

D901012

The Honorable Kenneth M. Carr
Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Chairman Carr:

We have your memorandum of August 1, 1990, dealing with legal services for the Advisory Committee on Reactor Safeguards. We wish to comment on the implication in your memorandum that the ACRS role is to provide "scientific and technical" advice to the Commission and to spell out a bit more carefully the basis for the position taken by the ACRS in a letter to you dated July 17, 1990.

The basic documents that specify the ACRS duties are Section 29 of the Atomic Energy Act, as amended, and the provisions contained in 10 CFR 1.13. You imply in your memorandum that these documents define the ACRS role as one of giving "scientific and technical advice" to the Commission, but the fact is that no such language is contained in either. To the contrary, both documents refer to advice on a variety of safety-related matters. Until now no Commission and no Chairman have defined limits to this assignment.

Although the July 17 letter called this matter to your attention, it now appears that it would be helpful to explain more carefully just why it is important to reactor safety that we have the freedom to explore (including the use of appropriate consultants) all those aspects of a safety-related question that we deem important. The point made in the July 17 letter is that independence only on narrowly technical matters is unduly limiting.

The nub of the issue is that reactor safety is a complex mix of technical, procedural, human, and legal matters. For any given safety question one or another of these factors may dominate, and to limit the areas of investigation in advance is to seriously impair the ability of the Committee to function in its statutory role. Perhaps some examples will help.

In 1986 the interpretation of the backfit rule was a pressing issue, involving both the extent to which a cost-benefit analysis could be required as justification for a backfit, and the definition of adequate protection. The Commission had already received a report from OGC on these matters, but the Committee felt that, in its role as an independent advisor to the Commission, it required a separate analysis. The Committee then engaged an outside law firm to study the issues on its behalf, and that study materially contributed to its understanding. In this case, the legal issues were inseparable from the technical ones.

Though we have yet to report to you on this, we have recently had a series of briefings on the criteria the staff has used to order a plant shut down and to permit it to restart. This

discussion has raised, in some of our minds, serious questions about accountability for each of these decisions. Both for shutdown and for restart, the staff criteria were highly personal and subjective in areas (like "management culture") that lack explicit standards. Whether it is in the interests of nuclear safety for the licensee to be forced to simply placate the staff under these conditions is at best questionable. Certainly the staff has limited expertise in such areas.

These are two (of many that could have been furnished) examples of important safety-related matters, which are not narrowly "scientific and technical." The Committee is required by both law and conscience to advise you about all aspects of safety-related matters, without topical constraints. This will occasionally require that we seek outside consultation on a variety of subjects when a second opinion seems appropriate, even though the advice available from your staff may well be competent. (Such outside consultation may well involve legal matters.) After all, it is the staff that advises you, and our independence is illusory if we are confined to that same staff for our own inputs.

Once more we ask you to take these matters seriously -- they go to the heart of the relationship between the Commission and the Committee. We do not raise them lightly, and urge you to reconsider the position taken in your memorandum of August 1, 1990.

Additional comments by ACRS Members Carlyle Michelson and Charles J. Wylie, and by Chester P. Siess are presented below.

Sincerely,

Harold W. Lewis
Acting Chairman

Additional Comments by ACRS Members Carlyle Michelson and Charles J. Wylie

It is our position that Chairman Carr's memorandum of August 1, 1990, constitutes an adequate reply to the ACRS letter of July 17, 1990. We believe that the ACRS is not constrained in pursuit of its responsibilities as defined by the Atomic Energy Act and by Federal regulations. If it should require legal assistance concerning a specific matter, the Office of the General Counsel is ready and willing to support such a need. If the Committee should feel that independent legal assistance is essential, the Commission has ensured that such a need can be brought to its attention for resolution. To our knowledge, the Committee has never been encumbered in its efforts to find and retain outside scientific or technical assistance. It is our view that this matter has already achieved a proper closure and should be dropped.

Additional Comments by ACRS Member Chester P. Siess

I cannot agree with my colleagues that my ability to provide advice to the Commission on matters of reactor safety is seriously impaired by anything you wrote in your memorandum of August 1, 1990.