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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges
Marshall E. Miller, Chairman
Dr. Cadet H. Hand, Jr.
Gustave A. Linenberger, Jr.

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In the Matter of

UNITED STATES DEPARTMENT OF ENERGY
PROJECT MANAGEMENT CORPORATION
TENNESSEE VALLEY AUTHORITY

(Clinch River Breeder Reactor Plant)

Docket No. 50-537-CP

September 15, 1983

ORDER REQUIRING DISCLOSURE OF SEISMIC INFORMATION

Volume 2 of the NRC Staff's (Staff) SER¹ in Appendix H thereto presents the final seismology and geology review of the proposed Clinch River Breeder Reactor (CRBR) site, by the U. S. Geological Survey. The Summary section of that Appendix² states that there is evidence that a concentrated local source of seismic activity may exist in the vicinity of the proposed site that could invalidate adoption of a diffuse seismicity model for the Appalachian province. Based upon the Staff's representation that further confirmatory work directed toward resolution

¹ NUREG-0968, Vol. 2, March 1983.

² Id., pp. 7-8.

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of this uncertainty can be carried out as a post-CP item,³ the Board did not include this matter as one of its areas of concern nor raise questions about it at the CP hearing session held August 8-11, 1983.

On September 14, 1983, the Board received a copy of a letter from the Department of Energy (DOE) to the NRC⁴ stating that three faults had been discovered on the site during foundation excavation. The letter stated that telecon notification of these discoveries was provided to the NRC in May and June of 1983. The letter enclosed formal fault evaluation reports and stated that the DOE does "not consider these faults to be capable within the meaning of Appendix A to 10 C.F.R. Part 100."

So far as the Board is aware, the referenced letter of September 7, 1983 represents our first notice (although not addressed to the Board) of fault discoveries made well in advance of the recent CP evidentiary hearing. Those discoveries are of potential significance to the outcome of Board deliberations concerning whether a CP should issue. Hence, we consider that such belated and indirect notification to this Board does not fulfill the affirmative responsibilities of the parties.

³ Id., Vol. 1, pp. 2-31, 2-32.

⁴ Letter, G. L. Chipman, Jr. (DOE) to J. N. Grace (NRC), dated September 7, 1983, with three enclosures.

An affirmative duty on the part of Applicants and the Staff to disclose, affirmatively and promptly, any new information or changes in data is accepted in NRC practice. The Commission has held, with reference to the affirmative disclosure of seismic conditions, that "full disclosure by applicants and licensees of all relevant data is vital" to the Commission in fulfilling its duties.⁵ The Appeal Board has stated:

"...parties must inform the presiding board and other parties of new information which is relevant and material to the matters being adjudicated. To avoid any misunderstanding, we do not mean that necessary administrative actions by the regulatory staff should not go on while a proceeding is being adjudicated (see 10 CFR 2.717(b)). But this does not mean that the staff or applicant can be permitted to leave the presiding body and the other parties to the proceeding in the dark about any change which is relevant and material to the adjudication.¹⁵ Changes may take place but they must be disclosed. If the presiding board and other parties are not informed in a timely manner of such changes, the inescapable result will be that reasoned decision-making would suffer. Indeed, the adjudication could become meaningless, for adjudicatory boards would be passing upon evidence which would not accurately reflect existing facts. The disclosure requirement we impose is not the product of any overly procedural formalism on our part--it goes to the very heart of the adjudicatory process. Its sacrifice for the sake of expediency cannot be justified and will not be tolerated."

⁵ Virginia Electric and Power Company (North Anna Power Station, Units 1 and 2), CLI-76-22, 4 NRC 480, 488 (1976).

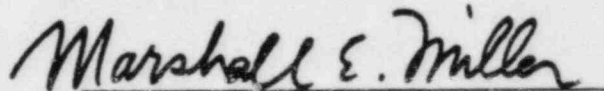
Footnote 15: "Any uncertainty regarding the relevancy and materiality of new information should be decided by the presiding board." (Emphasis supplied)⁶

It is for the Board to decide whether the existence of faults at the site is of sufficient import to affect or preclude the issuance of a CP. That decision can only be undertaken after the Board has been promptly and fully informed of the details and analyses made by the Applicants and of the subsequent review and conclusions of the Staff. It should also be obvious to counsel for the parties that such information will not be considered unless supplied at least by affidavits in such form that they can be appropriately included in the record of this proceeding. Furthermore, a mere resubmittal of the enclosures of the September 7, 1983 letter, cited above, accompanied by an affidavit from Applicants is not adequate. The photographic reproductions therein are unusable and the legibility of Figure 1 of Enclosure 1 is at best marginal. Based upon the foregoing, the Board is

⁶ Duke Power Company (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-143, 6 AEC 623, 625-26 (1973). See also Tennessee Valley Authority (Brown Ferry Nuclear Plant, Units 1, 2 and 3), ALAB-677, 15 NRC 1387, 1388 (1982); Georgia Power Co. (Alvin W. Vogtle Nuclear Plant, Units 1 and 2), ALAB-291, 2 NRC 404, 411 (1975); Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC397, 406 note 26 (1976).

presently unable to determine whether additional evidentiary hearing sessions will be required to resolve this matter. Accordingly, the Applicants and the Staff are directed to make appropriate written submittals to the Board, within 30 days, of detailed and adequately verified information of record concerning the faults discovered on the CRBRP site.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Marshall E. Miller, Chairman
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 15th day of September, 1983.