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December 1, 1983

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

From: Guy H. Cunningham, III
Executive Legal Director

Subject: APPEAL BOARD DECISION IN CALLAWAY

On November 29, 1983, the Appeal Board in this operating license proceeding issued a Memorandum and Order (ALAB-750) denying Joint Intervenors' Motion for Reconsideration of ALAB-740. In ALAB-740, issued on September 14, 1983, the Appeal Board affirmed the Licensing Board's decision (favorable to the Staff) on Joint Intervenors' quality assurance/construction defects contention (LBP-82-109, December 13, 1982). Joint Intervenors based their reconsideration motion on an Integrated Design Inspection Program (IDIP) report on Callaway prepared by NRC's I&E. The Appeal Board in ALAB-750 found that the IDIP did not call into question the earlier conclusions reached by the Licensing and Appeal Boards regarding the adequacy of the construction of the Callaway facility.

Joint Intervenors are now expected to appeal ALAB-740 (and possibly ALAB-750) to the Commission. That party has no contention in this proceeding other than the one ruled upon in LBP-82-109 and ALAB-740. The Licensing Board on October 31, 1983 issued a decision (LBP-83-71) favorable to operation of the facility on Intervenor John Reed's last remaining emergency planning contention (all of Mr. Reed's other emergency planning contentions were disposed of through settlement negotiations). The time for filing an appeal from LBP-83-71 has expired; no appeal was taken by Mr. Reed. There are no other intervenors in this proceeding; Commission review of ALAB-740 (and ALAB-750) should be the last contested action in this proceeding.

Guy H. Cunningham, III
Executive Legal Director

Attachment:
Appeal Board Decision

cc w/attachment:
W.J. Dircks
J.G. Keppler
G.E. Edison

DEC - 5 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Administrative Judges:

Alan S. Rosenthal, Chairman
Gary J. Edles
Dr. Reginald L. Gotchy

November 29, 1983
(ALAB-750)

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| In the Matter of | ) | |
| UNION ELECTRIC COMPANY | ) | Docket No. STN 50-483-OL |
| (Callaway Plant, Unit 1) | ) | |

Kenneth M. Chackes, St. Louis, Missouri, for the joint intervenors Coalition for the Environment, St. Louis Region; Missourians for Safe Energy; and the Crawdad Alliance.

Thomas A. Baxter and Richard E. Galen, Washington, D.C., for the applicant Union Electric Company.

David A. Repka and Robert G. Perlis for the Nuclear Regulatory Commission staff.

MEMORANDUM AND ORDER

I.

In an opinion issued on September 14, 1983, we affirmed a Licensing Board decision that found that there had been no general breakdown in quality assurance procedures at the Callaway plant, that various identified construction defects had been remedied, and that there was reasonable assurance

that the facility could be operated safely.[1] On September 23, 1983, the Intervenors[2] filed what they denominated a petition for reconsideration of our decision. In actuality, however, it is more akin to a motion to reopen the record and should be so treated. Intervenors do not point to any error per se in the decision. Rather, their request that we reconsider the result is predicated on "new evidence regarding the adequacy of Applicant's quality assurance program . . . ."[3] The "new evidence" is an Integrated Design Inspection Program (IDIP) report prepared by the NRC Office of Inspection and Enforcement (I&E). This report summarizes the results of an inspection of the Callaway plant conducted by I&E personnel in November and December, 1982, as part of a generic program to measure certain quality assurance objectives.[4]

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[1] ALAB-740, 18 NRC __, aff'g LBP-82-109, 16 NRC 1826 (1982).

[2] Coalition for the Environment, St. Louis Region; Missourians for Safe Energy; and the Crawdad Alliance.

[3] Petition for Reconsideration (September 23, 1983) at 1.

[4] At our request, answers to the petition were filed by the applicant and the NRC staff. We asked specifically that the applicant and the staff address, in addition to the merits of Intervenors' claims, the question of whether either of them was under an obligation to call the inspection report to our attention at the time of issuance. Order of September 27, 1983 at 2 (unpublished).

To justify a reopening of the record, a petitioner must satisfy a tripartite test as follows:

> (1) Is the motion timely? (2) Does it address significant safety or environmental issues? (3) Might a different result have been reached had the newly proffered material been considered initially?[5]

In our judgment, the Intervenors have not satisfied the third element of the test for reopening. The petition is therefore denied. We discuss each of the elements separately.

II.

A. Timeliness.

The Intervenors represent that "[t]he subject report came to . . . [their] attention too late to allow for analysis and submission to the Appeal Board prior to its decision . . . ."[6] The I&E report was dated April 4, 1983. Although the staff suggests that it was mailed to the local Public Document Room on that date,[7] the letter transmitting

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[5] Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), ALAB-738, 18 NRC __, __ (August 31, 1983) (slip opinion at 3), quoting from Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-598, 11 NRC 876, 879 (1980).

[6] Petition for Reconsideration at 1.

[7] Staff Response to Intervenors' Petition for Reconsideration (October 12, 1983) at 2 n.2.

the report to the applicant states that it "will be placed in the NRC Public Document Room unless you notify this office, by telephone, within 15 days of the date of this letter and submit written application to withhold information contained herein within 30 days of the date of this letter."[8] The report was thereafter placed in the central Public Document Room in Washington on May 9, 1983. It was thus available for public inspection more than a month before oral argument on the Intervenors' appeal, and some four months before the filing of the Intervenors' petition for reconsideration. In any event, the applicant responded to the report by letter dated June 15, 1983. That letter was acknowledged by C.E. Norelius of the NRC Region III in a letter dated July 21. A service list attached to Mr. Norelius' letter indicates that a copy of the July 21 acknowledgement, along with a copy of the applicant's June 15 communication, were mailed to Ms. Kay Drey, who was one of the participants for the Intervenors in this case.[9] The Intervenors thus appear to have received actual notice of

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[8] See Applicant's Response to Joint Intervenors' Petition for Reconsideration (October 12, 1983), Exhibit A, letter of Richard C. DeYoung, Director, Office of Inspection and Enforcement to Union Electric Company (April 4, 1983),

[9] See Applicant's Response, Exhibit C.

the report at least two months before they filed their petition.

It may be that the Intervenors did not obtain a copy of the report in sufficient time to review it for presentation to us in advance of the June 22 oral argument or the September 14 issuance of our decision. Parties requesting a reopening of the record, however, have an obligation to give us ample information so that we can determine whether the request is timely. The petition before us does not do so. It merely sets forth the petitioners' opinion that they lacked sufficient time to review the report. Nonetheless, because we find that the petition does not satisfy the third element of the tripartite test for reopening the record, we need not reach the question of timeliness in this case.

B. Significance of the Issue

The petition and the underlying I&E report relate to the issue of quality assurance. Both the staff and the applicant appear to recognize that some quality assurance matters may well be significant. Although we do not suggest that all quality assurance matters will be of sufficient safety significance to justify reopening, we assume for present purposes that the petition meets the second prong of the tripartite test for reopening.

C. Likelihood of a Different Result

The third element of the test for reopening the record -- whether the new information could have led to a different

result -- is the most important. The Intervenors make essentially two arguments in this regard. First, they claim that the I&E report reveals a number of deficiencies that now call into question the general conclusion that there has been no pervasive breakdown in quality assurance at the Callaway plant. Second, they contend that certain of these alleged deficiencies support their argument that the applicant has specifically failed to prove the safety of the structural steel embedded plates and the SA-312 piping used at Callaway. We find that the Intervenors have not satisfied the requirement that the information submitted in support of their motion be likely to lead to a different result in the case.

1. Alleged Pervasive Breakdown We do not believe that the report undermines the ultimate conclusion reached in ALAB-740 and LBP-82-109 that the applicant's construction quality assurance program provides reasonable assurance of safety. To begin with, the report focuses on the design process and the quality of design activities, rather than on the construction quality assurance issues that were litigated below by the Intervenors. As a result, there is no direct connection between the report and the matters

before the Licensing Board and us.[10] Nevertheless, the report does explore various approaches and undertakings by the applicant, such as its procedures, recordkeeping, training, and inspection, which might have been conducted in a similar fashion at the construction stage. If so, the findings and conclusions in the report might provide a useful and additional insight into the construction quality assurance process.[11]

Assuming for present purposes that the report bears on our earlier conclusion, we are unable to find that it warrants a change in that conclusion. The Intervenors observe that the report contains "29 negative findings, 12

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[10] The Intervenors do not request that the record be reopened to consider design quality assurance issues. If they did, they would be required to satisfy both the criteria for reopening the record and the standards for admitting late-filed contentions. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-82-39, 16 NRC 1712, 1714-15 (1982).

[11] For this reason, we believe that the decision by the staff and the applicant not to apprise us of the report was a close one. Both the staff and an applicant are obligated to submit new information that is relevant and material to the matters being adjudicated. Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1, 2 and 3), ALAB-677, 15 NRC 1387, 1394 (1982). As we observed in Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-691, 16 NRC 897, 914 "if a party has doubts about whether to disclose information, it should do so . . . This is because the ultimate decision with regard to materiality is for the decisionmaker, not the parties." After reviewing the contents of the report, we find ourselves in agreement with the staff and the applicant that the new information would not have affected the outcome of the case.

unresolved items and 9 observations for licensee consideration regarding the design process and activities for the auxiliary feedwater system."[12] Such information must be evaluated in the context of the report's overall conclusions. As a threshold matter, I&E states that

> we found many design actions that were being well executed. . . They are not flagged and numbered in the text nor listed at the front of this report since follow-up is not required[13] . . . .

I&E summarizes its conclusions as follows:

> Although the inspection sampled a very small part of the design effort, the team did review hundreds of specific items. The most significant deficiencies are summarized as follows:
>
> (1) There was a lack of formal control over Bechtel's use of plant design newsletters. Thus, these newsletters, which described acceptable modeling and stress analysis techniques, were not being applied uniformly to project design work (Section 3.1.2).
>
> (2) The auxiliary feedwater pump turbine exhaust pipe was not classified as Seismic Category I

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[12] Petition for Reconsideration at 1-2. "Negative findings" include such items as procedure violations, errors and inconsistencies. Some followup action by the licensee is required for NRC staff evaluation. "Unresolved items" are questions for which the inspection team did not develop enough information to reach a conclusion. Some licensee response regarding these items must be presented for NRC staff evaluation. "Observations" reflect items that the staff considered appropriate to call to the applicant's attention but for which there is no regulatory requirement. See Report of Integrated Design Inspection 50-483/82-22 of Callaway Plant, Unit 1 (April 4, 1983) at 1-1 to 1-2 ("I&E Report), attached to Petition for Reconsideration.

[13] Id.

and safety grade throughout its entire length. No justification available. This represented incomplete detailed analysis to support pump operability requirements. A similar classification was identified in two other systems (Section 2.4).

(3) The ability of motor controllers to withstand fault currents had not been considered or assured. This represented an instance of improper detailed design (Section 5.2).

(4) The team identified needs for improvement in control of the design process at Bechtel in certain areas such as those related to high energy line break analyses (Section 2.4), guidance for two design groups (Sections 3.1.4 and 3.2.4), interface definitions (Section 4.4) and baseplate design (Section 4.5).

(5) Three instances were identified where specific FSAR commitments were not met, one of which involved the turbine exhaust pipe discussed above (Sections 2.3, 2.4, and 6.2).

Prompt attention is needed for the resolution of these specific deficiencies and others identified in the following sections. However, the team concludes that these items are not indicative of any pervasive breakdown in the design process.

With the exception of the matters identified in the findings and an instance of delay in resolving a design issue (Observation 4-1), the team considered the general project management to be a strength. Several utilities' staffs were involved in the development of design criteria and guidance. Effective follow-up and project management assistance were provided by NPI. Bechtel utilized a competent project organization to execute the detailed design work. Interfaces, including those with Westinghouse, were generally well controlled as evidenced by the consistency of design documents. Nearly all the detailed design

information reviewed was adequate and consistent, indicating a controlled design process.[14]

The letter transmitting the report to the applicant reiterates that no pervasive breakdown in the design process was identified. And, as we discuss later, we have reviewed each of the specific matters called to our attention by the Intervenors and find that they are readily explained and pose no safety threat. In our judgment, the I&E Report, considered in its entirety, is broadly supportive of the Licensing Board's determination (which we affirmed) that, despite specific deficiencies that were addressed and resolved, there is no pervasive pattern of quality assurance breakdown at the Callaway plant.

2. Specific Allegations We do not find that the information contained in the I&E Report calls into question the safety of either the embedded plates or the SA-312 piping used at Callaway.

a. Embedded Steel Plates The Intervenors point to findings in the I&E Report that allegedly support their claim that the "Applicant has failed to prove the safety of the several hundred structural steel plates that were embedded in concrete before welding defects were

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[14] Id. at 1-4 to 1-5.

discovered."[15] They further contend that the plates are inadequate to support the loads imposed on them. They make five arguments to support their claim. We discuss each in turn.

First, the Intervenors claim that Unresolved Item 3-1, which notes a possible "non-conservatism" in the calculation of loads due to seismic anchor movements, undermines the finding that the embeds installed before certain welding defects were discovered are safe. Our review of the report indicates that the "non-conservatism," if its exists, deals only with the computer program used to calculate the loads on pipes and pipe supports, not loads on the embedded steel plates themselves. As pointed out in the applicant's response, a separate analysis is used to determine the load on the plates.[16] Any "non-conservatism" would not affect that separate analysis. Moreover, on their appeal, and even in the Petition for Reconsideration, the Intervenors expressed concern essentially with the safety of the manually-welded embedded plates installed before the June 1977 discovery of the defects.[17] While the loads imposed on

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[15] Petition for Reconsideration at 2.

[16] See Applicant's Response at 10, and Exhibit D, Affidavit of Eugene W. Thomas (October 11, 1983) at 2.

[17] See ALAB-740, supra, 18 NRC at __ - __ (slip opinion at 14-24).

the piping are a part of the overall load imposed on the embedded plates, it appears that even the pipe anchors that may be subject to the "non-conservatism" are attached to embeds that are machine-welded and were installed after June 1977, when the welding defects in the embeds were first discovered.[18] In sum, we do not believe that any supposed "non-conservatism" in the calculation of loads due to seismic anchor movements calls into question the safety of the manually-welded embeds.

Second, the Intervenors allege that I&E found "that the loads imposed by the floors of the auxiliary building, which in some cases are supported by embedded plates installed before the discovery of defects, were calculated incorrectly during the original design of the plant such that the as-built loads 'exceeded the original [seismic] spectra that had been used in design, by significant amounts in some cases.'"[19] They point further to an alleged "failure of Applicant and Bechtel to communicate the increased loads to all of the engineering discipline groups to allow them to

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[18] See Applicant's Response at 10, and Exhibit D, Affidavit of Eugene W. Thomas (October 11, 1983) at 2.

[19] Petition for Reconsideration at 2.

evaluate the effects of the greater loads upon their systems and components."[20]

The I&E Report notes that

> Bechtel had calculated revised floor response spectra using actual as-built conditions for the auxiliary building. Some of the revised spectra exceeded the original spectra that had been used in design, by significant amounts in some cases . . . Revised spectra had not yet been sent to the other discipline groups, such as mechanical and electric, to evaluate the effects of the greater seismic loads upon systems and components. . . .[21]

As we interpreted the report, it did not conclude that the original seismic response spectra were calculated incorrectly. Moreover, we recognized that there was no necessary safety significance to the difference between the design spectra and the actual spectra. Nonetheless, we were concerned that there had been no definitive assessment regarding the safety significance, if any, of the differences between the spectra used in the original design and the revised spectra. And we were troubled that, as of the date of the I&E inspection, the relevant discipline groups had not been apprised of the design spectra

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[20] Id. at 3-4.

[21] I&E Report at 4-9. Intervenors' argument regarding the omission from the final report of a statement of concern by an NRC inspector contained in an earlier draft report carries no weight. Drafts are always subject to change during the evolution to a final product and we must assume that I&E was able to resolve its concern during preparation of the final report.

recalculation. As a result, we issued an order requiring the applicant and the NRC staff to report to us as to what has been done since the I&E inspection with respect to determining if the loads imposed by the revised spectra exceed the design loads, and the safety implications, if any. We also invited the Intervenors to comment on the reports.[22] Responses by the applicant and the staff were filed on November 4, 1983, and by the Intervenors on November 15.

The responses filed by the staff and the applicant, with accompanying affidavits, indicate that since the I&E inspection Bechtel has initiated a review to determine the effects on design of the revised floor response spectra. That review is approximately half finished and no design deficiencies have been uncovered. Importantly, the review is complete as it relates to all of the manually-welded embeds, and Bechtel advises that there are no load increases on any of these plates as a result of the "as-built" floor response spectrum curves. The applicant and the staff claim that there is no safety significance to the embeds resulting from the change in response spectra.[23]

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[22] Order of October 20, 1983 (unpublished).

[23] Applicant's Reponse to the Appeal Board's Memorandum and Order of October 20, 1983, at 3, and Affidavit of Eugene
(Footnote Continued)

The Intervenors contend, however, that nothing in the submissions by the applicant or the staff permit independent verification of Bechtel's determination that the changes in design spectra have no safety significance. The Intervenors urge us to require additional information and appoint an independent expert, if necessary, to determine the safety of the manually welded embeds.[24]

We are satisfied that there is no current basis for reopening the record or deferring decision. The I&E Report does not itself call into question the safety of the embeds. Bechtel's representations, coupled with the staff's judgment that Bechtel's program should ensure adequate resolution of the matter, resolve the concerns that prompted our October 20 order. The Bechtel review will be completed by the end of the year, at which time the staff will evaluate its results.[25] The staff shall make a copy of its final report available to the Intervenors promptly upon its completion. In the circumstances, we see no reason to retain

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(Footnote Continued)
W. Thomas (November 3, 1983) at 6-7. NRC staff Response to Appeal Board Memorandum and Order of October 20, 1983 at 4.

[24] Joint Intervenors' Comments Regarding Responses to Appeal Board's Memorandum and Order of October 20, 1983 (November 15, 1983) at 1.

[25] NRC Staff Response to Appeal Board Memorandum and Order of October 20, 1983, and Affidavit of Dennis P. Allison (November 4, 1983) at 3.

jurisdiction over this phase of the proceeding; rather, we leave to the staff resolution of any matters that may arise in the future. See Duquesne Light Co. (Beaver Valley Power Station, Unit 1), ALAB-408, 5 NRC 1383, 1386 (1977).[26]

Third, the Intervenors refer to Unresolved Item No. 4-2, which found that the field inspection "indicated that the load transfer path used in the design calculations did not reflect actual conditions."[27] Specifically, design calculations assumed that a pipe stanchion would be "centered over and connected to two embedded plates which would share the load." In fact, the stanchion had been mislocated. The mislocation resulted in the load being placed on a single embed only. I&E notes that Bechtel personnel subsequently revised their calculation to reflect the as-built condition and found that the load carrying capacity in the single plate was adequate (a finding with which I&E does not appear to disagree). I&E concludes that further evaluations should be conducted to determine if

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[26] In this connection, we do not endorse the Intervenor's suggestion that our disposition of this issue constitutes a delegation of responsibility to Bechtel. On the information before us, we are satisfied that the embeds are safe and that nothing in the I&E Report suggests the contrary. We are also confident that the staff can pursue any safety concerns that might arise as part of its ongoing inspection responsibilities.

[27] I&E Report at 4-16.

similar instances of disagreements between design and as-built conditions exist elsewhere. In this regard, we note that the applicant's response indicates that such review will be conducted on all other remaining anchors and necessary modifications will be made to ensure that the civil design requirements are met.[28] Thus, I&E's concerns appear to have been satisfied.

Fourth, the Intervenors claim that the report supports their argument that the embedded plates were improperly selected. They point to I&E's observation that "no specific design calculations existed for embedded plates to document the basis for their selection and placement on design drawings designating the type of plate for use at a given location,"[29] and it seems clear that the inspection uncovered inadequacies in paperwork. I&E was nonetheless able to conclude that "a controlled process for these selections had been in effect."[30] Furthermore, I&E noted that "[o]nly one instance was identified where there was a question of why the original designer had selected a particular type of plate."[31] I&E assumed that the selection

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[28] See Applicant's Response, Exhibit B

[29] See I&E Report at 4-17.

[30] Id.

[31] I&E Report at 4-18.

was "a judgment call" because "it was unlikely that the refined analysis which was performed during our inspection was in fact performed originally to support the selection."[32] I&E pointed out that "the more refined analysis did support the original design, validating the judgment . . . made by the original designer."[33] I&E's overall conclusions regarding the selection process were as follows:

> In summary, there existed excellent evidence of the interface action between the plant design groups. . . and the Civil Group on the examples reviewed. There appeared to be good coordination of the necessary information from one group to another. . . Overall, there was evidence that when an interface problem was identified, management had taken corrective action and the inspector was able to see how the coordination process had improved although the written procedures might not in every case reflect the actual functioning process as a requirement . . . .[34]

In our view, the I&E Report does not support the Intervenors' claim that the embedded plates were improperly selected.

Finally, the Intervenors claim that the I&E Report reminds the applicant of various construction alternatives identified during plant design that may be employed where

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[32] Id.

[33] Id.

[34] Id. at 4-17 to 4-18.

"legitimate question exists as to the safety of the embedded plates. . . ."[35] The Intervenors appear to suggest that such alternatives should now be used at Callaway. The I&E Report found, however, that the design assumptions were valid and that the analyses had been conducted in accordance with appropriate procedures. The Licensing Board found, moreover, and we agreed, that the safety of the embedded plates had not been genuinely called into question (a conclusion with which the Intervenors obviously disagree). Thus, there is no reason now to employ the various design options noted in the I&E Report.

b. SA-312 Piping. The Intervenors point to an allegedly "improper calculation of pressure within piping."[36] The I&E Report does, indeed, discuss an improper calculation. However, as noted in the affidavit submitted by the applicant, the piping in question is not SA-312 pipe which was the subject of the Intervenors' argument on appeal, but rather SA-106 GR. B piping.[37] Perhaps more important, the I&E Report itself found no similar or systematic errors elsewhere and concluded that these small

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[35] Id. at 4-11.

[36] Petition for Reconsideration at 4. See I&E Report at 2-5.

[37] See Applicant's Response, Exhibit E, Affidavit of John D. Hurd, (October 11, 1983).

underpressure predictions had no effect on the safety of the design.[38] As a result, we conclude that the Intervenors have failed to demonstrate that this finding by I&E is material to the issues we considered in ALAB-740.

III.

The responsibility for the examination of safety issues is divided between the Commission's adjudicatory boards and its staff. Generally speaking, at the operating license stage the role of the boards is limited to resolving contested matters properly placed in issue in a case. Consolidated Edison Co. (Indian Point, Units 1, 2 and 3), ALAB-319, 3 NRC 188, 189-90 (1976). The staff must make decisions on a wide range of safety matters not placed in litigation, and has a further responsibility to superintend the safety of individual applicants and licensees on an ongoing basis. The I&E inspection that resulted in the report brought to our attention by the Intervenors was undertaken in the exercise of these more general responsibilities.

We have reviewed the report and the Intervenors' arguments in connection with it and are satisfied that nothing warrants a reopening of the record to examine the

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[38] I&E Report at 2-5 to 2-6.

matters litigated in this case. We have not attempted to evaluate the merits of the various findings, unresolved items or observations included in the report. Such matters are left to resolution by the staff.[39]

The petition for reconsideration is denied.

It is so ORDERED.

FOR THE APPEAL BOARD

C. Jean Shoemaker
C. Jean Shoemaker
Secretary to the
Appeal Board

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[39] This does not mean, however, that the Intervenors are foreclosed from raising these matters at all. A party that wishes to raise health, safety or environmental issues but is unable to do so in a pending adjudication may file a request with the Director of Nuclear Reactor Regulation under 10 CFR § 2.206 asking the Director to institute a proceeding to address those issues. Detroit Edision Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 NRC 1760, 1767 (1982).