



UNITED STATES
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD PANEL
WASHINGTON, D.C. 20555

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May 27, 1980



MEMORANDUM FOR: Robert M. Lazo, Acting Chairman
Atomic Safety and Licensing Board Panel

FROM: Oscar H. Paris
Charles Bechhoefer
Frederick J. Shon
Members, Atomic Safety and Licensing Board Panel

SUBJECT: YOUR MEMO TO PANEL MEMBERS DATED 5/22/80 REPORTING YOUR MEMO TO
GENERAL COUNSEL DATED 5/16/80 RELATIVE TO ALAB-590

As you are aware from a conversation that you had earlier with one of us (Paris), several Panel Members do not agree with the interpretation placed on ALAB-590 in your memo of 5/16/80 to the General Counsel. Consequently we do not share your concern that ALAB-590 eliminates from 10 C.F.R. § 2.714 the "bases" requirement for contentions.

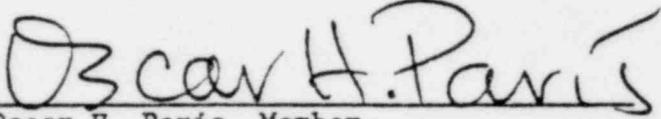
In our view, ALAB-590 merely restates the principle established originally by ALAB-130 (Grand Gulf) in 1973. Over the years a number of us have applied the Grand Gulf principle in evaluating the adequacy of petitions, without any sense that we were acting contrary to the regulation in § 2.714. We simply do not see that ALAB-590 requires anything that was not already required by ALAB-130.

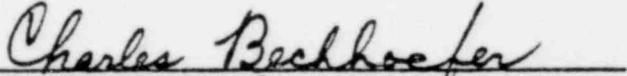
Further, it is our impression that the petitioner with whom ALAB-590 dealt did cite bases for his contention. We interpret ALAB-590 as saying only that a Licensing Board, at the outset of a proceeding, is not free to determine whether a petitioner has correctly relied on the bases which he cites—scarcely a novel proposition. It seems to us, in fact, that the alternative to the result reached in ALAB-590, viz., that a Board could use its own technical expertise to dismiss, out of hand, contentions which it considers non-meritorious, would be a dangerous policy indeed. Such a practice would virtually assure that any issue other than the most conventional would be very difficult to introduce into a proceeding.

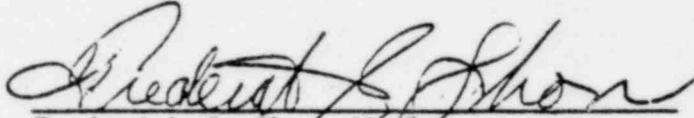
Since the three of us share the different (dissenting?) opinion expressed above, and we are aware of other panelists who agree with us in whole or part, we

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believe that the foregoing interpretation of ALAB-590 by panel members should also be brought to the Commission's attention. We request, therefore, that our view be communicated to the General Counsel in a manner which you deem appropriate.


Oscar H. Paris, Member
Atomic Safety and Licensing Board Panel


Charles Bechhoefer, Member
Atomic Safety and Licensing Board Panel


Frederick J. Shon, Member
Atomic Safety and Licensing Board Panel

cc: All AS&LBP Panel Members

