

contained in their pending motion to reopen on base mat issues. ^{2/} The Staff believes that such a result was not intended by the Appeal Board and would be improper, and that clarification or reconsideration of ALAB-792 is therefore necessary and appropriate. ^{3/}

^{2/} See "Amended and Supplemental Motion to Reopen Contention 22", filed on December 12, 1983 ("Amended Motion"). Joint Intervenors' Amended Motion constitutes their second attempt to reopen the record to litigate base mat issues within the scope of Contention 22; their first such motion, entitled "Motion to Reopen Contention," was filed on July 25, 1983.

^{3/} As part of this request, the Staff also moves, pursuant to 10 C.F.R. § 2.788, for a stay of the decision in ALAB-792, pending a determination by the Appeal Board of the instant motion for clarification and/or reconsideration. In accordance with 10 C.F.R. § 2.788(e), the Staff submits that:

(1) as more fully set forth herein, the Staff has made a strong showing that it is likely to succeed on the merits, in that the Appeal Board appears to have intended to assert jurisdiction only over those portions of the QA Motion which bear a reasonable nexus to the pending base mat motion, and the Appeal Board's jurisdiction exists only with respect to such matters;

(2) irreparable injury to the Staff may result in the absence of a stay, in that litigation of matters unrelated to the base mat -- founded upon an incorrect definition of jurisdiction -- would result in an unnecessary and substantial tax upon limited Staff resources, after the Staff has already devoted many man-years of effort in a broad-based investigation of Waterford-related QA allegations;

(3) the granting of a stay will not result in any harm to the Applicant or Joint Intervenors and, indeed, would serve to assist those parties in planning and in conserving their own resources, pending the Appeal Board's definition of the proper scope of its jurisdiction; and

(4) the public interest lies in favor of the entry of a stay, in that a stay would serve to avert unwarranted litigation, thereby leading to the conduct of "efficient and expeditious administrative proceedings" (see generally Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1048 (1983)).

DISCUSSION

In ALAB-792, the Appeal Board correctly set forth the procedural history of this proceeding, up to and including the filing, on November 7, 1984 of Joint Intervenors' QA Motion. The Appeal Board correctly observed that, in ALAB-753 (issued on December 9, 1983), it had, inter alia, denied the Joint Intervenors' first motion to reopen on base mat issues and had "completed [its] sua sponte review of the last Licensing Board decision in this proceeding" (ALAB-792, slip. op. at 3). As noted by the Appeal Board, an amended motion to reopen on base mat issues was filed on December 12, 1984; no party contested the Appeal Board's jurisdiction to rule on the amended base mat motion; and the QA Motion was filed before the Board had ruled upon that amended motion (Id.). In light of this procedural history, and based upon its examination of the QA Motion, the Appeal Board found "a rational and direct link" between the QA Motion and the amended base mat motion, leading it to reject the Applicant's jurisdictional challenge (Id., at 7-8).

The Staff fully concurs with the Appeal Board's approach to resolving the issue of jurisdiction, as that issue was presented by the Applicant. As noted by the Appeal Board, the signal test of its jurisdiction to consider a motion to reopen, in these circumstances, is to decide whether the "issue sought to be considered anew, or to be reconsidered, has a reasonable nexus to the discrete matter still pending before [it]," and its "inquiry is thus reduced to whether there is a reasonable nexus between Joint Intervenors' pending basemat motion and their latest motion to reopen on quality assurance" (Id., at 5 and 7;

emphasis added). Too, our examination of the arguments presented by the Applicant ^{4/} leads us to conclude that those arguments were properly rejected. In our view, the Applicant went too far in asserting that "none of these contentions bears a reasonable relationship to the cracked basement [sic] issue" and that, for jurisdictional reasons, "the Appeal Board must dismiss the [QA] motion" (Applicant's Answer, at 2, 6; emphasis added).

Our review of the pending QA motion leads us to find, as did the Appeal Board, that a "reasonable nexus" exists between that motion and the amended base mat motion -- but only to the extent that certain of the matters set forth in the QA Motion also relate to the pending base mat motion. We do not, however, consider that such jurisdiction extends to each of the other far-reaching matters embraced by the QA Motion -- including, without limitation, such matters as piping, pipe supports, hangers, whip restraints, instrumentation, Hilti bolts, electrical equipment, valves, cable trays, HVAC supports, motors, operating staff, shop welds, welding (other than of base mat-related items), and vendors and procurement (other than as related to the base mat). As to such matters, we do not perceive a "reasonable nexus" to matters contained within the

^{4/} "Applicant's Answer to Joint Intervenors' Motion to Reopen the Record and Admit Three New Contentions", dated November 30, 1984 ("Applicant's Answer"), at 4-6.

base mat motion and, as to these matters, jurisdiction no longer resides within the Appeal Board. ^{5/} Similarly, the issue of management integrity, in our view, may be reached only to the extent that it involves management's handling of matters related to the base mat.

Our reading of ALAB-792 leads us to believe that the Appeal Board, itself, was mindful of this limitation on its jurisdiction. Thus, the Appeal Board stated as follows:

Our inquiry is thus reduced to whether there is a reasonable nexus between Joint Intervenors' pending basemat motion and their latest motion to reopen on quality assurance. Although the latter motion is substantially broader, there is a clear overlap insofar as Joint Intervenors allege quality assurance deficiencies in connection with the construction of the base mat. . . . Further, resolution of certain of the concerns raised by the staff in the so-called Eisenhut Letter of June 13, 1984, will be pertinent to our disposition of both motions to reopen.

(ALAB-792, at 7; emphasis added). However, while the Appeal Board recognized that the QA Motion "is substantially broader" than the matters contained in the base mat motion, nowhere in its Memorandum does it clarify whether it means to assert jurisdiction over all of the matters contained

^{5/} Nor is this view of the Appeal Board's jurisdiction inconsistent with the fact that the Staff recently transmitted to the Appeal Board two Board Notifications which discuss matters being investigated by the Office of Investigations. See Board Notification Nos. 84-170 (December 5, 1984) and 84-187 (December 13, 1984). The Staff issued these Board Notifications in keeping with its responsibility to inform the Boards of potentially "significant new developments in pending cases." Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-551, 9 NRC 704, 706 (1979). In doing so, the Staff highlighted certain new matters which may relate to either of the motions pending before the Board, without presuming to determine, in advance of the Appeal Board's own determination, whether jurisdiction to decide the issues properly rested with the Appeal Board.

in the QA Motion or only over those particular matters which bear a relationship to the matters presented by the base mat motion. For this reason, clarification of the Appeal Board's Memorandum is required.

It is possible that the language in ALAB-792, quoted above, reflects an intention by the Appeal Board to assert jurisdiction only over the base mat-related portions of the QA Motion. At the same time, we recognize that the Board was not presented with any reason to define the precise boundaries of its jurisdiction, given the Applicant's broad assertion that the Board lacked any jurisdiction whatsoever, even to consider those aspects of the QA Motion which clearly relate to the base mat. While the Appeal Board apparently perceived a need to issue its jurisdictional determination as promptly as possible, before it had received the Staff's views (ALAB-792, at n.2), we believe that a clarification of its Memorandum is now appropriate in light of these comments.

Finally, we wish to note that any other result would be incorrect. The Joint Intervenors' pending base mat motion seeks to reopen their Contention 22, a contention which was previously rejected on Applicant's motion for summary disposition.^{6/} That contention asserted as follows:

Applicant has failed to discover, acknowledge, report or remedy defects in safety related concrete construction.

^{6/} See "Memorandum and Order (Granting Applicant's Motion For Summary Disposition of Joint Intervenors' Contention 22)", dated October 20, 1981. A chronology of the events surrounding the filing of Contention 22 and its disposition by the Licensing Board is presented in the Staff's response to Joint Intervenors' first motion to reopen on base mat issues. See "NRC Staff's Answer to Joint Intervenors' Motions to Reopen Contentions 8/9 and 22", dated November 28, 1983, at 2-4.

Contention 22 -- to the extent that it relates to the base mat -- provides the proper touchstone to be used in determining the Appeal Board's jurisdiction over the newly raised contentions presented by the instant QA Motion. Arguably, Contention 22 may be read to contain an issue of quality assurance -- but only insofar as safety-related concrete construction is concerned. It would be fundamentally improper for the Board to admit for litigation the numerous and broad matters contained in the QA Motion, on the basis of finding a "reasonable nexus" to issues presented by the pending motion to reopen Contention 22 to consider base mat issues, in that no such rational link has been demonstrated by the Joint Intervenors. Accordingly, the Staff submits that a careful examination of the pending QA Motion is required, in order to ascertain the proper scope of the Appeal Board's jurisdiction. Also, any further litigation of matters contained in the QA Motion should proceed only with respect to those particular matters which bear the requisite "reasonable nexus" to the motion to reopen on base mat issues.

Nor should this result be perceived to have unwarranted consequences for the safety of the facility or the health and safety of the public. As the Joint Intervenors, themselves, have noted, the Waterford facility has been the subject of an unprecedented Staff investigation -- initiated at the Staff's own instance -- involving the efforts of some 40 technical experts over the course of several months. This investigation has led the Staff to require the Applicant to take further action with respect to numerous matters; and the Applicant's follow-up of those items has been monitored for adequacy by the Staff. Based upon the Staff's review of the Joint Intervenors' QA Motion, the Staff has concluded that the

"Joint Intervenors' motion does not contain any significant new safety issues that have not been previously reviewed by the Staff and brought to a satisfactory resolution." Affidavit of Dennis M. Crutchfield, dated December 21, 1984, at 7.

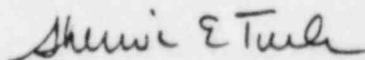
Three conclusions should be reached in view of these circumstances. First, the Appeal Board possesses the jurisdiction to decide only those matters contained in the QA Motion which bear a "reasonable nexus" to matters contained in the pending base mat motion. Secondly, the Staff's investigation of Waterford-related QA matters provides substantial assurance as to the safety of the Waterford facility, and a reopening of the adjudicatory proceeding to reexamine the resolution of these matters is unwarranted. Finally, it is particularly appropriate in these circumstances -- where the Staff has already become intimately familiar with a wide range of QA allegations concerning the facility -- that the Joint Intervenors be directed to pursue any remaining concerns they may have following their review of the Staff's affidavits filed in response to their QA Motion and Supplement 9 to the SER, through the precise avenue provided to them by the Commission's regulations where jurisdiction has already passed from the Appeal Board. The proper avenue for resolution of the Joint Intervenors' remaining concerns is found in 10 C.F.R. § 2.206, whereby they may seek a decision by the Director of the Office

of Nuclear Reactor Regulation as to whether an order to show cause should be issued. Cf. North Anna, ALAB-551, supra, 9 NRC at 709. ^{7/}

CONCLUSION

For the reasons set forth above, the Staff submits that the Appeal Board possesses jurisdiction to decide only those particular matters contained in the Joint Intervenors' QA Motion which bear a "reasonable nexus" to the pending motion to reopen on base mat issues. Accordingly, the Staff hereby moves for clarification and/or reconsideration of the Appeal Board's Memorandum of December 17, 1984 (ALAB-792) in light of the discussion contained herein.

Respectfully submitted,



Sherwin E. Turk
Deputy Assistant Chief
Hearing Counsel

Dated at Bethesda, Maryland
this 24th day of December, 1984

^{7/} We note, also, that on June 4, 1984, the Commission indefinitely extended the time in which it might review ALAB-753. Accordingly, the Commission may retain jurisdiction over matters outside the scope of the pending base mat motion, and it is possible that the Appeal Board's jurisdiction may "be resurrected by a remand order" by the Commission. See generally, North Anna, ALAB-551, supra, 9 NRC at 708.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of)

LOUISIANA POWER AND LIGHT COMPANY)

(Waterford Steam Electric Station,)
Unit 3))

Docket No. 50-382

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S MOTION FOR CLARIFICATION AND/OR RECONSIDERATION OF APPEAL BOARD'S MEMORANDUM DATED DECEMBER 12, 1984 (ALAP-792)" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 24th day of December, 1984.

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