Mr. Blanch by not inviting him to participate in a meeting at which his expertise was considered not needed. Indeed, Mr. Blanch participated in many high-level meetings convened to discuss the Rosemount issue. Nor was Mr. Blanch discriminated against when his supervisors

requested that he follow routine procedure like everyone else, or requested that he tolerate technical views that differed from his own. In the case of an audit of Mr. Blanch's activities and the conduct of two of his subordinates, Company management was compelled as a matter of corporate responsibility to pursue allegations of impropriety where there appeared to be a credible, objective basis for the allegations.

In short, at all times in their dealings with Mr. Blanch, NU management made decisions that affected him based on reasonable management judgments. There was no effort to retaliate against him or stifle his views. To be sure, Mr. Blanch is unconventional and at times unusually aggressive, and can present a challenge to the management and people skills of those with whom he works. But contrary to any suggestion that NU attempted to inhibit Mr. Blanch's participation in Rosemount issues, from the emergence of these issues, NU encouraged him to spend time on them and gave him extraordinary leeway in accommodating his desire to pursue his interest in them. When that time went beyond what NU management believed to be prudent in terms of the Company's interest in the subject (in contrast to broader industry needs), it approved Mr. Blanch's pursuit of the generic issues on his own time in an unusual consulting arrangement with EPRI. While Mr. Blanch's supervisors might have exhibited better interpersonal skills at times in their dealings with him, there was no intent to discourage Mr. Blanch from expressing his viewpoints or to retaliate against him for doing so. In any

event, when he indicated that he felt slighted by not being included in certain activities, management took immediate and visible steps to assure his continued participation and correct his misimpression.

The record also reflects that Mr. Blanch's claims or perceptions of what occurred were colored by the dislike he had over the years -- including in the period pre-dating the Rosemount issue -- for some of the key targets of his allegations, and by the several career disappointments that also pre-dated the Rosemount issue and caused a strain in relations with his management.

It is not plausible to suggest that anyone at NU could have seriously entertained the notion of covering up or minimizing the Rosemount issue, since the issue had already come to prominence with the NRC and throughout the nuclear industry and had been resolved for NU's plants, as Mr. Blanch has acknowledged.

Intent to discriminate is a prerequisite for a violation of Section 210 or 10 C.F.R. § 50.7. The record reflects that no such intent existed in management's handling of Mr. Blanch during the events in question. However, even if one assumed, for the sake of argument, that a violation could occur without intent, then surely the standard is at least an objective, "reasonable person" standard. In this regard, the record reflects that while Mr. Blanch is a skilled engineer, he has proven to be someone who perceives retaliation and harassment at every turn, going so far

as to claim recently that the NRC was involved -- along with NU management and Rosemount, Inc. -- in a "conspiracy" to harass him because he has publicly challenged the NRC's competence. (See Section II.C.3, below.) Carrying this to its logical extreme, if intent is not a necessary element of a § 50.7 violation or if an objective test is not applied, then the mere fact that Mr. Blanch perceives harassment by the NRC would mean that the agency is guilty as charged. This is of course an absurd result, but Mr. Blanch's conspiracy claim against the NRC should help to place in context his claims against the Company.

In the sections to follow, we provide a discussion of the historical background of this case, including a brief summary of the evolution of the Rosemount issue; a detailed explanation of why each of Mr. Blanch's allegations is not substantiated; a discussion of the elements of a Section 210 or 10 C.F.R. § 50.7 violation; and finally a discussion of the basis for the conclusion that no violation of law has occurred.

II. BACKGROUND

A. Case History

1. Department of Labor Complaint

On October 27, 1989, Mr. Blanch filed a complaint against the Company with the Department of Labor (DOL) under the counterpart to Section 50.7 in the Energy Reorganization Act, ERA

Section 210 (Attachment 1).^{2/} Mr. Blanch's complaint stated, in sum, that he had identified the Rosemount transmitter issue earlier that year and had raised his concern about the issue to NU management; that he had attended a meeting with the NRC on that subject, but was informed after the meeting by his manager, Arnold Roby, that his conduct at the meeting had been unprofessional and, further, that he had mishandled proprietary information; and that he had been informed by Mr. Roby that, because his time-consuming involvement in the Rosemount issue had begun to cause him to neglect his normal supervisory responsibilities, he would no longer be providing primary support for the investigation into the Rosemount issue. Mr. Blanch complained that he had not received a response to a memorandum he had written to Mr. Roby about his perception that he had been unjustly chastised, or to a memorandum he had written to G. Leonard Johnson (Mr. Roby's supervisor) even though it raised safety issues concerning Rosemount transmitters. Mr. Blanch also alleged that C. Frederick Sears, an NU Vice President, had attempted to convince him to "relinquish" his responsibilities related to the Rosemount issue and had conducted "his own personal investigation" of Mr. Blanch by contacting an individual at EPRI to inquire about Mr. Blanch's consulting arrangement there. Finally, Mr. Blanch asserted that NU's internal audit

^{2/} Section 210 was recently amended and redesignated as Section 211 of the Energy Reorganization Act. Energy Policy Act of 1992, § 2902, Pub.L.No. 102-486 (codified as amended at 42 U.S.C. § 5851). We refer to Section 210 throughout this document because it was the governing law at all times relevant to the allegations.

department was in the process of conducting an audit of him. It was Mr. Blanch's "feel[ing]" that this course of events constituted harassment and intimidation toward him for raising safety concerns. As the complaint stated, Mr. Blanch had filed concerns in the same vein both with NU's Nuclear Safety Concerns Program contact and with the NRC in March 1989.

Mr. Blanch supplemented his allegations in a November 21, 1989 letter and in a December 5, 1989 written "Statement to the U.S. Department of Labor" (Attachments 2 and 3). By that time, the audit to which he had alluded in his October correspondence had been completed, and in his follow-up correspondence Mr. Blanch expressed his opinion that the audit had not been conducted in accordance with NU procedures, that the audit was discriminatory (in that no audit had been conducted into similar allegations he had raised about other employees), that the discrepancies identified by an audit conducted at the same time into alleged time and expense abuse (which related not to Mr. Blanch, but to employees he supervised) could be explained, and that both audits had been primarily designed to intimidate and harass Mr. Blanch.

2. Department of Labor Preliminary Determination

In a December 8, 1989 letter (Attachment 4), the Department of Labor's Wage and Hour Division determined preliminarily that discrimination against Mr. Blanch contrary to the requirements of Section 210 had occurred. The only support the Division offered

for this conclusion was that Mr. Blanch had not received a response to the letters he had written to Mr. Roby or Mr. Johnson (see the discussion at III.G, below), that information given to Mr. Blanch regarding the impetus for the internal audit "[a]pparently" was not "accurate," and the Division's belief that the audit had not been conducted in accordance with NU procedures. The Division also concurred in Mr. Blanch's belief that, as a result of the contact of EPRI by Dr. Sears, Mr. Blanch's ability to obtain future contracts had been adversely impacted.

The Wage and Hour Division's preliminary determination was based, of course, solely on a quick investigation into Mr. Blanch's allegations by the Division. Firmly disagreeing with the Division's conclusions, the Company requested a hearing on the complaint before the Department of Labor, thus invoking its right to have the matter resolved de novo in a forum in which it could present its own witnesses and other evidence.

3. Settlement Agreement

Before a hearing on Mr. Blanch's complaint commenced, and following confidential negotiations between counsel for Mr. Blanch and counsel for NU, the Company and Mr. Blanch reached a settlement of his Section 210 claim, thus resolving their differences over his allegations of discrimination. In connection with the settlement, and as agreed to by Mr. Blanch's counsel, Mr. Blanch informed the Department of Labor by letter

dated February 1, 1990 that he was no longer interested in pursuing, and wished to withdraw, his Section 210 complaint against NU. In a February 28, 1990 order, the DOL administrative law judge assigned to the case recommended to the Secretary of Labor that the settlement be approved and that Mr. Blanch's complaint be dismissed.

NU fully expected that the Secretary would approve the settlement as fair, adequate, and reasonable, and therefore NU viewed the Section 210 proceeding as having been concluded. In March 1991, however, while the recommended decision was pending before the Secretary, Mr. Blanch's counsel sent a letter to the Secretary claiming that Mr. Blanch had been "forced" to withdraw his complaint due to "financial pressure" exerted by lawyers for NU (Attachment 5). (Counsel for Mr. Blanch made this accusation, despite the fact that he himself had represented Mr. Blanch throughout the settlement negotiations, and presumably had been retained by Mr. Blanch precisely to ensure that any resolution of his dispute with NU would be fair to him.) In addition, although not claiming that the settlement was in any way flawed, Mr. Blanch's counsel asserted, without support, that the "spirit" and "intent" of the agreement had been violated by NU. Mr. Blanch thus requested the Secretary to "reject" the settlement into which he and NU had entered.

NU views Mr. Blanch's request for annulment of the settlement to be wholly improper and the asserted grounds for rejection to be without merit. Indeed, as NU pointed out in its

response to the Secretary (Attachment 6), Mr. Blanch's counsel at the conclusion of the settlement process had made a point of stating that he thought the terms of the settlement were fair and very much in Mr. Blanch's interest. The matter remains pending before the Secretary.^{3/}

4. NRC OI Investigation

The NRC's Office of Investigations (OI) conducted its own investigation into Mr. Blanch's harassment and intimidation allegations. The Company made over twenty witnesses available for voluntary interviews with OI, and produced over one thousand documents in response to OI's requests. While we understand that OI recently completed its written report on this matter, neither that report nor, as noted previously, the majority of the OI transcripts generated from these voluntary interviews, has been provided to the Company or to the various witnesses who testified.

^{3/} Mr. Blanch also filed a second but unrelated complaint with the Department of Labor, in November 1990. In this complaint, Mr. Blanch charged that NU counsel had sent correspondence to him at his home address, rather than his work address, and that this act somehow constituted an attempt to harass him. (The correspondence was in reply to a request for information that Mr. Blanch had made to the law firm.) The Department of Labor investigated Mr. Blanch's charges and found them to be without merit. The Department concluded that the fact that the correspondence had been sent to Mr. Blanch's home did not itself evidence any type of harassment, and, further, that the law firm acted reasonably in sending the reply to Mr. Blanch's home because the firm felt that the personal nature of the letter could best be preserved in that way. See Attachment 7.

5. LRS Investigation

LRS Incorporated was a nuclear consulting firm that had for many years reviewed NU's nuclear activities during regularly scheduled visits. LRS was also, in the time period pertaining to Mr. Blanch's allegations, one alternative (as the so-called "Nuclear Review Team") made available by the Company to employees who wished to contact that firm to pursue concerns outside of the chain of command.

In a letter dated May 10, 1989 (Attachment 8), Ed Mroccka, then Senior Vice President of Nuclear Engineering and Operations, wrote to LRS and, as was his practice, identified various issues NU wished LRS to review in its next visit. Because of the concerns Mr. Blanch had raised to Richard Laudenat, then the Nuclear Safety Concerns Program contact (at Millstone), Mr. Mroccka requested that LRS investigate "[i]nteractions between people involved in the Rosemount Transmitter issue." (As it happened, Mr. Blanch had previously contacted LRS to express his concern that he had been treated unfairly because of his Rosemount activities.) As requested by management, LRS conducted some interviews as well as briefings with management in connection with Mr. Blanch's allegations. LRS issued a report summarizing its findings and containing recommendations (LRS Incorporated visit #1-89: May 29-June 8, 1989; visit #2-89:

July 31-May 4, 1989) (Attachment 9).^{4/}

With little analysis beyond a repetition of the facts as Mr. Blanch perceived them,^{2/} LRS found: "A general sense can be drawn from the evidence available that the supervisor was subjected to harassment and attempts at intimidation by his management superiors, and that such actions may be continuing." Attachment 9 at 6. However, LRS equivocated. It stated that "acts of harassment and attempts at intimidation were sometimes apparently made with intent." Id. (emphasis added). But it also stated, in words suggesting no unlawful conduct, that no "criminal intent" was ever discernible, and that "the root cause of that intent is believed to have been the result of lack of detailed technical understanding of the issue in conjunction with longstanding conflicts of personality." Id.

Knowing all the players as it had for 16 years, senior management was reluctant to accept at face value LRS's seemingly negative, if garbled, conclusions about Mr. Blanch's supervisors

^{4/} NU made a copy of the LRS Report available to Ed Wenzinger, then NRC Region 1 Projects Chief, Branch No. 4, for his review on November 14, 1989 at the Berlin office of the Company. The LRS Report was subsequently also provided to the Office of Investigations in response to a document request.

^{2/} For example, a typical paragraph of the report states: "Beginning in February 1989, the supervisor began to feel increasingly frustrated with the lack of support he was receiving from higher levels of management in Generation Engineering and Construction. He perceived many actions as harassment and attempts to intimidate him to terminate his activities on the Rosemount transmitter problem." Attachment 9 at 4.

without more closely examining the events that had occurred. LRS's expertise was principally in the technical arena rather than in personnel-related matters. Further, one would assume that LRS's ability to inquire directly into Mr. Blanch's allegations was hampered by its desire to preserve the confidentiality of those allegations. Thus, Mr. Johnson, Mr. Roby's supervisor, was not informed that the focus of the LRS inquiry was harassment and intimidation. (Mr. Johnson thought that LRS was inquiring into the handling of Rosemount issues generally at NU.) Thus, he was not accorded the opportunity to focus on the allegations and offer information on all the relevant details of which he had knowledge. Finally, LRS did not have the perspective, as senior management did when reviewing the events, of knowing the players for approaching two decades. Mr. Mroczka ultimately concluded that LRS was wrong to the extent it found that harassment had occurred.

B. Evolution of the Rosemount Transmitter Issue

Mr. Blanch raised a number of allegations premised in large part on his disagreement with NU management regarding treatment of the Rosemount transmitter issue. At bottom, Mr. Blanch asserted that NU was unresponsive to the Rosemount transmitter issue. (He has levelled similar criticism against industry groups and, more recently, the NRC regarding both the Rosemount and other issues.) His allegations are without merit.

The Rosemount transmitter issue evolved over time, as new information became available. From the initial identification (not by Mr. Blanch) of five failed transmitters at Millstone Unit 3 in 1987, to the detailed evaluations and responses to the issues as they evolved, NU's actions often preceded comparable generic industry actions by months and in some cases years. In the course of this evolution, NU demonstrated a responsible and proactive response to technical concerns, the nature and scope of which were not always readily discernible. Above all, NU's actions maintained their focus on protection of public health and safety.

NU's evaluations of the Rosemount transmitter issue were consistent with established processes for reviewing and resolving potential nuclear safety issues. Those processes naturally reflected the need to reconcile differing views as to the proper resolution of a complex issue. That some differences of opinion would exist in the course of resolving such an issue is to be expected, even perhaps encouraged. Even outside of NU, efforts to resolve these issues have reflected such differences, as evidenced by the still ongoing industry and NRC reviews of Rosemount transmitter issues -- almost five years after NU first discovered the failed transmitters at Millstone Unit 3. Thus, the questions involved were not subject to simple answers.

To assist in understanding the nature of this evolving process of issue resolution, and to place NU's role in context, described below are the generic industry activities associated

with Rosemount transmitters, as well as the specific, principal actions undertaken by NU in this area. As evidenced by this chronology, NU took an active role in addressing the Rosemount transmitter issue, consistent with its regulatory obligations, (even before Mr. Blanch became involved), and has continued to do so.

Twelve Rosemount transmitters are used at Millstone Unit 3 to monitor Reactor Coolant System (RCS) flow. In 1986 and 1987, during the first cycle of operation of Unit 3, plant personnel identified failures in five of the twelve Rosemount (Model 1153 HD) flow transmitters at that unit. The five failed transmitters were returned to Rosemount and replaced. An evaluation determined that a loss of fill oil had occurred. A reportability evaluation was conducted under 10 C.F.R. §§ 50.72 and 50.73. NU concluded that the plant remained in compliance with Technical Specifications, and that no reportable condition existed.

However, on November 24, 1987, NU initiated a Substantial Safety Hazard (SSH) evaluation to determine if notification of the NRC under 10 C.F.R. Part 21 was required. Differing opinions were expressed during the SSH evaluation process, as can reasonably be expected with respect to any new condition, the cause and exact nature of which is not yet fully understood. Nevertheless, NU ultimately made the conservative determination to report the condition, and a Part 21 notice was submitted to the NRC on March 25, 1988.

In addition to replacing the failed transmitters, and as a result of the SSH determination, NU initiated monthly "white noise" time response tests (also described as "signature analysis") on all twelve transmitters at Millstone Unit 3 in order to identify potential failures. This testing commenced in early 1988, at least a year ahead of generic NRC and industry efforts to define appropriate measures to respond to the Rosemount transmitter issue.

The first formal generic communication concerning Rosemount transmitter failures occurred in early December 1988, when Rosemount, Inc., the manufacturer of the transmitters, issued a letter to purchasers of the suspect (Model 1153 and 1154) transmitters. In that letter, which alerted purchasers to a potential generic failure mode, Rosemount described the nature of the reported failures and noted, with respect to their scope, that the failures represented a small fraction of the total transmitter population.

In a follow-up to the Rosemount letter, General Electric issued a Rapid Information Communication - Services Information Letter (RIC-SIL) to BWR (Boiling Water Reactor) Owners on December 20, 1988. This letter reiterated that a failure mechanism existed for certain Rosemount transmitters. GE noted, however, that "[p]roblems have occurred in less than 0.5% of installed transmitters." While GE made general recommendations, as with the Rosemount communication, no specific remedial actions were identified.

By this time, NU had already identified and replaced the failed transmitters at Millstone Unit 3; begun monthly time response tests to assure reliability of the remaining transmitters; made reportability and operability determinations; initiated and completed a Part 21 evaluation; and reported the condition to the NRC.

In early and late January 1989, Rosemount met with representatives of industry, including NUMARC and EPRI, to discuss the transmitter issue. With NU management's permission, Mr. Blanch attended these meetings and was actively involved in examining the nature of the Rosemount problem. By the late January meeting, Rosemount had determined that up to 88 loss-of-fill-oil failures had occurred industry-wide. Rosemount further determined that the manufacturing lot associated with each confirmed failure would be considered "suspect."

Based on this information, Rosemount issued a Part 21 notice to affected licensees on February 7, 1989 (Attachment 10). In the notice, Rosemount described the suspect groups of transmitters, the apparent failure mode (a gradual loss of oil from the sensing module) and the potential manifestations or symptoms of failure. Rosemount made the initial assessment that any failures would occur within the first 30 months of operation (the concept known as "infant mortality"). Rosemount recommended that licensees "identify the location of these transmitters in [their] plant[s] and determine the effect which this reduced performance may have in each situation." As further information

became available, Rosemount issued supplements to its Part 21 Notice in the ensuing 10 months.^{9/}

In the aftermath of Rosemount's February 7, 1989 Part 21 notice, the I&C group for each of NU's affected plants developed a detailed program to ensure that their transmitters were operating satisfactorily. An action plan was issued in early February, including the location and identification of suspect batch transmitters and calibration check recommendations.

By this time, NU had begun its third reportability evaluation process, taking into account all newly developed information. Separate reportability evaluations and operability determinations were initiated on February 8, 1989, for all three Millstone Units. After evaluating the potential failure effects of all installed Model 1153 and 1154 transmitters at Units 2 and 3,^{1/} it was determined that the majority of the suspect model transmitters would already have failed if they were going to fail, and that any future failures would be random and few in

^{9/} Rosemount issued an additional Part 21 notification and accompanying Technical Bulletin on May 10, 1989, and additional technical bulletins on July 20, 1989 (No. 2), October 23, 1989 (No. 3), and December 22, 1989 (No. 4).

^{1/} Neither Millstone Unit 1 nor the Haddam Neck plant utilized the suspect transmitters in safety-related applications. With input from Rosemount, NU determined that Millstone Unit 3 had received 13 of the suspect transmitters; 10 were installed and 3 were not. NU performance-checked the installed transmitters and found them to be in working order with no failure symptoms. Millstone Unit 2 had received three of the suspect transmitters. Two of them had been replaced in earlier years, and the remaining one was performance-checked and calibrated.

number. These evaluations concluded that no reportable condition existed at any of the Millstone units at that time.

What is more, in mid-February 1989, all Rosemount transmitters were checked during plant shutdown in order to verify the effectiveness of the corrective actions that had to date been taken at Millstone. NU used high-speed recording data to identify flow reduction response from nine Rosemount transmitters. In addition, data from the Offsite Information System (OFIS) were used to verify flow reduction response for twelve Rosemount transmitters. No degradation was identified.

The NRC also closely followed and examined this evolving issue. In March 1989, at the NRC's request, two meetings were held at NU to discuss Rosemount issues and NU's response. (See the discussion in Section III.C and D.) And, on April 13, 1989, the NRC sponsored a public meeting to explore concerns relating to the Rosemount transmitters. NRC, utility, and industry representatives (including Rosemount) attended. With NU management approval, Mr. Blanch made a detailed technical presentation at this meeting based on his understanding of the issues. (See the discussion in Section III.H, below.) NU submitted an informational letter to the NRC on the day of the NRC meeting, summarizing its activities regarding the transmitters to date, and its conclusion that the installed transmitters at Millstone remained operable (Attachment 11). Following the April 13, 1989 meeting, the NRC issued Information Notice No. 89-42, "Failure of Rosemount Models 1153 and 1154

Transmitters," dated April 21, 1989. The NRC did not direct any specific actions or require a written response from licensees in the notice.

NU nevertheless at that point undertook yet additional efforts to address Rosemount issues. These efforts were taken despite the fact that the NRC already had reasonable assurance that the problem had been adequately addressed for its units. On May 10, 1989, various individuals, including Mr. Blanch, met in order to identify any remaining possible tasks with respect to evaluation of Rosemount transmitters at NU's plants. See Attachment 12. Several specific actions were identified, including reviews of transmitter monitoring methods and needs. These tasks, many of which Mr. Blanch had the lead for completing, were undertaken in the ensuing months. In May 1989, NU implemented a special calibration/surveillance procedure to identify faulty Rosemount transmitters.

The NRC (Region I) conducted a routine inspection at Millstone Unit 3 from April 5 to May 15, 1989, during which it reviewed Rosemount transmitter issues. In a June 29, 1989 Inspection Report (50-423/89-04), the NRC concluded that NU's "initiatives and leadership in evaluating transmitter failures and notifying the NRC of this safety issue are commendable." See Attachment 13. (Mr. Blanch's involvement in the Rosemount issue no doubt contributed to the NU effort which the NRC complimented.) While additional information was requested, no violations were identified. As requested, NU subsequently

provided its evaluation of the continued operability of installed transmitters at Unit 3, and concluded in its submittal to the NRC (dated August 1, 1989) that sufficient information was available to support a determination that all Rosemount transmitters installed at Unit 3 were operable. The August 1, 1989 response (Attachment 14) in addition described the ongoing and augmented transmitter monitoring program at Millstone Unit 3. In further response to the request for information in the Millstone Unit 3 inspection report, NU transmitted a follow-up informational letter to the NRC on October 31, 1989 (Attachment 15).

In the summer and fall of 1989, a question that had been raised by Mr. Blanch regarding "historical" compliance with applicable General Design Criteria (GDC) was also pursued and resolved. Beyond the previously noted reportability evaluations, and following internal debate, NU management initiated a separate evaluation to address whether, given the evolving knowledge of Rosemount transmitter performance, the Millstone units had historically (i.e., before the issue was identified and addressed) been in conformance with GDC 21, 22, 23 and 29 (and certain industry standards). This evaluation was completed in February 1990, with NU concluding that the plants were in compliance with applicable GDC and industry standards. Nevertheless, NU conservatively determined that current information suggested that redundant RCS flow transmitters could have failed simultaneously, without detection, in a single loop on Millstone Unit 3 for some period during the first cycle of

operation, and that this could have affected the ability of the RCS to perform a safety function. Accordingly, although simultaneous failures could not be established conclusively, NU took the conservative course of reporting to the NRC this potential past condition through an LER.

The NRC required licensees to take specific actions in response to the Rosemount transmitter issue in March 1990, when it issued Bulletin No. 90-01, "Loss of Fill-Oil in Transmitters Manufactured by Rosemount." In the Bulletin the NRC requested, among other things, that operating license holders identify transmitters from suspect lots and replace any such transmitters used in reactor protection systems; review plant records to determine whether a loss of fill oil may have already occurred in the subject transmitters; and apply an enhanced surveillance program for those transmitters.

Finally, on March 31, 1992, the NRC released for public comment a supplement to the 1990 bulletin ("Loss of Fill-Oil in Transmitters Manufactured by Rosemount," Draft NRC Bulletin No. 90-01, Supplement 1). In the supplement, the Staff concluded that various transmitter models were not achieving high functional reliability, depending upon their application and location in the plant. The Staff proposed certain licensee actions with respect to those transmitter models, including specific monitoring programs and/or methodologies. Mr. Blanch submitted personal comments to the NRC in this connection (Attachment 16). He criticized some aspects of the proposed

bulletin, stating an "overriding concern" that "plants may be operating with a risk which is totally unacceptable due to these unaddressed issues." Mr. Blanch emphasized, however, that "[m]y personal concern is not NU's nuclear plants, as very responsible action has been taken to resolve these issues due to NU's total commitment to true nuclear safety and the dedication of the NU operating and engineering staffs." Attachment 16 at 5.

C. Mr. Blanch's Employment History

1. Pre-Rosemount Era

It is important to understand Mr. Blanch's allegations against the backdrop of his employment history and the dislike he had over the years for several of the key targets of his allegations. During the period relevant to his allegations (1989-90), Mr. Blanch was a supervisor for special studies in the Generation Electrical Engineering (GEE) group. Mr. Blanch reported directly to Arnold R. Roby (then System Manager - GEE), who reported to G. L. Johnson (then Director, Generation Engineering and Design). Mr. Johnson, in turn, reported to the then Vice President of the Generation Engineering and Construction Division, Richard P. Werner, who reported to Edward J. Mroczka, then the Senior Vice President of Nuclear Engineering and Operations. Thomas A. Shaffer, another individual who played some role in the events in question, was then a manager in the Instrumentation and Controls (I&C) Engineering branch within the GEE department. Mr. Shaffer also reported directly to Mr. Roby

during the period relevant to Mr. Blanch's allegations. An organization chart reflecting the reporting chain as it then existed is attached (Attachment 17).

Mr. Blanch joined the I&C Engineering Section at NU in the early 1970's. In 1980, Mr. Blanch requested a transfer to the Nuclear Operations division. He did so, he says, because he disliked working for [REDACTED], for whom he had little respect in terms of technical ability. See February 20, 1990 transcript of Conference Regarding Issues of Concern to Paul Blanch (Attachment 18) at 36.^{8/} Mr. Blanch had been in the Nuclear Operations division for approximately one year when Mr. Werner requested that he return to the I&C Section. See February 20, 1990 Blanch transcript at 36-37. Mr. Werner promoted Mr. Blanch to the position of I&C supervisor, at the helm of a group of approximately 13 individuals. See February 20, 1990 Blanch

^{8/} The referenced February 20, 1990 transcript was generated as a result of a meeting among Mr. Blanch, his counsel and NU counsel. The purpose of the meeting was to engage in a dialogue with Mr. Blanch, in the aftermath of the settlement of his DOL complaint, in order to begin a healing process and put relations back on a healthy plane. The understanding, made clear at the outset, was that NU counsel had no intention of seeking information about any communications that Mr. Blanch may have had with the NRC. See February 20, 1990 Blanch transcript at 5. Further, it was agreed that a court reporter would transcribe the meeting and prepare a transcript. A condition of this arrangement was that copies of the transcript would be kept solely in the offices of counsel for Mr. Blanch and NU, and disclosed to others only upon the consent of all participants in the meeting. See February 20, 1990 Blanch transcript at 6-7. Subsequently, Mr. Blanch requested consent from NU counsel to provide the transcript to the Office of Investigations, and, upon the agreement of NU counsel, did so. We reference the transcript in this report because it is part of OI's record.

transcript at 36, 38, 45. Mr. Blanch was now working in Mr. Roby and Mr. Johnson's management chain. At that juncture, I&C responsibilities were divided between Mr. Blanch and Mr. Shaffer, with Mr. Blanch supervisor of the Instrumentation section, and Mr. Shaffer supervisor of the Controls section. Mr. Blanch acknowledges he came to his new position with trepidation as a result of negative feelings toward Mr. Roby, for whom he also had little respect. See February 20, 1990 Blanch transcript at 36.

In 1985, the I&C sections were consolidated. Upon the recommendation of Messrs. Johnson and Roby, Mr. Werner promoted Mr. Shaffer to Manager of Generation Instruments and Controls Engineering (with three supervisors reporting to him). Mr. Blanch had hoped to get this position. See February 20, 1990 Blanch transcript at 45, 46. Mr. Blanch was instead made supervisor of I&C Special Programs and Studies -- a position that Mr. Johnson recalls was created especially to take advantage of Mr. Blanch's talents, but which Mr. Blanch viewed as the downgrading of his group. See February 20, 1990 Blanch transcript at 46. Mr. Werner chose Mr. Shaffer over Mr. Blanch for the manager's position because of what he believed to be his superior administrative abilities. Mr. Blanch thought of himself as better qualified for the manager's position, however, and had fully expected the manager's job to be his. See February 20, 1990 Blanch transcript at 46.

Mr. Blanch's frustration increased when an individual with less experience than he, John Ferraro, was promoted to the

position of Manager of EQ and Special Studies for Electrical and I&C and Mr. Blanch then reported to him. Again, Mr. Blanch believed he was better qualified. As Mr. Blanch put it, "he got promoted to be over me and he had absolutely no background in instrumentation at all." February 20, 1990 Blanch transcript at 46. When Mr. Ferraro subsequently transferred to another division (Fossil-Hydro) and Mr. Blanch was, again, not promoted to the position Mr. Ferraro had vacated, this too upset Mr. Blanch. This was a position that management had decided not to fill in light of an anticipated reorganization.

Relations between Mr. Blanch and his immediate supervisors also became strained in 1985 as a result of the decision by Messrs. Roby, Johnson and Werner not to terminate an employee Mr. Blanch supervised for what he perceived as time and expense abuses by the employee. This created "a lot of hard feelings" on Mr. Blanch's part. See February 20, 1990 Blanch transcript at 50-53. In the same time frame, however, this employee had filed a grievance against Mr. Blanch for not conducting her review in a fair manner, for removing her from a project for unjust reasons, and for not coming to her defense in a meeting during which others allegedly harassed her. This employee had also filed charges against various other individuals for alleged sexual and other harassment, which she alleged Mr. Blanch condoned. See February 20, 1990 Blanch transcript at 51. Mr. Blanch was later exonerated of these charges.

Mr. Blanch's management took the path they did in this instance to avoid exposing the Company -- and Mr. Blanch -- to allegations that the termination of this employee was in retaliation for filing these charges. They also believed, after consulting with the Company's Human Resources Group, that the evidence Mr. Blanch had collected against the employee (e.g., observing her coat on her chair when Mr. Blanch believed she was not actually present) was not substantial enough and was tainted due to the unorthodox manner in which Mr. Blanch had conducted his surveillance of her activities. (Mr. Blanch had conducted his own surveillance rather than requesting that it be done by someone trained in such matters.) Moreover, their review of the facts showed that Mr. Blanch had signed the employee's time and expense sheets, notwithstanding his view that she was falsifying them. This was another reason that the Human Resources Group advised against more severe disciplinary action. Accordingly, the employee was placed in a performance improvement program and ultimately transferred, rather than terminated.

Yet another source of frustration to Mr. Blanch arose early in 1988, when Messrs. Roby, Johnson and Werner made the decision to withdraw financial support for an Electric Power Research Institute (EPRI) task force that was of interest to Mr. Blanch. See February 20, 1990 Blanch transcript at 39, 40. Mr. Blanch had been chairman of an advisory group to EPRI's safety technology division, representing NU. A vacancy occurred on the EPRI Issues Determination Task Force, for which its departing

member and EPRI had recommended Mr. Blanch. Id. Although Mr. Johnson had explained to Mr. Blanch that the decision not to fund this effort had been driven by economics, and although other NU employees had been similarly relieved of various EPRI tasks, Mr. Blanch viewed the action as unfair to him personally. He characterized it as his "removal" from EPRI. February 20, 1990 Blanch transcript at 39. As he put it, "I was chairman of an advisory group . . . [a]nd I was doing a fantastic job." Id. At the time, he stated to Mr. Roby that somebody up the management chain was not allowing him to do what he wanted to do.

Mr. Blanch was also unhappy with a change in early 1988 from his position as manager of technical support for the corporate emergency response organization (an on-call position rotated among six or so qualified individuals) to electrical support, which was a position with lesser responsibility. See February 20, 1990 Blanch transcript at 47. 48. Organizational changes were put into effect placing two individuals with extensive operational backgrounds (John Ferguson and Mike Hills) in charge of technical support for the corporate emergency response organization. Messrs. Werner, Johnson and Roby were not involved in this reassignment. When an opening occurred for the technical support manager position, Mr. Blanch expressed dissatisfaction that another individual was selected. Again, Mr. Blanch felt he was the most qualified individual for the job. See February 20, 1990 Blanch transcript at 48 (" . . . I think I was the most qualified one, but they just wouldn't put me back there").

Yet another source of frustration to Mr. Blanch came when Mr. Johnson lowered the rating in Mr. Blanch's 1988 performance evaluation (Attachment 19) from 040 ("exceeds normal expectations"), which Mr. Roby had given him, to 035 ("fully meets/exceeds normal expectations"). See February 20, 1990 Blanch transcript at 42-43. Mr. Johnson felt that Mr. Roby had rated Mr. Blanch too highly, given the rating of others doing comparable work. While Mr. Blanch had received generally favorable performance evaluations from Mr. Roby in the past, his failure to monitor the work and progress of his subordinates had been noted as recurrent job performance deficiencies.^{9/}

^{9/} It is not true, as OI's questions implied, that criticism of Mr. Blanch in this regard first appeared in performance evaluations of Mr. Blanch that post-dated the Rosemount issue. It is apparent from Mr. Blanch's earlier reviews that criticism of his failure to monitor the work of his subordinates was a common thread running throughout his career, including in the period pre-dating the Rosemount issue. In Mr. Blanch's Master Performance Rating for 1986 (Attachment 20), with respect to the categories in Section B ("Major Duties/Accountabilities/Skills") labelled "Employee supervision" and "Monitoring and Controlling Work Progress", Mr. Blanch was rated 025 ("falls short of expectations/fully meets expectations"). The comment noted that "Paul needs to follow progress of his subordinates more closely." Similarly, Mr. Blanch's 1987 evaluation (Attachment 21) states that while there had been improvements in Mr. Blanch's control of activities within his section, "he should make himself more available to [his subordinates] for advice in the conduct of their projects and to assure that the published product addresses the needs of the plants." The section in the 1987 review on "Professional Growth" notes that Mr. Blanch "would benefit NU by using his technical knowledge to develop his subordinates." Mr. Blanch's overall rating for the years 1986 through 1989 -- prior to and after the Rosemount issue -- was a consistent 035 ("fully meets/exceeds normal expectations").

Mr. Blanch has acknowledged that these job-related problems (and, to use his word, the "strained" relations with his supervisors) preceded the difference of professional opinion which later arose between Mr. Blanch and his management over the handling of the Rosemount issue.^{10/} See February 20, 1990 Blanch transcript at 35, 36, 37, 42, 43, 44, 46, 47, 48, 55. From NU management's perspective, these events seriously strained Mr. Blanch's objectivity in helping his management work with the NRC and industry representatives to identify the scope of the Rosemount problem and find an acceptable technical resolution. The record shows, as Mr. Blanch acknowledges, that he was frustrated by the failure to receive promotions to which he felt entitled, and by past assignments which he felt beneath him. The record also shows that while Mr. Blanch possesses strong technical skills, with the ability to address complex problems, he repeatedly showed disdain for the chain of command and other conventions^{11/} and procedures as well as for the technical

^{10/} Mr. Blanch maintains that while it was discovered in 1987 that five out of twelve Rosemount transmitters had failed at Millstone Unit 3 (for unknown reasons), it was not until November/December of 1988 that the failure mechanism began to be focused on, and not until late December 1988/January 1989 that it was recognized that Rosemount transmitters were failing due to degradation caused by loss of fill oil. See February 20, 1990 Blanch transcript at 55, 58-61, 71-72. Most importantly, it was not until the January/February 1989 timeframe that the conflict between Mr. Blanch and his management arose over how best to resolve the issue technically.

^{11/} For example, Mr. Blanch went to Mr. Mroczka, then Senior Vice President, instead of to his immediate management, and requested him to call EPRI to reiterate NU's concurrence that Mr. Blanch serve as an independent consultant to EPRI (continued...)

abilities and ideas of his colleagues. It was against this backdrop of contention and discord between Mr. Blanch and his immediate management chain that the Rosemount issue emerged, and relations between Mr. Blanch and his immediate management further deteriorated over time as a result of differences in style and opinion as to the most appropriate way to address that issue. Mr. Blanch himself put it this way in February 1990: "It's not like everything was going smoothly, and Rosemount came along and everything went to shit I think a lot of what has transpired over the past year has been a result of personality conflicts." February 20, 1990 Blanch transcript at 55, 171.

2. Rosemount Era

From the emergence of the Rosemount issue, NU management encouraged Mr. Blanch to further his involvement in the Rosemount issue and liberally approved his requests to spend Company time on this project. See Attachments 23 and 24. With permission from management and in a period when travel requests for most NU employees were on the decline in order to husband resources and focus on Company-specific matters, Mr. Blanch attended many industry meetings and conferences pertaining to Rosemount issues throughout the period relevant to his allegations.

11/ (...continued)

(more fully discussed below). When Mr. Werner later asked Mr. Blanch why he had not gone to his immediate supervision, Mr. Blanch replied that Mr. Werner had been unavailable on that day. Mr. Werner recalls that he had seen Mr. Blanch that day just after he had spoken with Mr. Mroczka at Mr. Mroczka's office. Mr. Johnson had also been available that day. See Attachment 22 at 2.

In addition, in late November 1988, Mr. Roby (with authorization from Mr. Johnson) approved an unusual arrangement under which Mr. Roby believed Mr. Blanch would work as an outside consultant for EPRI, researching generic industry issues related to Rosemount transmitter failures. Mr. Roby approved this arrangement, even though he knew (and Mr. Blanch had assured him) that the transmitter problem at Millstone had been resolved and that this was "primarily an issue for the rest of the industry." See Attachments 25 and 26. The arrangement was that Mr. Blanch could work as an outside consultant for EPRI, on his own time, as long as this did not interfere with the performance of his normally assigned responsibilities. The additional stipulation was that Mr. Blanch could use NU's OFIS (Offsite Information System) records concerning the failed Millstone Rosemount transmitters, but would not use Company facilities or resources. The further understanding was that Mr. Blanch would inform management if he intended to involve any other NU employees in this effort, and would ensure that his next filed "Conflict of Interest" disclosure form correctly identified the nature of these consulting services. Id.

This experience provided another example of actions by Mr. Blanch that quite naturally raised questions about his respect for and compliance with procedures. Although Mr. Blanch was given permission to consult for EPRI, much later his management discovered that he was in fact doing this work for Performance Associates, under subcontract to EPRI. Messrs. Roby and Johnson

viewed this as significant when they later discovered it, because Performance Associates was a contractor for NU at that time. What is more, Mr. Blanch's next filed Conflict of Interest form (Attachment 27) said nothing whatever about Performance Associates, although he was unquestionably aware that Performance Associates had done and was doing business with NU. A disclosure form he filed subsequently (after he became aware of the IAD probe of his consulting activities) did mention Performance Associates. See Attachment 28. Further, the EPPI proposal that Mr. Roby had approved projected a total of 1300 man-hours over a twenty-six week period, with the understanding that Mr. Blanch would provide only a small proportion of the total hours identified so as not to impinge on his assigned duties. See Attachment 26. The proposal Mr. Blanch actually submitted to Performance Associates specified 110 hours of Mr. Blanch's time per month over a six month period -- a far more significant proposed dedication of Mr. Blanch's time than he had disclosed to Mr. Roby and for which he obtained approval. See Attachment 29 at 7-9.

The record also shows that throughout the period relevant to Mr. Blanch's allegation that he had been excluded from Rosemount issues, Mr. Blanch was specifically requested by management to participate in high-level Company meetings, as well as industry and NRC meetings, convened to discuss the Rosemount issue. As discussed in more detail in Section III.B below, Dr. Sears (then Vice-President, Nuclear and Environmental Engineering), arranged

a meeting on February 6, 1989, in order to give Mr. Blanch a forum to present a technical overview to the NU Nuclear Vice Presidents as well as to various directors and managers. Mr. Blanch was specifically invited to this meeting to air his opinion on Rosemount issues. Mr. Blanch was also invited to participate in a follow-up meeting with the NU Nuclear Vice Presidents and other personnel on February 10, 1989, which was called as a result of Rosemount issuing its Part 21 report to the NRC. Mr. Blanch was, in addition, asked by his management to make a technical presentation on Rosemount transmitters at a meeting with the NRC on March 30, 1989. And, on April 11, 1989, Mr. Blanch met with Senior Vice President Mroczka and Dr. Sears to discuss a presentation on Rosemount transmitters for an upcoming NRC meeting. Although Dr. Sears also attended that meeting, which occurred on April 13, 1989, Mr. Blanch made the major technical presentation there. Further, in May 1989, Mr. Blanch was designated as the "single point of contact" within the Generation Electrical Engineering department for coordinating Rosemount issues. And, as Mr. Blanch has acknowledged, in June 1989 he was (with management concurrence) making many of the calls in terms of NU's technical position on Rosemount transmitters. See February 20, 1990 Blanch transcript at 114-15. Mr. Blanch was also included in meetings in August and October 1989, and played a significant role in the deliberations regarding the reportability aspects of the Rosemount transmitter issue.

Although Mr. Blanch has alleged that management attempted to "remove" him from the Rosemount issue, so as to "bury" it, the record shows, to the contrary, that his involvement was (and continues to be) extensive and that there was not, and indeed could not have been, any attempt to ignore the issue.^{12/} Given the industry-wide notoriety of the Rosemount transmitter failures by December 1988, as well as NU's self-interest in maintaining the operability of its plants affected by this problem, it is not plausible to suggest, as Mr. Blanch has, that anyone at NU could have seriously entertained the notion of ignoring the Rosemount issue.

To be sure, there were differences of professional opinion on how best to handle the technical issues that emerged. The disagreement that divided Mr. Blanch and his immediate management grew in substantial part out of Mr. Blanch's belief that NU should have instituted special testing programs at Millstone (beyond what was done). NU management determined, however, that any single utility was not in the best position to implement such a generic effort, which would have cost millions of dollars and could have been performed far more expeditiously, practicably and

^{12/} Mr. Blanch apparently claimed that he was frustrated by the lack of support from his management in this arena. See Attachment 9 at 4. However, according to Messrs. Roby, Johnson and Werner, Mr. Blanch never approached them with his concerns prior to bringing them to the NRC. See Attachment 22 at 2. It seems as if Mr. Blanch, impatient with any approach other than his own, and pre-judging his supervisors in light of his prior professional and personal differences with them, failed to give them a bona fide chance to address his concerns.

effectively by the vendor. Management therefore believed that the issue could and should be dealt with through systematic, conventional methods such as an industry-wide effort.

Mr. Blanch has repeatedly accused the vendor and industry groups of inaction and even of trying to cover up the Rosemount issue.^{13/} See OI "Report of Interview with Paul Martin Blanch" dated October 29, 1989 (Attachment 30) at 3-4.^{14/} Yet, it is readily apparent that there was no possibility of the Rosemount issue being "covered up" or ignored. As noted, on December 10, 1988, Rosemount had issued a letter to affected licensees alerting them of a potential transmitter problem. On December 20, 1988, GE had sent a Services Information Letter to all BWR owners stating that a problem might exist with loss of fill oil in Rosemount transmitters. And by February 7, 1989, Rosemount had issued its first Part 21 Report to the NRC, giving notice to the nuclear industry of potential deficiencies in Rosemount transmitters that had to be resolved by each plant utilizing this equipment.

During the period relevant to Mr. Blanch's allegations, management had concluded -- a conclusion that Mr. Blanch had endorsed -- that the Rosemount problem at Millstone had

^{13/} Again, Mr. Blanch's supervisors testified that he never came to them with such concerns or gave them specifics regarding such a "cover-up."

^{14/} This interview summary was prepared by the NRC's Office of Investigations. NU acquired it through a FOIA request directed to the Department of Labor.

essentially been resolved. See LRS Report at 3-4 ("Due to the status of OFIS, an on-line noise analysis program being conducted at Millstone Station, and the awareness of station and Unit 3 management of the issue, it was not believed [in January 1989] that a problem existed in Northeast Utilities"). At Millstone Unit 3, NU had replaced the failed Rosemount transmitters and instituted an OFIS monitoring/surveillance program to assure reliability of the remaining transmitters. See February 20, 1990 Blanch transcript at 61-62, 116-117; LRS Report at 3-4. The effectiveness of these corrective actions was confirmed by testing in February 1989.^{15/} Indeed, in his November 30, 1988 memorandum to Mr. Roby entitled "Request for Permission to Provide Consulting Services to EPRI," Mr. Blanch flatly stated in item three: "The failures of Rosemount transmitters experienced at Millstone is [sic] considered resolved and . . . this is primarily an issue for the rest of the industry." Attachment 25. Both Mr. Roby and Mr. Johnson recall that Mr. Blanch reiterated in the ensuing months that there was no problem at Millstone regarding the transmitters.^{16/} There is further support for this

^{15/} As previously noted, all Rosemount transmitters were checked during plant shutdown in mid-February 1989. NU used high-speed recording data to identify flow reduction response from nine Rosemount transmitters. In addition, OFIS data were used to verify flow reduction response for 12 Rosemount transmitters. No degradation was identified. NU also implemented a special calibration/surveillance procedure which went into effect in May 1989 to identify any faulty Rosemount transmitters.

^{16/} These pronouncements to NU management notwithstanding, Mr. Blanch apparently alleged to DOL and to the NRC that he had made it clear to NU management that he had identified a
(continued...)

in Mr. Blanch's own correspondence. See Attachment 31 (failures are random; strong justification for leaving instrument in service even with degradation indications); Attachment 32 (based on the fact that all safety related Rosemount transmitters underwent a complete range check during the past cold shutdown, there is a very low probability that any additional failures will occur during the remaining portion of the present fuel cycle; the probability of two (or more) undetected failures existing at the same time is considered extremely low); Attachment 33 (my objective is to provide an engineering justification for the continued use of Rosemount transmitters at Millstone through the use of data and failure probabilities); Attachment 34 (normal calibration should be able to identify an ailing transmitter); Attachment 35 (our prior statements were to the effect that two transmitters never failed simultaneously; ability to provide a reactor trip signal was always available; still a valid statement using the definition of "failure" in IEEE 379); Attachment 36 (NU had committed in its August 1, 1989 letter to the NRC to install a monitoring system which has the capability to detect the majority of incipient failures of Rosemount transmitters); Attachment 37 (failure probability decreases significantly with

19/ (...continued)

safety issue that could impact "not only NU's nuclear plants but the majority of nuclear plants in the USA." October 27, 1989 DOL complaint at 1; see also OI Report of Interview with Paul Martin Blanch at 4-5 ("... Blanch felt that Roby's and Johnson's attitude of 'let NUMARC handle it' was counter to the resolution of genuine safety concerns which Blanch had relating to the use of the transmitters at MNS-3.")

time in service); Attachment 38 (data indicates that if a transmitter does suffer from a loss of oil, the defect was present at time of shipping; if this can be confirmed it may be possible to eliminate any further monitoring and/or testing after a period of time); Attachment 39 (with no constant drift and eight years of operational experience with the transmitters there is most likely no need for further action or the installation of a monitoring program).^{17/}

NU management did not intend to discourage Mr. Blanch's interest or participation in the more expansive implications of the Rosemount transmitter issue. At the same time, Mr. Blanch's supervisors required that they be kept apprised of any NU time spent on these broader endeavors; that Mr. Blanch clear work unrelated to his regular duties in advance with his supervisors; and that -- in conformance with the understanding reached in the November 30, 1988 correspondence with Mr. Roby -- his normal duties and supervisory responsibilities not suffer as a result. These were not, as Mr. Blanch has erroneously characterized them, "attempts to intimidate him to terminate his activities on the Rosemount transmitter problem" (Attachment 9 at 4), but rather the exercise of management's prerogative, indeed obligation, to have their employees focus primarily on issues of concern to Northeast Utilities.

^{17/} There were contrary statements during this time period as well. Mr. Blanch did not maintain a consistent position.

In sum, the professional disagreement that deepened between Mr. Blanch and his management was mainly over whether NU should dedicate manpower and other resources to resolve, for the industry, a problem that management believed essentially had been resolved for its own plants -- a fact of which Mr. Blanch had personally advised management.^{18/} No effort was made to stop Mr. Blanch from pursuing the Rosemount issue; the issue had been brought to light and would run its course in any event. In fact, management gave Mr. Blanch unusually free reign to continue his involvement with the Rosemount issue despite the fact that it was basically resolved for the NU plants.

3. Post-Rosemount Era

The Nuclear Engineering and Operations department was reorganized in June, 1991. As a result of that reorganization, Mr. Blanch's group was merged with the other Electrical and I&C functions. Mr. Blanch retained the authority of a first-line supervisor, and currently works as the Supervisor, I&C Engineering, with eight individuals reporting to him. Mr. Blanch

^{18/} Later there was disagreement over reportability issues. (A brief summary of events relating to NU's handling of these issues is set out in Attachment 40 at 3-5.) Again, Mr. Blanch has taken various positions on these issues. For example, at times he maintained that NU was not in compliance with General Design Criterion (GDC) 21 (and thus with its design basis), a reportable condition under 10 C.F.R. § 50.72. See Attachments 41 and 42. At other times, Mr. Blanch seemed to indicate that he believed NU was in compliance with its design basis. See Attachment 38; see also Attachment 43 (in compliance "with the possible exception of two transmitters").

still reports to Mr. Roby,^{12/} who in turn reports to Bob Harris, Director of the Engineering Department, and ultimately to Eric DeBarba, Vice President of Nuclear Engineering Services.

Mr. Blanch remains active in the Rosemount transmitter issue today. For example, Mr. Blanch was heavily involved in developing NU's comments on the NRC's recently proposed supplement to Bulletin 90-01. In addition, Mr. Blanch has served on an ad hoc committee of NUMARC on Rosemount. Thus, he continues to be involved, with NU management approval, in the nuclear industry's efforts to wrap up the Rosemount issue.

It is noteworthy that Mr. Blanch disagrees not only with the approach NUMARC has taken on the Rosemount issue, but also with the approach taken by the NRC. Displeased with the manner in and

^{12/} Mr. Roby is now Manager, Electrical and I&C Engineering. Messrs. Johnson and Shaffer also have different positions in the organization. Mr. Johnson is now the Director of the Field Services department at Millstone. Mr. Shaffer is now Manager, Component Testing Services. Mr. Werner no longer works for NU, having taken early retirement in August 1990. In addition, in October 1991, as part of NU's efforts to shorten the chain-of-command, the position that had been held by Chief Nuclear Officer Ed Mroczka (Senior Vice President - Nuclear Engineering and Operations) was eliminated and Executive Vice President John Opeka became Chief Nuclear Officer. Mr. Mroczka then left to pursue opportunities outside the Company. It is also worth noting that in January 1992, NU announced a management succession plan in which Bernard Fox, President and Chief Operating Officer, will become Chief Executive Officer when William Ellis steps down as CEO in July 1993. Mr. Ellis will remain Chairman of the NU Board until he retires in 1995. Finally, Dr. Sears was reassigned in March 1992 as the Vice President of Environmental Services, a position outside the nuclear organization. The resumes/profiles of Messrs. Roby, Johnson, Shaffer, Mroczka, Opeka, Sears and Fox are included as Attachments 44 through 50.

speed with which the NRC has handled the Rosemount issue (and other issues), Mr. Blanch has accused the NRC -- as he accused NU management -- of doing "nothing." In a recent newspaper editorial he wrote:

Recent actions, or more correctly stated, inactions by the Nuclear Regulatory Commission demonstrates [sic] the concept that "nothing is to be accomplished by . . . [the NRC] except the creation of good feelings and the illusion of action" (emphasis in original).

See "NRC's 'Illusion of Action,'" The Day, September 20, 1992 (Attachment 51) (quoting "Our Do-Nothing Government," The New York Times) at 1. Beyond that, Mr. Blanch has accused the NRC -- as he also accused NU management -- of attempting to suppress safety issues:

There have been two . . . technical issues that I have identified to the NRC that clearly violate NRC regulations . . . NRC technical personnel informed me that it [sic] could not take any action due to its [sic] management's decision to suppress the issues due to the potential impact on the industry.

Id. at 3.

And, in much the same way that Mr. Blanch's personal disagreement with the way NU management handled the Rosemount transmitter issue translated into his perception of harassment and intimidation, Mr. Blanch has similarly accused the NRC of "likely" involvement in a conspiracy to harass him:

After identifying the [Rosemount transmitter] problem, I received severe retaliation and harassment, including the suspension of two engineers. This was directed by NU top management as a result of the direct influence exerted by Rosemount and, likely the NRC itself (emphasis added).

Id. at 2. Mr. Blanch thus has stated the belief that the NRC has been conducting a campaign to discredit him, as well as (in connection with the condensate pot issue, discussed below) a "covert investigation" of him, in retaliation for challenging the NRC's competence and handling of safety issues. See id. at 3 ("no one will dare challenge the methods used by the NRC to discredit an individual questioning their competence"); Attachment 52 ("[t]he purpose of this covert [NRC] investigation appears to be directed at obtaining information which may be used to personally discredit me").

There are examples, relating to other technical safety issues he has raised, of Mr. Blanch's propensity to view as personal harassment, a remark that anyone else would take in stride in the workaday world. Thus, having expressed displeasure also about what he called the NRC's "illusion of action" regarding recently identified errors associated with boiling water reactor vessel level measurements (the "condensate pot" issue), Mr. Blanch took umbrage when the NRC criticized the Company in a recent NRC inspection report (50-245/92-13; 50-336/92-14; 56-423/92-13) because his engineering unit took nearly two weeks to resolve a minor instrument error. In a

letter to Leo Norton, NRC Assistant Inspector General, Mr. Blanch wrote:

. . . I was shocked to read the inspection report which stated that ". . . corporate engineering support was remiss . . . and was delayed for about thirteen days from the time of request I believe that these statements in the inspection report are a direct reflection on the capability of me personally I consider this type of action by the NRC personnel of Region 1, a form of direct retaliation and harassment of me as a result of my questioning the NRC's ability to properly regulate the nuclear industry.

See Attachment 53. Indeed, according to news reports, Mr. Blanch has asked the Inspector General to open an investigation into whether the NRC inspection report that criticizes his unit was "harassment" for raising safety complaints. See "NRC is Subject of Investigation for its Dealings with NU," The Day, September 13, 1992 (Attachment 54).

In connection with the condensate pot issue, Mr. Blanch has publicly accused General Electric Company -- much like he accused Rosemount, Inc. with respect to the transmitter issue -- of "making serious attempts to destroy my creditability [sic] and to divert attention from the real safety issue." Attachment 52.²⁰

²⁰ In a lawsuit Mr. Blanch recently filed against Rosemount, Inc., in Connecticut Superior Court, Mr. Blanch similarly alleged that "[a]s a result of continuing influence by Rosemount in questioning the motivation and creditability [sic] of Blanch, Northeast Utilities management acted in a manner to hinder Blanch and caused severe damage to the reputation and the future livelihood of Blanch". See Attachment 53 at ¶ 43.

And, most recently, Mr. Blanch publicly accused William Russell, the NRC's Associate Director for Inspection and Technical Assessment, of a "material false statement" in connection with this issue because Mr. Blanch apparently disagreed with something Mr. Russell did or did not do. According to a statement Mr. Blanch made in connection with a November 5, 1992 public NRC meeting in Niantic, Connecticut:

I reported this [condensate pot] problem to the NRC which included personal discussion with Mr. William Russell, the Director of Nuclear Regulation in Washington, D.C. This conversation occurred in mid-June of this year. After Mr. Russell ignored my pleas to take action to notify other utilities, a letter was written on my behalf to the Chairman of the NRC with copies to news media and various members of the Congress. Only after this drastic action did the NRC respond.

Mr. Russell eventually called a meeting on July 29, 1992, approximately a month and a half after my initial discussions. [T]his meeting was held in Washington, D.C. and he stated that he had just become aware of the magnitude of this issue nine days prior to this meeting. This is a material false statement, as I had two phone conversations with him in mid-June about this very topic If it were a licensee making this type of false statement there would be criminal action brought against the licensee and individuals.

See Transcript excerpt, "NRC Public Meeting to Receive Comments on Northeast Utilities' Performance Enhancement Program," November 5, 1992 (Attachment 56) at 22; see also "Statement by Paul M. Blanch, NRC Public Meeting, November 5, 1992, Niantic, Connecticut" (Attachment 57) at 4-5.

Against this pattern of conduct, it is apparent that Mr. Blanch has proven himself, repeatedly, to be someone who cannot tolerate an approach on issues different from his own; who blithely ascribes disagreement with his views as improperly motivated; who perceives the ordinary back and forth of discourse relating to resolution of complex issues as attempts to "bury" issues; and who sees at every turn the specter of retaliation and harassment. Can it truly be that a grand conspiracy exists among Northeast Utilities, Rosemount, General Electric, and the NRC Staff to discredit and harass Mr. Blanch? The answer of course is that while he may think so or purport to think so, it is nothing more than a figment of a fertile imagination or an intolerant spirit. It is clear that Mr. Blanch is not the proverbial "reasonable man."

III. MR. BLANCH'S ALLEGATIONS

Mr. Blanch has alleged harassment and intimidation by management in connection with his activities concerning the Rosemount transmitter issue. Each of his allegations, which we have gleaned from reviewing the entire record available to us, is addressed in turn below.

A. Management Did Not "Remove" Mr. Blanch From An EPRI Effort Concerning the Rosemount Issue

Mr. Blanch apparently told LRS that, in the fall of 1988, he was "removed" from an EPRI effort investigating the Rosemount issue. See Attachment 9 at 3; see also OI Report of Interview

with Paul Martin Blanch at 3. This is another illustration of Mr. Blanch personalizing a management decision not to support a generic EPRI research effort as his "removal" from the effort. In fact, at the time management made its decision, this EPRI effort did not even relate per se to Rosemount transmitters. (Mr. Blanch had also characterized management's decision not to support an EPRI Issues Determination Task Force in early 1988 as his "removal" from an EPRI effort. See the discussion at II.C.1.)

In the October/November 1988 time frame, Mr. Blanch approached Messrs. Roby and Johnson seeking approval for NU's fuller participation in EPRI's Instrument Calibration Reduction Program (ICRP). Previously, with his supervisors' approval, and as part of his NU responsibilities, Mr. Blanch had been analyzing historical OFIS data he had gathered on the five failed Millstone Rosemount transmitters to assess whether it could be of use to EPRI in connection with its ICRP.

At the time Mr. Blanch requested more extensive NU participation in this EPRI program, the "Rosemount issue" had yet to be discovered. Put another way, no one at that time knew about the degradation of Rosemount transmitters due to a loss of fill oil. Mr. Blanch had told Mr. Roby that his review of OFIS records indicated a possibility that the Millstone transmitters had failed several months before their failure had been detected, and that he believed OFIS data might have some value in predicting future failures. However, as Mr. Blanch has

acknowledged, no nuclear utility focused on the cause of the Rosemount transmitter degradation until December 1988 or January 1989. (Nor did the EPRI activity relate to corrective action for the 1987 Rosemount transmitter failures at Millstone Unit 3.) See February 20, 1990 Blanch transcript at 55, 58-62, 70-72. What is more, at the time Mr. Blanch sought approval for increased NU participation in EPRI's Instrument Calibration Reduction Program, Mr. Roby understood Mr. Blanch's position to be that there was no immediate or long-term safety concern for NU plants posed by Rosemount transmitters (see the discussion at II.C.2). In addition, Mr. Roby was aware that NU had already replaced the failed Rosemount transmitters at Millstone Unit 3 by this time and that an increased monitoring/surveillance program would provide information bearing on the reliability of the remaining transmitters. See the discussion in Section II.B, above.

NU's research review committee carefully reviewed Mr. Blanch's proposal, but turned down participation in this EPRI project for two reasons. First, EPRI's generic research held no apparent benefit for NU. Second, the Company could not justify expending resources on such discretionary projects which could create staff shortages for more pressing work that related directly to safe operation of NU's nuclear plants. This reasonable decision by management was hardly tantamount to a "removal" of Mr. Blanch from an "investigative effort of [the Rosemount] issue," as LRS stated. Attachment 9 at 3. What is

more, as noted previously (in Section II.C.2), Mr. Blanch's management approved an arrangement whereby he could nevertheless pursue this research as an outside consultant for EPRI.

Additional insight into all of Mr. Blanch's allegations may be gained from this claim. Mr. Blanch appears to assert, in effect, that this was retaliation against him because of his involvement in the Rosemount matter. Attachment 9 at 3. But of course the timing is off. He did not raise resolution of the Rosemount issue as a concern until early 1989, while this decision not to participate in the EPRI effort was made in the fall of 1988. This allegation is indicative of the pattern that emerged and continues to this day -- that if Mr. Blanch does not have things his way, then the motive of those who cause that result is improper.

**B. Mr. Roby's Assumption of Lead Management
Responsibility for Rosemount Assignments
Was Not Discrimination**

Mr. Blanch's next allegation is that during a February 10, 1989 meeting with NU Nuclear Vice Presidents and other personnel, Mr. Roby stated that he (Roby) would assume full responsibility for resolution of the Rosemount transmitter problem. See February 20, 1990 Blanch transcript at 77 and Exhibit #3 thereto; OI Report of Interview with Paul Martin Blanch at 5. According to OI's interview of Mr. Blanch, this was his "first indication that he was being unfairly removed from the issues associated with the Rosemount Transmitters." OI Report of Interview with

Paul Martin Blanch at 5.

This allegation should be put in perspective. There had been an earlier meeting (on February 6) called to discuss the Rosemount issue. NU Vice President Fred Sears had convened the meeting to address the concern, relayed to him by Mr. Blanch, that more attention should be focused on the Rosemount issue. See February 20, 1990 Blanch transcript at 73-75. Dr. Sears assembled top management to hear Mr. Blanch's views, including the Nuclear Vice Presidents, the plant superintendents for Units 2 and 3, and responsible directors and managers (including Messrs. Roby and Johnson). See February 20, 1990 Blanch transcript at 74, 79.

These same individuals, including Mr. Blanch, again convened a few days later (on February 10, 1989) to address how NU should respond to Rosemount's February 7, 1989 Part 21 report. Id. at 79. (Rosemount recommended that affected licensees identify the application of the transmitters in their plants and determine the effect that reduced performance may have in each situation.) Mr. Roby did state at this meeting that he would assume lead management responsibility for setting up a program to assure that the Rosemount transmitters at NU's plants were satisfactory. And Mr. Roby did assign significant responsibility in this connection to Tom Shaffer, manager of the I&C group. However, Mr. Roby also designated Mr. Blanch as the central clearinghouse for information that might be relevant to implementation of the Part 21 program at NU's plants. Specifically, Mr. Roby assigned Mr.

Blanch to work with the I&C supervisors for each plant to ensure that his knowledge concerning Rosemount transmitters would be integrated into the plant programs. See Attachment 58.

Mr. Blanch disagreed with his management that he should have this liaison role with the I&C supervisors. Instead, Mr. Blanch wanted to assume control over the entire effort. See February 20, 1990 Blanch transcript at 77. Mr. Blanch's sentiments were expressed in his April 4, 1989 memorandum (Attachment 33) to Mr. Roby (" . . . I feel that I am the most qualified individual in the nuclear industry to resolve this apparent significant issue for Millstone") and in his April 6, 1989 memorandum (Attachment 59) to Mr. Johnson ("By reassigning the responsibility for the resolution to M.F. Samek and T.A. Shaffer, Generation Engineering is relying on individuals who have an incomplete understanding of the failure mechanisms, incomplete knowledge of the symptoms, incomplete knowledge of data analysis, incomplete knowledge of the safety implications"). Technical differences also began to surface during this meeting.

Mr. Roby's assumption of lead management responsibility was quite unremarkable and appropriate. As System Manager, Mr. Roby was always responsible for leading this work. Contrary to Mr. Blanch's demands, it would not have been appropriate for management to have given Mr. Blanch total control of Rosemount work to the exclusion of his management chain. Moreover, it would not have been prudent or responsible for NU to bypass the chain of command, and the checks and balances it provides, by

assigning ultimate responsibility for addressing the Rosemount issue to any one person. Mr. Roby was unwilling to delegate the responsibility for plant quality and safety merely to one person simply to avoid wounding Mr. Blanch's pride or to avoid a conflict with him.

Further, Mr. Roby's statement with respect to taking the managerial lead could not reasonably be interpreted as an attempt to preclude Mr. Blanch from working on Rosemount issues. It was simply a statement of Mr. Roby's intent to make assignments looking at resources, expertise and experience -- all normal management prerogatives and an inherent part of his management responsibility. Mr. Blanch was apparently upset because he felt that he alone had the competence and expertise to oversee the Rosemount issue, but his perception was not shared by his managers. Indisputably, nonetheless, his invitations to high-level meetings on the Rosemount issue, as well as his liaison role with the plants, proved that he was participating in Rosemount matters -- even if not in the exclusive role that he desired.

One final point is also noteworthy. Mr. Blanch appears to be claiming that Rosemount work that was normally performed by his group was being diverted to Mr. Shaffer's group. That is simply not so. In fact, the assignment made to Mr. Shaffer's group fell well within his group's normal purview.

C. Management Did Not Discriminate Against Mr. Blanch
By Not Inviting Him to a March 10, 1989 Meeting

Mr. Blanch next alleges discrimination by being excluded from a meeting held with the NRC at Millstone on March 10, 1989. OI Report of Interview with Paul Martin Blanch at 5; February 20, 1990 Blanch transcript at 80 and Exhibit #3 thereto. Mr. Blanch alleges that Mr. Roby told him that he was not needed at the meeting.

Mr. Johnson coordinated the March 10 meeting, which had been requested by Mr. William Raymond, the then NRC Senior Resident Inspector at Millstone. At the time he set up the meeting, Mr. Johnson thought its purpose was to explore the NRC's questions concerning the testing program for Millstone Unit 3 as a result of the Rosemount Part 21 notice. Accordingly, in addition to Messrs. Johnson and Roby, also present at the meeting were I&C supervisors Mark Samek and Tom Cleary, i.e., those individuals directly responsible for implementation of the surveillance/testing program at the Millstone Units.^{21/}

Because the understanding was that NU's representatives were primarily there to discuss only plant programs, neither Mr. Johnson nor Mr. Roby felt that Mr. Blanch was needed to make a technical presentation. Hence, no one "excluded" Mr. Blanch; he was simply not needed at that juncture. Indeed, neither was Jay

^{21/} As noted, the I&C group for each plant was tasked with preparing a detailed program in response to the Rosemount Part 21 notice. Mr. Blanch's role was to ensure that generic information was integrated into the programs.

Ely (the mechanical discipline specialist) invited to the meeting, although he had been involved (as had Mr. Blanch) with the Rosemount issue on a generic basis. Mr. Roby had explained to Mr. Blanch, prior to the meeting, that neither he nor Mr. Ely would be required to be there because the meeting would involve questions about Millstone Unit 3 concerns rather than generic Rosemount issues. See Attachment 60 at 2.

As it turned out, Mr. Johnson's understanding of the purpose of the meeting was not consistent with the matters actually discussed. Mr. Raymond did want the answers to questions of a more general nature concerning Rosemount transmitters. Mr. Raymond thereafter asked Mr. Johnson to set up a follow-up meeting with the NRC to discuss more global Rosemount issues.

D. Mr. Blanch Was Invited to the March 30, 1989
Follow-up Meeting with the NRC

Mr. Johnson coordinated the follow-up meeting with the NRC, which took place on March 30, 1989. Mr. Johnson invited Mr. Blanch to the meeting to make the primary technical presentation on Rosemount transmitters. See February 20, 1992 Blanch transcript at 84. Mr. Blanch's presentation concerned how to use OFIS data, for which he had developed the software, to monitor Rosemount transmitters. Mr. Johnson also requested that Mr. Ely make a presentation at this meeting. Mr. Ely's presentation concerned Rosemount, Inc.'s manufacturing techniques. Also in attendance were Messrs. Shaffer, Samek, McGuinness (of the Generation Facilities Licensing branch) and Mahannah (an engineer

in GEE). See February 20, 1990 Blanch transcript at 84. Because he had business out of town, Mr. Roby did not attend.

Mr. Johnson had asked Mr. Blanch to attend this meeting because Mr. Raymond had raised questions that Mr. Johnson felt could best be answered by Mr. Blanch. Mr. Blanch maintains that he had fed Mr. Raymond questions that would assure that he (Mr. Blanch) would be invited to the meeting. February 20, 1990 Blanch transcript at 84.^{22/} If this was so, there is no evidence that NU management knew of it, and Mr. Johnson's request that Mr. Blanch attend and participate proves that NU management valued his knowledge and input and involved him in Rosemount issues as needed.

E. The Fact that Mr. Johnson Reminded Mr. Blanch to Follow Company Protocol Was Not Discrimination

Mr. Blanch next alleges that Mr. Raymond requested a Westinghouse document at the March 30 meeting,^{23/} and that when Mr. Blanch asked Mr. Johnson if he could give Mr. Raymond the document (noting that it had been marked "proprietary information"), Mr. Johnson suggested that Mr. Blanch conduct himself in accordance with NU procedures governing the handling of proprietary information. OI Report of Interview with Paul

^{22/} In what would appear to be inconsistent with this assertion, Mr. Blanch also maintains that Mr. Raymond specifically asked Mr. Roby to invite Mr. Blanch to the March 30 meeting. See Exhibit 3, February 20, 1990 Blanch transcript.

^{23/} The record suggests that in fact Mr. Blanch offered the Westinghouse document to Mr. Raymond unsolicited.

Martin Blanch at 6; February 20, 1990 Blanch transcript at 92. Far from providing support for Mr. Blanch's claim, Mr. Johnson's remark was simply a reminder to Mr. Blanch that he needed to follow Company procedures like everyone else.

To provide the context for Mr. Johnson's remark, during his presentation at the meeting, Mr. Blanch had cited a Westinghouse document that he had received that very morning. February 20, 1990 Blanch transcript at 91. Mr. Johnson had been concerned in particular about the unreviewed and unverified nature of data in Mr. Ely's presentation on Rosemount manufacturing techniques. Thus, prior to the meeting Mr. Johnson had obtained the agreement from all attendees, including Mr. Blanch, that they would verbally provide all the information they had to Mr. Raymond, but that written material would be provided only if it had undergone validation through peer review. See Attachment 61. Mr. Blanch had not apprised anyone of the existence of the information from Westinghouse or that he planned to use it as part of his presentation. This concerned and surprised Mr. Johnson because there had been no chance to review the information for accuracy or relevance to the points being made.^{24/} Id.

At the point where Mr. Blanch was about to ignore the NE&O procedure controlling the release of proprietary information, by

^{24/} Messrs. Johnson, Roby and Shaffer would later conclude that the information cited by Mr. Blanch had been taken out of context, and was not in fact relevant to the point Mr. Blanch had been making regarding Rosemount failures. See Attachment 61.

simply handing the document to Mr. Raymond,^{25/} Mr. Johnson felt compelled to speak. Mr. Johnson's comment that Mr. Blanch should abide by procedures was made in a normal, conversational tone. Mr. Johnson's statement of this Company procedure -- in the presence of Mr. Raymond -- could not reasonably have been perceived as discrimination of any kind. Far from constituting discrimination for the raising of a safety concern, Mr. Johnson's remark was prompted by Mr. Blanch's penchant for ignoring the protocols and procedures that bound everyone else.

F. Mr. Roby's April 3, 1989 Meeting With
Mr. Blanch Did Not Constitute Harassment

Mr. Blanch also alleges that, on April 3, 1989, he was chastised in a meeting with Mr. Roby for his conduct in the March 30 meeting with the NRC, even though Mr. Roby had not been at the meeting. Mr. Blanch alleges that Mr. Roby accused him, without cause, of mishandling proprietary information, unprofessional conduct, and ignoring his supervisory responsibilities. See October 27, 1989 DOL complaint at 1-2; OI Report of Interview with Paul Martin Blanch at 6-7; LRS Report at 4. As Mr. Blanch acknowledges, no one else was present at the meeting to witness the conversation. See February 20, 1990 Blanch transcript at 89.

While Mr. Roby was not at the March 30 meeting, Messrs. Shaffer and Samek were there, and had personally observed Mr.

^{25/} NE&O procedure 2.10, Safeguarding Supplier Proprietary Material, requires written permission from the document's author before being distributed outside of NU.

Blanch's conduct. They felt obliged to speak about certain aspects of his conduct to Mr. Roby. Specifically, Messrs. Shaffer and Samek reported that Mr. Blanch had disparaged the presentations of others (including Mr. Samek) throughout the meeting;^{26/} had cited data from Westinghouse he had not fully digested and that they believed had been taken out of context; had ignored a pre-meeting agreement to provide written material to the NRC only if it had been reviewed for accuracy and completeness; and had been on the verge of ignoring proprietary information procedures.

Mr. Johnson wrote a note to Mr. Roby likewise expressing his concerns about what he felt to be the unprofessional nature of Mr. Blanch's conduct, although he did not request further action. (Mr. Johnson wrote the note since he was on his way out of town and was unable actually to meet with Mr. Roby before he left.) According to Mr. Roby, Mr. Johnson's note was not the driving force behind his meeting with Mr. Blanch on April 3. In fact, Mr. Roby explicitly testified that he would have met with Mr.

^{26/} At one point during Mr. Blanch's presentation, Mr. Shaffer remarked that Millstone Unit 3 had never had simultaneous transmitter failures in the same protection channel. At that point someone responded, in a sarcastic tone, that NU had just been "lucky" about that. Mr. Roby recalled that Mr. Samek told him that it had been Mr. Blanch who had made this remark. But, according to Mr. Shaffer, the person who made the remark was Mr. Mahannah. (Mr. Blanch believes, however, that Mr. Raymond made the remark. See February 20, 1990 Blanch transcript at 91.) In any event, for purposes of judging Mr. Roby's motive for speaking with Mr. Blanch, it is important only that he had been informed that Mr. Blanch had acted inappropriately during presentations by others.

Blanch on April 3 whether or not the March 30 meeting had taken place. Mr. Roby stated that he viewed the reports about Mr. Blanch's conduct at the March 30 meeting as "small" issues compared to the management/personnel issues about which he had planned to meet with Mr. Blanch in any event in this time frame.

Mr. Roby's meeting with Mr. Blanch took place when it did because, on that morning, Mr. Roby had reviewed Mr. Blanch's March time sheets and had found that over fifty percent of Mr. Blanch's recorded time had been charged to Rosemount issues. See Attachment 62. There had been similar figures for Mr. Blanch's January and February time sheets. Mr. Roby was disturbed by this for two reasons. First, two of Mr. Blanch's subordinates had complained to Mr. Roby (in February) that they had not been receiving much supervision from Mr. Blanch, who, they said, was spending virtually all his time on his EPRI consulting work.^{21/} See Attachment 61. This concern had also been raised to Mr. Roby by Messrs. Shaffer and Samek, who verified that they had been put in the position, as supervisors in other groups, of finding work

^{21/} The employees were Nir Bhatt and Gerry Caccavale. Mr. Roby recalls that Mr. Bhatt and Mr. Caccavale had come to see him separately, several weeks apart. Mr. Roby further recalls that Mr. Bhatt said that he had been forced to turn to other I&C supervisors for assignments, and that Mr. Caccavale expressed a concern regarding his performance review given Mr. Blanch's lack of awareness of his activities. (Messrs. Bhatt and Caccavale subsequently denied that they expressed these concerns. See the discussion in Section III.M, below.) This sort of feedback was not new to Mr. Roby. In prior years Mr. Roby had cited Mr. Blanch's failure to monitor the conduct and progress of the work of his subordinates as job performance deficiencies. See the discussion in Section II.C.1, above.

for Mr. Blanch's subordinates. Second, Mr. Roby viewed this amount of time as excessive, and outside the bounds of the understanding that had been reached in terms of Mr. Blanch's consulting work not infringing on his normal responsibilities. Mr. Roby's time management concerns also stemmed from his belief, which Mr. Blanch had endorsed, that the Rosemount issue had essentially been resolved at NU's plants. Mr. Roby felt that the only remaining issues were generic ones best handled by NUMARC and that any further significant expenditures of NU time and resources in that effort would have been unwarranted.

As he testified, Mr. Roby opened the April 3 discussion with what he viewed as the "easier" topics to discuss, in order to get them out of the way. Thus, the first thing he asked Mr. Blanch was his view of the success of the March 30 meeting. Mr. Roby then asked Mr. Blanch about the conduct that had been reported to him. Mr. Roby proceeded in this way because he did not simply wish to accept what others had told him about Mr. Blanch's conduct at the meeting. In fairness to Mr. Blanch, Mr. Roby wanted to obtain his perspectives on the issues that Messrs. Johnson, Shaffer and Samek had raised. (Mr. Roby decided to obtain Mr. Blanch's perspectives on these issues also so that he would be in a position to discuss Mr. Johnson's note upon his return.) Mr. Roby then went on to discuss with Mr. Blanch the personnel issues of concern to him.

During this April 3 meeting with Mr. Blanch, Mr. Roby conducted himself in a professional, businesslike manner. His

tone was low-key and not accusatory. To the extent Mr. Blanch's conduct at the March 30 meeting was questioned, such questions were not communicated with any intent to stifle Mr. Blanch's safety concerns, but rather were asked out of a growing sense of frustration at Mr. Blanch's history of ignoring routine and convention. Further, Mr. Roby did not say anything about precluding Mr. Blanch's further involvement in Rosemount issues, although that is ostensibly what Mr. Blanch inferred from the meeting. In light of the feedback he had received concerning Mr. Blanch's supervisory lapses, Mr. Roby wanted to be kept apprised of the time Mr. Blanch would be spending on Rosemount transmitter issues to assure that it did not interfere with his routine assignments and supervisory duties and that it comported with management's views on needs specific to NU. Toward that end, Mr. Roby merely asked that Mr. Blanch clear further Rosemount-related work to be done on Company time with him in advance in order that he could be aware of and respond to Mr. Blanch's requests.^{28/}

See Attachments 61, 62. By any objective standard, what was said, and the tone in which it was said, should not have left Mr. Blanch with the impression that he would no longer be allowed to

^{28/} Such a request was not unusual given the nature of Mr. Blanch's responsibilities. As his 1987 performance evaluation (Attachment 21) states in Section C, "The nature of the work in Paul's group is such that a simple clear mission cannot be identified. We have agreed that the purpose is to complete those tasks that are assigned in support of the plants and to intercept work which would interfere with the progress of application engineering work in the I & C Branch of GEE. He will supervise the work already assigned and seek management concurrence to undertake other activities (emphasis added)."

work on Rosemount issues. (Mr. Blanch would later concede in a meeting with Mr. Mroczka (on April 19, 1989), that Mr. Roby had never told him he could not work on Rosemount issues.) Indeed, it is difficult to see how Mr. Blanch could have maintained that impression in light of senior management's request, ten days later, that Mr. Blanch give a major technical presentation on Rosemount transmitters in a meeting with the NRC Staff. See February 20, 1990 Blanch transcript at 94-95.

G. Management Responded to the Issues
Raised in Mr. Blanch's April 4 Memorandum

Mr. Blanch alleges that he never received a response to an April 4, 1989 memorandum (Attachment 33) detailing his perceptions of his April 3 conversation with Mr. Roby (or, for that matter, to his April 6 memorandum (Attachment 59) to Mr. Johnson describing what Mr. Blanch viewed as the safety concerns relating to Rosemount transmitters in NU's plants). October 27, 1989 DOL Complaint at 2. Contrary to Mr. Blanch's assertion that the Company did nothing to respond to the concerns raised in these memoranda, however, Mr. Blanch received a great deal of feedback regarding those concerns. The very next day after Mr. Blanch wrote his April 4 memorandum, Mr. Roby's supervisor, Mr. Johnson, asked to meet with Mr. Blanch to explore what had occurred and to discuss the incidents enumerated in Mr. Blanch's memorandum. Mr. Johnson in addition asked Mr. Blanch to describe during that meeting what he viewed as the safety issues concerning the transmitters, and the urgency of the problem so

far as NU's plants were concerned. See Attachment 63.

In addition, as more fully discussed in Section IV, below, in early May, Executive Vice President John Opeka met with Mr. Blanch in response to Mr. Blanch's request, specifically to counter any impression on Mr. Blanch's part that he was being phased out of work on the Rosemount transmitter issue. Mr. Opeka told Mr. Blanch that senior management would specify that he would be responsible for developing the programmatic aspects of the Rosemount transmitter issue. That expectation was underscored in a May 3, 1989 memorandum by Senior Vice President Mroczka to Mr. Werner, with copies to Mr. Blanch's immediate supervisors as well as to Mr. Blanch. See Attachment 64. Also, in mid-May, Mr. Roby communicated to the Millstone Units 2 and 3 plant superintendents, management's expectation that with the completion of the plant programs, Mr. Blanch would be the point of contact within Generation Electrical Engineering for Rosemount issues. See Attachment 65. A copy of this memorandum was provided to Mr. Blanch, as well as to Messrs. Mroczka, Werner, Romberg, Johnson, Shaffer and Scace (Millstone Station Superintendent).

The Company did not provide Mr. Blanch with a direct written response to his April 4, 1989 memorandum. Although Mr. Roby did prepare a draft response to address "Mr. Blanch's mistaken perception of our discussions," see Attachment 66, the draft response was never sent. During the time frame Mr. Blanch wrote his April 4 memorandum, he had been expressly threatening to file

a Section 210 complaint against the Company. In light of the prospect of imminent litigation, Company management viewed a direct written response to Mr. Blanch's April 4 memorandum to be inappropriate. In addition, management believed that the primary effect of any direct response to Mr. Blanch would likely be to alienate him further (if management could not simply agree with all his points), which would be counter to management's desire to return the relationship to a more healthy plane.

Messrs. Johnson and Roby had no knowledge at that time of Mr. Blanch's threat to sue. Mr. Roby believed it would be inappropriate to send the response to Mr. Blanch because he felt Mr. Blanch's accusations against him were so serious that it would be improper to deal directly with Mr. Blanch on these issues. Instead, Mr. Roby involved his supervisor, Mr. Johnson, in the matter. See Attachment 67.

When the specter of litigation was removed, and Mr. Blanch was believed to be more open to efforts to smooth relations, management did respond in writing to other concerns expressed by Mr. Blanch. Specifically, in the aftermath of a March 8, 1990, meeting between Mr. Blanch, Mr. Opeka and Mr. Mroczka, Mr. Blanch was provided with a comprehensive written response to the concerns he had expressed in a March 1, 1990 memorandum he wrote. See Attachments 40, 68.

H. Dr. Sears Made No Attempt to Suppress Mr. Blanch's
Involvement With the Rosemount Transmitter Issue

Mr. Blanch next alleges that Dr. Sears called him into his office on April 14, 1989, and attempted to convince him to relinquish his responsibilities relating to the Rosemount issue. October 27, 1989 DOL complaint at 2.^{29/} The record indicates that something quite different happened.

Dr. Sears did have occasion to speak with Mr. Blanch in connection with the Rosemount issue. Attempting to smooth relations that had become increasingly strained over technical differences on how to resolve the Rosemount issue, Dr. Sears advised Mr. Blanch that the issue was being addressed, and counselled him to be more accepting of differences of opinion on this matter. Apparently, Mr. Blanch construed this conversation as an attempt to halt his Rosemount involvement.

^{29/} Mr. Blanch would later characterize the discussion with Dr. Sears in this way: ". . . what I'm saying to you, Paul, is that maybe you ought to think about turning the problem over to those people who have the responsibility for addressing these types of issues I strongly opposed [that] because . . . I have a strong belief that these people are trying to bury the issue and I will not back off." February 20, 1990 Blanch transcript at 99. Dr. Sears testified that he did not specifically recall uttering the words "back off" to Mr. Blanch. This appears to be Mr. Blanch's characterization of what Dr. Sears had said to him. (OI subsequently adopted this phrase in its interview summary. See OI Report of Interview with Paul Martin Blanch at 7-8.) Moreover, Dr. Sears also did not recall Mr. Blanch telling him that he was concerned that Messrs. Roby and Shaffer were attempting to "bury" the Rosemount issue. Dr. Sears testified that what Mr. Blanch said was more along the lines of the sentiment that Mr. Blanch was the only person qualified to handle the issue.

To place this encounter in perspective, just a few days before, Mr. Blanch had met with Dr. Sears and Senior Vice President Mroczka to discuss the Rosemount issue and the strategy for an upcoming meeting with the NRC Staff on April 13, 1989. Mr. Blanch and Dr. Sears spent several hours together preparing their individual presentations for the meeting. Dr. Sears later concluded that two completely separate presentations would be confusing and unnecessary. Accordingly, Dr. Sears decided to give the introduction at the meeting, and have Mr. Blanch give the detailed technical presentation. See February 20, 1990 Blanch transcript at 95, 97. Had Dr. Sears intended on April 14 to warn Mr. Blanch off from pursuing the Rosemount issue, allowing him substantial responsibility for the technical presentation to the NRC Staff on April 13 seems a strange way indeed of advancing that goal.

In other respects, Mr. Blanch's allegations are either inconsistent or not supported by fact. Mr. Blanch has expressed "the highest regard for Fred Sears, and everything I've seen him do was the utmost in safety ethic." And he made this statement after the meeting on April 14, 1989. February 20, 1990 Blanch transcript at 73.²⁹ It was Dr. Sears to whom Mr. Blanch had turned in February when he felt the Rosemount issue was not being adequately addressed. And it was Dr. Sears who thereafter called a meeting with NU Nuclear Vice Presidents and various directors

²⁹ As his resume (Attachment 49) attests, Dr. Sears has had a long and very distinguished career in the nuclear industry.

and managers to allow Mr. Blanch to express his views to that effect. See February 20, 1990 Blanch transcript at 73-75.

As for the meeting between Dr. Sears and Mr. Blanch on April 14, 1989, it was only Dr. Sears's purpose to ease the strain that was beginning to show in Mr. Blanch's relationship with his superiors and coworkers over his perceived slights. Mr. Blanch has acknowledged that the conversation was "very cordial." February 20, 1990 Blanch transcript at 99-100. Dr. Sears asked to speak with Mr. Blanch because of the strident way he felt Mr. Blanch had been pressing the technical differences of opinion with his managers. Dr. Sears counselled Mr. Blanch that the issue was being aggressively addressed at NU's plants, though perhaps not always in the way Mr. Blanch thought best. Dr. Sears told Mr. Blanch that Mr. Blanch was, of course, free to express his views. Dr. Sears also counselled Mr. Blanch, however, that he had become too narrow-minded and possessive over the issue, i.e., his view that there was one "right" way (Mr. Blanch's way) to handle it. When he later learned that Mr. Blanch had misconstrued his remarks, Dr. Sears attempted to clarify what he meant in another meeting with Mr. Blanch. February 20, 1990 Blanch transcript at 108-09.

I. Mr. Blanch Was Not Intentionally Excluded
From Flying on the Company Plane

Next is Mr. Blanch's allegation that, prior to the meeting with the NRC Staff on April 13, 1989, all NU attendees travelled to the meeting by chartered plane, except Mr. Blanch. OI Report

of Interview with Paul Martin Blanch at 7; February 20, 1990 Blanch transcript at 95-97. Although Mr. Blanch has acknowledged that "looking back on it now, it was probably just a natural thing. . . . probably cost-effective for five people to fly . . . by private jet" (February 20, 1990 Blanch transcript at 96), Mr. Blanch apparently reported this to OI as another incident of discrimination. OI Report of Interview with Paul Martin Blanch at 7.

The record indicates that since he was unable to travel the night before the meeting, Dr. Sears had arranged a chartered plane for himself and Messrs. Roby, Shaffer, McGuinness and Johnson to leave on the day of the meeting. Mr. Blanch had flown to the Washington area on a commercial airline the night before in order to meet with an individual from EPRI. February 20, 1990 Blanch transcript at 95-96. At the time Dr. Sears made the decision to charter the plane, Mr. Blanch was already en route to Washington, as he has acknowledged. All returned home by the chartered plane, including Mr. Blanch. February 20, 1990 Blanch transcript at 96-97. Such last-minute travel arrangements by corporate managers is scarcely unique to NU. No one intended to slight Mr. Blanch, as evidenced by his substantial role at the April 13 meeting. See February 20, 1990 Blanch transcript at 94-95, 97.

J. Management's Decision Against Funding the BWROG Subcommittee Was Driven By Resource Allocation Needs

Mr. Blanch also alleges that NU declined to participate in the Boiling Water Reactors Owners Group (BWROG) subcommittee effort on the Rosemount issue because this effectively eliminated any opportunity he might have had to lead that effort. OI Report of Interview with Paul Martin Blanch at 9. This is another case of Mr. Blanch viewing a rational management decision as an attempt to "remove" him from a particular effort.

On June 7, 1989, while representing NU, Mr. Blanch made a presentation to the BWR Owners Group, in which he recommended a program to analyze the Rosemount transmitter problem. The Owners Group approved the recommendation. See February 20, 1990 Blanch transcript at 114. In considering NU's participation in the BWROG Subcommittee, management reviewed the material provided by the Owners Group which outlined the tasks to be undertaken by the Group. See Attachment 69. The cost of funding this effort would have been approximately \$12,000. See February 20, 1990 Blanch transcript at 116.

The tasks proposed by the Owners Group covered fact-finding investigations and diagnostic methods that had already been performed for Millstone Unit 3, NU's plant most affected by the Rosemount transmitter failures. See Attachment 69 at 1. As noted previously, NU had already implemented a special calibration procedure to identify any faulty Rosemount transmitters at Millstone Unit 3. Moreover, the issue had no

impact on Millstone Unit 1 -- NU's only Boiling Water Reactor. Millstone Unit 1 did not have any suspect (Rosemount Model 1153 or 1154) transmitters. Thus, management felt that NU did not need the BWROG work to support either Millstone Unit 1 or NU's overall work on the Rosemount issue. See id., Attachment 70.

Based on this assessment, and in light of the costs associated with the effort, management decided that NU would not contribute any more resources to resolving what was, in essence, an industry (as opposed to an NU) problem. Mr. Blanch has himself acknowledged that this was a reasonable decision, fairly within management prerogative. See February 20, 1990 Blanch transcript at 115-16 ("[C]an't totally disagree with that position"). Indeed, Mr. Blanch told NU President Bernard Fox at the time that he "could not fault [this] logic." See Attachment 71. Mr. Blanch had made a similar statement to Richard Kacich, the Manager of Generation Facilities Licensing. See Attachment 70.

The record indicates that there had been discussions at one point of whether Mr. Blanch was best suited to the task of chairmanship of the Owners Group subcommittee because of the inflexible approach to technical issues he had demonstrated, but this was not the basis for management's decision. Indeed, Senior Vice President Mroczka had written a letter supporting Mr. Blanch as Committee chairman. See Attachment 72.

NU did nevertheless offer to participate in the BWROG effort as a non-funding member and to share information with the subcommittee. See Attachments 69, 70. As stated in Dr. Sears's October 3, 1989 memorandum to the File, Mr. Blanch was expected to be an "integral part of our responses." The Owner's Group ultimately decided as a matter of policy, however, that non-funding participation would not be allowed. The Owner's Group also decided that because NU was not a financial contributor, an NU employee could not serve as Group chairman. Dr. Sears explained to Mr. Blanch that the decision not to fund this activity should not be taken personally, as disregard for his knowledge or competence, but was simply a management decision not to expend staff and other resources needlessly. See Attachment 69.

K. The IAD Audits Were Not Discrimination Against Mr. Blanch

Mr. Blanch's allegations of discrimination against him seemed to reach their pinnacle with the audits conducted by NU's Internal Audit Department (IAD) on certain activities of Mr. Blanch and his group in September and October of 1989. The audits apparently played a major role in Mr. Blanch's decision to file complaints with both DOL and OI. In this light, we believe the facts and circumstances surrounding the audits merit especially close attention.

Mr. Blanch alleges that these audits were initiated by NU management to harass him. See October 27, 1989 DOL complaint at

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2-3; November 21, 1989 DOL complaint; Blanch Statement to U.S. Department of Labor dated December 5, 1989; OI Report of Interview with Paul Martin Blanch at 9. He further says that he was given conflicting reasons for the audit of his employees,^{31/} and that it was not performed in accordance with internal procedures.^{32/} Mr. Blanch also alleges disparate treatment in that Messrs. Roby, Johnson and Werner had failed to conduct a similar audit of a certain employee [REDACTED] against *EX. 7c* whom Mr. Blanch had gathered evidence of time and expense

^{31/} It has never been clear exactly what Mr. Blanch sought to make of the fact that he had received somewhat differing information about the underlying reason for the IAD investigations. That there would have been some differences in the understandings (not to mention manners of expression) among the numerous people with whom he registered his complaints should hardly be surprising, inasmuch as one's knowledge of the circumstances necessarily would vary with the proximity of one's contact with those events. Moreover, what may have been in Mr. Blanch's view the most significant inaccurate statement about the investigation of time and expense abuses in Mr. Blanch's group -- the comment that IAD was conducting a "routine" audit -- appears to have been the product of Mr. Blanch's misunderstanding or mischaracterization of what he had been told. Mr. Pollock testified that he had not told Mr. Blanch that the investigation was a routine audit, but rather that IAD was trying to conduct the audit in the same manner as they would a routine audit. Pollock OI Tr. at 107-108.

^{32/} Mr. Blanch maintains that the confidentiality of the alleged's identity was protected only because the allegations were improperly brought under the nuclear concerns procedure. But the key members of the IAD audit team have testified that they would routinely handle such an alleged on a confidential basis, regardless of how they came into contact with the alleged, if he or she requested it (as the alleged in this case had done), and IAD's interest in receiving information regarding potential wrongdoing by NU employees would be served by doing so. See Pollock OI Tr. at 48-51; Marinaccio OI Tr. at 32-33; Mirabella OI Tr. at 14-16, 56.

abuse.^{23/} See November 21, 1989 DOL Complaint at 2; Blanch
Statement to U.S. Department of Labor dated December 5, 1989.

The truth is that the audits were initiated as the result of allegations brought forth by a non-management employee outside Mr. Blanch's management chain who appeared to be sincere and who was in a position to be knowledgeable about the events in question. This employee first articulated concerns about possible improprieties in Mr. Blanch's group on a confidential basis to Mr. David Diedrick, who at the time was the contact point at Company headquarters for NU's Nuclear Safety Concerns Program. Mr. Diedrick brought the concerns to the attention of his supervisor, Vice President Fred Sears. Dr. Sears informed Mr. Diedrick that he would like to meet with the alleged to go over first-hand the concerns that had been raised.

Mr. Diedrick passed Dr. Sears's request along to the alleged, who agreed to the meeting. On September 8, 1989, the alleged met with Dr. Sears and Mr. Diedrick, informing them that there was evidence of significant abuses in Mr. Blanch's group. The areas of greatest concern raised by the alleged were:

- 1) evidence that two of the employees reporting to Mr. Blanch (Nir Bhatt and Gerry Caccavale) had been signing out on the

^{23/} In addition to the [REDACTED] matter, Mr. Blanch suggested that individuals in Tom Shaffer's group had been guilty of abuses in the form of playing golf on Company time and taking extended lunches during which alcoholic beverages were consumed. Mr. Blanch declined, however, to provide sufficient details to permit a meaningful investigation of these allegations. Pollock OI Tr. at 179-186. EX-7C

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departmental sign-out log indicating that they were going to one of NU's nuclear plants, then leaving work early; 2) indications that Mr. Blanch himself and another employee in his group were performing and being compensated for work for an NU contractor that was done on NU time and using Company resources; and 3) Mr. Blanch's showing open disdain and disrespect for NU management in front of coworkers. Dr. Sears came away from the meeting with the allegor of the view that the allegor's motives were sincere and that the allegations could have merit.

After the meeting with the allegor, Dr. Sears met with senior management to share the information about the allegations. Shortly thereafter, Dr. Sears attended another meeting to discuss the situation, with Mr. Opeka, Mr. Mroczka, Robert Ahlstrand, Director of IAD, and Edward Richters, NU legal counsel. See Ahlstrand OI Tr. at 16-17. As a result of that meeting, Mr. Ahlstrand returned to his department with the understanding that IAD was to look into the matter and determine whether a full investigation of the allegations would be warranted.

Of course, when management made the decision to turn this matter over to IAD, it was well aware of the charges Mr. Blanch had levelled over the prior months. It was fully cognizant that any investigation of the new allegations that came to Mr. Blanch's attention would almost certainly elicit from him yet another round of his own allegations. While this provided a powerful disincentive for management to authorize any such investigation, it was finally decided that such credible

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allegations could not be ignored consistent with management's obligations as corporate fiduciaries. But Mr. Ahlstrand was made aware of the fact that there was a history of disputes between Mr. Blanch and his management so that IAD would be duly sensitive as it conducted whatever investigation it determined to be appropriate. See Ahlstrand OI Tr. at 18, 31, 43-45.

Mr. Ahlstrand, in turn, shared this need for sensitivity with Allen Pollock, who was then Manager of Internal Audit^{M/} and to whom Mr. Ahlstrand assigned the responsibility to pursue the issues that had been raised by the alleged. Similar admonitions were also communicated to the other three IAD employees who became involved in the audits. See Marinaccio OI Tr. at 45-46, 49; Mirabella OI Tr. at 70-71. As a result, the audit team was alert from the beginning for any signs that the allegations they had been assigned to investigate were the product of or related in any way to Mr. Blanch's historical disputes with his management. See Pollock OI Tr. at 25-27, 45, 112-115; Marinaccio OI Tr. at 47-48, 57.

^{M/} In typical fashion, Mr. Blanch attacked Mr. Pollock's integrity by filing a complaint of unauthorized use of title with the Connecticut State Board of Accountancy because Mr. Pollock's NU business card contained the designation "CPA". The complaint stated that Mr. Pollock was not a licensed CPA in the State of Connecticut. See Attachment 73. The reply from the Executive Secretary of the Board stated that Mr. Pollock's use of the initials "CPA" on his NU business card and the use of that title in conjunction with his NU business activities did not constitute a violation of state law. See Attachment 74.

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In part because of this and in part as a matter of sound investigatory practice, the IAD audit team proceeded cautiously. Before speaking with any witnesses, Mr. Pollock reviewed the personnel files of the alleged, Mr. Blanch, and three of the employees in Mr. Blanch's group (including those of Messrs. Bhatt and Caccavale) to see if there was anything in them that might suggest some ulterior motive underlying the alleged's coming forward with the allegations. See Attachment 75 (information redacted from copy provided to OI to protect alleged's identity); Pollock OI Tr. at 59-60. Mr. Pollock found that the alleged had a history of favorable performance evaluations, with all comments in the file being positive, and that nothing in the file "indicate[d] that [the alleged] had any motive for making false allegations." Attachment 75.

Mr. Pollock then worked through Dr. Sears to set up a face-to-face meeting with the alleged so that Mr. Pollock could receive a detailed description of the allegations and directly assess their credibility. Among the issues that the alleged discussed with Mr. Pollock in that meeting was the practice of Messrs. Bhatt and Caccavale of leaving the office and signing out on the departmental sign-out log to one of NU's nuclear plant sites, but then going home or elsewhere on personal business. The alleged described this practice as "blatant;" said that coworkers in the area made bets on the proposition that Messrs. Bhatt and Caccavale would not show up at the plants when they indicated they were going there on the sign-out log; that Mr.

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Caccavale had been seen at home when he had been signed out to one of the plants; and that Mr. Bhatt had once signed out to one of the plants and returned to Berlin some time later with a truck full of fish. See Attachment 76 at 2-3, 10-12, 15-17.

The allegor also provided information on the concern that Mr. Blanch and one of the employees who worked for him were doing work for an NU contractor, Performance Associates, on NU time and using NU facilities. The allegor described Mr. Blanch as having boasted in front of other employees that he was making more money under this contract than he was from NU.^{35/} The allegor stated that Mr. Blanch had gotten Mr. Bob Lord, the principal of Performance Associates, started in business by giving Mr. Lord his first contract and raised the possibility that Mr. Blanch might be using his travels in connection with the Rosemount matter to promote Mr. Lord's company as having the solution to the Rosemount transmitter problem, thereby increasing Mr. Blanch's opportunities to obtain income as a subcontractor to Performance Associates. Finally, in response to a comment from Mr. Pollock mentioning that he had seen documents indicating that Mr. Blanch had been approved for work on a contract with EPRI, the allegor raised a question as to whether Mr. Blanch's contract

^{35/} The transcript of the allegor's September 18, 1989 IAD interview indicates that the allegor quoted Mr. Blanch as having said: "Hell, I'm making more money under this contract than I'm making it on you." Attachment 76 at 23. A review of the tape recording of the interview from which the transcript was produced, however, indicates that the statement quoted by the allegor actually was: "Hell, I'm making more money under this contract than I'm making at NU."

was with EPRI or Performance Associates and suggested that IAD check with EPRI to ascertain what was in fact the case. Id. at 19-25.

The allegor characterized Mr. Blanch as frequently displaying open disdain for NU management, especially Mr. Blanch's own chain of command, openly referring to them as "stupid", "idiots" and "assholes". The allegor also suggested that Mr. Blanch was using the Rosemount transmitter issue to advance his own personal agenda and was trying to make Messrs. Roby, Johnson and Werner "stink." Id. at 8-9, 37.

One additional point raised by the allegor in this interview had to do with ^{EX 7C} [REDACTED] an employee who had previously ^{EX 10W} worked for Mr. Blanch and whom Mr. Blanch had suspected a few years earlier of abuses similar to those in which the allegor thought Messrs. Bhatt and Caccavale had been involved.¹⁶

¹⁶ During and after the IAD investigation into alleged time and expense abuses by Messrs. Bhatt and Caccavale, Mr. Blanch repeatedly asserted that he thought action against Messrs. Bhatt and Caccavale was improper in light of the fact that no action had been taken against [REDACTED] for similar abuses. As IAD concluded when it looked into this issue, however, Mr. Blanch's investigation of [REDACTED] alleged improprieties had lacked the objectivity provided by IAD's comparison of Bhatt and Caccavale log discrepancies against those of several other employees. In addition, the existence of a grievance filed by [REDACTED] against Mr. Blanch, as well as sexual harassment allegations by [REDACTED] against individuals in Mr. Blanch's department (which [REDACTED] alleged Mr. Blanch condoned) added an element of complication in that situation that did not exist in the Bhatt and Caccavale case. See Attachment 76A; Pollock OI Tr. at 120-126; Mirabella OI Tr. at 87-90, 96, 99-100, 108-109. It also bears noting that Mr. Blanch's contention in this regard is irreconcilable with the assurance he had

(continued...)

Referring to the problems Mr. Blanch had had with [REDACTED] in that earlier period, the allegor said that [REDACTED] complaint had been: "How come they can do it and I can't" (id. at 7), suggesting the possibility at least that such abuses had been common in Mr. Blanch's group even at that time.

Mr. Pollock was impressed with the allegor's apparent sincerity and credibility and noted in particular that the allegor had made it clear that he or she was not seeking to have any disciplinary action imposed on those he or she thought to be involved in the reported abuses, but sought only to have the abuses stopped. Id. at 9-10, 15-16, 28; Pollock OI Tr. at 95-96, 116.

1. IAD's Investigation of Alleged Time and Expense Abuses By Messrs. Bhatt and Caccavale

To provide an initial picture of the situation as it related to the time and expense abuse allegation that had been raised by the allegor, IAD compared the departmental sign-out log entries in the period May 1, 1989 through September 26, 1989 showing trips to one of the plants, with plant security gate logs containing entries for Mr. Blanch and his employees, and for two other GEE employees as well, whose activities required them occasionally to go to the plants. Mirabella OI Tr. at 19-20.

²⁹ (...continued)

given to the IAD audit team early in the investigation that, if they uncovered evidence of time and expense abuses similar to that he had developed with regard to [REDACTED] he would fully support them. Pollock OI Tr. at 153-154.

This initial comparison indicated that for the employees whose records were checked other than Messrs. [REDACTED] EX7C entries on the departmental sign-out log had a corresponding entry on a plant security log 96 percent of the time. See Attachment 77 at 3; Attachment 78 at 10; Mirabella OI Tr. at 23. For Messrs. [REDACTED] the correspondence between these EX7C two logs fell dramatically, to 65 percent for Mr. [REDACTED] and 59 EX7C

EX7C percent for Mr. [REDACTED] See Attachment 77 at 3; Attachment 78 at 4, 9. In addition, IAD's comparison of the two logs disclosed EX7C 15 occasions for Mr. [REDACTED] and eight occasions for Mr. [REDACTED] when they had been at one of the plants, were shown on the plant security log as having left the site before 2:00 p.m., but were not shown on the departmental log as having returned to the office.

With this discrepancy information in hand, Mr. Pollock and another member of the IAD audit team, Mike Marinaccio, met with EX7C Messrs. [REDACTED] to give them the opportunity to offer any information that would explain the discrepancies.^{17/} Messrs. EX7C [REDACTED] were unable to provide satisfactory explanations for many of the discrepancies at that initial session with Messrs. Pollock and Marinaccio, a subsequent session

^{17/} Messrs. Pollock and Marinaccio had accorded a similar opportunity to the only other employee for whom the comparison of the two logs had been done and who had more than one discrepancy in the period analyzed (Mr. P.M. Meehan, another of Mr. Blanch's employees). That employee was able to provide a satisfactory explanation for the discrepancies relating to him. See Attachment 78 at 10; Pollock OI Tr. at 230-231.

in which they were given the opportunity to do so, or in written memoranda that they submitted to IAD for that purpose.^{38/} Indeed, there were a number of factual and logical inconsistencies in the explanations that they offered, as well as other behavior that tended to undermine their credibility with IAD. See Marinaccio OI Tr. at 82, 109-111, 116-117, 148; Mirabella OI Tr. at 24-27, 44-45, 52-53.

In sum, IAD concluded as follows with respect to this audit:

Based on our review of this allegation, we have surfaced many discrepancies regarding the whereabouts of both Bhatt and Caccavale during working hours. Their inability to sufficiently explain these discrepancies combined with other audit data, raises numerous questions about the likelihood that both of them have, quite often, abused their positions with NU.

It should be noted that Blanch himself was often out of the office on business when many of the abuses occurred and there is no evidence that he had knowledge of them.^{39/}

^{38/} For a detailed comparison of each of the discrepancies and the various explanations offered for them by Messrs. Bhatt and Caccavale, along with a description of what IAD did to follow up on those explanations, see Attachments 79 through 82 (IAD worksheets on Mr. [REDACTED]) and Attachments 83 through 89 (IAD worksheets on Mr. [REDACTED]). As an examination of the IAD worksheets comprising these Attachments plainly shows, there were several instances in which IAD resolved discrepancies in favor of Messrs. [REDACTED] by giving them the benefit of the doubt. Nevertheless, there were numerous discrepancies that IAD was simply not able to resolve to its satisfaction. EX7C
EX7C

^{39/} Earlier drafts of the IAD report on this audit had contained statements laying some of the fault for the abuses of Messrs. [REDACTED] on inadequacies in Mr. Blanch's management of his employees. Further, Messrs. Roby and Johnson had reviewed one or more of the drafts and had offered information to IAD suggesting that such criticism of (continued...) EX7C

During the period of May through September 1989, we conclude the following:

- o N.R. Bhatt on up to 20 occasions, left the plants before 2:30 p.m. We believe that he did not return to work, even though his regular workday concludes at 4:30 p.m. Additionally, on up to 11 occasions he signed-out of the Berlin Office to go to one of the plants, but did not go, i.e. quit early.
- o G. Caccavale on up to 14 occasions, signed-out of the Berlin Office to go to Millstone Station, but did not go, i.e. quit early.

Attachment 77 at 1-2. As a result of the conclusions drawn from IAD's investigation, Messrs. Bhatt and Caccavale were given a one-week suspension without pay.

The nature of the allegations on which this investigation focussed, the manifest care and professionalism with which the investigation was conducted by IAD, and the clear factual basis for the conclusions reached all preclude any inference that the investigation was either initiated by IAD as a means of retaliation against Mr. Blanch or conducted in a manner calculated to harass him. Indeed, it is difficult to imagine a case of employee time and expense abuse for which there could be

^{29/}(...continued)

Mr. Blanch would have been justified. See Pollock OI Tr. at 201-202, 205-206, 210-211. But the important thing is that any such reference was deleted in the final version of the report because those in IAD who were responsible for drafting it were not comfortable including conclusions about Mr. Blanch's management performance in light of the fact that it was peripheral to the issues on which they had focussed in their investigation. Id. at 176-181, 192-196; Marinaccio OI Tr. at 78-80, 92.

a stronger factual basis in the absence of a confession from the employee himself. Given the quality of the information provided by the alleged, the clear pattern of discrepancies that set Messrs. Bhatt and Caccavale apart from their coworkers (including Mr. Blanch himself and the other employees in his group), their failure to offer adequate explanations for most of the discrepancies, and their suspicious conduct during the course of the investigation, the conclusions drawn by IAD were very reasonable and the discipline taken against Messrs. Bhatt and Caccavale was moderate in the circumstances. Moreover, the fact that Mr. Blanch was not held in any way accountable for the improprieties of his subordinates belies any contention that the entire investigation was done to "get something" on Mr. Blanch.

2. IAD's Investigation Of Alleged Conflict
Of Interest Violations By Mr. Blanch

The investigation into Mr. Blanch's contract work for EPRI/Performance Associates was considerably less involved than the investigation into the time and expense abuse allegations. IAD's final report on the conflict of interest matter (Attachment 90) was issued on October 19, 1989, about two weeks after the IAD auditors first raised the issue with Mr. Blanch. See Attachment 91. The report on that investigation concluded:

Based on our review of this allegation, we feel that no impropriety existed on the part of P.M. Blanch. Blanch's consulting involvement with the EPRI project was known and authorized by his management. Blanch received permission to use NU resources (systems, facilities, staff) in support of

this project as long as it did not interfere with NU work. There was no indication that the work interfered. Blanch also provided documentation to substantiate that he was separating the EPRI work and expenses from NU work. The work was primarily accomplished after hours, weekends, and during vacation time.

It is understandable that other GEE workers would view the EPRI work by Blanch and others as a conflict of interest. The circumstances had not been communicated throughout the department in order to passify [sic] concerns arising from differing interpretations of what was going on.

Attachment 90 at 1.

It is implausible to suggest that an investigation launched to "get" an employee would conclude in only two weeks with a full vindication of the employee's conduct. Moreover, IAD's report on this investigation is perhaps most remarkable for what it does not say. As previously discussed (in Section II.C.2), no mention is made, for instance, of the fact that in the annual conflict of interest statement that all NU employees are required to file, Mr. Blanch had described his contract as being with EPRI, thus failing to disclose his relationship with Performance Associates ("PA"), as the allegor had suggested to IAD might well be the case. See Attachment 27; Attachment 76 at 19, 22. This failure might have been treated as significant in light of two facts.

First, by signing the conflict of interest form, Mr. Blanch was certifying that:

Neither I nor any members of my immediate family are employees of, or are otherwise associated with, nor do I or they have an

economic interest or financial investment (other than owning stock in a publicly held corporation) in any company, firm, association, or organization which has or is likely to have any relationship with a subsidiary or affiliate of Northeast Utilities (except for the purchase or sale of energy at rates approved by a regulatory authority).

Attachment 27. In light of the fact that PA had done business as a contractor with NU in the past and that Mr. Blanch had been the NU employee interfacing with PA under that contract, Mr. Blanch's failure to reveal the tie to that company could have been considered a material nondisclosure.^{40/}

The second aspect of Mr. Blanch's failure to disclose his relationship with PA that might have been taken to have significance arises out of the fact that there appears to have been a reasonable basis for concluding that he actually went out of his way to conceal that relationship from NU. As noted previously, the disclosure form Mr. Blanch subsequently submitted -- after he learned of the IAD's probe of his consulting activities -- did disclose the tie to PA. See Attachment 28. Such an inference could also be supported by the fact that, in his November 30, 1988 memorandum to Mr. Roby seeking authorization to participate in the project, Mr. Blanch speaks

^{40/} Mr. Marinaccio testified that he had been aware of the fact that Mr. Blanch's conflict of interest form had not been accurate, but that he had not attached any significance to it because the contract and the nature of the work had been adequately disclosed. Marinaccio OI Tr. at 136, 138. However, Mr. Johnson testified that he and Mr. Roby would never have approved the arrangement had they known of the tie to PA.

only of "submitting a proposal to EPRI" and says he "will be acting as an independent contractor to EPRI." Attachment 25. Yet, on the very same day, Mr. Blanch sent a letter to PA outlining his proposal and stating that "[d]uring this investigation, Mr. Blanch will represent himself as a contractor to Performance Associates and EPRI" Attachment 29 at 5.

The fact that these and other arguable irregularities pertaining to Mr. Blanch's relationship with PA were not even noted in the report, along with the fact that Mr. Blanch's records regarding when he had actually done the contract work (i.e., on his own time) were accepted without question by IAD (see Marinaccio OI Tr. at 130-131), make it impossible to conclude that the investigation was part of a plot to discriminate against Mr. Blanch. It is simply implausible to suggest anyone acting with such an intent would have passed up such opportunities as those described above to raise matters that had clear potential for causing Mr. Blanch discomfort.

L. Dr. Sears's Contact With EPRI

Mr. Blanch next alleges that in order to harass him, Dr. Sears contacted a high-level individual within EPRI and inquired about Mr. Blanch's ethics, performance, commercial interest in a Rosemount transmitter monitoring program, and his ownership interest in Performance Associates. See October 27, 1989 DOL complaint at 3; OI Report of Interview with Paul Martin Blanch at 10-11. Again, Mr. Blanch's perception does not reflect fact.

Dr. Sears did contact an EPRI official to determine whether Mr. Blanch was under contract to EPRI either directly or through subcontract. Dr. Sears was aware of the sensitivity of the contact, however, and handled it discreetly and professionally. He made this contact at the direction of Senior Vice President Mroczka to assist the Internal Audit Department in its inquiry into the alleged conflict of interest. See Section III.K, above.

The feedback Dr. Sears provided to the Internal Audit Department confirmed IAD's conclusion that no impropriety existed. It should be noted that, as part of the Settlement Agreement dismissing Mr. Blanch's Department of Labor complaint, NU sent a letter to Mr. John Taylor of EPRI (with a copy to Mr. Robert Lord of Performance Associates) stating, in language that Mr. Blanch and his counsel expressly approved, that the audit of Mr. Blanch's outside consulting activities had concluded that this work had been fully authorized in accordance with Company procedures, and that his actions had involved no improprieties of any kind. See Attachment 92. The letter further stated assurances by NU management that it had not disapproved of the work Mr. Blanch had done for EPRI, and would not be predisposed to deny any such future request by Mr. Blanch. It stated that NU management would consider any proposal contemplating outside work by Mr. Blanch in accordance with the same policies and considerations applicable to all other NU employees. Id.

M. Mr. Blanch Was Not Discriminated Against
Through a Series of "Administrative Hassles"

According to LRS, Mr. Blanch was subject to "continued harassment" in the form of "unusual time sheet reviews, lack of invitations to Rosemount-related meetings, inaccurate documentation of one of his subordinate's comments on his supervision, and other administrative hassles." Attachment 9 at 4-5. To the extent not previously addressed, we respond to each of these items below.

1. "Unusual Time Sheet Reviews"

The allegation of "unusual time sheet reviews" apparently refers to a single occasion on which, in Mr. Roby's absence, the secretary for the department requested Mr. Johnson to review and authorize various time sheets submitted by Mr. Blanch. In so doing, Mr. Johnson noticed that Mr. Blanch had recorded emergency plan on-call time (for which employees are paid extra) for April 12, 1989 in his capacity as the on-call electrical support manager. However, Mr. Johnson was aware that Mr. Blanch had travelled to the Washington, D.C. area on that day in order to make a presentation to the NRC Staff the following day concerning Rosemount transmitters. When Mr. Johnson questioned Mr. Blanch on this point, he first explained that another person had covered the beeper for him, and that it was common practice in that group to cover for each other without changing the on-call time sheet reporting. Mr. Blanch later said that yet another person had covered the beeper for him. Subsequently, Mr. Blanch merely

revised his time sheet to eliminate the charge for one on-call day. See Attachment 93; Attachment 22 at 3.

We cannot explain why LRS apparently concluded that the reasonable scrutiny by a Director of a supervisor's time sheets should be attributed to harassment. Mr. Johnson was required to review the time sheet in the absence of Mr. Blanch's immediate supervisor, Mr. Roby. Time sheet procedures are taken seriously by NU management. In a memorandum from Mr. Mroczka to all NE&O employees dated December 13, 1988 (Attachment 94), he reiterated that there must be strict adherence to NE&O guidelines on time and expense reporting. Indeed, Mr. Blanch himself had written a very similar memorandum to the employee whom he suspected of time and expense abuses in February 1985. In that memorandum he admonished this employee of the need for strict adherence to sign-out sheet and sign-out book procedures. See Attachment 95.

2. "Inaccurate Documentation" of Subordinate's Comments

The allegation concerning "inaccurate documentation of comments" by one of Mr. Blanch's subordinates presumably refers to two memoranda in which conversations with Mr. Bhatt were memorialized by Messrs. Roby and Johnson, respectively. See Attachments 96 and 97. Specifically, in an April 28, 1989 memorandum to Mr. Johnson, Mr. Roby documented a meeting with Mr. Bhatt on that same day. And, an October 11, 1989 memorandum written by Mr. Johnson to Mr. Werner documents a meeting that occurred among Messrs. Johnson, Roby and Bhatt on October 6,

1989. Both memoranda indicate that Mr. Bhatt had requested these meetings. Both memoranda also indicate that Mr. Bhatt had done so because of concerns that lack of supervision from Mr. Blanch had adversely impacted upon his career. Mr. Bhatt was copied on the October 11, 1989 memorandum, along with Messrs. Mroczka and Roby.

Mr. Blanch has alleged that the writing of these memoranda -- especially the circulation among senior management of the latter memorandum -- constituted harassment. He asserts that Messrs. Roby and Johnson distorted or indeed fabricated such complaints by Mr. Bhatt in order to make him appear in a negative light. See February 20, 1990 Blanch transcript at 20-21. In addition -- at least to certain audiences -- Mr. Bhatt has subsequently denied making such statements about Mr. Blanch.

The record indicates that Mr. Bhatt may have told one thing to Mr. Blanch and to LRS, and another to Messrs. Roby, Johnson and Werner. Without commenting on Mr. Bhatt's credibility, his perception of what he communicated to Messrs. Roby and Johnson may in fact differ from the impression on that score received by Messrs. Roby and Johnson. (English is not Mr. Bhatt's native language.) It is the testimony of Messrs. Roby and Johnson that Mr. Bhatt did seek them out; that he told them he was upset about his current assignment for various reasons, including the lack of supervision from Mr. Blanch; and that Mr. Bhatt wished to be transferred from Mr. Blanch's group. In terms of management's good faith, it is irrelevant that some of Mr. Bhatt's statements

may have been misunderstood, or that Mr. Bhatt may have expressed additional types of concerns in these meetings.

What is more, Mr. Bhatt's own handwritten notes appear to confirm, at the very least, that he felt he had certain problems in working with Mr. Blanch, and that he communicated those concerns to Messrs. Roby and Johnson. Specifically, prior to meeting with Messrs. Roby and Johnson on October 6 in connection with his request to transfer to another group, Mr. Bhatt made notes of the points he planned to discuss. See Exhibit #1, February 20, 1990 Blanch transcript, at 1-2. The notes contain, among others, the following points: "I find that my personality and way of resolving issues is [sic] more compatible with the I&C Group orientation, than the Special Studies Orientation. I view P. Blanch's orientation as overly aggressive in problem resolution I have brought some of the above issues to your attention in the past year or so and to LRS associates."^{41/} Id. at ¶¶ 3, 5.

^{41/} Other notes written by Mr. Bhatt, and dated November 1, 1989, purport to indicate that Mr. Roby had repeatedly asked Mr. Bhatt whether his problems were "all due to poor quality [of] supervision by [Mr. Blanch]." See Exhibit #1, February 20, 1990 Blanch transcript, at 4. In contrast to his other notes, these notes were written at LRS's request, and after Mr. Bhatt's October 6, 1989 meeting with Messrs. Roby and Johnson. See February 20, 1990 Blanch transcript at 29-31; 34-35. In any event, the notes reflect that Mr. Bhatt responded as follows: "I did agreed [sic] that [lack of supervision by Mr. Blanch] is one of the reason [sic] and I have expressed my concerns to [sic] two times during my meeting with LRS."

Because of Mr. Bhatt's repudiation of statements that had been attributed to him by Messrs. Roby and Johnson, Mr. Mroczka requested that Mr. Werner investigate the situation. See Attachment 98. Accordingly, Mr. Werner interviewed Mr. Bhatt on November 28, 1989 to ask him about this issue. Mr. Werner summarized his discussion with Mr. Bhatt in handwritten notes that he made contemporaneously during the meeting. See Attachment 99. Mr. Werner's notes indicate that his interview with Mr. Bhatt did not support the conclusion that Messrs. Roby and Johnson had fabricated or distorted what Mr. Bhatt had told them. Further to this point, Mr. Werner maintains that Mr. Bhatt confirmed to him that the contents of the April 28 and October 11 memoranda captured the essence of what Mr. Bhatt had related to Messrs. Roby and Johnson.^{42/}

Moreover, Mr. Bhatt sought out Mr. Roby several months later (on April 12, 1990) to reiterate his request for a transfer. Mr. Roby asked if Mr. Bhatt had any concerns that he had not previously raised, and he answered "no." Mr. Roby specifically asked him if the October 11, 1989 memorandum by Mr. Johnson accurately reflected his views, and he answered "yes."

^{42/} Mr. Bhatt apparently told Mr. Blanch that he had in fact told Mr. Werner that he "totally disagreed with the memorandum that Lenny Johnson mailed to him It was distorted. It was a fabrication." See February 20, 1990 Blanch transcript at 32. Further, OI's questions of various witnesses imply that Mr. Bhatt has also told OI that he never received a copy of Mr. Johnson's October 11, 1989 memorandum, despite the fact that the memorandum indicates that a copy had been sent to him.

3. "Other Administrative Hassles"

It is unclear to what LRS is referring when it mentions the "other administrative hassles." LRS may be alluding to Mr. Johnson's questioning Mr. Blanch, in the April 1989 time frame, after receiving a requisition for a high-speed computer printer to be used in analyzing Rosemount data. Mr. Johnson asked Mr. Blanch what efforts he felt were required to resolve any outstanding Rosemount issues specifically for NU, and how much time would be needed. Having heard concerns expressed by Mr. Blanch's employees that his EPRI Rosemount work had been overshadowing all other responsibilities (an opinion voiced by supervisors in other groups), Mr. Johnson was simply trying to gain an understanding of the situation. After Mr. Johnson's questions were answered, Mr. Blanch's requisition was approved, and the high speed computer printer was obtained for Mr. Blanch to use in analyzing Rosemount data. See Attachment 100.

IV. MANAGEMENT RESPONDED SWIFTLY TO MR. BLANCH'S CONCERNS

When senior management realized that Mr. Blanch had received the impression in April 1989 that he was being phased out of Rosemount issues, they acted swiftly and surely to correct his misperception. Executive Vice President John Opeka met with Mr. Blanch in early May, in order to discuss Mr. Blanch's concerns and obtain his input into a draft memorandum that Mr. Mroczka planned to send to Mr. Blanch's immediate supervisors. The purpose of the memorandum was to clear the air and set the record

straight in response to Mr. Blanch's perception that he was being excluded from Rosemount issues.

The memorandum was finalized and signed by Mr. Mroczka on May 3, 1989 (Attachment 64). Although it was directed to Mr. Werner, the memorandum was also copied to Messrs. Roby, Johnson and Blanch. The memorandum was very clear on the future role senior management saw Mr. Blanch playing in resolution of Rosemount issues:

This memorandum provides my direction for the future with respect to NE&O's handling of the Rosemount transmitter issue and related issues raised by Paul Blanch It is my understanding that it was not the intent of Generation Engineering management to remove Mr. Blanch from further participation in work on the Rosemount transmitter issue. This intent appears to not have been clearly communicated, however, because Mr. Blanch has indicated that he was left with the impression that he was being removed from future Rosemount transmitter work altogether. In my view, it would not be appropriate for Mr. Blanch to be removed from work on this issue. I would expect that Mr. Blanch will be responsible for developing programmatic aspects of the Rosemount transmitter issue while others would continue to be responsible for implementation of the program (emphasis added).^{43/}

^{43/} Mr. Blanch would later claim that, contrary to the underscored language in this memorandum, Arnold Roby (and not Mr. Blanch) was given the responsibility to coordinate the reportability evaluation with Westinghouse. As Mr. Opeka's written response to Mr. Blanch on this issue stated, it was never senior management's intent that Mr. Blanch would have total control of Rosemount work, to the exclusion of his management chain. In his written response to Mr. Blanch, Mr. Opeka explained that Mr. Roby had always had, as an inherent part of his management responsibilities, the particular responsibility of a task such as coordinating the
(continued...)

Regarding Mr. Blanch's expression of concern that he might be subjected to discrimination because of his airing of safety issues, Mr. Mroczka's memorandum categorically stated: "To ensure that there is no misunderstanding about NU's policy and my own position with respect to such matters, I want to reiterate to those in Mr. Blanch's management chain that any such actions would be inappropriate."

Mr. Johnson met with Mr. Blanch on May 10 to discuss implementation of the May 3 memorandum. See Attachment 12. The meeting was cordial and constructive. In addition, further to the May 3 memorandum, Mr. Roby sent a memorandum to the Millstone Unit 2 and Unit 3 Superintendents on May 15, 1989. See Attachment 65. That communication put flesh on the bones of the May 3 memorandum by establishing the I&C Special Studies Group, and Mr. Blanch in particular, as the "single point of contact within Generation Electrical Engineering" to be responsible for "responding to plant concerns [about Rosemount issues] and evaluating changes or modifications to the plant program." The memorandum further indicated that "[i]ndustry activities and/or

^{43/}(...continued)

Company's reportability evaluation on the Rosemount issue. See Attachment 40 at 2. Mr. Opeka went on to explain to Mr. Blanch that it was appropriate and normal protocol for Mr. Roby, as a supervisor, to bring into the evaluation process, as necessary, other relevant NE&O groups or an outside vendor. Id. Finally, Mr. Opeka's response set out a brief summary of events surrounding the reportability evaluation in question. Id. at 3-5. This summary illustrates that Mr. Blanch was in no way excluded from the deliberations or the evaluation process that occurred with respect to reportability issues.

responses will continue to be followed by the Special Studies Group, who will ensure that the information is appropriately disseminated until this issue is dispositioned." The May 15 memorandum was copied to Mr. Blanch, as well as to Messrs. Werner, Scace, Johnson, and Shaffer.

Additional proactive measures were taken some months later, in the fall of 1989, when, after reviewing all the information before him, Senior Vice President Mroczka concluded that Mr. Blanch's supervisors should be reprimanded and counselled. Mr. Mroczka concluded that while the facts did not show that Mr. Blanch's supervisors had intended to stifle Mr. Blanch's expression of safety concerns, it appeared that they had not exhibited good interpersonal communications and management skills in their dealings with him, possibly leaving him with the impression that his expression of viewpoints was being discouraged. These conclusions were communicated in the form of letters of reprimand sent to Messrs. Roby, Johnson, Shaffer and Werner in October of 1989. See Attachments 101 through 104. (The reprimands were thereafter the subject of grievances filed by Messrs. Roby, Shaffer and Johnson; at the conclusion of the grievance process it was found by the independent grievance panel composed of Company officers that this disciplinary action was not appropriate and the letters of reprimand should be retracted.)

In addition, in early October, NU President Bernard Fox met personally with Mr. Blanch to discuss Mr. Blanch's concerns with

respect to the audits then being conducted by NU's Internal Audit Department (see the discussion in Section III.K). See Attachment 71. In the aftermath of their meeting, Mr. Blanch wrote a memorandum to Mr. Fox thanking him for "the opportunity to have a very open and frank discussion with you." Attachment 105. Mr. Fox in turn responded to Mr. Blanch's memorandum the following week, responding to the concerns about the audit Mr. Blanch had raised. See Attachment 106.

V. NO VIOLATION OF LAW HAS OCCURRED

In cases arising under Section 210 of the Energy Reorganization Act,^{44/} it is incumbent upon the employee to prove that his participation in a protected activity actually motivated his employer to take some personnel action adverse to him. If an employee cannot meet this obligation by producing direct evidence of discrimination, he must at a minimum present facts that show some causal relationship between his protected activity and the adverse action taken against him. However, if the licensee articulates a legitimate reason for the adverse action, then the employee must also prove that the employer's reason was not the real basis for the adverse personnel action. E.g., Dartey v. Zack Co., Case No. 82-ERA-2 (Sec'y Decision and Final Order, April 25, 1983).

^{44/} As noted, Section 210 has recently been amended and redesignated as Section 211 of the Energy Reorganization Act. Energy Policy Act of 1992, § 2902, Pub.L.No. 102-486 (codified as amended at 42 U.S.C. § 5851).

The NRC's regulation concerning allegations of retaliation against reactor licensee employees, 10 C.F.R. § 50.7, is derived from and parallels the language of Section 210. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), DD-85-9, 21 N.R.C. 1759, 1764 (1985). Like Section 210, Section 50.7 prohibits discrimination against an employee in reprisal for the employee's having engaged in protected conduct.

Section 210 is violated, assuming that the licensee acted with retaliatory animus, only if an employee has been subject to some adverse act amounting to "discrimination." Section 50.7 similarly prohibits this type of discrimination. See 10 C.F.R. § 50.7(a) ("Discrimination includes discharge and other actions that relate to compensation, terms, conditions, and privileges of employment."). What Section 210 and the NRC regulation prohibit are acts that affect an employee's terms and conditions of employment -- not every act that an employee might perceive as unfavorable.

A. Section 50.7 Prohibits Intentional Retaliation

Section 50.7 prohibits a licensee from intentionally discriminating against an employee in reprisal for the employee's having engaged in protected activity. The rule makes clear that it is intentional discrimination that is prohibited: "The prohibition [against discrimination] applies when the adverse action [against the employee] occurs because the employee has engaged in protected activities." § 50.7(d) (emphasis added).

The Commission has emphasized that it is intentional retaliation -- rather than the mere appearance or perception of discrimination -- that poses a significant safety issue. In Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-85-2, 21 N.R.C. 282, 328 (1985), modified on other grounds, 27 N.R.C. 335 (1988), the Commission stated:

[W]hile the timing of the suspension [of an alleged whistleblower] may have given the appearance that it was retaliatory, the evidence does not support such a conclusion. Appearances alone do not raise significant safety issues warranting a hearing. ...

The issue ... concerns Licensee's motivation in requiring [an employee who had recently raised safety concerns] to take a neurophysical examination. ... While this may have given the appearance of retaliation, the evidence does not support such an inference (emphasis added).

In short, based on facts that had been developed by OI in that case, the Commission could not conclude "that [the] Licensee's actions were motivated by the fact that [the employee] had raised safety concerns." Id. (emphasis added).

NRC enforcement actions make clear that the intent by a licensee to retaliate against a protected employee is an essential element of a Section 50.7 violation. Indeed, to our knowledge the NRC has never taken enforcement action under Section 50.7 in circumstances in which the licensee or its

contractor^{45/} lacked the intent to retaliate.^{46/}

For example, in EA 84-137 (GPU Nuclear Corp., Aug. 12, 1985) (Notice of Violation, March 4, 1986, Appendix p. 3), the NRC Staff concluded that an employee's safety concerns had "motivated the management actions [against] him." The NRC notably did not take enforcement action based on retaliatory "effect," but rather based on its determination that the safety concerns actually had motivated the retaliation. In EA 88-32 (Georgia Institute of Technology, Jan. 20, 1988) (letter accompanying Notice of

^{45/} Licensees have been cited for violations of Section 50.7 caused by acts of licensee contractors. In such cases, however, the licensee -- while itself lacking intent to discriminate -- is held accountable for the contractor's illicit motive. See, e.g., EA 88-294 (Commonwealth Edison Co., September 14, 1990) ("[T]he Commonwealth Edison Company should have questioned the motives" of its contractor in requesting an employee's removal). Even in these cases, then, intent has been deemed an essential element of a Section 50.7 violation.

^{46/} That Section 50.7 prohibits only intentional retaliation is confirmed by the rule's close relationship with Section 210 -- which also proscribes only intentional retaliation. The NRC promulgated Section 50.7 in order to "implement" Section 210 (IE Information Notice No. 84-08) and to codify in its regulations "the statutory prohibition of discrimination of the type described in Section 210" (47 Fed. Reg. 30452). Section 210 provides that an employer may not discriminate against an employee "because" the employee engaged in activity protected by Section 210. 42 U.S.C. § 5851(a) (emphasis added). Moreover, the burdens of proof applicable to Section 210 proceedings are those adopted by the Supreme Court for allegations of intentional discrimination in violation of Title VII of the Civil Rights Act. Zack v. Dartey Co., Case No. 82-ERA-2 (Secretary's Decision and Final Order, Apr. 23, 1983) (complainant bears the burden of proof that intentional discrimination occurred) (adopting Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248 (1981)). Accordingly, enforcement action under Section 50.7 is appropriate only where the licensee intentionally retaliated against an employee for engaging in protected activity.

Violation, November 15, 1988, p. 2), the NRC declined to take enforcement action under Section 50.7 for the dismissal of two employees, even though the dismissals had been viewed by other employees as retaliatory and even though there were "some indications to support this perception," but where the evidence was not sufficient to demonstrate that a violation of Section 50.7 had occurred. As these enforcement proceedings demonstrate, something more than the perception of retaliation is required before a violation of Section 50.7 occurs.^{47/}

In other proceedings, the NRC Staff has also emphasized that retaliatory motive is an essential element of the conduct proscribed by Section 50.7. For example, in Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), DD-90-1, 31 N.R.C. 327, 330-31 (1990), a proceeding initiated under 10 C.F.R. § 2.206 by a petitioner who claimed that the

^{47/} In contrast, enforcement actions in which the Commission has found a violation of Section 50.7 confirm that retaliatory motive is an essential element of a violation. In EA 88-234 (Toledo Edison Co., Nov. 21, 1988) (Order Modifying License, p. 3), the NRC concluded: "Based on the results of the NRC inspection and investigation, the Staff has concluded that Mr. Wade intentionally removed the QC Inspector from the Davis-Besse facility for raising a safety issue" (emphasis added). In EA 87-05 (Philadelphia Electric Co., Feb. 9, 1987), the NRC specifically determined that the licensee's explanation for the firing of an employee who had expressed and pursued radiological concerns was a pretext and that the true motive for the firing was retaliatory. And in EA 88-289 (Defense Nuclear Agency, Mar. 22, 1989) (Order Imposing Civil Monetary Penalty, August 22, 1989, Appendix p. 5), the NRC rejected the licensee's explanation for the transfer of an employee (personnel conflicts), finding that it was a pretext for what in actuality constituted retaliation: "[T]he employee was removed as a direct result of raising safety concerns."

licensee had violated Section 50.7, the Director of Nuclear Reactor Regulation denied the petition, finding that no substantial health and safety issues had been raised, in part because "no Turkey Point employee ... was knowingly harassed or discriminated against by the Licensee for [protected] activity" (emphasis added). In another case involving a Section 2.206 petition alleging a violation of Section 50.7, the Director determined that there had been no discrimination in violation of Section 50.7 where there was no basis for concluding that the licensee had "manipulated" an investigation into the leak of confidential information so as to draw in (and thus retaliate against) an employee who had previously contacted the NRC. Arizona Public Serv. Co. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), DD-88-08, 27 N.R.C. 639, 644-45 (1988). Thus, since there had been no intent to retaliate against the employee -- even though he clearly had perceived harassment -- Section 50.7 had not been violated.

Similarly, in Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), LBP-87-14, 25 N.R.C. 461, 471-79 (1987),^{45/} an inspector was fired after he had pointed out what he believed to be procedural "inconsistencies" and other deficiencies. His termination was based on the fact that his deficiency reports reflected a lack of technical expertise.

^{45/} See Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), CLI-87-8, 26 N.R.C. 1 (1987) (permitting Licensing Board decision in LBP-87-14 to become effective).

While the inspector "was understandably suspect of the motive for his firing since he genuinely believed the issues he [had] raised were important and significant," id. at 478, the Board concluded that Section 50.7 had not been violated. Id. at 479. In short, while there was an appearance of retaliation in that case, and while the inspector might reasonably have felt that he had been retaliated against, the Board declined to find a violation of Section 50.7 where the motive for terminating the inspector was in fact legitimate. In the summary of its decision, the Board noted, after considering the evidence concerning inspector transfers and terminations: "While we found that certain of the actions of . . . management indicated poor judgment and a lack of appropriate communicative skills, there seemed to be at least the semblance of a reasonable justification for the actions. . . . We find no violation of 10 C.F.R. § 50.7." Id. at 468.

The ASLB's decision in Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-16, 31 N.R.C. 509 (1990), also suggests that acts that merely create the appearance of retaliation will not provide grounds for enforcement action -- even if the appearance might have been avoided had the employer acted in a more conscientious manner, and even if the employer should have known that the employee might perceive the acts as retaliatory. There, in addressing an intervenor-employee's charge of harassment, the Board noted:

... Mr. Saporito's employer ... received a copy of a letter sent by Mr. Butler [FP&L's counsel] to Mr. Saporito on March 19. In

that letter, Mr. Butler assured Mr. Saporito that "neither Florida Power & Light Company nor I had any hostile or coercive motives in making the inquiry [to the employer to verify employment data]." Since the contents of Mr. Butler's letter was [sic] not directly relevant to any interest of Mr. Saporito's employer, there does not appear to be any strong reason for him to have sent a copy of the letter to the employer and -- in light of Mr. Saporito's earlier complaint -- Mr. Butler might easily have anticipated that Mr. Saporito could have felt coerced by this procedure. Mr. Butler could have avoided the appearance of coercion by not copying the employer. However, he may also have felt that the letter would reassure the employer about there being no coercive intent and we find that the routine copying of the letter does not, by itself, demonstrate coercion to this Board.

Id. at 512-13 (emphasis added).

The Board's decision in Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-84-24, 19 N.R.C. 1418, 1442 (1984), aff'd 22 N.R.C. 59 (1985), is also instructive in this regard. In that case, welding inspectors interpreted a QC supervisor's actions and words as threatening because they had expressed safety concerns. But the ASLB found that while the supervisor's communications skills were somewhat lacking, the supervisor "did not intend to convey that impression," 19 N.R.C. at 1507 (emphasis added), and that the supervisor thus had not actually retaliated against the inspectors because they had expressed safety concerns. Similarly, where a craftsman "bumped [an inspector] with his shoulder," id. at 1529, the Board ruled that this did not constitute harassment because there was no evidence that the incident had been intended to prevent the inspector from

EXEMPT FROM
PUBLIC DISCLOSURE
PER 10 CFR 2.790 AND 9.17

performing his duty.^{49/} Thus, the ASLB drew a line between intentional discrimination -- which violates Section 50.7 -- and acts that may give rise to the perception of retaliation -- which do not.

In addition to this substantial body of precedent, the NRC's enforcement policy permits enforcement action under Section 50.7 only where the licensee intends to retaliate against an employee. The Commission's Enforcement Policy provides that "[l]icensees are not ordinarily cited for violations resulting from matters not within their control." 10 C.F.R. Part 2, Appendix C, Section VI.A (57 Fed. Reg. 5791, 5800 (February 18, 1992)). A licensee cannot generally foresee how an employee will perceive statements or acts of a superior, and accordingly should not be subject to a Section 50.7 penalty if an employee misperceives, as discriminatory, a superior's well-intentioned or fairly motivated actions.^{50/}

^{49/} Consistent with the fact that only discriminatory motive gives rise to a Section 50.7 violation, the Board determined that Section 50.7 had been violated, at least in spirit, when the supervisor actually gave one of the inspectors a low evaluation score because he had engaged in protected activity. The Board specifically noted that deviations from normal evaluation procedure had not merely "contribute[d] to [his] feelings of unfairness" but rather had resulted in actual "unfairness" to the employee. Id. at 1517 (quoting staff findings) (emphasis in original). A civil penalty was subsequently imposed under Section 50.7 for this intentional act of retaliation. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), DD-85-9, 21 N.R.C. 1759 (1984).

^{50/} Likewise, where retaliation was not intended, enforcement action would be inappropriate because it will not dissuade future incidents of unintentional retaliation. See generally Duke Power Co., 21 N.R.C. at 1773 n.9 ("Civil
(continued...)

B. Unreasonable Perceptions of Discrimination
Provide No Basis for Enforcement Action

Section 50.7 should not be read to proscribe even acts that, while not intended to be retaliatory, might be perceived as having been taken in retribution for protected activity. In light of the plain meaning of Section 50.7 and the weighty body of precedent cited above, Section 50.7 should not be read so liberally, for these cases consistently provide that retaliatory motive is key to a Section 50.7 violation. However, even under a more relaxed standard that would permit enforcement action based on "perceived" but unintended retaliation, no breach of Section 50.7 has occurred with respect to Mr. Blanch.

Even if Section 50.7 (in contrast to Section 210) could be violated where the licensee had no intent to retaliate, it is clear that an employee's mere perception of retaliation alone is not a sufficient premise for enforcement action. Were retaliatory perception itself forbidden by Section 50.7, licensees would be subject to penalties in every case in which an allegation of retaliation is asserted -- at least if the employee

⁵⁰ (...continued)

penalties for violations of § 50.7 ... are appropriate if a civil penalty may positively affect the conduct of the licensee or other similarly situated persons and are not grossly disproportionate to the gravity of the offense." (citing Atlantic Research Corp., CHI-80-7, 11 N.R.C. 413 (1980)) (imposing civil penalty for violation of Section 50.7 arising out of intentional retaliation); see also Hurley Medical Center (One Hurley Plaza), ALJ-87-2, 25 N.R.C. 219, 239 (1987) ("[W]hether a civil penalty is needed will be considered in the light of whether a penalty will improve conduct found to be deficient.").

could prove the sincerity of (or convincingly feign) such a perception. As one court recently put it: "There is no evidence, beyond plaintiff's visceral perceptions of discrimination, that race motivated defendants' decision.... 'To permit [a discrimination] action, without clear proof of a link between the plaintiff's protected status and the adverse employment action, would cause Title VII [of the Civil Rights Act] to become a vehicle for providing compensation following an adverse employment decision to every person in a protected class.'" Cooper v. Southwark Metal Co., 1992 Westlaw 236285 (E.D. Pa. 1992) (quoting Wright v. Allis-Chalmers, Inc., 496 F. Supp. 349 (N.D. Ala. 1980)).

At the very most, Section 50.7 would only be properly invoked if the employer, albeit harboring no intent to retaliate, acted with reckless disregard (so reckless it approaches intentional conduct and an employee could reasonably believe that it had been intended). But see Metropolitan Edison Co., 21 N.R.C. at 328 (discussed above) ("Appearances [of retaliation] do not raise significant safety issues The issue ... concerns Licensee's motivation"); Duke Power Co., 19 N.R.C. at 1442, aff'd, 22 N.R.C. 59 (1985) (discussed above) (no retaliation even though supervisor's poor communication skills may have created perception of retaliation, because supervisor had not intended to convey retaliatory impression). Because employers cannot control the perceptions their employees may have, it would only be where the employer acted with reckless disregard for an employee's

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probable and reasonable perceptions -- i.e., acted without legitimate reason and with knowledge that its actions would in fact lead the employee to believe he was being retaliated against -- that a violation of Section 50.7 might arise. Likewise, because an employer cannot control an employee's perceptions, a perception of discrimination can be actionable only if it is judged by an objective standard to be reasonable.

Regardless of whether intent to discriminate is required (as the NRC precedent cited above clearly holds), or whether a reasonable perception of retaliation will suffice, no violation of Section 50.7 occurs absent some act of discrimination. See 10 C.F.R. § 50.7(a) ("Discrimination includes discharge and other actions that relate to compensation, terms, conditions, and privileges of employment."). A perception of discrimination is insufficient; the discrimination must affect an employee's compensation, terms, conditions, or privileges of employment.

In this vein, an employee's disenchantment with the manner in or extent to which his concerns are resolved does not establish that the employer has trespassed Section 50.7. While the manner in which a licensee responds to an employee's concerns may bear on the licensee's motive in subsequent dealings with the employee, it is the prerogative -- the duty -- of licensee management to resolve issues in a manner that it deems most appropriate. An employee is not discriminated against simply because he remains unhappy with the resolution management selects. Nor does an allegation of discrimination compel

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management to adopt the allegor's approach. The licensee is accountable to the NRC for the decisions it makes regarding safety issues; it is not accountable to the employee, and even poor management decisions are not properly redressed under Section 50.7.

Indeed, management must remain free to resolve technical matters in the manner it believes, in its collective judgment, to be correct. Management cannot yield to the person who speaks the loudest or is the most aggressive. The threat that management's approach to concern resolution may result in liability under Section 50.7 necessarily will restrict management's freedom in that regard. In short, an employee's dissatisfaction with the approach taken by management to resolve a substantive concern cannot appropriately be considered to evidence a breach of Section 50.7.

If an employee claims that he has been subjected to acts of harassment and intimidation, the employee's perception of those acts should be judged by an objective standard. For example, the Commission's Enforcement Policy states that "discrimination should be broadly defined, and includes intimidation or harassment that could lead a person to reasonably expect that, if he/she makes allegations about what he/she believes are unsafe conditions, the compensation, terms, conditions, and privileges of employment could be affected." United States Nuclear Regulatory Commission, NRC Enforcement Manual § 5.5.2 (p. 5-13)

(emphasis added).^{21/}

This does not suggest that perceptions of retaliation are not of utmost concern to NU. As described above in Section IV, management took prompt action to counter any perception of retaliation on Mr. Blanch's part. In addition, at the time of the events in question, management took substantial measures intended to assure that no "chilling effect" would occur in the work force. Although NU's actions with respect to Mr. Blanch were not retaliatory, NU fully recognized that the filing of claims alleging unfair treatment can attract the attention of the work force. Accordingly, as discussed in detail in Mr. Mroczka's April 9, 1990 letter to Thomas T. Martin, NRC's Regional Administrator, NU took measures designed to signal NU's policy of encouraging all employees to raise safety issues. These included enhancements to NU's Nuclear Safety Concerns Program, which were announced in correspondence to all NE&O employees from Mr. Ellis, the Chairman and Chief Executive Officer of the Company, as well as attempts on the part of senior management to reach out to Mr. Blanch in a very public manner. See Attachment 107 at 11-13.

^{21/} While this enforcement provision makes clear that "discrimination" encompasses only acts that instill in an employee a "reasonable" belief that the terms and conditions of his employment will be adversely affected by the raising of safety concerns, this language should not be read to suggest that "intent" to retaliate is irrelevant. Rather, by its reference to "intimidation and harassment" -- acts that normally are understood to be intentional -- the provision is consistent with Commission precedent which indicates that retaliatory motive, not the mere appearance of retaliation, is prohibited.

C. The Facts Show That No Intentional Discrimination Occurred and Further, That Mr. Blanch Could Not Have Reasonably Perceived Discrimination

NU fully recognizes, and regrets, that the employment relationship in the past between Mr. Blanch and his managers fell short of both Mr. Blanch's and NU's expectations. For his part, Mr. Blanch encountered a series of what he has perceived as unwarranted restrictions on his employment activities. For its part, NU suffered a profound strain in relations between a talented employee and his management.

But the record is convincing that NU did not discriminate against Mr. Blanch for any of his activities, and specifically did not retaliate against Mr. Blanch in violation of Section 50.7 (or Section 210) for his involvement in the Rosemount transmitter issue. Foremost among the bases for this conclusion is that no one in the Company, and in particular its management, at any time harbored any intent to retaliate against him. To the contrary, at all times in their dealings with Mr. Blanch, members of NU's management made the decisions that affected Mr. Blanch based on their experienced business judgment, and not in an effort to retaliate against or silence Mr. Blanch.

Nor was there any motive to retaliate against Mr. Blanch for his role in attempting to resolve the Rosemount issue. Management had nothing to conceal with respect to that matter, for as recounted in detail above, NU aggressively addressed and resolved the issue as it affected NU's plants prior to the time

that Mr. Blanch claims he had been retaliated against. NU could have accomplished nothing by, and thus cannot be presumed to have possessed any ulterior motive for, the acts that Mr. Blanch has claimed were illicitly motivated. And, contrary to any suggestion that NU dealt with Mr. Blanch so as to inhibit his participation in Rosemount issues, NU from the start encouraged Mr. Blanch to spend time on this problem. Where that time went beyond what NU management believed to be prudent in terms of its own needs (as opposed to broader industry needs), it approved Mr. Blanch's pursuit of the generic issues on his own time in an unique consulting arrangement with EPRI.

An equally important basis for NU's conclusion that Mr. Blanch was not retaliated against in violation of Section 50.7 (or Section 210) is that Mr. Blanch has not been subject to any "discrimination." He has not been terminated, he has not been demoted, and he does not contend that he was passed over for a deserved promotion. (To the extent Mr. Blanch has articulated such complaints, they predated the Rosemount transmitter issue.) The matters of which he has complained -- isolated instances in which he believes he was not permitted to participate in Rosemount issues, and the like -- had no impact on Mr. Blanch's employment. For example, as soon as management became aware that Mr. Blanch perceived that he had been excluded from certain Rosemount activities, it took prompt steps to resolve Mr. Blanch's concern (see Part IV above). As for the audit, Mr. Blanch was actually cleared of any impropriety.

NU recognizes that even subtle forms of discrimination cannot be tolerated. But in Mr. Blanch's case, the alleged forms of discrimination are so subjective and intangible that they cannot reasonably be interpreted to support a conclusion that Mr. Blanch had been designated for discriminatory treatment. In short, while relations between Mr. Blanch and his superiors were strained, the terms and conditions of Mr. Blanch's employment were not negatively impacted.

Moreover, close examination of Mr. Blanch's allegations, as set forth above, demonstrates that in each instance, Mr. Blanch's management had a legitimate basis for the action taken. For example, Mr. Blanch had not been asked to participate in the March 10, 1989 meeting, not because NU desired to exclude him, but because Mr. Johnson's impression as to the scope of what was to be discussed at the meeting led him to believe that Mr. Blanch was not needed to make a technical presentation (see the discussion in Section III.C, above). Similarly, Mr. Roby's assumption of lead responsibility for the Rosemount work was an entirely reasonable and responsible assignment of authority -- nothing suggests that it was part of a scheme to deprive Mr. Blanch of responsibilities to which he could rightfully lay claim.

NU acknowledges the finding by the Department of Labor and the less succinct finding by LRS, suggesting that NU did intentionally subject Mr. Blanch to discriminatory treatment because of his involvement in Rosemount issues. As for the

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Department of Labor's findings on Mr. Blanch's Section 210 complaint, NU believes they are not supported by the facts of the case as they are now known. For example, as demonstrated above, close examination of the circumstances surrounding the IAD audits undercuts the Wage and Hour Division's preliminary finding that the audit had not been conducted in accordance with applicable procedures. Further, a fair analysis of the record precludes reliance on the LRS findings, which appear to be based primarily on Mr. Blanch's perceptions.

It is equally clear that Mr. Blanch's perceptions of discrimination were neither reasonable, on his part, nor the consequence of conduct by his management that was either improperly motivated or reckless with regard to its treatment of him. Mr. Blanch's perceptions that he had been the victim of inequitable treatment originated long before the Rosemount issue surfaced. On a number of occasions, as outlined above, he had felt slighted by management decisions to promote others to positions he believed he should have filled. At several stages in his employment, including the pre-Rosemount era, Mr. Blanch perceived that he had been denied the level of authority to which he was entitled. For this and other reasons already discussed, Mr. Blanch long ago had decided in his own mind that his superiors did not adequately recognize his talents and were not deserving of his full respect.

From Mr. Blanch's personal perspective, then, it is perhaps not surprising that he felt slighted when he did not receive

complete autonomy with regard to the Rosemount issue. However, NU firmly believes that an employee with a more balanced perspective than Mr. Blanch, and one unencumbered by longstanding diminished respect for and outrage at his superiors for perceived slights and technical wants, would not have so quickly labelled as "retaliatory" the matters of which he has complained. (In this vein, a reasonable person would not claim, as Mr. Blanch recently has, that the NRC is party to a conspiracy to harass him. See Section II.C.3, above.) By an objective measure, these episodes would not reasonably have been perceived as retaliatory.

It also appears, in hindsight, that in some of the Company's dealings with Mr. Blanch a more desirable course of action could have been taken. For example, while the audits into the activities of Mr. Blanch and two of his subordinates were motivated, respectively, by legitimate concerns regarding Mr. Blanch's subcontracting activities and his subordinates' potential time and expense fraud, management could have expended extra effort to ensure that the precise bases for the audits were promptly communicated to Mr. Blanch. But shortcomings of this magnitude are not the stuff of a violation of Section 50.7. In no instance did NU take any action concerning Mr. Blanch without a legitimate basis for the action or with reckless disregard as to whether Mr. Blanch would perceive the action as retaliatory.

VI. NO NRC ENFORCEMENT ACTION
IS WARRANTED IN THIS CASE

While we are convinced that as a matter of fact, law and policy, no violation of NRC requirements occurred, we submit that if a violation did occur, no NRC enforcement action is warranted in this case. It is clear that the NRC has great latitude in deciding whether or not to take enforcement action. In Duke Power Company (Catawba Nuclear Station, Units 1 and 2), DD-85-9, 21 NRC 1759 (1985), discussed above, the Director of the Office of Inspection and Enforcement outlined the scope of the NRC's discretion. The case involved a § 2.206 petition alleging a violation of 10 C.F.R. § 50.7. The petitioner in that case argued that the examples in the NRC's Enforcement Policy (10 C.F.R. Part 2, Appendix C) are to be strictly applied and that "civil penalties should be 'automatic' in such cases to 'punish' employers for harassment." Id. at 1771. The Director responded that:

. . . not every violation of NRC requirements warrants initiation of show-cause proceedings or imposition of civil penalties. See Petition for Emergency and Remedial Action, CLI-78-6, 7 NRC 40 (1978). Sanctions are not "automatic." The choice of enforcement sanctions for violations of NRC requirements rests within the sound discretion of the Commission based on consideration of such factors as the significance of the underlying violations and the effectiveness of the sanction in securing lasting corrective action

See also the NRC's General Statement of Policy and Procedure for Enforcement Actions, Section VII.B(6) (57 Fed. Reg. at 5805)

("the appropriate Deputy Executive Director may reduce or refrain from issuing a civil penalty or a Notice of Violation for a Severity Level II or III violation based on the merits of the case after considering the guidance in this statement of policy and such factors as the age of the violation, the safety significance of the violation, the overall performance of the licensee, and other relevant circumstances, including any that may have changed since the violation").

The NRC has exercised its discretion not to take enforcement action (even where it determined that a violation of NRC regulations had occurred) where extensive remedial actions had been taken; the potential violation was several years old; significant management changes had been instituted since the incidents in question; and the safety significance of the violation was minimal. Thus, in Niagara Mohawk (Nine Mile Point Nuclear Power Station, Unit 1), EA 89-179 (February 23, 1990), the NRC exercised its discretion with respect to imposition of a civil penalty because of the age of the violation and because significant management changes had recently been made. In Texas Utilities (Comanche Peak Station), EA 88-278 (February 28, 1989), the Commission similarly exercised its discretion by not issuing a civil penalty because the violation had occurred several years earlier, the overall safety significance was minimal, extensive corrective actions were already underway when the violation occurred, and it was unlikely that the violation would be repeated. Id. at 2. In Tennessee Valley Authority, EA 86-93

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(July 10, 1986), the civil penalty which was proposed for a violation of Section 50.7 was fully mitigated because of TVA's prompt corrective actions, which included investigation of the incident and action against the offending supervisor. And, in Commonwealth Edison Company, EA 92-019 (April 22, 1992), no civil penalty was proposed in a case involving a violation of Section 50.7 because several years had passed since the violation occurred, and because of the apparent isolated nature of the violation.

In the present case, similar factors support an NRC exercise of discretion to take no enforcement action. The incidents in question occurred over three years ago. NU management took immediate and visible remedial measures to address them. NU is confident that it has properly addressed the relevant safety issues pertaining to Rosemount transmitters and that safety was never compromised at its nuclear plants. Finally, relationships between the individuals involved have stabilized, and NU's nuclear organization has been restructured since these events occurred. A civil penalty or other enforcement sanction imposed at this time would accomplish nothing in the way of deterrence, and would send no new regulatory message. The public interest is best served in this case by leaving undisturbed the relative peace that has evolved over the last three years between Mr. Blanch and his co-workers and management chain. Enforcement action in this case would serve no useful purpose.

VII. CONCLUSION

The very suggestion that Northeast Utilities management would discriminate against anyone for raising or addressing nuclear safety issues is incompatible with the Company's historic safety ethic and aggressive pursuit of nuclear safety. Every manager against whom Mr. Blanch has levelled charges has a long and distinguished career in the nuclear industry and a deep personal commitment to nuclear safety. Not one has ever been accused of wrongdoing of any sort.

Mr. Blanch is an engineer with vision and technical perception. He is also pugnacious and judgmental, and difficult to integrate into a team. He is, in short, a management challenge. He may have disagreed with certain management actions in 1989 concerning resolution of the Rosemount issue and his involvement in that process, but his perspective is not objective or reasonable, and his spin on the facts is unfair.

The full record in this case shows that with respect to each of Mr. Blanch's allegations, management exercised reasonable prerogatives and judgment to fulfill its obligations to conduct the Company's affairs in a responsible and prudent manner. In no respect does the record fairly compel the conclusion that there

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was any intent to discriminate against Mr. Blanch. Thus, there has been no violation of NRC regulations, and enforcement action is unwarranted.

Respectfully submitted,

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