NPP CWA/ITU Negotiated Pension Plan

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December 2,2003

Jonathan G. Katz, Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, D.C. 20549-0609

Re: **File No. S7-19-03**

Dear Mr. Katz:

I am the Chairman of the Board of Trustees of the CWA/ITU Negotiated Pension Plan, a national multiemployer pension fund holding approximately $1 billion in assets for the benefit of more than 50.000 participants, retirees and beneficiaries. I am writing to the Securities and Exchange Commission (the "SEC") to commend the SEC for proposing historic new rules that could, for the first time, give institutional shareholders the ability to challenge companies' board of directors' power to handpick their own slate of nominees for director and to offer supporting comments on SEC proposal **S7-**19-03 regarding security holder director nominations.

The numerous corporate scandals that we have recently seen have revealed how unregulated conflicts of interest can compromise the independence of the very people entrusted to protect investors. In response to these governance failures and the Sarbanes-Oxley Act of 2002, the SEC has adopted a substantial number of reforms aimed at the independence of audit committees and outside auditors. and is expected to approve new exchange listing standards to further strengthen the independence of boards and their key committees. For this, the SEC should be commended. These reforms are essential to rein in the conflicts of interest that can compromise directors' loyalty to the corporation and its shareholders. **As** effective as the reforms may prove to be, they cannot. however. assure that directors will be responsive to shareholder concerns or contribute to building the long-term value of the corporations they serve. The SEC has the ability to restore genuine accountability to boardrooms by establishing rules to promote meaningful elections of directors.

As things stand now, shareholders have only a theoretical power to select directors to oversee the company on their behalf. In reality, boards of directors are dominated by incumbent directors and by management by virtue of their control of the process of nominating candidates for election to the board. Shareholders have little opportunity to suggest alternative candidates to management's nominees because, although state law permits shareholders to nominate director candidates, this right is only meaningful to shareholders willing to engage in a proxy fight, which is expensive even for the largest institutional investors. Management and incumbent directors, on the other hand, can spend company dollars to get their candidates elected.

As a result, shareholders can generally do nothing more than rubberstamp a company's nominees. To elect a director at most companies, including nine of the top ten companies on the Fortune 500, a plurality of shareholder votes is required. This means that unless shareholders can gain access to a company's proxy statement through an expensive proxy fight, shareholders can dissent from the nominated siate only by withholding their votes from the nominees. And even if the withheld shares greatly outnumber the shares voted in favor of the nominees, the nominees would still be elected. Therefore, by not voting for a director, a shareholder has done nothing more than protest the nominations. The absence of a way for shareholders to register more than an ultimately empty protest results in a self-perpetuating system with no checks and balances—a very un-democratic situation.

The proposed rules reflect the SEC's thoughtful and diligent approach to this very significant corporate reform. We strongly agree with the SEC that there should be appropriate safeguards, including, significant ownership and holding period requirements and limitations on the number of shareholder nominees. We believe these safeguards will ensure that the rules do not facilitate corporate raids or result in potentially frivolous nominees at numerous corporations. As proposed, however, the rules also contain certain barriers that would make them difficult for even the largest investors to use, and impossible to do so in a timely manner.

We strongly believe that the triggering requirements are unnecessary given the high ownership threshold required for shareholders to place nominees in the proxy statement. Moreover, the two proposed triggers create serious additional problems. First, the proposed triggers entail a two-year process, an untenable delay at a company or board in crisis. Second, the proposed 1% ownership requirement for shareholders to submit a triggering proposal is far too high. **A** shareholder seeking to introduce such aproposal at the average S&P 500 company would need to hold shares worth more than $180 million.

In addition, while we support a significant ownership requirement for placing nominees in the proxy statement to deter corporate raids or result in potentially frivolous candidates, we believe the 5% threshold is too high and prohibitive. This threshold would require a shareholder or shareholder group seeking to place nominees in the proxy statement of the average S&P 500 company to own shares worth roughly $900 million. We strongly encourage the SEC to lower the threshold to 3%, a level that would more fairly balance the SEC's concerns with the interests of corporations and their shareholders.

Shareholders and the companies they own need directors who are open and responsive to shareholder input on issues facing the company, and are willing to challenge management with tough questions

and realistically ambitious goals. It is unfortunate that under the current incumbent-dominated director election process, shareholders with a significant, long-standing stake in the company do not have any way to elect directors whom they have identified as best able to meet these fundamental standards. In order to address the inequities that currently exist, long-term shareholders should have access to company proxy cards in order to nominate directors. We commend the SEC for taking steps to reform an area where reform is long overdue.

By adopting final rules that truly give responsible long-term investors timely and effective access to the proxy the SEC can further strengthen accountability to a boardroom culture that for too long has been characterized by cozy relationships and a resulting unwillingness on the **part** of boards to challenge management. We strongly believe implementation of the new rules will reap significant benefits to shareholders, including, but not limited to, board of director independence, performance and accountability. Again, we commend the SEC on the significant steps it has taken to create greater accountability in the boardroom. Now we ask that the SEC confirm this commitment and adopt the proposed amendments to the rule as we have set forth herein.

Thank you for your time and consideration.

Sincerely yours:

William J. Boarman
Chairman

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