



hearing sessions, the Board received into evidence the testimony of CASE witnesses Jack Doyle and Mark Walsh, concerning the adequacy of Applicants' pipe support and pipe system design for CPSES. In addition, the Board received the Testimony of Kenneth L. Scheppelle, Roger F. Reedy, Peter S.Y. Chang, John C. Finneran, Jr. and Gary Krishnan, Applicants' Exhibit 142F, responding to the allegations of Messrs. Walsh and Doyle.

The Staff has conducted a special inspection of the concerns raised by Messrs. Walsh and Doyle, and expects to issue its report documenting its inspection and findings in the near future.

In anticipation of the Staff's special inspection report concerning the concerns raised by Messrs. Walsh and Doyle, the Board stated that it expects that one additional hearing session will be held. Memorandum and Order of January 4, 1983, p. 7. In that Order, the Board directed the parties to:

. . . complete discovery and file prefiled direct testimony on all remaining issues, including the underlying facts and evidence regarding . . . the Walsh/Doyle allegations, SSER No. 3, and unresolved Board Notification matters having a significant relationship to the issues in controversy.

Memorandum and Order, pp. 7-8.

#### Discussion

CASE requests the Board to order the Staff and/or the Applicants to "immediately provide . . . the following documents and information to the Licensing Board and CASE:

1. The following items discussed at the 12/16/82 meeting in Bethesda:
  - (a) Copies of NRC summary notes of the 12/16/82 meeting, including any handwritten notes or information about the meeting;

- (b) Information regarding any planned future meetings between Applicants and NRC Staff in regard to this subject;
  - (c) Information regarding any meetings between the Applicants and the NRC Staff in regard to this subject which may have taken place since the 12/16/82 meeting;
  - (d) The recent review of Comanche Peak by the Institute for Nuclear Power Organizations (INPO);
  - (e) The recent audit done by Antonio Vega on NPSI hanger designs;
  - (f) Any results, including handwritten notes, of Dave Smith's (INPO) review regarding various reports about the INPO review and whether the INPO report was a good job or a whitewash and if any new types of criteria were needed for Comanche Peak;
  - (g) Copies of the concept, procedures, reports regarding, notes concerning (including handwritten notes), preliminary report, final report, monthly status reports, regarding the FSAR System Compliance Verification Program;
  - (h) Applicants' analysis of the pipe support problem; and
  - (i) The NRC's independent review of pipe support design, including handwritten notes, draft report, final report, etc.
2. All information in the possession of or of which Applicants and the NRC Staff have knowledge regarding defective Unit 1 steam generators at Comanche Peak, including reports, draft reports, handwritten notes, etc.
  3. Other Investigation and Inspection Reports by the NRC applicable and pertinent to the matters and issues at hand in these proceedings.
  4. Any other potentially significant matters pertinent to the issues in these proceedings which are known by the Applicants and/or the NRC Staff (with the Licensing Board, not the Applicants and Staff deciding what is or is not truly significant).

The Staff first notes that this motion is, in essence, a motion for discovery and production of documents pursuant to 10 C.F.R. Sections 2.740, 2.741 and 2.790. While CASE suggests in its January 28, 1983 Letter to the Board, that its Motion is not a motion for discovery, the Staff points out that CASE requested Items 1(a), (b) and (c) from the Staff prior to filing this Motion (see discussion on these items, infra). Moreover, the Motion clearly requests that the documents listed on pages 5 to 6 be provided "to CASE". Motion, p. 5. This Board has repeatedly stated that all parties shall informally confer regarding discovery requests, before coming to the Board. See, e.g., Protective Order (March 23, 1982), p. 2; Order (August 20, 1981), pp. 1-2; Order (August 3, 1981), p. 3; Memorandum and Order (July 23, 1981), p. 9 ("All parties are directed to confer directly with each other regarding alleged deficiencies in discovery before resulting to motions involving the Board"). Except for Items 1(a), (b) and (c), CASE did not attempt to reach Staff counsel to informally discuss disclosure.<sup>1/</sup>

After receiving this Motion, Staff counsel telephoned Mrs. Ellis, CASE's representative, on January 28, 1983 to discuss this Motion. During this telephone call, Staff counsel reminded CASE of its obligation to informally discuss discovery requests before filing motions with the Board. Mrs. Ellis was unable to explain why CASE did not comply with the Board's directive in this circumstance. Staff counsel then set forth the Staff's position regarding disclosure. Staff counsel and CASE were unable to reach agreement on disclosure, except for those

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<sup>1/</sup> The Staff's commitments to CASE regarding Items 1(a), (b) and (c) will be discussed in the subsection of this Response concerning these items.

documents which were Applicant-generated documents. CASE agreed that the Staff need not provide documents which are Applicant-generated documents (Items 1(d), (e), (f), (g), (h)).

Before individually addressing CASE's itemized list of requested information and documents, the Staff states a general objection to CASE's request for any handwritten notes, and draft or preliminary reports generated by the Staff. Discovery of NRC documents and records are governed by 10 C.F.R. § 2.790 and § 2.741(e). Section 2.790(a) states, in relevant part, that "final NRC records and documents" are disclosable. In a footnote, the section specifically provides that final records and documents "do not include handwritten notes and drafts." 10 C.F.R. § 2.790(a), footnote 8. Since the regulation specifically exempts handwritten notes and preliminary non-final drafts from disclosure, the Staff opposes CASE's Motion for production of such documents.

Items 1(a), (b), and (c)

In an early December 1982 telephone call to Staff counsel, CASE requested that the NRC summary notes of the November 18, 1982 meeting regarding the Independent Design Review Verification Program ("IDVP") for CPSES be provided to CASE. CASE also requested notice of any future meetings between the Staff and Applicants concerning this subject matter. Staff counsel stated that since CASE is on the CPSES document distribution list, the NRC minutes of the November 18, 1982, and the December 16, 1982 meetings would be routinely provided to CASE through the NRC Region IV document distribution system. In addition, Staff counsel also assured CASE's representative, Mrs. Ellis, that meeting notices for all subjects relating to CPSES, not just those relating to the IDVP, were

routinely mailed to CASE. The NRC has not conducted any meetings with Applicants concerning the IDVP since the December 12, 1982 meeting. There is no need for a motion ordering the Staff to provide to CASE documents and information which it already agreed to provide. Accordingly, the Staff opposes the Motion in this regard.

Items 1(d) and (f)

The Institute for Nuclear Power Organization's ("INPO") report on CPSES is a document generated for Applicants. The Dave Smith's (whom NRC Staff is unable to identify) review is an Applicant-generated document, and is not within the possession of the Staff. Since CASE withdraws its motion against the Staff with regard to documents generated by the Applicants, no further response by the Staff is necessary.

Item 1(e)

CASE states that an audit by Applicants of NPSI pipe hanger designs was discussed during the December 16, 1982 meeting; (Motion, p. 3); this appears to be the audit requested under Item 1(e). The Staff is unable to determine what audit CASE is referring to, and its records do not indicate any discussion of an audit of NPSI pipe hanger designs. This document appears to have been generated by the Applicants. During the January 28, 1983 call, CASE was unable to provide any additional information which would assist the Staff in identifying this document. On the assumption that CASE is requesting an Applicant-generated document, the Staff concludes that no further response is necessary, since CASE withdraws its Motion against the Staff with respect to Applicant-generated documents.

Item 1(g)

The FSAR System Compliance Verification Program report has not been submitted to the Staff, either in draft or final form. This program is an Applicant-initiated program, and is not a Staff requirement. The Staff has also not received any monthly status reports concerning the FSAR System Compliance Verification Program. No further response is necessary, since CASE withdraws its Motion in this regard against the Staff.

Item 1(h)

The Staff is unable to identify the "Applicants' analysis" referred to by CASE in this item. CASE was unable to provide any additional information to the Staff during the January 28, 1983 telephone call that would assist the Staff in identifying this document. Moreover, the purported document appears to be one which was generated by Applicants. For the reasons stated earlier, no further response by the Staff is necessary.

Item 1(i)

The Staff believes that CASE is referring to the Staff's special inspection of the concerns raised by Messrs. Walsh and Doyle concerning Applicants' design of pipe supports and piping systems for CPSES. No final report on this subject has been issued by the Staff. For the reasons discussed earlier, the Staff opposes the disclosure of handwritten notes, or draft versions of this inspection report regarding the Walsh/Doyle concerns.

Item 2

The Staff is currently preparing to issue a Board notification regarding possible flow-induced vibration problems with Westinghouse steam generators of the type being utilized at CPSES. Under this circumstance, the Staff concludes that it is not necessary for the Board to order the Staff to provide this information to the Board and CASE. The Staff therefore opposes CASE's Motion in this matter.

Item 3

As noted earlier, CASE is on the NRC Region IV document distribution list for all CPSES inspection reports. CASE is also on Region IV's distribution list for NRC investigation reports as they are released for public distribution. There is no need for an order directing the Staff to make these reports available to CASE. The Staff opposes the Motion in this regard.

Item 4

CASE requests disclosure by the Staff of "any other potentially significant matters pertinent to the issues in this proceeding . . ." (emphasis in original). Moreover, during the January 28, 1983 telephone call, CASE indicated that it possessed most of the documents requested, and that the purpose of this Motion is to "bring this information to the Board's attention." In its January 28, 1983 Letter to the Board, CASE reiterates that, "our primary purpose was to inform the Board of potentially

significant information..." Letter to the Board, p. 2. CASE's Letter to the Board goes on to state:

CASE had though that we understood the Board's intent regarding the reporting by all parties to the Board about potentially significant information pertinent to these proceedings. However, it is obvious from our discussion with the Staff that CASE's interpretation of what is significant and what the Staff considers significant differ quite a bit. It would be helpful if the Board would clarify for all parties in its ruling on CASE's Motion what the Board expects of the parties insofar as reporting potentially significant information.

Letter to the Board, p. 2. CASE clearly implies that the Staff has not been complying with its duty to promptly inform the Board of matters which are relevant and material to this proceeding. The Staff strongly disagrees with CASE's negative implication concerning the Staff.

Contrary to CASE's implication, the Staff has complied with NRC case law and the Staff's established standard procedures for Board notification.<sup>2/</sup> For example, the Staff has promptly notified the Board regarding an alleged generic deficiency in the design of ASME Code Class 1 piping, which was reported to the NRC by Mr. William Van Meter. Board Notification No. 82-105 (November 24, 1982). The Staff is presently assessing Mr. Van Meters' allegations, to determine if they are relevant to the

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<sup>2/</sup> See, Memorandum from H.R. Denton, Director, NRR, to Darrell G. Eisenhut, Director, Division of Licensing, et al., Regarding Procedures for Notification to Licensing Boards of Relevant and Material New Information, December 9, 1980 (Attachment A to this Response); Virginia Electric and Power Company (North Anna Nuclear Power Stations, Units 1 and 2), ALAB-551, 9 NRC 704 (1979); Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397, 406, fn. 26 (1976).

concerns raised by Messrs. Walsh and Doyle. Moreover, the Staff continues to update any previous Board notifications as new information on the previous notification becomes known to the Staff. An example of the Staff's action in this regard is Board Notification No. 82-116 (November 4, 1982), concerning welds in main control panels at CPSES. This notification presents new information specific to CPSES on possible control panel weld defects and updates information provided to the Board in Board Notification Nos. 82-90 (September 8, 1982), and 82-90A (October 22, 1982).

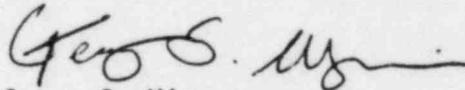
CASE's Motion requesting the Staff to provide potentially significant information to CASE appears to be an attempt to independently discover whether the Staff is fulfilling its duty. The Board has previously admonished CASE that "it is not proper for Intervenors through discovery to attempt to discover whether other parties are fulfilling their duties [to disclose potentially significant information]." Order (Following Conference Call), April 2, 1982, p. 5. For these reasons, the Staff opposes that portion of CASE's Motion requesting that the Staff be ordered to provide "potentially significant matters pertinent to the issues in this proceeding" to the Board.

#### Conclusion

The Staff generally opposes disclosure of all handwritten notes and draft reports requested by CASE. The Staff opposes the disclosure of Items 1(a), (b), (c), (i), and 3, since the Staff has been, and will be routinely providing these documents to CASE. Items 1(d), (e), (f), (q) and (h) are Applicant-generated documents and are not within the possession of the Staff. No further response by the Staff is necessary regarding

these documents, since CASE agreed to withdraw its Motion against Staff with regard to Applicant-generated documents. The Staff opposes disclosure of Item 2 since the Staff is currently preparing a Board Notification concerning this matter. Finally, the Staff opposes disclosure of Item 4, since the Staff is already providing such information to the Board, and because the Motion is an impermissible attempt by CASE to discover whether the Staff is fulfilling its duties to the Board.

Respectfully submitted,



Geary S. Mizuno  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 4th day of February, 1983



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20585

ATTACHMENT A

DECEMBER 9 1980

MEMORANDUM FOR: Darrell G. Eisenhut, Director, Division of Licensing  
Richard H. Vollmer, Director, Division of Engineering  
Stephen H. Hanauer, Director, Division of Human Factors  
Safety  
Derwood F. Ross, Director, Division of Systems Integration  
Thomas E. Murley, Director, Division of Safety Technology  
Bernard J. Snyder, Program Director, TMI Program Office

FROM: Harold R. Denton, Director, Office of Nuclear Reactor  
Regulation

SUBJECT: NRR OFFICE LETTER NO. 19, REVISION 1  
PROCEDURES FOR NOTIFICATION TO LICENSING BOARDS OF  
RELEVANT AND MATERIAL NEW INFORMATION

Effective immediately, all NRR personnel will use the following revised procedures for assuring prompt and appropriate action on notifying Licensing Boards, Appeal Panel and the Commission of new information which is considered by the staff to be relevant and material to one or more licensing proceedings. These revised procedures reflect the experience we have gained since issuing the original Office Letter No. 19 on July 6, 1978.

This Office Letter places an obligation on all NRR staff members to be alert to the significance of new information that is developed in the course of their review and to consider whether this information could reasonably be regarded as putting a new or different light upon an issue before Boards or as raising a new issue after publication of the staff's principal evidentiary documents. This is the central theme of the procedures and requires the exercise of good judgment to assure that Boards will not be burdened with material beyond that potentially significant to the individual licensing proceedings.

A handwritten signature in dark ink, appearing to read "H. R. Denton".

Harold R. Denton, Director  
Office of Nuclear Reactor Regulation

Enclosure:  
Board Notification  
Procedure

cc: E. Christenbury, OELD  
R. Rosenthal, ASLAP  
R. Lazo, ASLBP  
R. Hoefling

## BOARD NOTIFICATION PROCEDURE

### A. BACKGROUND

Following Commission approval of its Board Notification policy on May 4, 1978, the Office of Nuclear Reactor Regulation issued NRR Office Letter No. 19, dated July 6, 1978, which contained Board Notification procedures to be implemented by NRR. The term "Board Notification" refers to new information which is considered to be relevant and material to one or more licensing proceedings', i.e., material relating to an issue before a Licensing Board, Appeal Panel, or the Commission which can reasonably be regarded as putting a new or different light on that issue, or raising a new issue. (Note that the term "Board" will be used in this procedure to refer to Licensing Boards, Appeal Panel and Commission.)

In a memorandum dated May 10, 1978, the Commission requested that an evaluation of the Board Notification policy be prepared when approximately one year of experience was available. To this end, Commission Paper SECY-80-129, dated March 10, 1980, provided an assessment of then current procedures and proposed changes to those procedures to correct problems encountered in carrying out the Board Notification policy.

### B. DISCUSSION

There were three significant changes to the Board Notification procedures recommended in SECY-80-129 and approved by the Commission:

1. Change the time threshold for initiating the formal Board Notification procedures from the issuance of the ACRS Supplement and FES to 30 days before the start of the evidentiary hearing.
2. Eliminate the routine transmittal to the Boards of staff correspondence and notices to applicants and licensees. Staff correspondence and notices to applicants and licensees would be sent to the Board only if it is determined to meet the guidelines for Board Notification, i.e., new information considered material and relevant.
3. Incorporate the guidelines for staff appraisal and evaluation of Board Notification matter set forth in ALAB-551, as follows:
  - a. supply an exposition adequate to allow a ready appreciation of the precise nature of the Board Notification matter;
  - b. supply an exposition adequate to allow a ready appreciation of the extent to what the Board Notification matter might have a bearing upon the particular facility before the board;
  - c. in the event a conclusion with regard to the safety or environmental significance of the Board Notification matter is presented, set forth the reasoning underlying that conclusion sufficient to allow the board to make an informed judgment on the validity of the conclusion; and

- d. where the board has limited jurisdiction, spell out the possible relationship between the subject matter of the notification and one or more of the issues before the board.

C. DETERMINATION OF RECOMMENDATIONS FOR BOARD NOTIFICATION BY TECHNICAL REVIEW GROUPS AND PROJECT MANAGERS

The Board Notification policy is applicable to operating license proceedings as well as construction permit proceedings. In these proceedings the staff will send new information relevant and material to safety or environmental issues to the Boards regardless of the specific issues which have been placed in controversy. This practice includes proceedings for the conversion of provisional to full-term operating licenses. In hearings concerning operating license amendments Board Notification is limited to the issues under consideration in the hearing. All staff members are responsible for reviewing all information received in the course of their assigned tasks, including reports identified by the Research and Standards Coordination Branch as being appropriate for consideration for Board Notification, to determine whether it may be related to licensing proceedings and may represent relevant and material new information which should be provided to appropriate Boards.

Information received from outside sources and considered to be suitable for Board Notification should be handled in an expeditious manner. Some examples of information from outside sources are: (1) the reporting of errors discovered in a vendors Emergency Core Cooling System (ECCS) models or codes which could result in changes to analyses previously evaluated and discussed in the SER, (2) the reporting of geological features which could result in significant changes to those previously reported by the applicant and evaluated by the staff as discussed in the SER, and (3) those reports identified by the Research and Standards Coordination Branch as being appropriate for consideration for Board Notification.

Internally generated information that could reasonably be regarded as putting a new or different light upon an issue before Boards should also be reported as expeditiously as practicable. However, the Commission's policy recognizes the difficulty of determining the point when an individual staff member's perceived concern has developed into a staff issue of sufficient importance that Boards are to be notified. In accordance with the Commission's policy, internally generated information should be provided to Boards at the point when the staff determines that it is necessary to get more information about a problem from a source external to the staff. That is, if such new information is determined to be of sufficient importance to seek further information, analyses, tests, etc., from licensees or vendors, NRC contracts, or others outside the NRC staff, then the issue has developed to the point where concerned Boards should be informed.

As for internally generated information, technical papers and journal articles should be provided to Boards at a point when the staff determines that (1) such information is of sufficient importance to call into question staff positions and criteria or (2) the staff has determined to seek further information, analyses, tests, etc., from licensees, vendors, NRC contractors or others outside the staff.

1. Staff members should provide promptly the following information, through their management, to the Director, Division of Licensing:
  - a. The item recommended for notification of Boards.
  - b. An exposition adequate to allow a ready appreciation of the precise nature of Board Notification matter.
  - c. Considerations regarding relevancy and materiality; i.e., putting a new or different light upon an issue before the Board or raising a new issue.
  - d. An exposition adequate to allow a ready appreciation of the extent to what the Board Notification matter might have a bearing upon the particular facility before the Board.
  - i.e. A statement as to the perceived significance of the information as it may affect current staff positions. (A clear assessment of the significance is not required at this time and the recommendation should not be delayed in order to permit lengthy determinations. If a clear assessment and final resolution is available, it obviously provides for a clean Board submittal. For all recommendations which do not contain a final resolution followup action is required to inform the Boards as to the ultimate staff disposition.)
  - f. In the event a conclusion with regard to the safety or environmental significance of the Board Notification matter is presented, set forth the reasoning underlying that conclusion sufficient to allow the Board to make an informed judgment on the validity of the conclusion.
  - g. Where the Board has limited jurisdiction, spell out the possible relationship between the subject matter of the notification and one or more of the issues before the Board.

- h. If the information relates to a specific docket, a statement as to possible applicability to other dockets.
  2. NRR also has a responsibility for identifying information potentially relevant and material to Boards considering facilities licensed under Part 70 and under the cognizance of the Office of Nuclear Material Safety and Safeguards (NMSS). Staff members should make any such recommendations through their management to the Director, Division of Licensing. The information provided should, to the extent possible, conform to that listed in Item 1. above. The Director, Division of Licensing, will forward the Board Notification material to the Director, Office of Nuclear Material Safety and Safeguards.
  3. Recommendations may be judged by the Director, Division of Licensing, not to be material and relevant and a memorandum to that effect will be provided to the originator. If the originator still feels that the information should be provided to Boards, he or she should so state in a followup recommendation. Such a followup recommendation will be processed through the normal Board Notification channels. Although comments may be added indicating disagreement by those who judged the information not to be relevant and material, it will be forwarded to the Board.
  4. Board Notifications on differing professional opinions will follow the procedures of NRC Manual Chapter 4125, "Differing Professional Opinions."
- D. PROCESSING OF BOARD NOTIFICATION RECOMMENDATIONS
1. The key to commencement of Board Notifications on a specific case is the establishment of the date for the beginning of evidentiary hearing and issuance of related notice by the Board. Prior to 30 days before the hearing, new material which is considered material and relevant to a proceeding is presented to the Boards via SER supplement or other documents. However, if there are items that have not been appropriately disposed of, a summary list is to be provided by the project manager to the Board 30 days before the start of the hearing. For cases within 30 days of (or during) the evidentiary hearing new material found material and relevant shall be forwarded promptly to the Board according to these procedures.
  2. OELD will provide DL with periodic updates of a list of current proceedings for facilities under the cognizance of DL, indicating whether the Licensing Board, Appeal Board or Commission has jurisdiction over proceedings.

3. The Office of the Director, DL, will establish and maintain the record-keeping system related to all Board Notification matters. This will include a log of current proceedings and a detailed list of issues under consideration.
4. The Director, Division of Licensing, shall review all recommendations and determine whether they are relevant and material (5 working days from logging). Recommendations containing information considered to be directly related to a specific case are also reviewed for applicability to other cases. If it is determined that a recommendation is not considered to be relevant and material, a memorandum to that effect is sent to the recommending parties. If the information and accompanying recommendation are not clear enough for a determination to be made, the Director will request clarifying information from the originator.
5. For instances prior to 30 days of the evidentiary hearing, the Director, Division of Licensing, shall forward a memorandum to the cognizant DL Assistant Director(s) advising them that the item be brought to the attention of the Board through incorporation in the SER or as supplemental staff testimony. A copy of the memorandum will be sent to the originator. The project manager is responsible for seeing that the item is covered in evidentiary documents unless it has been determined that the item has been resolved and that Board Notification is not required. Final disposition shall be reported to the Office of the Director, DL (Board Notification Coordinator).
6. For instances within 30 days of (or during) the evidentiary hearing, the Director, Division of Licensing, shall forward a memoranda to the cognizant DL Assistant Director advising them that the item must be brought promptly to the attention of the appropriate Boards. The cognizant DL Assistant Director shall assure that the item is brought promptly to the attention of the Boards (5 working days from receipt of the Director's memorandum). Copies of the Board Notification shall be sent to the originator, technical review group, Office of the Director, DL (Board Notification Coordinator) and OELD (Hearing Division Director and Chief Counsel).
7. A finding by the Director, Division of Licensing, with regard to Board recommendations shall be reviewed by the DL Assistant Directors for applicability to proceedings related to applications for construction permits, post-CP proceedings, applications for operating licenses, as well as proceedings relating to issuance of license amendments. Proceedings related to research and test facilities licensed under Part 50 are to be taken into consideration also.



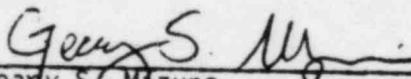
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