

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

|                                    |   |                    |
|------------------------------------|---|--------------------|
| In the Matter of                   | ) |                    |
| PORTLAND GENERAL ELECTRIC COMPANY, | ) | Docket No. 50-344  |
| <u>ET AL.</u>                      | ) | (Control Building) |
| (Trojan Nuclear Plant)             | ) |                    |

NRC STAFF'S RESPONSE TO INTERVENORS' MOTION TO  
REOPEN PHASE I EVIDENTIARY HEARINGS, REVOKE INTERIM  
OPERATION AUTHORIZATION AND COMPEL FULL DISCLOSURE

I. Introduction

By motion dated December 8, 1979, Intervenors Eugene Rosolie and Nina Bell (Intervenors) requested that the Atomic Safety and Licensing Board in the captioned proceeding (Licensing Board or Board):

- 1) rescind its Order of December 21, 1979 authorizing interim operation of the Trojan facility;
- 2) reopen Phase I proceedings to consider the seismic adequacy of the Control Building Complex, its piping, equipment, systems and components;
- 3) require the full disclosure by the Licensee and the NRC Staff of all matters related to the seismic adequacy of the Control Building Complex and systems therein;
- 4) require the facility to remain in the cold shutdown condition pending the issuance of a new decision on interim operation; and

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- 5) require full disclosure by the Licensee and NRC Staff of security problems at Trojan.

The actions requested in items (1) to (4) above are directed toward Phase I of the captioned proceeding on interim operation of the as-built Control Building Complex. The action requested in item (5) above is directed toward Phase II of the proceeding on the adequacy, scope and timeliness, from a safety standpoint, of the proposed modifications to bring the Control Building into substantial compliance with the requirements of the Trojan operating license.

The NRC Staff's response to this motion is set forth below. For the reasons enumerated, it is the Staff's position that Intervenors' motion should be denied.

## II. NRC Staff's Response

### A. Actions Requested With Regard to Phase I on Interim Operation

#### 1. Licensing Board Jurisdiction Over Interim Operation

Intervenors argue that the Licensing Board retains full jurisdiction with regard to all aspects of interim operation and that the Board is, therefore, empowered to order the facility to remain shutdown and to reopen the Phase I hearing on the safety of interim operation. While Intervenors acknowledge that the Phase I decision authorizing interim operation has become final agency action, they assert that bifurcation of the Control Building proceeding into two distinct phases was nothing more than a matter of convenience and

that, as such, the Licensing Board's jurisdiction was unaffected by the finality that has attached to Phase I.<sup>1/</sup>

The Staff submits that the Intervenors are incorrect and that the Licensing Board does not retain unlimited jurisdiction and authority to act with regard to interim operation but that, in fact, because the Phase I decision on interim operation has become final agency action, it retains jurisdiction on interim operation only with regard to interim operation during actual performance of the modification work to correct the Control Building design deficiencies which are the subject of this Control Building proceeding.

The commencement and termination of a licensing board's jurisdiction is governed by 10 CFR § 2.717(a)<sup>2/</sup> which provides, in part, that:

[t]he presiding officer's jurisdiction in each proceeding will terminate upon the expiration of the period within which the Commission may direct that the record be certified to it for

<sup>1/</sup> Intervenors contend that the continuing jurisdiction of the Licensing Board over interim operation is supported by the Appeal Board's decision in Philadelphia Electric Company, et al. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-389, 5 NRC 727 (1977). That decision is simply inapplicable here. For one thing, the initial decisions involved in that case were still pending before the agency (one initial decision had been remanded by the Court of Appeals and the Commission remanded the matter to the Licensing Board; the other initial decision was pending before the Appeal Board on exceptions) and had not become final agency actions. In addition, the Appeal Board explicitly stated that because of a lack of agreement among the Appeal Board members, nothing stated by the Appeal Board with regard jurisdiction of the Licensing Board after a remand can be taken as holdings of the Appeal Board in that decision.

<sup>2/</sup> Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-235, 8 AEC 645, 647 (1974).

final decision, or when the Commission renders a final decision, or when the presiding officer shall have withdrawn himself from the case upon considering himself disqualified, whichever is earliest.<sup>3/</sup>

Section 2.717(a) makes it clear that once a decision becomes final agency action, it is not within the power of any Licensing Board to reopen the proceeding for any reason since the terminal point has been reached when the final agency decision has been rendered. Houston Lighting and Power Company, et al. (South Texas Project, Units 1 and 2), ALAB-381, 5 NRC 582, 590-91 (1977). Thus, where an initial decision has been issued and affirmed by the Appeal Board and the time within which the Commission could review has expired, the jurisdiction of the adjudicatory boards over the subject matter of the decision is at an end. Washington Public Power Supply System, et al. (WPPSS Nuclear Project Nos. 3 and 5), ALAB-501, 8 NRC 381, 382 (1978).

This principle of finality and termination of jurisdiction applies in equal measure where an initial decision has been rendered and becomes final with regard to some of the issues in a proceeding but were the adjudicatory board retains jurisdiction over other issues which remain to be litigated. In Public

<sup>3/</sup> In fact, an Appeal Board has indicated that a Licensing Board may no longer have jurisdiction over the subject matter of a decision once that decision is before the Appeal Board for review. See Georgia Power Company (Alvin W. Vogtle Nuclear Plant, Units 1 and 2), ALAB-276, 1 NRC 533 (1975) where a decision issued by a Licensing Board nearly a year earlier was pending before the Appeal Board which stated "[a]lthough the Licensing Board no longer has jurisdiction over the licensing proceeding, we still do." 1 NRC at 536.



Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2), ALAB-513, 8 NRC 694, 695 (1978), the Licensing Board rendered an initial decision authorizing issuance of construction permits. The decision was affirmed by the Appeal Board except as to the issues on alternative sites and radon (over which the Appeal Board retained jurisdiction). The Appeal Board's decision was affirmed by the Commission, and the construction permits were issued. Subsequently, an intervenor filed a motion to reopen the proceedings on the ground that there was significant new information which brought into question the permittees' financial qualifications. The Appeal Board summarily denied the motion on the ground that the matter of financial qualifications had been adjudicated, that the decision thereon had become final agency action, and that, therefore, no adjudicatory board retained jurisdiction to consider it further, despite the fact that the Appeal Board had retained jurisdiction over certain other matters in the proceeding.<sup>4/</sup>

The matter of finality and jurisdiction was discussed at length by the Appeal Board in Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-551, 9 NRC 704 (1979). Therein, the

<sup>4/</sup> In a nearly identical case, an intervenor moved to reopen a safety hearing months after the initial decision had been issued, affirmed by the Appeal Board and became final agency action through the Commission's election not to review. Although the Appeal Board had expressly retained jurisdiction over an issued in the proceeding and that issue remained to be litigated, the Appeal Board denied the motion for lack of jurisdiction on the ground that the matters to which the motion was directed had become final agency action. The Appeal Board indicated that the responsibility for such matters lies with the Staff and that the proper recourse is a petition to the Director of Nuclear Reactor Regulation under 10 CFR §§ 2.206, 2.202. Public Service Co. of Indiana, Inc (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-530, 9 NRC 261, 262 (1979).

Appeal Board made it clear that where finality has attached to some but not all issues in a proceeding, the jurisdiction of a board to entertain a new matter depends on the existence of a reasonable nexus between that matter and the issues remaining before the board. Jurisdiction over a matter on which there has been final agency action may only be resurrected in the board by a remand from a court and, in that event, jurisdiction is shaped by the remand order. 9 NRC 706-09.

[I]rrespective of whether a reopening of a determined issue, or instead the raising of a new issue not earlier considered is involved, the concept underlying the finality doctrine - that litigation must come to an end at some point - comes into play. In both instances, the decisive factor is whether, except for those limited issues as to which jurisdiction has been expressly retained, the case has been denied. 9 NRC 709.

The rules as to finality and board jurisdiction apply irrespective of the type of proceeding (i.e. construction permit, operating license or operating license amendment proceeding) which is involved. North Anna, 9 NRC 709 at n. 7. Accordingly, they are as applicable to the Trojan Control Building proceeding as they are to the construction permit and operating license proceedings discussed above.

While it is true that bifurcation of Phase I and Phase II evidentiary hearings was a matter of convenience in handling different and separable issues

(interim operation of the as-built, unmodified Control Building versus adequacy of the proposed modifications from a safety standpoint), it is equally true that finality of agency action has attached to the Licensing Board's decision and determination in Phase I that interim operation is safe and should be authorized. That decision was affirmed in all respects by the Appeal Board,<sup>5/</sup> and, after an extension by the Commission,<sup>6/</sup> the time within which the Commission might elect to review the decision expired on May 17, 1979. Thus, "irrespective of whether a reopening of a determined issued, or instead the raising of a new issue not earlier considered"<sup>7/</sup> is involved, the Licensing Board's jurisdiction to consider interim operation matters came to an end on May 17, 1979, except insofar as the Board "expressly" retained jurisdiction.<sup>8/</sup>

The degree to which the Licensing Board retains jurisdiction over interim operation is, in the Staff's view, limited and goes only so far as interim operation may be affected by the proposed modifications to the Trojan Control Building which are the subject of Phase II of this proceeding. In the Partial Initial Decision authorizing interim operation, the Licensing Board

5/ Portland General Electric Company, et al. (Trojan Nuclear Plant), ALAB-534, 9 NRC 287 (1979).

6/ Commission Order (unpublished) dated May 3, 1979, extending the time in which Commission might review ALAB-534 to May 17, 1979.

7/ North Anna, supra 9 NRC at 709.

8/ The Appeal Board in both North Anna, ALAB-551, 9 NRC 704 at 709, and Marble Hill, ALAB-530, 9 NRC 261 at 262, n. 2, indicated that for jurisdiction over certain issues to service after the decision in which those issues were, or could have been, considered becomes final, such jurisdiction must be "expressly" retained.

directed that the facility be operated in accordance with the operating license amendment set forth in the Board's Order accompanying the Partial Initial Decision.<sup>9/</sup> This license amendment, which was incorporated into the Trojan Operating License as License Condition 2.C.(10), provides that "...[u]pon the effective date of this amendment to Facility Operating License No. NPF-1, and until further order of the Atomic Safety and Licensing Board issued in conjunction with the decision on the scope and timeliness of modifications from a safety standpoint required by the Order for Modification of License of May 26, 1978..." (LBP-78-40, 8 NRC 717, 747, emphasis added), the facility is to be operated in accordance with certain specified conditions. The underlined language above indicates that the Licensing Board has retained jurisdiction over that portion of interim operation which has a bearing on "the scope and timeliness of modifications from a safety standpoint required by the Order for Modification of License of May 26, 1979;" that is, whether the facility should be allowed to operate during actual performance of any modifications that are authorized in Phase II of this proceeding. The Appeal Board itself recognized this when, in affirming the Partial Initial Decision, it stated

... the Licensing Board decided nothing more than that the facility might operate until such time as it entered a further order in conjunction with the decision on the scope and timeliness of

<sup>9/</sup> Portland General Electric Company, et al. (Trojan Nuclear Plant); LBP-78-40, 8 NRC 717, 746 (1978).



modifications from a safety standpoint ..." (8 NRC at 747)

In other words, it remains to be determined below not merely the nature and timing of the modifications, but also whether (and, if so, on what conditions) the facility should be allowed to operate while the work is being performed. Portland General Electric Company, et al. (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 290 at n. 7 (emphasis added).

Thus, it is apparent that no jurisdiction remains in the Licensing Board to reopen the interim operation proceeding, reconsider its partial initial decision on interim operation in light of new or additional information which has arisen since the interim operation decision became final agency action, or impose new and different license conditions on interim operation, except insofar as additional license conditions may be necessary with regard to operation during the actual performance of any modifications authorized in Phase II.<sup>10/</sup> No nexus has been shown by Intervenors between the matters complained of in the motion to reopen and the need for conditions on operation during performance of actual modification work.

<sup>10/</sup> Of course, since Phase II of this proceeding remains to be completed, the Licensing Board retains the jurisdiction to consider, and take action with regard to, the timing of completion of modifications that would bring the Control Building into substantial compliance with the original license requirements. For example, if implementation and completion of modifications to restore seismic capacity to the Control Building were to be unduly delayed and such delay, in and of itself, gave rise to a safety concern over operation of the plant, the Licensing Board could impose requirements and conditions on operation prior to completion of the modifications in order to alleviate that time-dependent safety problem.

All of this clearly does not mean that, because the Licensing Board may retain only very limited jurisdiction with regard to interim operation, new information on the safety of interim operation, safety problems regarding interim operation or the Licensee's failure to comply with the interim operation license conditions and requirements will go unattended. Rather, such matters fall within the Staff's bailiwick instead of the Licensing Board's. North Anna supra, ALAB-551, 9 NRC 704, 709. Even where a licensing action remains before an adjudicatory board and has not become final agency action terminating or severely limiting the board's jurisdiction, it is, in the first instance, an enforcement function (for enforcement officials) and not an adjudicatory function to make certain that conditions imposed as a result of the licensing action are being satisfied. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2), ALAB-356, 4 NRC 525, 536 (1976).<sup>11/</sup> The Commission's regulatory staff has the continuing duty and responsibility under the Atomic Energy Act of 1954 to assure that

<sup>11/</sup> Intervenors cite Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-459, 7 NRC 179 (1978) as establishing that a presiding licensing board has an enforcement function and jurisdiction to impose civil penalties. Examination of that case as well as the licensing board decision which it affirmed (LBP-77-52, 6 NRC 294, 301-02 (1977)) reveals that, in fact, the Staff had imposed a civil penalty on an applicant for violation of the Commission's regulations on activities prior to issuance of a limited work authorization (LWA). Certain intervenors then urged the licensing board to withhold the LWA and construction permit to further punish the applicant for the violation for which it was fined. The licensing board refused because it found that the fine imposed by the Staff was the appropriate sanction and there was no need to take the actions requested by the intervenors. The Appeal Board affirmed, holding that the licensing board acted within its jurisdiction in this regard. This hardly establishes that a licensing board may take enforcement actions with regard to matters over which it no longer retains jurisdiction because such matters have become final agency actions.

licensees comply with applicable requirements, Duke Power Company (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-143, 6 AEC 623, 627 (1975), and it is for the Staff, not an adjudicatory board, to monitor an applicant's (or licensee's) performance and take vigorous action when necessary. Duquesne Light Company, et al. (Beaver Valley Power Station, Unit 2), ALAB-240, 8 AEC 829, 839 (1974).<sup>12/</sup> Obviously, once an agency action becomes final and jurisdiction of an adjudicatory board is lost, the ability to take further agency action with regard to safety reposes only in the Staff or the Commission itself. The Staff, for its part, can review the safety matter on an informal basis; beyond that, either on his own initiative or upon the request of any individual, the Director of Nuclear Reactor Regulation is empowered to institute a show cause proceeding looking to the modification, suspension or revocation of a particular license under 10 CFR ss 2.202 or 2.206. North Anna supra, ALAB-551, 9 NRC 704, 709.<sup>13/</sup>

In summary, the Licensing Board's jurisdiction with regard to interim operation has terminated except as to the need for conditions on operation during performance of the modification work itself. Monitoring of the licensee's

<sup>12/</sup> The Appeal Board has emphasized that the Commission's Rules of Practice contemplate that primary responsibility for monitoring the conduct of utilities under their licenses is with the NRC Staff and has expressed some doubt as to whether a Licensing Board is the proper forum to entertain ab initio a complaint that a licensee is engaging in activities not authorized by its operating license. Portland General Electric Company, et al. (Trojan Nuclear Plant), ALAB-451, 6 NRC 889, 891 at n. 3 (1977).

<sup>13/</sup> The Director of Nuclear Reactor Regulation can also issue an order for modification of license under 10 CFR s 2.204. It was just such an order, issued on May 26, 1979, that gave rise to the instant proceeding.

compliance with the interim operation license conditions and of plant safety during interim operation is the duty of the Staff and the Licensing Board is without power in this regard. Accordingly, Intervenors' motion should be denied insofar as that motion seeks to have the Licensing Board (1) rescind its December 21, 1979 Order authorizing interim operation, (2) reopen Phase I proceedings, and (3) require the facility to remain in the cold shutdown condition pending a new decision on interim operation.

2. Basis for Reopening Phase I Proceeding and Taking Other Actions With Regard to Interim Operation

While, in the Staff's view, it is clear that the Licensing Board lacks jurisdiction with regard to interim operation as set forth above, it is also the Staff's view, assuming arguendo the Board retains jurisdiction over all aspects of interim operation, that the Intervenors have failed to set forth sufficient bases to warrant the actions requested with regard to interim operation.

Intervenors assert that new information has come to light showing that the Licensee has failed to comply with the condition on interim operation requiring that safety-related piping in the Control/Auxiliary/Fuel Building Complex be qualified to withstand earthquakes up to and including the 0.25g SSE.

Specifically:



- 1) Based on evaluations conducted pursuant to IE Bulletin #79-14,<sup>14/</sup> the Licensee identified a nonconformance in which a floor-mounted sliding support in the Containment Spray System had slipped off its base.<sup>15/</sup> (Rosolie/Bell Motion, paragraph 10).
- 2) From IE Bulletin #79-14 evaluations, the Licensee identified a nonconformance involving an uncompleted restraint in the Auxiliary Feedwater System, (Rosolie/Bell Motion, paragraph 10).
- 3) The Licensee identified an apparent inadequacy with regard to block walls in the emergency diesel generator rooms. (Rosolie/Bell Motion, paragraph 13).
- 4) In LER 79-15, dated November 4, 1979, the Licensee identified a problem in which certain masonry block walls were inadequately designed to withstand seismic reaction forces imposed by piping

<sup>14/</sup> This IE Bulletin requests licensees to verify that input values used in the seismic analyses of safety-related piping is consistent with, and accurately reflects, the actual as-built piping systems. Copies of IE Bulletin #79-14, were forwarded to the Licensing Board and parties in the instant proceeding in a Staff letter of July 25, 1979. The Licensee's initial response to the Bulletin as well as the Licensee's August 31, 1979 response were forwarded in a Staff letter of September 14, 1979.

<sup>15/</sup> This nonconformance was the subject of Licensee Event Report (LER) 79-13, transmitted to the Licensing Board and parties in a Staff letter of September 26, 1979.



attached to such walls.<sup>16/</sup> Because of this, four pipe supports that were previously modified, pursuant to the interim operation license condition 2.C(10).c, to qualify for the as-built floor response spectra in the Control Building Complex had to be further modified. (Rosolie/Bell Motion, paragraphs 11, 12, 14).

Intervenors claim that all of these problems and non-conformances should have been revealed and resolved in the Phase I proceeding, that their existence shows a possible need for reopening the Phase I proceeding and reanalyses (Rosolie/Bell motion, paragraph 19), and that, because of these problems, the interim operation proceeding should be reopened and the plant required to remain shut down pending resolution of these problems in the reopened proceeding. In the Staff's view, Intervenor's arguments are without merit because the problems and non-conformances listed above are either wholly unrelated to the Control Building proceeding (and, therefore, beyond the Licensing Board's jurisdiction to consider) or may be appropriately addressed by the Office of Inspection and Enforcement and the Staff (wherein the continuing monitoring of plant safety and compliance with license requirements lies) and do not warrant reopening.

<sup>16/</sup> The Licensing Board and parties were initially informed of this matter in the Staff's status report letter of October 26, 1979. Additional information available to the Staff was forwarded in Board Notification documents dated November 13 and November 30, 1979. Supplement 2 to LER 79-15 on this problem was transmitted to the Board and parties by the Licensee on December 7, 1979. Additional information was provided in the Staff's December 7, 1979 response to the Licensing Board's Order of November 30, 1979 and in the Licensee's answers to five Staff questions on the problem which were forwarded by the Licensee to the Licensing Board and all parties on December 13, 1979.

As to the floor-mounted sliding support in the Containment Spray System, this is located at approximately elevation 16' in a pipe-way that is located above the corridor at elevation 5' in the Auxiliary Building. This support, which is located well below elevation 45', was not a support which was subject to requalification for interim operation since requalification was required only for supports above elevation 45' (grade level) where the Control Building design deficiencies resulted in a revised floor response spectra (Portland General Electric Company, et al. (Trojan Nuclear Plant), LBP-78-40, 8 NRC 717 at 738, paragraphs 54 and 55). Thus, this support was unaffected by the Control Building design deficiencies and its status is unrelated to the Control Building proceeding.

With regard to the uncompleted restraint in the Auxiliary Feedwater System, the Auxiliary Feedwater System itself is located in the Turbine Building and facade near the Containment Building, and the uncompleted restraint is located in the facade area itself. These areas are separate and distinct from the Control Building Complex and are unaffected by the Control Building design deficiencies which are the subject of the instant proceeding. Similarly, the block walls in the emergency diesel generator room are located entirely within the Turbine Building and are wholly unaffected by the Control Building design deficiencies. Consequently, these problems would not have been discovered in the analyses and reviews conducted in support of interim operation. Moreover, these problems, having no bearing or effect on, and being unaffected by, the Control Building design deficiencies, are beyond the scope of the Control Building proceeding and, thus, are outside the Licensing Board's jurisdiction.

Finally, it is the Staff's view that the piping reaction force problem, while having a bearing on the Control Building proceeding, may appropriately be addressed by existing license requirements and conditions and that resolution of this problem is, in the first instance, properly an enforcement function rather than a matter requiring reopening of the interim operation hearing. Because of the Control Building design deficiencies, the floor response spectra above ground level (elevation 45') for the as-built Control Building Complex differed from that which was originally licensed. Consequently, as a result of the Phase I proceeding, the Licensee was required, prior to interim operation, to modify those safety-related piping systems in the Control Building Complex which were not qualified for the as-built response spectra in order to properly qualify them. (Partial Initial Decision, Part IV(3), LBP-78-40, 7 NRC 717 at 748, incorporated into the Trojan operating license as license condition 2.C(10)c). These modifications were the direct result of the Control Building design deficiencies and, because of those design deficiencies, were required to qualify certain piping systems to withstand earthquakes up to and including the 0.25g SSE. To the extent that the modifications performed pursuant to this license condition did not fully qualify a piping system to withstand the 0.25g SSE because of the reaction force problem, this license condition was not satisfied. The Staff agrees that prior to resumption of plant operation, this license condition must be satisfied. However, as set forth previously,<sup>17/</sup> it is an enforcement function for the Staff, and not an adjudicatory function for the Licensing Board, to assure that conditions imposed as a result of a licensing action

17/ See text accompanying footnotes 11-13 supra.

are being satisfied. In addition, the Staff and the Office of Inspection and Enforcement are currently investigating the extent to which the reaction force problem may affect the strength of walls required for seismic capacity in the Control Building Complex. The Office of Inspection and Enforcement issued an immediate action letter on October 22, 1979, supplemented on December 20, 1979, documenting the Licensee's agreement to remain shut down until the reaction force problem is resolved and the Staff is continuing to evaluate the proposed resolution to the problem.<sup>18/</sup>

3. Full Disclosure of Matters Related to Seismic Adequacy of the Control Building Complex

Intervenors also request that the Licensing Board compel full disclosure of all matters related to the seismic adequacy of the Control Building Complex and systems therein. (Rosolie/Bell Motion, paragraphs 16-19). In this regard, the Staff has made substantial efforts on a continuing bases since issuance of the Licensing Board's Partial Initial Decision on Interim Operation to keep the Board and parties aware of any information having any bearing whatsoever on the seismic adequacy of the Control Building Complex and systems therein of which the Staff is aware. Included among the numerous Board notification items forwarded by the Staff are:

- 1) Staff letter transmitting Lewis Report, 12/27/78;
- 2) Summary of Staff-Licensee meeting on proposed modifications, 12/28/78;

<sup>18/</sup> See the documents cited in footnote 16 supra.



- 3) Operating license amendments issued since Partial Initial Decision: amendment 36, 2/21/79; amendment 37, 2/26/79; amendment 38, 2/27/79; amendment 39, 3/9/79; amendment 40, 3/13/79; amendment 41, 6/22/79; amendment 42, 11/8/79;
- 4) Staff letter transmitting IE Bulletin No. 79-02 on pipe support base plate designs, 3/21/79;
- 5) Staff letter on new information with regard to fire tests, Lewis Committee Report, 3/30/79;
- 6) Staff letter on new information on iodine behavior during steam generator accidents and accumulator delivery for ECCS, 4/10/79;
- 7) Staff letter transmitting information on the transport of radio-nuclides in urban environs, 5/15/79;
- 8) Staff trip report for site visit to Trojan and meeting with Bechtel on proposed modifications, 6/20/79;
- 9) Staff letter transmitting PGE response to IE Bulletin No. 79-02, 7/12/79;
- 10) Staff letter transmitting IE Bulletin No. 79-14 on accuracy of information used in pipe seismic analyses, 7/25/79;
- 11) Staff letter transmitting additional PGE response to IE Bulletin No. 79-02, 8/21/79;
- 12) Staff letter transmitting PGE response to IE Bulletin No. 79-14, 8/22/79
- 13) Staff letter transmitting Supplement 1 to IE Bulletin No. 79-02, Supplement to IE Bulletin No. 79-14 and additional PGE response to IE Bulletin No. 79-14, 9/14/79;



- 14) Staff letter transmitting LER 79-13 on nonfunctional seismic restraint, 9/26/79;
- 15) Staff status report of 11/2/79 including minutes of Staff-PGE meeting on proposed modifications, 11/2/79;
- 16) Staff board notification documents on reaction force problem, 11/13/79, 11/30/79.

The Staff is fully aware of its duty to keep the Licensing Board and parties informed of new matters which may have some bearing on the Control Building proceeding and, in the Staff's view, the effort at board notification cited above is strong evidence of this. The Staff will continue to keep the Board and parties fully informed during the pendency of the Control Building proceeding, just as it has in the past.

B. Actions Requested With Regard to Phase II on the Proposed Modifications

At the prehearing conference held in this proceeding on March 29, 1979, Intervenors entered into an agreement, proposed by the Licensing Board, with regard to Coalition for Safe Power's contention 18 on the effects of the proposed modifications to the Control Building on security at the facility. Under that agreement, the NRC Staff was to evaluate the facility's security provisions in light of the proposed modifications to the Control Building and with particular reference to any effects of the proposed modifications on security. If that evaluation showed that the modifications or performance of the modification work itself raised questions about the adequacy of

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security or the need for additional security provisions, then Intervenors' contention in this regard might be considered in the Phase II proceeding.<sup>19/</sup> The Staff completed its security evaluation in this regard and, on August 13, 1979, submitted the documented conclusions that the proposed modifications would not affect security to the Intervenors. Mr. Rosolie indicated orally to Staff counsel in November that he was unwilling to stipulate to the dismissal of his security contention and that he would document the reason for his position in this regard in a letter to the Licensing Board. To date, the Staff has not received a copy of this documentation.

In the instant motion, Intervenors point out that a number of security guards at Trojan have recently been arrested or barred from the plant site because of a drug ring involving the guards. The Staff had not informed the parties of this matter because, in the Staff's view, there is no apparent relationship between this matter and the effects of the proposed modifications on security. Intervenors now contend that the Licensee and Staff should have informed the parties of the facts surrounding the drug ring incident and that the Licensing Board should compel disclosure of this information.

The Staff continues to believe that such information is not relevant to Phase II of this proceeding and is of the view that Intervenor's motion in this regard should be denied. However, if the Licensing Board determines

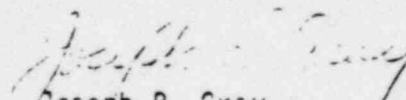
<sup>19/</sup> Tr. 3065-66, 3086, 3090-92.

that such information is relevant to Intervenor's security contention and to the effects of the proposed Control Building modifications on Trojan security, the Staff will provide such information as is available to it on this matter.<sup>20/</sup>

III. Conclusion

For the reasons set forth above, it is the Staff's position that Intervenor's Motion should be denied in toto.

Respectfully submitted,

  
Joseph R. Gray  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 21st day of December, 1979

<sup>20/</sup> To the extent that information must be protected pursuant to 10 CFR § 2.790, appropriate protective measures would be required.

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) (Control Building)  
(Trojan Nuclear Plant) )

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO INTERVENORS' MOTION TO REOPEN PHASE I EVIDENTIARY HEARINGS, REVOKE INTERIM OPERATION AUTHORIZATION AND COMPEL FULL DISCLOSURE," and of "NRC STAFF'S RESPONSE TO LICENSEE'S MOTION TO RESCIND SHUTDOWN ORDER AND AFFIDAVIT ON STATUS OF REACTION FORCE PROBLEM" in the captioned proceeding have been served on those persons designated below by a single asterisk (\*) by hand delivery to their listed address, on those persons designated below by a double asterisk (\*\*) by hand delivery to special messenger services, to those persons designated by a triple asterisk (\*\*\*) by hand delivery to express mail service, and to the remainder of those persons listed below by deposit in the United States mails or in the NRC's internal mail system, this 21st day of December, 1979:

Marshall E. Miller, Esq., Chairman\*  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
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Dr. Kenneth A. McCollom, Dean\*\*  
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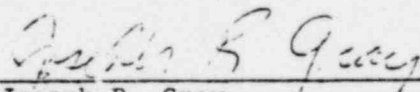
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Atomic Safety and Licensing Appeal  
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