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C O U N S E L O R S A T L A W

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January 25, 2001

VIA HAND DELIVERY

Mr. Charles E. Mullins
Office of the General Counsel
Nuclear Regulatory Commission
One White Flint North
11545 Rockville Pike
Rockville, Maryland 20852-2738

Re: Demand for Disclosure of Information Under 10 CFR Part 9, Subpart D

Dear Mr. Mullins:

My client, the City of Lincoln, Nebraska, d/b/a Lincoln Electric System (LES) is currently engaged in a lawsuit with the Nebraska Public Power District (NPPD), an NRC licensee that owns and operates Cooper Nuclear Station. One of the issues in this lawsuit concerns NPPD's operation of Cooper from 1991 through 1995. The NRC's regulatory oversight of, performance assessments of, and actions concerning Cooper are relevant to the lawsuit.

LES recently discovered that the former Region IV Deputy Regional Administrator John M. Montgomery has been named by NPPD as one of NPPD's expert witnesses. Mr. Montgomery was employed by the NRC as the Region IV Deputy Regional Administrator during most of the period relevant to this lawsuit. In this position, and on information and belief, Mr. Montgomery personally and substantially participated in the NRC's performance assessment and regulatory oversight of Cooper Nuclear Station, and personally and substantially participated in the NRC's deliberative processes regarding the NRC's assessment and oversight of that facility. According to disclosures made by NPPD (a copy of which is enclosed), the proposed substance of Mr. Montgomery's testimony includes the following:

Beginning in 1992 with the change in resident inspectors at Cooper and with the earlier change in Region IV managers, a difference of opinion existed between headquarters and the region in regard to Cooper, resulting in Cooper receiving "mixed messages" regarding its performance. Once the NRC gave Cooper a

clear message about their performance as evidenced by the trending letters of 1994, Cooper management effectively managed the problem and because of their actions, including the DSAT, Cooper was never placed on the Problem Plant or Watch lists.

LES has several concerns regarding Mr. Montgomery's proposed testimony. These concerns include the propriety of a former NRC official "switching sides" by testifying on behalf of entity that the former official regulated, and on matters in which the former official participated personally and substantially. Moreover, the disclosures suggest that Mr. Montgomery intends to provide testimony on matters that include the deliberative processes between regional and national NRC regulators—an area of inquiry that would likely be barred to LES under traditional civil discovery rules. We believe that the actions of Mr. Montgomery and NPPD warrant a response by the NRC, to ensure that testimony is not presented in this lawsuit with the imprimatur of NRC authority, when such authority does not exist.

Accordingly, as part of its ongoing investigation and discovery of the facts relevant to the judicial proceeding *City of Lincoln, Nebraska, d/b/a Lincoln Electric System v. Nebraska Public Power District*, Docket 528, Page 069, District Court of Lancaster County, Nebraska, LES respectfully requests that the NRC provide live testimony by William D. Travers, NRC Executive Director for Operations, on the following matters:

- Whether former Region IV Deputy Regional Administrator John M. Montgomery speaks for the NRC with regard to the oversight and performance of Cooper Nuclear Station during the 1991-1995 time period.
- Whether the opinions of former Region IV Deputy Regional Administrator John M. Montgomery regarding NRC oversight of Cooper Nuclear Station constitute the official opinions of the NRC.
- Whether the NRC's publicly-available documents regarding Cooper Nuclear Station during the time period 1991 through 1995 that are on the official docket maintained by the NRC for NPPD's license to operate Cooper constitute the most accurate and complete statements of the NRC's official positions and conclusions regarding the operation of the facility during that time period.
- Whether, if asked, the NRC would encourage or discourage a former Deputy Regional Administrator from giving expert testimony on behalf of a licensee regarding matters within the former Deputy Regional Administrator's jurisdiction and regarding matters in which the former Deputy Regional Administrator participated personally and substantially while an NRC employee.

- Whether former Region IV Deputy Regional Administrator John M. Montgomery notified or received permission from the NRC to serve as an expert witness for the Nebraska Public Power District in the case *City of Lincoln, Nebraska, d/b/a Lincoln Electric System v. Nebraska Public Power District*, Docket 528, Page 069, Lancaster County District Court.

To the extent that the NRC is not agreeable to providing Mr. Travers as a live witness to testify as to these matters, LES respectfully requests that the NRC provide the requested NRC information in affidavit or other certified form. For your convenience, we have provided a proposed draft instrument to that effect.

Please contact the undersigned if you have any questions, or if you need any additional information.

Sincerely,



Brad Fagg

BF/cbm

Enclosures

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

CITY OF LINCOLN, NEBRASKA,)
 a municipal corporation,)
 d/b/a LINCOLN ELECTRIC SYSTEM,)
)
 Plaintiff,)
)
 v.)
)
 NEBRASKA PUBLIC POWER)
 DISTRICT,)
)
 Defendant.)

DOCKET 528 PAGE 69

DEFENDANT'S SECOND
SUPPLEMENTAL ANSWERS
TO PLAINTIFF'S FIRST SET
OF INTERROGATORIES

INTERROGATORY NO. 30: Identify each person whom you expect to call as an expert witness at trial, and state the following:

- a. the subject matter on which the expert is expected to testify;
- b. the substance of the facts and opinions to which is expected to testify;
- c. a summary of the grounds for each opinion.

SUPPLEMENTAL ANSWER: In further response to Interrogatory No. 30, and in accordance with this Court's of December 28, 2000, Defendant states that it may call the following witnesses to testify as experts at trial of this matter.

1. **Kris R. Nielsen**
 The Nielsen-Wurster Group, Inc.
 345 Wall Street
 Princeton, NJ 08540
 609-497-7300

The subject matter, facts and opinions, and a summary of the grounds for the opinions rendered by Mr. Nielsen, are set forth in the report of the Nielsen-Wurster Group, Inc. dated February 28, 1997, Mr. Nielsen's previous deposition testimony dated April 8 and 9, 1997, and in his previous trial testimony dated April 20, 1998. Mr. Nielsen has begun the process of reviewing his prior work and, if during the course of his preparation, the subject matter, substance of facts or opinions, or grounds for those opinions change, this answer will be supplemented.

- 2. **Patricia D. Galloway**
The Nielsen-Wurster Group, Inc.
345 Wall Street
Princeton, NJ 08540
609-497-7300

The subject matter, facts and opinions, and a summary of the grounds for the opinions rendered by Ms. Galloway, are set forth in the report of the Nielsen-Wurster Group, Inc. dated February 28, 1997, Ms. Galloway's previous deposition testimony dated April 10, 1997, and in her previous trial testimony dated April 20 and 21, 1998. Ms. Galloway has begun the process of reviewing her prior work and, if during the course of her preparation, the subject matter, substance of facts or opinions, or grounds for those opinions change, this answer will be supplemented.

- 3. **Richard H. Vollmer**
550 Moorings Circle
Arnold, MD 21212

The subject matter, facts and opinions, and a summary of the grounds for the opinions rendered by Mr. Vollmer, are set forth in his report dated February 28, 1997, his previous deposition testimony dated March 26, 1997, and in his previous trial testimony dated April 16 and 17, 1998. Mr. Vollmer has begun the process of reviewing his prior work and, if during the course of his preparation, the subject matter, substance of facts or opinions, or grounds for those opinions change, this answer will be supplemented.

- 4. **John W. Beck**
Little Harbor Consultants, Inc.
44 Nichols Road
Cohasset, MA 02025

The subject matter, facts and opinions, and a summary of the grounds for the opinions rendered by Mr. Beck, are set forth in his report dated February 28, 1997 and in his previous deposition testimony dated March 12, 1997. Mr. Beck has begun the process of reviewing his prior work and, if during the course of his preparation, the subject matter, substance of facts or opinions, or grounds for those opinions change, this answer will be supplemented.

- 5. **John Painter**
R.W. Beck, Inc.
800 N Magnolia Avenue
Suite 300
Orlando, FL 32803-3247

The subject matter, facts and opinions, and a summary of the grounds for the opinions rendered by Mr. Painter, are set forth in his report dated January 16, 1998, Bill Lamson's letter to counsel for LES dated March 30, 1998, Mr. Painter's previous deposition testimony dated February 20, 1998, and in his previous trial testimony dated April 17 and 20, 1998. Mr. Painter has begun the process of reviewing his prior work and, if during the course of his preparation, the subject matter, substance of facts or opinions, or grounds for those opinions change, this answer will be supplemented.

6. William S. May

Utility Systems Associates, Inc.
4675 Ponte Vedra Drive, Suite 100
Marietta, GA 30067-4659

The subject matter, facts and opinions, and a summary of the grounds for the opinions rendered by Mr. May, are set forth in his report dated January 16, 1998, Bill Lamson's letters to counsel for Plaintiff dated March 30 and April 14, 1998, Mr. May's previous deposition testimony dated February 11, 1998, and in his previous trial testimony dated April 20, 1998. Mr. May has begun the process of reviewing his prior work and, if during the course of his preparation, the subject matter, substance of facts or opinions, or grounds for those opinions change, this answer will be supplemented.

In addition, on January 3, 2001, Mr. May obtained a copy of PROMOD III Version 31.66, which is the version of PROMOD used by LES' Expert Kenneth Slater in his analysis. Mr. May is using the program to continue his analysis of the work previously performed by Mr. Slater. The results of Mr. May's analysis will be furnished to the Plaintiff when it is complete.

7. John Montgomery

RR 4, Box 87AA
Crockett, TX 75835
936-544-4614

The subject matter, facts and opinions, and a summary of the grounds for the opinions rendered by Mr. Montgomery, to date, are set forth below. Mr. Montgomery is continuing his analysis and if during the course of his work, the subject matter, substance of facts or opinions, or grounds for these opinions change, this answer will be supplemented.

1. The lack of mismanagement by NPPD during the period leading up to and during the 1993 and 1994/1995 outages.

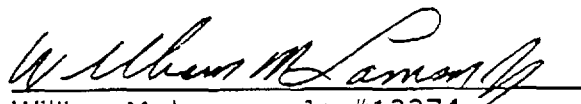
2. That NPPD operated Cooper at all times relevant to the instant case efficiently and economically consistent with good business and utility operating practice.
3. To the extent the management of Cooper erred, they were not outside the acceptable range for the nuclear utility industry.
4. The response of NPPD management during the 1994/1995 outage was prompt, decisive and effective in getting the plant back on line in a minimum amount of time.
5. The NRC regulatory environment from the late 1980's to the mid 1990's underwent a change from compliance-based to performance-based regulation, resulting in the industry as a whole having a difficult time predicting what would satisfy the regulator given the regulator's lack of communication of this intent.
6. It was not uncommon for nuclear power plants to be scrutinized by the NRC resulting in a number of plants being placed on the Watch or Problem Plant lists.
7. Poor communication of the bases for NRC positions and complex interpretations contributed to an unpredictable regulatory environment with different basic interpretations by the regulator and industry. An earlier recognition of this difference and the application of probabilistic risk methodology by the regulator would have resulted in no civil fines.
8. Beginning in 1992 with the change in resident inspectors at Cooper and with the earlier change in Region IV managers, a difference of opinion existed between headquarters and the region in regard to Cooper, resulting in Cooper receiving "mixed messages" regarding its performance. Once the NRC gave Cooper a clear message about their performance as evidenced by the trending letters of 1994, Cooper management effectively managed the problem and because of their actions, including the DSAT, Cooper was never placed on the Problem Plant or Watch lists.
9. Given the complexity and difficulty inherent in the operation of a nuclear power plant, coupled with a changing political environment, the appropriate standard for management adequacy is to look at the overall record of a plant over a significant period of time. The occurrence of issues or events is not in and of itself mismanagement; in judging management, one should examine the issue or event and how management responded.

10. The commercial nuclear power industry has developed a self-critical culture that is unique and, most uniquely, it is shared publically without thought of adverse actions. Tough self criticism is viewed as a positive indicator of management by the industry, the NRC and INPO. The self assessment measures against the highest possible standard. The DSAT in his opinion, while criticizing specific functions does not mean other functions were not consistent with the performance of a large segment of the industry. As examples, both the SRAB and the Operating Experience Review Programs were criticized in the DSAT, but in Mr. Montgomery's opinion, were not mismanaged.
11. With the broader use of probabilistic risk assessment and in today's reformed regulatory environment, Cooper would not have received the fines or CAL's it experienced in the mid-1990's time frame. That method of regulation has been updated by the NRC and is no longer in use.

DATED this 12th day of January, 2001.

NEBRASKA PUBLIC POWER DISTRICT,
Defendant,

By:



William M. Lamson, Jr. #12374
David J. Schmitt, #19123
LAMSON, DUGAN & MURRAY, LLP
10306 Regency Parkway Drive
Omaha, NE 68114-3743
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and

Laurence V. Senn, Jr.
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1185 Avenue of the Americas
New York, NY 10036-4003
(212) 556-2100

and

Robert A. Green
John R. McPhail
Nebraska Public Power District
P.O. Box 499
Columbus, NE 68602-0499

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served upon the attorneys designated below in the manner specified, this 12th day of January, 2001:

Via U.S. Mail

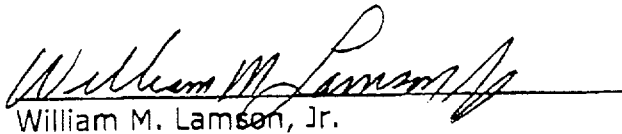
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Brad Fagg
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1800 M Street NW
Washington, DC 20036


William M. Lamson, Jr.

AFFIDAVIT OF WILLIAM D. TRAVERS

STATE OF MARYLAND)
)
COUNTY OF MONTGOMERY) ss.

1. I am the current Executive Director for Operations, Nuclear Regulatory Commission (NRC). I am located at the NRC's national headquarters in White Flint, Maryland.

2. I have been informed that a former NRC Region IV Deputy Regional Administrator, John M. Montgomery, has been identified as an expert witness for one of the parties in the civil lawsuit entitled *City of Lincoln, Nebraska, d/b/a Lincoln Electric System v. Nebraska Public Power District*, Docket 528, Page 069, District Court of Lancaster County, Nebraska.

3. Former Region IV Deputy Regional Administrator John M. Montgomery does not speak for the NRC with regard to the oversight and performance of Cooper Nuclear Station during the 1991-1995 time period.

4. The opinions of former Region IV Deputy Regional Administrator John M. Montgomery regarding NRC oversight of Cooper Nuclear Station do not constitute the official opinions of the NRC.

5. The NRC's publicly-available documents regarding Cooper Nuclear Station during the time period 1991 through 1995 that are on the official docket maintained by the NRC for NPPD's license to operate Cooper constitute the

most accurate and complete statements of the NRC's official positions and conclusions regarding the operation of the facility during that time period.

6. Had it been asked, the NRC would have discouraged a former Deputy Regional Administrator from giving expert testimony on behalf of a licensee regarding matters within the former Deputy Regional Administrator's jurisdiction and regarding matters in which the former Deputy Regional Administrator participated personally and substantially while an NRC employee.

7. It is my understanding that former Region IV Deputy Regional Administrator John M. Montgomery did not notify or receive permission from the NRC to serve as an expert witness for the Nebraska Public Power District in the case *City of Lincoln, Nebraska, d/b/a Lincoln Electric System v. Nebraska Public Power District*, Docket 528, Page 069, Lancaster County District Court.

FURTHER AFFIANT SAYETH NOT.

William D. Travers

Subscribed and sworn to before me this
_____ day of _____, 2001.

Notary Public