

Filed: May 31, 1983

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
before the
ATOMIC SAFETY AND LICENSING BOARD

_____)	
In the Matter of)	
MAINE YANKEE ATOMIC POWER COMPANY)	Docket No. 50-309-OLA
(Maine Yankee Atomic Power Station))	(Spent Fuel Compaction)
_____)	

LICENSEE'S RESPONSE TO "MOTION
ON BEHALF OF SENSIBLE MAINE POWER
TO COMPEL ANSWERS TO INTERROGATORIES
AND PRODUCTION OF DOCUMENTS FROM APPLICANT,
AND REQUEST FOR LEAVE TO FILE THE SAME"

The Licensee hereby answers the "Motion on Behalf
of Sensible Maine Power to Compel Answers to
Interrogatories and Production of Documents from
Applicant, and Request for Leave to File the Same" (the
"Motion"), and says that, for the reasons set forth
herein, the Motion should be denied.

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The Motion is Untimely

The interrogatory answers of which SMP now complains were filed and served on March 29, 1983. SMP's Motion was not served, however, until May 14, 1983, which was 46 days later. The Commission's Rules of Practice require that a motion to compel be filed within ten days after the answers in question have been served. 10 CFR § 2.740(f). The present motion is therefore substantially out of time and ought not to be considered by the Board unless the Board is persuaded that SMP's motion for leave to file it should be allowed.

Leave should not be granted. It is SMP's burden to establish the positive existence of "good cause" for the delay. 10 CFR § 2.711. While the justification for filing a document one or two days late need not be overwhelming, the justification for so substantial a delay as SMP now seeks to excuse must be persuasive. All that SMP has offered, however, is the generalized statement that its counsel has been "[laboring] under time constraints of other matters" and that SMP has been engaged in certain matters in connection with this proceeding, namely: (i) the filing of its own answers

to Staff interrogatories, (ii) the re-filing of its motion for "more complete disclosure," and (iii) the preparation of interrogatories to the Staff. The former (unrelated activities) should not be considered: since there are no details or specifics offered, the Board is in no position to assess the validity of the assertion -- it is not too much to require that, if SMP wants special dispensation because of particular unrelated activities of its counsel, some detail as to what those activities were ought to be supplied. Prescinding from the lack of detail, moreover, it is now fairly well established that unrelated engagements of counsel do not warrant the sort of substantial avoidance of the Rules of Practice as is now requested. E.g., Commonwealth Edison Co. (Byron Station, Units 1 and 2), LBP-51-30A, 14 NRC 364, 373 (1981).

The other proffered justification, while it appears more substantial on its face, pales in the light of the facts. A review of the papers on file reveals the following chronology:

10/25/82	SMP First Set of Interrogatories served on Licensee (deemed served on 2/8/83)
2/8/83	ASLB ORDER (Ruling on Second Round of Contentions, and starting discovery period)
3/13/83	SMP Second Set of Interrogatories served on Licensee
3/29/83	Licensee's Answers to Both Sets of SMP Interrogatories served
4/19/83	SMP Answers to Staff Interrogatories served
4/26/83	SMP Renewal of Motion for More Complete Disclosure served
5/14/83	SMP Motion to Compel Served
5/17/83	SMP Interrogatories (First Set) to Staff served

It is simply not reasonable to conclude that it took the entirety of the approximately 30 days between the service of the Licensee's answers to interrogatories and the filing of SMP's "renewed" motion for more complete disclosure in order simply to draft the "renewed" motion. Moreover, even if the "renewed" motion were something that required every minute of that time, SMP was not justified in giving it precedence over the timely preparation and filing of a the motion to compel. The same is true of SMP's

interrogatories to the Staff: important as interrogatories may be thought to be, they are something a party does of his own volition. The deadline for a motion to compel, on the other hand, is imposed by the Rules, and SMP is not permitted to decide for itself that it will subordinate the dictates of the rules to its own preferences, as apparently happened here. (Justification for the failure to have timely filed a motion compel cannot be premised on the "need" to prepare interrogatories to the Staff for another reason: the deadline for the interrogatories was far longer than that for the motion to compel, as is demonstrated by the fact that ultimately both papers were prepared and the time for serving interrogatories on the Staff has still not run out.)

In short, SMP's assertion that the time was inadequate has not been sustained and should not be credited. Even were the time inadequate to do both a timely motion to compel and the other things SMP did, SMP made an election of its own accord to spend its time as it did and it is not now entitled to relief. The present Motion should therefore be denied as untimely.

SMP's Specific Complaints

1. Question A-1. This was SMP's attempt to obtain the so-called "more complete disclosure" by interrogatory. The problem, of course, is that this is not really a question of "disclosure;" it is a question of whether there is but a single way of doing what is, in the course of running a nuclear power reactor, some relatively routine tasks, and of whether, of the probably several different ways of accomplishing these tasks, Maine Yankee has selected a single way or is prepared to lock itself to a single way. What SMP complains about is not "disclosure" -- Maine Yankee's answer (and the materials referred to and incorporated thereinto) provide adequate "disclosure" on how one does fuel re-racking and pin handling. What SMP is concerned about, rather, is that there is no proposal to limit Maine Yankee to a single method, defined and constrained in minute detail, for executing these tasks. The difficulty that SMP faces in this quest is that the NRC Regulations do not require that a single method of doing a given task be defined in advance, and, in particular, there is no contention before this Board that there are any special circumstances

warranted a technical specification in this case. See 10 CFR § 50.36.

In short, the answer provided to this almost unanswerable question is as good as answer as exists. There is no "disclosure" to compel.

(One additional point should be made. It is perfectly true that Maine Yankee declined SMP's request to allow the most recent refueling to be witnessed from the floor of the spent fuel room by a person SMP wanted to have observe it. The reason, as was stated to SMP at the time, is that the only person SMP identified -- a person with whose credentials Maine Yankee is quite familiar -- was not (in Maine Yankee's judgment) qualified. Under those circumstances, the presence of such a person during refueling would hardly be in the spirit of ALARA. See Consolidated Edison Company of New York (Indian Point, Unit 2), ___ NRC ___, CCH Nuc. Reg. Rptr. ¶ 30,710 (Full Commission, August 20, 1982).

(At no time, however, was SMP ever denied access to and the opportunity to inspect and copy any of the documents identified in response to its interrogatories or those of the Maine Attorney General; SMP's counsel is free to inspect those documents at the place where

they are normally kept (for the most part, in the corporate offices of the Licensee) at any time mutually agreeable to counsel. What is not true -- indeed, what is so untrue as to be worthy of the label "false" -- is the implicit assertion that Maine Yankee has denied SMP access to any of those documents. The fact of the matter is that SMP has yet to request the setting of a time for their production.)

2. Question A-2. This question asked for "the most current documentation relative to each step or phase [of the proposed work]." The answer was a list of documents, including "Maine Yankee Spent Fuel Modifications" as revised through May 7, 1982 (referred to as the "Complete Report"). This is "the most current documentation." The fact that SMP isn't satisfied with its contents may be a reason for denying the requested amendment; it does not, however, amount to an incomplete answer to an interrogatory.

3. Question A-4. SMP's objection is hard to follow, particularly if one refers (as SMP did not) to the question actually asked and the answer actually given. The question was:

"Have any mockups, scale models, simulators or other demonstrative instrumentalities been utilized in developing the means and methods identified above. If so, please describe the same, including the identity of the originator(s), the date of completion and the availability of such instrumentality for inspection."

The answer was:

"No mockups, scale models simulators, or other 'demonstrative instrumentalities' beyond those discussed in response to question A.(3) have been utilized. The pin handling tool has been operated as discussed in response to Question Maine 4-23."

Arguably, the second sentence of the answer was gratuitous. The first sentence appears to be a complete answer to the question as framed, and the reason why there is not a more detailed description of the pin handling tool is no doubt because the question asked did not call for a description of the pin handling tool. SMP has no complaint.

4. Question A-5. This question reads as follows:

"Please briefly describe and where applicable please document the process by which the foregoing means and methods were chosen, including the alternative means and methods investigated or considered in keeping with ALARA goals and objectives."

The answer gave what information Maine Yankee has about the only two identifiable topics of the question: alternatives and ALARA. We do not understand the

substance of SMP's complaint (unless it is simply an oblique repetition of its concern that a single detailed and exclusive series of steps of accomplishing the modifications has not been selected). In any event, one cannot describe the process by which something that has not yet been chosen "were chosen."

5. Question Worker Exposure 1(a). While SMP disagrees with Maine Yankee's objection to the relevance of a request for the production of a massive amount of documentation of past worker exposure, the fact of the matter is that Maine Yankee said that, notwithstanding its objection, the documents "are available for inspection and copying at the offices of Maine Yankee Atomic Power Company, Bailey Point, Ferry Road, Wiscasset, Maine, on a [date] mutually agreeable to the parties." As of the moment this response is written, SMP has yet to request the setting of a date for the production of these documents for inspection.

This objection is frivolous.

6. Question Worker Exposure 1(b). It is difficult to tell whether SMP is arguing here that the answer should be rejected or that the application should be denied. In any event, contrary to SMP's bald

assertion that "Applicant claims not to have information regarding doses anticipated in its d/r/c scheme with any qualification or quantification . . .," what SMP actually asked was:

"Please provide an itemized or categorical listing of the exposures anticipated for each step in the proposed pin-compaction process by source and deliver, (e.g., Kr 85, .0035 pc, inhalation, pin hole leaks in fuel rods, during fuel rod removal from old assemblies)."

What Maine Yankee said in response was:

"We do not have information in this form."

We submit that at least three propositions are plain: (1) the answer that "we do not have the information" in the form sought is a complete answer, (2) bearing in mind that what is being discussed here is minute incremental, possible, future exposures, rendering information in the detailed form suggested by SMP would imply a false precision, and (3) the question of whether prognostications must exist in this form in order for the proposed license amendment to be approved is a question of fact to be addressed at the hearing. There is no requirement that a party do independent research to produce information in a form not normally kept. See Pennsylvania Power & Light Co. (Susquehanna

Steam Electric Plant, Units 1 and 2), ALAB-613, 12 NRC 317, 334 (1980).

7. Question Worker Exposure 1(c). Assuming that anyone understands this question, our response is the same as it was to the foregoing interrogatory.

8. Question Worker Exposure 1(d). SMP asked the following unintelligible question:

"Please state methods, procedures and frequency of cross-checking or verifying calculated doses (meter, badge, dosimeter, whole-body counter, nasal smear, retinal exam and/or urinalysis), and health physics/environmental lab records for spent fuel pool, filter, and irradiated/contaminated materials inventory."

Out of what appears to be an uncoordinated and ungrammatical collection of technical-sounding terms, it was clear that the topic of the question was the determination of exposures; to allay fears that Maine Yankee has some special way of making such determinations, it stated that "Such methods, procedures, and frequencies are in accordance with industry practice." Beyond that, however, one had only two choices: one, to restate (in several volumes) the collective sum of industry knowledge on the topic, or two, to state that whatever details SMP was really

interested in were unintelligible. Maine Yankee did the latter:

"The question is not specific enough to be answerable in a precise fashion. However, if SMP will specify the types and circumstances of concern to it, Maine Yankee will provide a more detailed description of dosimetry practices that would apply."

In the ensuing two months, SMP was either unwilling or unable to propound another question.

Whatever displeasure SMP has with this answer is attributable to the defective form of the question. SMP was offered information; it declined to make any attempt to clarify what it wanted.

9. Question Worker Exposure 1(e). We do not understand SMP's objection. The answer appears now to be as complete as it was when it was prepared.

10. Question Worker Exposure 1(f). The question inquired about accident mitigation procedures with no effort at all to limit it to accidents or consequences related to the proposed amendment. Maine Yankee properly objected to discovery about accidents other than those relating to the expansion presently proposed, and SMP has offered no reason why it should be permitted discovery about such accidents when its

contention of the same scope was rejected. As to accidents relating to the proposed re-racking and pin consolidation, no objection was interposed and the question was answered.

11. Question Worker Exposure 1(g). SMP asked a detailed question about the equipment known is the transfer machine, upenders, and fuel handling cranes. Interesting as the question might be as an abstract topic, however, the fact of the matter is that there is no proposal before this Board for any change in any of this equipment, nor is there admitted in this proceeding any contention relating to this contention. Since discovery must be relevant to the issues properly litigable in connection with the admitted contentions (see, e.g., Wisconsin Electric Power Co. (Point Beach Nuclear Power Plant, Units 1 and 2), LBP-82-2, 15 NRC 48, 53 (1982); Allied General Nuclear Services (Barnwell Fuel Receiving and Storage Facility), LBP-77-13, 5 NRC 489, 494 (1977)), the objection was and is well-taken. SMP points to no such contention.

12. Question Worker Exposure 1(h). This proceeding is about a proposed license amendment. It is about the incremental effects of doing what is

proposed. It is not about Maine Yankee fuel handling practices in the past, nor is it an investigation into an incident wholly unrelated to the present application that happened several years ago and on which the investigations are long since closed. This interrogatory has no relationship to the incremental effects of the re-racking and pin consolidation proposed, and it is therefore not relevant to the matters to be litigated in this proceeding.

13. Question Worker Exposure 1(i). Contrary to SMP's assertion, this proceeding is not a general inquiry into "Applicant's ability to protect its workers." It is a specific inquiry into a specific proposal to increase the capacity of the spent fuel pool and the effects of that expansion. This question has no relevance to the issues to be litigated.

14. Question Worker Exposure 1(j). We do not understand SMP's objection. The question calls for the practices relating to a particular topic to be implemented by reason of the proposed work. The answer is that there are none: with respect to the general subject of the interrogatory (retrieval of dropped objects), there is no proposal for doing anything

different. That is a complete answer to the only legitimate inquiry.

15. Questions Worker Exposure 1(k), (l) and (m). SMP treats these three questions by a single outburst that is so vague that we do not understand the nature of the complaint. The answer to question 1(k) appears to provide all of the specific information that is available on the subject (together with the reason why no detail is required in order to reach an informed judgment); the answer to question (l) appears to be particularly complete, given the vagueness of the question and its non-relation to the proposed amendment; and the answer to question 1(m) (relating to a subject as to which there is no proposal for a change) appears to be equally complete. Wholly apart from whether it is entitled to it, we simply do not comprehend what it is that SMP thinks is missing from the answers.

16. Questions Worker Exposure 1(n) and (o). SMP apparently believes that the proposed amendment opens for re-examination and relitigation any topic previously settled, and any class of equipment or system, provided only that the topic or equipment has

some tangential relationship to spent fuel as a general matter. This is not the test applied to SMP's proposed contentions; it is not the test of relevance for litigation in this proceeding; and it is not the test of the validity of these interrogatories.

SMP is quite correct that the fact that a particular system is not to be changed, by itself, may not be the end of the inquiry. It is possible for a contention to be framed precisely on the point that the failure to change a certain piece of equipment is itself a defect warranting disapproval of the application. This is true as a theoretical matter, though in the present case, for the reasons set forth in the Complete Report, the marginal impacts of the altered spent fuel pool are so small that there is little likelihood that any basis for such a contention could be found. But the fact of the matter is that there is no such contention in this proceeding; SMP offered none; and the time for doing so has long since elapsed. SMP simply does not understand -- or does not accept -- the limited nature of what is open for litigation.

17. Question Worker Exposure 1(p). This question was fully answered by the statement: "Alternative methods and procedures were not explicitly considered from an ALARA perspective" The statement of the reason why not -- because the exposures are so low that no alternative could trip ALARA concerns -- was, arguably, gratuitous; it does not, however, detract from the completeness of the answer. We suspect that SMP does not understand the regulatory concept of ALARA. See 10 CFR § 50.34a(a); Part 50, App. I.

18. Question Worker Exposure 1(q). SMP stated in its interogaoetry that "SMP has learned that a number of divers are currently at work within the spent fuel pool." Unfortunately, SMP had learned wrong. This was pointed out to SMP, notwithstanding the plain irrelevance of the question to any admitted contention: "Maine Yankee states that no divers are at work in the Maine Yankee spent fuel pool nor have divers ever worked in the pool, nor, in fact, has diving ever been seriously considered in connection with fuel storage. We do not know how 'SMP has learned' what it describes, but obviously its sources of information are unreliable." We cannot see what more is required.

19. Question 4(b). Once again, the problem here is not with Maine Yankee's answer to SMP's interrogatory, which was as complete as it could be given that the subject matter is obviously not one that has received -- or warrants -- much investigation. The problem is, rather, that SMP assumes that this topic is one on which (i) reams have been written, (ii) specific plans have been made, and (iii) particular plans and procedures are and must be fixed. SMP's premise, however, is incorrect. SMP has gotten all there is.

20. Question 4(d). SMP contends that the Board should order that certain documents, which are documents of Yankee Atomic but which Maine Yankee has stated will be produced anyway, should be transported from the regular place where they are maintained to some other place to suit SMP's convenience. Indeed, SMP goes on to assert, without benefit of citation that "it is more clearly the lawful duty of Applicant to provide copies of same to Intervenors" Motion at 14. The rule on the point, however, is 10 CFR § 2.741(a)(1):

"Any party may serve on any other party a request to produce and permit the party making the

request . . . to inspect and copy any designated documents40. . . ."

The Rules of Practice do not provide for the relief SMP seeks (and they flatly contradict its ipse dixit as to the legal obligation of the Licensee). See Pennsylvania Power & Light Co. (Susquehanna Steam Electric Plant, Units 1 and 2), ALAB-613, 12 NRC 317, 331 (1980) ("[T]he Coalition repeatedly insisted that its rights were improperly abridged because the parties did not mail its representatives all the documents it demanded. But the Commission's rules, like the corresponding Federal Rules, simply do not impose that requirement. A demand for documents is satisfied before the Commission as in court by producing them for inspection and copying." (Footnotes omitted.)

21. Questions 4(e) and (g). Once again, as near as we can tell, SMP is contending that it is entitled as a matter of law to be provided with free copies of documents. It is not.

22. Question 4(h). It is, we think, axiomatic that a request for the production of documents calls only for documents presently in existence. There is no duty to create a document in order to satisfy the

desires of an adverse party. Susquehanna, supra, 12 NRC at 334

23. Question 4(i). SMP's only objection is that it was not provided with free copies of, in this case, records of a measurement that has been made about once a week since 1972. It is sufficient that, as stated, these records "are available for inspection at the site." Susquehanna, supra, 12 NRC at 331.

24. Question 4(j). SMP asked about something that "may" happen. It was told what the Licensee thought about what "may" happen. We do not understand what it is that SMP thinks was omitted.

25. Questions 4(k), (l) and (m). Because there is no proposal for any alteration in the fuel pool practices referred to in this interrogatory, there is no issue regarding those practices that is open for litigation and resolution in this proceeding. SMP apparently operates on the assumption that it may sit in review of any and all aspects of the Maine Yankee spent fuel pool, without regard to the connection vel non of the aspect of the moment to the proposed changes; it, apparently, operates on the assumption that the Board's prior rulings, such as, e.g.,

Memorandum and Order of April 12, 1982 at 9, no longer apply. It is wrong on both counts.

26. Questions 6(a), (b) and (e). Maine Yankee stands precisely on the objections framed in its answers:

"Maine Yankee objects to, and moves for a protective order regarding, this interrogatory. The only litigable seismic issue in this proceeding is whether the proposed activities conform to the Maine Yankee Class I Seismic Design Criteria as previously established in this proceeding. See Memorandum and Order (4/12/82) at 11-12, 22; Memorandum and Order (2/8/83) at 9. This interrogatory is not relevant to that issue and, therefore, is not relevant."

This is an issue on which this Board has already ruled at least three times. Apparently, a fourth ruling is necessary.

27. Questions 6(c) and (d). Here SMP would create the rule that an analysis that an intervenor thinks useful must be performed even though (i) it does not presently exist, (ii) no one else thinks it is necessary, and (iii) SMP apparently has its own experts upon whom it may rely. There is, however, no such rule. Susquehanna, supra, 12 NRC at 334. The answers given to these questions are complete and unassailable.

28. Question 7(a). The interrogatory called for the identification and description of "any analyses of postulated fuel handling accidents" The answer said that "Reference 1 [the Complete Report] discusses in detail the analyses performed for the proposed actions." This is a complete answer; if SMP wants to propound a specific question, it is free to do so. As for SMP's request that it be furnished with free copies of documents, as described above, there is no warrant for this request.

29. Question 9(a). One's ability to answer a question depends on the ability of the propounder to ask a question. This question was not well drafted, and in the form in which it was propounded it is essentially impossible to answer. Nevertheless the Licensee made an attempt to provide SMP with meaningful information about the topic, and it expressed its willingness to provide any additional specific information if SMP will specify what it wants. In the form in which the question is propounded, the question is not susceptible of any better answer.

30. Question 9(b). SMP apparently objects to the fact that the Licensee regards its use of the term

"large scale pin compaction" to be inappropriate in connection with the proposed amendment. Prescinding from a disagreement over semantics, however, it is not clear that SMP is objecting the sufficiency of the "answering" part of the answer to this interrogatory. In any event, the answer is as complete an answer as the question in the form in which it was propounded is susceptible.

31. Question 9(d). The interrogatory propounded was:

"Please describe specifically and in detail the experience and training of any personnel in a supervisory capacity who have work experience or training for work at a spent fuel reprocessing facility, AFR storage facility, or other large-scale spent fuel handling enterprise as would equip them to particiapate in Applicant's proposed d/r/c scheme. If such be available, please identify and provide copies of any and all documentation demonstrating such experience and/or training."

The answer (including the information incorporated by reference) was:

"Maine Yankee personnel have considerable experience, dating back to 1973, in large scale fuel handling activities, conducted in the Maine Yankee spent fuel pool. In addition, many Maine Yankee personnel have experienced similar large scale spent fuel handling activities at other facilities.

"Maine Yankee has no experience in fuel consolidation per se. However a number of programs

have been undertaken to repair irradiated fuel for reuse in the reactor. These operations are conducted underwater in the spent fuel pool using remote tools. Many of these repairs involved removing the upper endfitting and removing and replacing fuel or shim rods or transferring fuel or shim rods from one assembly cage to another. The mechanics of fuel consolidation would be similar.

"This repair work was conducted by Combustion Engineering personnel and was done in accordance with procedures and tooling developed by Combustion Engineering. However, in all cases, the entire work program was managed by Maine Yankee personnel. Tooling for removing the upper endfitting and extracting, inspecting, and reinserting poison shim rods in discharged fuel was used, with Maine Yankee personnel participating directly.

"In addition to the Maine Yankee experience, personnel at Yankee Atomic Electric Company have participated in repair programs at the Yankee Atomic reactor and at Vermont Yankee. The repairs at the Yankee reactor and at Vermont Yankee have generally consisted of inspecting and transferring rods from one assembly to another or extracting and replacing rods in an assembly. These repairs have been performed by Exxon Nuclear at the Yankee Atomic reactor and by General Electric Company at Vermont Yankee. Yankee personnel participated in the development, execution, and management of these repair programs.

"A Maine Yankee designed fuel pin transfer tool was successfully tested on stainless steel pins with the dimensional characteristics of fuel pins during February of 1982. The test consisted of transferring the pins between different locations in a prototype consolidated pin cage in the Maine Yankee spent fuel pool under actual spent fuel pool conditions."

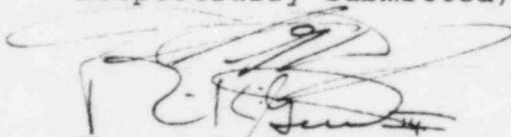
We are mystified at how SMP can characterize such an answer as "incomplete," "unresponsive," and "glib."

32. Question 9(e). SMP is correct that copies of the requested documents were not provided; it is incorrect that Maine Yankee is obligated to do any more than make the documents available for inspection and copying, which it did. Susquehanna, supra, 12 NRC at 331. We are unaware that SMP has ever been "barred" from the Maine Yankee site (we are aware that one of its advisors was once denied permission to be present on the fuel room floor during a refueling, but that had nothing to do with the production of documents).

Conclusion

For the foregoing reasons, the Motion should be denied.

Respectfully submitted,



Thomas G. Dignan, Jr.
R. K. Gad III
Ropes & Gray
225 Franklin Street
Boston, Massachusetts 02110
Telephone: 423-6100

Dated: May 31, 1983

Certificate of Service

I, Robert K. Gad III, hereby certify that on May 31, 1983, I made service of the within "LICENSEE'S RESPONSE TO "MOTION ON BEHALF OF SNESIBLE MAINE POWER TO COMPEL ANSWERS TO INTERROGATORIES AND PRODUCTION OF CUMENTS FROM APPLCANT, AND REQUEST FOR LEAVE TO FILE THE SAME'", by mailing a copies thereof, postage prepaid, to:

Robert M. Lazo, Esquire
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Cadet H. Hand, Jr.
Director, Bodega Marine Laboratory
University of California
P. O. Box 247
Bodega Bay, California 94923

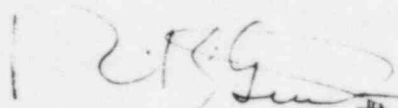
Judge Peter A. Morris, Esquire
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Richard J. Goddard, Esquire
Office of the Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

David Santee Miller, Esquire
Boothbay Harbor, Maine 04538

Philip Ahrens, Esquire
Assistant Attorney General
Department of the Attorney General
Augusta, Maine 04333

Mr. Raymond G. Shadis
P. O. Box 76
North Edgecomb, Maine 04556

A handwritten signature in dark ink, appearing to read 'R. K. Gad III', written over a horizontal line.

Robert K. Gad III