

UNITED STATES
NUCLEAR REGULATORY COMMISSION

June 13, 1979

ADJUDICATORY
CONSENT CALENDAR ITEM

SECY-A-79-51A

MEMORANDUM FOR: The Commissioners

FROM: **LB** Leonard Bickwit, Jr.
General Counsel

SUBJECT: CORRECTION TO SECY-A-79-51, MEMORANDUM
ON REQUESTS FOR HEARING ON RANCHO SECO
FACILITY

On further consideration, we believe that our memorandum of June 12, 1979* was in error when it stated (page 3, footnote 2) that a licensing board considering contentions related to the safety of Rancho Seco would not be empowered to order a shutdown of the facility. We believe that while the Commission could direct that the Board not have such power, in the absence of an explicit statement to the contrary the Board would under present practice have the authority to order remedial action. That authority would appear to be included in the delegation effected by 10 CFR 2.718(1) and 2.721(d). Taken together, these regulations authorize a board to take any action "consistent with the Act, this chapter, and sections 551-558 of Title 5 of the United States Code." Such authority could also be found in 10 CFR 2.717(b), which permits a hearing board to modify orders of the Director of NRR relating to the subject of the hearing. It is also arguable that the Boards have implied power to order remedial actions, because such authority is necessary for the Board's discharge of its functions.

In our memorandum of June 12, where we stated that the Board would not have power to order a shutdown without explicit delegation, we recommended that the Commission not depart from ordinary practice to confer such authority. Although we have revised our views as to the Board's authority, we continue to believe that the Commission should not alter the usual scope of the Board's authority for this case. Accordingly, we do not recommend that the Commission explicitly withdraw the Board's power to order remedial action. (To do so could make any hearing appear less than a normal proceeding without providing grounds for distinction.) We would note, however, that any action by the Board to shut down the facility would be reviewable by the Commission, or could be stayed, upon a proper showing, pending review. The recommendation of SECY-A-79-51 thus remains unchanged, and no alteration is necessary in the draft Order.

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*REF: SECY-A-79-51, for which Commissioner Response Sheets
have already been distributed.

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