

suggest an alternative course of action to Commission review solely on the basis of the present record. The bases for the NRC Staff request are fully set forth in the attached Affidavit of James P. Knight, Assistant Director for Engineering, NRC Staff.

As set forth in the attached affidavit, two years has passed between the issuance of ALAB-422 and the dissenting opinion. This passage of time and the attendant attrition of personnel has compromised the NRC technical Staff's ability to perform, in the very short time period normally allotted to responses to petitions for review, a proper assessment of Mr. Farrar's dissent and NECNP's petition based on that dissent in the light of the extensive and complex record compiled several years ago in this proceeding.

In addition, in the present circumstances of this proceeding, the NRC Staff believes it appropriate to undertake an examination of the two additional reports by Dr. Chinnery referenced by and attached to NECNP's petition. The Staff is taking this course notwithstanding the fact that NECNP has not even attempted to make the showing required to reopen the record to permit consideration of the reports. See Vermont Yankee Nuclear Power Corp. (Vermont Yankee), ALAB-138, 6 AEC 520, 524 (1973); Duke Power Co. (Catawba, Units 1 and 2), ALAB-359, 4 NRC 619 (1976); Kansas Gas and Electric Co., et al. (Wolf Creek, Unit 1), ALAB-462, 7 NRC 320, 337-338 (1978) (and cases cited therein). Cf. Porter County Chapter of the Izaak Walton League of America, Inc. v. NRC, Docket Nos. 78-1556, 78-1559-1561 (D.C. Cir., September 6, 1979). Rather, NECNP has left the parties and the Commission in the dark as to whether in NECNP's view there

are any important facts in the two appended reports which are not already in the extensive record testimony of Dr. Chinnery and the other witnesses, and if so what the significance of these facts are to the opinions of the Appeal Board.^{3/}

Notwithstanding any infirmities in NECNP's presentation of the two reports by Dr. Chinnery, the NRC Staff believes it appropriate to undertake an examination of these reports and reports on other NRC sponsored research issued since the hearing on seismological issues in this proceeding to assess their significance in the light of the opinions of the Appeal Board. The Staff will report on the results of this examination and will

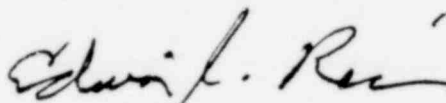
^{3/} NECNP states (petition, p. 11) that "[i]t is regrettable that the Staff should fail to notify the Appeal Board of . . ." the August 1978 and June 1979 reports by Dr. Chinnery which were funded by the NRC. The NRC Staff is presently looking into this matter and will issue a report in the near future.

Although Counsel for NECNP states that she first learned of the Chinnery reports in mid-September (petition, p. 11), we note that it is not stated that NECNP was unaware of these reports by its leading witness on the seismic issues in the Seabrook proceeding. If, in fact, NECNP was aware of these reports, and believed them to be significant and material to its testimony, it had an affirmative obligation to inform the Appeal Board. See Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-143, 6 AEC 623, 625-626 (1973); Georgia Power Co. (Alvin W. Vogtle Nuclear Plant, Units 1 and 2), ALAB-291, 2 NRC 404, 408 (1975); see also Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), CLI-76-22, 4 NRC 480 (1976).

examination and will factor its findings into the NRC Staff position on the further steps, if any, that the Commission should take with respect to the seismic issues in the Seabrook proceeding.^{4/}

For the reasons stated above and in the attached Affidavit of James P. Knight, the NRC Staff urges that its request for an extension of time to December 11, 1979, within which to either oppose NECNP's petition for review or otherwise recommend a course of action for further Commission review of the seismic issues in this proceeding be granted.

Respectfully submitted,



Edwin J. Reis
Assistant Chief Hearing Counsel

Dated at Bethesda, Maryland
this 11th day of October, 1979

1210 329

^{4/} Although the Staff is taking the initiative in assessing the subject reports, we respectfully suggest that the Commission may deem it appropriate to reestablish the normal procedure of requiring NECNP as the proponent of the reports to specify promptly what, if any, significant new information Dr. Chinnery and NECNP believe to be in his reports, and how that information materially affects the validity of the conclusions of the Appeal Board majority. See Philadelphia Electric Co. (Peach Bottom Atomic Power Station Units 2 & 3), ALAB-562, 10 NRC (slip opinion p. 22, September 10, 1979). See, Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553-54 (1978); Philadelphia Electric Co. (Peach Bottom Atomic Power Station Units 2 & 3), ALAB-562, 10 NRC (slip opinion p. 22, September 10, 1979).