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Anthony Z. Roisman, Esq.
Executive Director
Trial Lawyers for Public Justice P.C.
Suite 611
2000 P Street, Northwest
Washington, DC 20036

Dear Mr. Roisman:

On August 1, 1984, you wrote to request a report on actions of the NRC which resulted in the public availability of the name of a CASE witness and the transcript of a deposition given by that individual under a protective order in the Comanche Peak licensing proceedings. A partial response was provided by John Hoyle's letter of August 30, 1984. A response to your specific questions is provided as an attachment to this reply.

Based on information from the individuals who processed and handled copies of the transcript, the staff's review has not identified anyone other than Mr. Carpenter and Mr. Warshosky (interns for Trial Lawyers for Public Justice), Ms. Ellis (CASE), and one unidentified individual at the Glen Rose LPDR, who may have seen the document or obtained the name of the witness. If you have information of others who have obtained access, I would appreciate being informed.

The Commission's document handling and processing procedures do contain features which provide extra care to protected documents. These procedures have been reviewed in detail and changes have been made which should further reduce the possibility of inadvertent disclosure.

Sincerely,

Samuel J. Chilk
Secretary of the Commission

Attachment:
As Stated

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ANSWERS TO SPECIFIC QUESTIONS
CONTAINED IN MR. ROISMAN'S
AUGUST 1, 1984 LETTER

Question 1: When and how the breach occurred.

Response: The transcript of the July 20, 1984 deposition was received by the Atomic Safety and Licensing Board Panel (ASLBP) on July 22 and sent to the NRC document processing office (contract operation) for logging into the data system, reproduction, distribution and filing in accordance with existing procedure. The document entered the processing unit with the proper marking for sensitive material but was incorrectly cataloged and distributed by that office as a publicly available document on July 25.

Question 2: Who was responsible for it.

Response: The error was made by the NRC contractor responsible for cataloging new documents within the document processing office.

Question 3: What has been done to recover all copies of the transcript and of the witness's name.

Response: The NRC staff has advised the Office of the Secretary that all distribution pathways of the transcript have been examined and all known publically available copies of the transcript have been returned to NRC custody and public indexes have been revised to delete the witness' name.

Question 4: What is being done to determine who had access to the transcript and to the witness' name.

Response: The staff has determined that duplicates of the transcript and an index containing the witness' name were prepared for distribution to the H Street Public Document Room (PDR), the two Comanche Peak Local Public Document Rooms (LPDRs), and the Institute of Nuclear Power Operations (INPC). Each of those organizations were contacted to determine who

may have had access to the document and/or the name.

The H Street PDR staff indicated that the only known access by anyone external to the NRC processing staff was by Thomas Carpenter, intern for Trial Lawyers for Public Justice, and his associate, Daniel Warshosky. They conclude that other access was unlikely in the PDR because the error was identified before the transcript was placed on the public shelf and quick recovery actions were taken by PDR staff to purge all indexes of the witness' name.

The Glen Rose LPDR librarian (Glen Rose-Somervell Public Library) advised that an initial search for the transcript was made on August 6. No copy was found. However, as the result of a follow-up call from NRC on August 17, the librarian found a copy on the public shelf, removed it and returned it to NRC. The librarian recalls that during the period in which the transcript may have been on the shelf, one unidentified person was looking at Comanche Peak documents. The librarian had no knowledge that the July 20 transcript was among those being looked at by the unidentified person. The index of new accessions containing a record of the July 20 transcript was returned to NRC before it was placed on the public shelf.

The Arlington LPDR librarian (University of Texas at Arlington) also conducted a search for the transcript on August 6. A copy was found among other newly acquired documents which had not yet been processed for public access. The librarian removed and packaged it for return to NRC but at the request of the NRC Executive Legal Director staff, she made it available to J. Ellis, a party to the Comanche Peak proceeding, before it was mailed back to NRC. That copy is presumably still with J. Ellis. The index showing the July 20 deposition was returned to NRC by the librarian before public access could occur.

The staff of the Institute of Nuclear Power Operations (INPO) located a copy of the transcript among unfiled new microfiche acquisitions and returned it to NRC on August 13, 1984, before it was made publicly

available. The corresponding monthly computer index was still within NRC when the incident occurred and it was purged of any reference to this document prior to being sent to INPO.

Question 5:

A list of all those who may have obtained a copy of the witness' name and transcript.

Response

As described in the answer to question 4, other than those individuals in NRC who have responsibility for the processing, distribution, and handling of paper and microfiche copies of documents, only Mr. Carpenter, Mr. Warshosky, Ms. Ellis, the LPDR librarians and an INPO staff member have been positively identified as having access to the witness' name or a copy of the transcript of the deposition from any of the facilities where they may have been publicly available. The previous answer also indicates that an unidentified person reviewing documents in the Glen Rose LPDR may also have seen the witness' name and transcript.

Question 6:

What is being done to ensure that the names and transcripts of the testimony of other witnesses who testified under a protective order are not made available to the public.

Response:

The NRC document processing office, in coordination with LPDR staff, the Licensing Board staff, ELD and the PDR, has conducted a search of all public distribution pathways for the names and testimony of other witnesses who testified under protective order. Staff has informed the Office of the Secretary that all transcripts are maintained in NRC custody and there are no public indexes containing the names of such individuals.

Additional safeguards have been placed in effect that (a) require that documents containing such testimony be given an additional, easily recognizable marking on the cover to facilitate identification as a sensitive document, (b) tightly control the reproduction and distribution process; and (c) remove the processing steps which involve handling the protected documents by the contractor.

Question 7: The identity of the person or persons responsible for all of the protected documents.

Response: Responsibility for protection of documents in a Licensing Board proceeding is shared by those who, by virtue of their need to know, are determined to require them. Normally, the following individuals/units are provided copies on a need to know basis:

- signatories of the Statement of Non-Disclosure
- the members of the Licensing Board
administrative staff of the Atomic Safety and Licensing Board Panel
- the ELD staff attorneys for the case
- the Atomic Safety and Licensing Appeal Board
- the Docketing and Services Branch, Office of the Secretary

In special instances, the distribution within NRC may be broadened at the direction of the Board or ELD. In certain cases, the Commission itself may require access. In that event, Commissioner offices and Commission level staff may also be provided copies.

Question 8: What changes in procedures are being implemented to ensure that such breaches do not occur in the future.

Response: Additional safeguards, as described in the answer to question 6, have been designed and placed in effect.