



UNITED STATES
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING APPEAL PANEL
WASHINGTON, D.C. 20555

January 3, 1985

Ben B. Hayes, Director
Office of Investigations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

85 JAN -4 A11:38

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Re: Docket No. 50-382 OL, Louisiana Power &
Light Company (Waterford Steam Electric
Station, Unit 3)

SERVED ON 4 1985

Dear Mr. Hayes:

Your letter of December 24, 1984, does not provide a sufficient response to our "communication" of December 19. Indeed, it provides no substantive information whatsoever concerning the pending investigations being conducted by your office in connection with the Waterford facility. Our December 19 order directs you to supply us with such information, in writing, on an ex parte, in camera basis by January 14, 1985. As discussed in our order, we have taken this action pursuant to the Commission's "Statement of Policy; Investigations, Inspections, and Adjudicatory Proceedings," 49 Fed. Reg. 36,032 (1984).² Although the policy statement refers to the preparation of a transcript

¹ Although you sent a copy of your letter to the Commission's Secretary, presumably for inclusion in the public docket, you did not serve it on the parties in this pending adjudication. Because of the complete absence of any investigatory information in the letter, there is no reason why the parties should not have been served. Accordingly, we are asking the Secretary to serve your December 24 communication, along with this response, on the parties.

² In view of our familiarity with the policy statement, as evidenced by our December 19 order, it was quite unnecessary for you to supply us with another copy of it. A portion of that statement, however, warrants special note here.

The Commission believes that the boards, using the procedures established in this Policy Statement, can resolve most potential disclosure conflicts once they have been advised of the nature of the information involved, the status of the inspection or investigation, and the projected time for its

(Footnote Continued)

of the in camera proceedings, it does not preclude the preliminary written submissions we seek by our December 19 order. Because your office is apparently conducting some 11 investigations, the substance of which is unknown to us, we prefer to have a coherent³, well-focused written presentation before any oral hearing.

You may be assured that we will protect the confidentiality of any written or oral material presented in accordance with the Commission's policy statement.

Sincerely,

/s/

Christine N. Kohl, Chairman

W. Reed Johnson

/s/

Howard A. Wilber

Atomic Safety and Licensing
Appeal Board for the
Waterford proceeding

cc: S. Chilk, Secretary (with instructions to serve all parties with copies of this letter and that of B. B. Hayes, dated December 24, 1984)

(Footnote Continued)

completion. * * * These procedures are designed to allow the boards to determine the relevance of material to the adjudication, and whether that information must be disclosed to the parties, and, if disclosure is required, to provide a mechanism for case management both to protect investigations and inspections and to allow for the timely provision of material and relevant information to the parties.

49 Fed. Reg. at 36,033 (emphasis added).

³ A copy of the in camera transcript of your office's recent presentation to the Commission on the Waterford investigations will not do. Specially prepared written submissions are generally more organized than oral reports. Further, they do not include the potentially influencing comments, interjections, and discussion of others at the meeting.

December 24, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before Administrative Judges:

Christine N. Kohl, Chairman
Atomic Safety and Licensing Appeal Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

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OFFICE OF SECRETARY
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BRANCH

Dr. W. Reed Johnson,
Administrative Judge
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, DC 20555

Howard A. Wilber
Administrative Judge
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, DC 20555

SERVED JAN 11 1985

In the Matter of

LOUISIANA POWER & LIGHT COMPANY

Docket No. 50-382 OL

(Waterford Steam Electric Station,
Unit 3)

Dear Administrative Judges:

We appreciate the opportunity to assist the Atomic Safety and Licensing Appeal Board in this matter and trust this letter provides a sufficient response to your communication of December 19, 1984. The Office of Investigation stands ready to provide the Appeal Board in an ex parte, in camera session any information developed by OI relevant and material to the Board's inquiry. As there are several ongoing OI investigations being conducted regarding the Waterford project, there is a considerable amount of preliminary information already developed. There is also a substantial amount of investigative effort to be accomplished before the OI investigations are concluded.

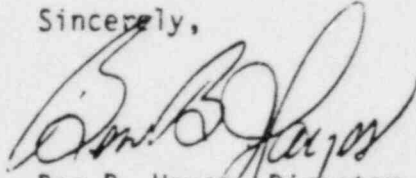
At this point, there is no information which might be disclosed to the parties under protective order. Information which even arguably at this juncture may appear appropriate for such disclosure may, as an investigation progresses, take on a new or different meaning thus negating the appropriate basis for its present disclosure.

Premature disclosure to parties, even under protective order, provides at least the potential for discovery of the lines of investigation, the opportunity for the tailoring of testimony, and ultimately a debasing of the integrity of the investigative process. Indeed, the licensing process is best served by a complete record, yet the record can never be complete if the premature release of information thwarts the further collection of that very information.

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In OI's view, a prophylactic approach is the most reasoned and dictates that OI will orally provide the Board any information it deems relevant and material. Upon conclusion of an investigation OI will provide the Board a copy of its report of investigation less any deletions made for privacy or confidentiality purposes.

Sincerely,



Ben B. Hayes, Director
Office of Investigations

cc: S.Chilk, SECY
S.Aloot, OGC

filed with the Department by the Trust. Such plan is not required to include in the annual report any information concerning individual transactions of the Trust.

(c) *Reporting Information Relating to the Trust to be Filed with the Department of Labor.* The following information regarding the Trust must be reported for the fiscal year of the Trust ending with or within the plan year for which a Participating Plan's annual report is made:

(1) Name, address and employer identification number (EIN) of the Trust;
 (2) A list of all Participating Plans investing in the Trust identified by plan name, plan number, and name and EIN of the plan sponsor as they appear on the annual return/report, and each plan's percentage interest in the Trust as of the beginning and ending of the fiscal year of the Trust;

(3) A statement of assets and liabilities of the Trust;

(4) A statement of income and expenses of the Trust;

(5) The assets held for investment (including the acquisitions and dispositions during the fiscal year of the Trust), leases and obligations in default, and compensation paid by the Trust for services in the manner required by the instructions to the annual return/report Form 5500;

(6) A report of an independent qualified public accountant regarding the statements and schedules described in subparagraphs (2) through (5) above which meets the requirements of 29 CFR 2320.103-1(b)(5).

The Trust shall file the information described in this paragraph (c) with the Department by mailing it to: Office of Reports and Disclosure, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210, Attention: Texas Commerce Trust Co. Alternative Method of Compliance.

Signed at Washington, D.C. this 8th day of September.

Robert A.G. Monks,

Administrator, Office of Pension and Welfare Benefit Programs.

[FR Doc. 84-24200 Filed 9-12-84; 8:43 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

Statement of Policy; Investigations, Inspections, and Adjudicatory Proceedings

On August 5, 1983, the Commission set forth interim procedures for handling

conflicts between the NRC's responsibility to disclose information to adjudicatory boards and parties, and the NRC's need to protect investigative material from premature public disclosure. "Statement of Policy— Investigations and Adjudicatory Proceedings," 48 FR 36358 (August 10, 1983).

Those interim procedures called for the NRC staff or Office of Investigations (OI), when it felt disclosure of information to an adjudicatory board was required but that unrestricted disclosure could compromise an inspection or investigation, to present the information and its concerns about disclosure to the board *in camera*, without disclosure of the substance of the information to the other parties. A board decision to disclose the information to the parties was appealable to the Commission, and the board was not to order disclosure until the Commission addressed the matter.

That Statement of Policy was to remain in effect until the Commission received and took action on the recommendations of an internal NRC task force established to develop guidelines for reconciling these conflicts in individual cases. The Commission in that Statement also requested public comments on the propriety and desirability of *ex parte in camera* presentation of information to a board, and suggestions for any better alternatives.

The Task Force submitted its report to the Commission on December 30, 1983. A copy of that report will be placed in the Commission's Public Document Room. The Task Force approved the principles discussed in the Commission's earlier Statement of Policy, and made several recommendations intended to define specifically the responsibilities of the boards, the staff, and OI in presenting disclosure issues for resolution.

The Task Force recommended that the final Policy Statement explain that full disclosure of material information to adjudicatory boards and the parties is the general rule, but that some conflicts between the duty to disclose and the need to protect information will be inevitable. The Task Force further recommended that issues regarding disclosure to the parties be initially determined by the adjudicatory boards with provision for expedited appellate review, and that procedures for the resolution of such conflicts be established by rule. Finally, the Task Force suggested that existing board notification procedures should remain unaffected by the Policy Statement, and that those procedures and Commission

guidelines for disclosure of information concerning investigations and inspections should apply to all NRC offices. Those recommendations have been incorporated in this Statement.

In addition, two comments were submitted by members of the public.

One commenter stated that the withholding of information from public disclosure should be confined to the minimum essential to avoid compromising enforcement actions, and that appropriate representatives of each party should be allowed to participate under suitable protective orders in any *in camera* proceeding except in the most exceptional cases.

The other commenter maintained that an *in camera* presentation to the board with only one party present is undesirable and violates the *ex parte* rule. That commenter suggested an alternative of having the attorneys or authorized representatives of parties who have signed a protective agreement present at any *in camera* presentation, with appropriate sanctions for violating the protective agreement.¹

The Commission, after considering these comments and the report of the Task Force, has decided that it would be appropriate, in order to better explain the Commission's policy in this area, to provide the following explanation of the conflict between the duty to disclose investigation or inspection information to the boards and parties and the need to protect that information:

All parties in NRC adjudicatory proceedings, including the NRC staff, have a duty to disclose to the boards and other parties all new information they acquire which is considered material and relevant to any issue in controversy in the proceeding. Such disclosure is required to allow full resolution of all issues in the proceeding. The Commission expects all NRC offices to utilize procedures which will assure prompt and appropriate action to fulfill this responsibility.

However, the Commission recognizes that there may be conflicts between this responsibility to provide the boards and parties with information and an investigating or inspecting office's need to avoid public disclosure for either or both of two reasons: (1) To avoid

¹ Both comments also included suggestions regarding matters beyond the scope of this Policy Statement, which is concerned only with establishing a procedure to handle conflicts between the duty to disclose information to the boards and parties and the need to protect that information. For instance, one suggestion was that the NRC impose a more stringent standard in deciding whether information warrants a board notification. Another recommended that the NRC improve the quality of its investigations.

compromising an ongoing investigation or inspection; and (2) to protect confidential sources. The importance of protecting information for either of these reasons can in appropriate circumstances be as great as the importance of disclosing the information to the boards and parties.

With regard to the first reason, avoiding compromise of an investigation or inspection, it is important to informed licensing decisions that NRC inspections and investigations are conducted so that all relevant information is gathered for appropriate evaluation. Release of investigative material to the subject of an investigation before the completion of the investigation could adversely affect the NRC's ability to complete that investigation fully and adequately. The subject, upon discovering what evidence the NRC had already acquired and the direction being taken by the NRC investigation, might attempt to alter or limit the direction or the nature or availability of further statements or evidence, and prevent NRC from learning the facts. The failure to ascertain all relevant facts could itself result in the NRC making an uninformed licensing decision. However, the need to protect information developed in investigations or inspections usually ends once the investigation or inspection is completed and evaluated for possible enforcement action.

The second reason for not disclosing investigative material—to protect confidential sources—has a different basis. Individuals sometimes present safety concerns to the NRC only after being assured that their individual identity will be kept confidential. This desire for confidentiality may arise for a number of reasons, including the possibility of harassment and retaliation. Confidential sources are a valuable asset to NRC inspections and investigations. Releasing names to the parties in an adjudication after promising confidentiality to sources would be detrimental to the NRC's overall inspection and investigation activities because other individuals may be reluctant to bring information to the NRC. However, the need to protect confidential sources does not end when the investigation or inspection is completed and evaluated for possible enforcement action.

By this Policy Statement, the Commission is not attempting to resolve the conflict that may arise in each case between the duty to disclose information to the boards and parties and the need to protect that information or its source. The resolution of actual conflicts must be decided on the merits

of each individual case. However, the Commission does note that as a general rule it favors full disclosure to the boards and parties, that information should be protected only when necessary, and that any limits on disclosure to the parties should be limited in both scope and duration to the minimum necessary to achieve the purposes of the non-disclosure policy.

The purpose of this Policy Statement is to establish a procedure by which the conflicts can be resolved. The Policy Statement takes over once a determination has been made, under established board notification procedures, that information should be disclosed to the boards and public, but OI or staff believes that the information should be protected. In those cases the Commission has decided that the only workable solution to protect both interests is to provide for an *in camera* presentation to the board by the NRC staff or OI, with no party present. Any other procedure could defeat the purpose of non-disclosure and might actually inhibit the acquisition of information critical to decisions. Allowing the other parties or their representatives to be present in all cases, even under a protective order, could breach promises of confidentiality or allow the subject of an investigation to prematurely acquire information about the investigation. We note in this regard the difficulties of attempting to prevent a party's representative from talking to his client about the relevance of the information and how to respond to it, even under a protective order.

The Commission believes that the boards, using the procedures established in this Policy Statement, can resolve most potential disclosure conflicts once they have been advised of the nature of the information involved, the status of the inspection or investigation, and the projected time for its completion. In many of the cases when the procedures in this Policy Statement are triggered by a concern for premature public disclosure, it may be possible for boards to provide for the timely consideration of relevant matters derived from investigations and inspections through the deferral or rescheduling of issues for hearing. In other instances, the boards may be able to resolve the conflict by placing limitations on the scope of disclosure to the parties, or by using protective orders.

The Commission wishes to emphasize that these procedures do not abrogate the well-established principle of administrative law that a board *may not* use *ex parte* information presented *in camera* in making licensing decisions.

These procedures are designed to allow the boards to determine the relevance of material to the adjudication, and whether that information must be disclosed to the parties, and, if disclosure is required, to provide a mechanism for case management both to protect investigations and inspections and to allow for the timely provision of material and relevant information to the parties. As such these procedures are analogous to the procedures for resolving disputes regarding discovery, see, e.g., 10 CFR 2.740(c), and do not violate the prohibition in 10 CFR 2.780 against *ex parte* discussion of substantive matters at issue.

In accord with the above discussion, the Commission has decided that the procedures to be followed, where there is a conflict between the need for disclosure to the board and parties and the need to protect an investigation or inspection, will include *in camera* presentations by the staff or OI. However, because this procedure represents a departure from normal Commission procedure, it is the Commission's view that the decision should be implemented by rulemaking. Accordingly, the Commission directs the NRC staff to commence a rulemaking on the matter.

Until completion of the rulemaking, the following will control the procedures to be followed in resolving conflicts between the duty to disclose to boards and the need to protect information developed in investigation or inspection:

1. Established board notification procedures should be used by staff or OI to determine whether information in their possession is potentially relevant and material to a pending adjudicatory proceeding.² The general rule is that all information warranting disclosure to the boards and parties, including information that is the subject of ongoing investigations or inspections, should be disclosed, except as provided herein.

2. When staff or OI believes that it has a duty in a particular case to provide an adjudicatory board with information concerning an inspection or investigation, or when a board requests such information, staff or OI should provide the information to the board and parties unless it believes that unrestricted disclosure would prejudice an ongoing inspection or investigation, or reveal confidential sources. If staff or OI believes unrestricted disclosure

² While this Statement refers only to staff and OI who are the organizations principally involved, the statement will apply to any other offices of the Commission which may have the problem.

would have these adverse results, it should propose to the board and parties that the information be disclosed under suitable protective orders and other restrictions, unless such restricted disclosure would also defeat the purpose behind non-disclosure. If staff or OI believes that any disclosure, however restricted, would defeat the purpose behind non-disclosure, it shall provide the board with an explanation of the basis of its concern about disclosure and present the information to the board, *in camera*, without other parties present. A verbatim transcript of the *in camera* proceeding will be made.³

All parties should be advised by the board of the conduct and purpose of the *in camera* proceeding but should not be informed of the substance of the information presented. If, after such *in camera* presentation, a board finds that disclosure to other parties under protective order or otherwise is required (e.g., withholding information may prejudice one or more parties or jeopardize timely completion of the proceedings, or the board disagrees that release will prejudice the investigation), it shall notify staff or OI of its intent to order disclosure, specifying the information to be provided, the terms of any protective order proposed, and the basis for its conclusion that prompt disclosure is required. The staff or OI shall provide the board within a reasonable period of time, to be set by the board, a statement of objections or concurrence. If the board disagrees with any objection and the disagreement cannot be resolved, the board shall promptly certify the record of the *in camera* proceeding to the Commission for resolution of the disclosure dispute, and so inform the other parties. Any licensing board decision to order disclosure of the identify of a confidential source shall be certified to the Commission for review regardless of whether OI and staff concur in the disclosure.⁴ The board's decision shall be stayed pending a Commission decision. The record before the Commission shall consist of the transcript, the board's Notice of Intent to require disclosure and the objections of Staff or OI. Staff or OI may file a brief with the Commission within ten days of filing a statement of objections with the board. The record before the Commission, including staff or OI's

³ Nothing in this Statement prohibits staff or OI from sharing information.

⁴ The Commission has decided to review any licensing board decision ordering disclosure of the identify of a confidential source because of the importance to the Commission's inspection and investigation program of protecting the identity of confidential sources.

brief, shall be kept *in camera* to the extent necessary to protect the purposes of non-disclosure.

The Commission recognizes that no other party may be in a position effectively to respond to staff or OI's brief because the proceedings have been conducted *in camera*. However, in those cases where another party feels that it is in a position to file a brief, it may do so within seven days after staff or OI files its brief with the Commission.

3. Staff or OI shall notify the board and, as appropriate, the Commission, if the objection to disclosure to the parties of previously withheld information, or any portion of it, is withdrawn. Unless the Commission has directed otherwise, such information—with the exception of the identities of confidential sources—may then be disclosed without further Commission order.

4. When a board or the Commission determines that information concerning a pending investigation or inspection should not be disclosed to the parties, the record of any *in camera* proceeding conducted shall be deemed sealed pending further order. That record will be ordered included in the public record of the adjudicatory proceeding upon completion of the inspection or investigation, or upon public disclosure of the information involved, whichever is earlier, subject to any privileges that may validly be claimed under the Commission's regulations, including protection of the identify of a confidential source. Only the Commission can order release of the identify of a confidential source.

Dated at Washington, D.C. this 7th day of September, 1984.

Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84-2428] Filed 9-12-84; 8:45 am]

BILLING CODE 7580-01-M

[Docket No. 50-334]

Duquesne Light Co., et al (Beaver Valley Power Station Unit No. 1); Exemption

I

The Duquesne Light Company, Ohio Edison Company and Pennsylvania Power Company (the licensees), are the holder of Facility Operating License No. DPR-66 which authorizes operation of the Beaver Valley Power Station, Unit No. 1 (the facility) at steady-state power levels not in excess of 2652 megawatts thermal. The facility is a pressurized water reactor (PWR) located at the licensee's site in Beaver County,

Pennsylvania. The license provides, among other things, that it is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect.

II

On November 19, 1980, the Commission published a revised section 10 CFR 50.48 and a new Appendix R to 10 CFR 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised section 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of those fifteen subsections, III.G, is the subject of this exemption.

Subsection III.G specifies detailed requirements for fire protection of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirements for separation and barriers cannot be met in an area, alternative safe shutdown capability, independent of that area and equipment in that area is required (III.G.3).

In response to previous requests from the licensee, the Commission granted an exemption to requirements of subsection III.G and III.L on March 14, 1983. By letter dated December 16, 1983 and supplemented by letter dated May 30, 1984, Duquesne Light Company requested additional exemptions from the requirements of Subsection III.G of Appendix R.

III

We have reviewed the licensee's exemption requests and evaluation of these requests is as follows:

1: Fixed Suppression and Detection Systems

For the following areas, an exemption is requested from Section III.G.3 to the extent it requires fixed suppression and detection to be provided throughout a fire area for which alternative shutdown has been provided:

Primary Auxiliary Building (PA-1A), Elev. 768
Control Room HVAC Equipment Room (CR-2), Elev. 713
Emergency Switchgear Rooms (ES-1 & 2), Elev. 713
Process Instrument Room (CR-4), Elev. 713
Communications Equipment & Relay Panel Room (CR-3), Elev. 713