

September 3, 2003

Diane Curran, Esq.
Harmon, Curran, Spielberg & Eisenberg, LLP
1726 M Street, N.W.
Suite 600
Washington, D.C. 20036

SUBJECT: AUGUST 7, 2003 REQUEST FOR DETERMINATION ON WHETHER
CERTAIN INFORMATION MAY BE RELEASED TO THE PUBLIC

Dear Ms. Curran:

Your August 7, 2003 letter identifies three items of information related to matters discussed at the oral hearing on the DCS motion for summary disposition on GANE contentions 1 and 2, held on August 5, 2003. You request a determination on whether this information may be released to the public. Contrary to your assertion, the items of information you listed are not "confidential" -- a term which the NRC uses in designating classified information which may not be released to the public. Moreover, information discussed in the course of NRC adjudications are generally matters of public record, and the transcript of the August 5 hearing is available should you wish to obtain it. However, given Judge Moore's remarks at the start of the August 5 hearing, you may need to seek the Board's clarification on what, if any, information discussed during the August 5 hearing should not be made public. Below, I address more specifically the three items of information listed in your August 7 letter.

The first item relates to a correction I made to the record during the August 5 hearing. An NRC Staff filing dated June 5, 2003 incorrectly indicated that the NRC's April 29, 2003 orders imposing a revised design basis threat (DBT) on BWX Technologies and Nuclear Fuel Services Inc., also applied to DCS. Note that while the revised DBT transmitted to BWX Technologies and Nuclear Fuel Services is classified information and thus not publicly available, the April 29 orders themselves were published in the *Federal Register*, and are thus matters of public record.

The second item listed in your August 7 letter is closely related to the first, as it pertains to the DBT applicable to DCS. The NRC Staff's position is as stated in the August 5 transcript, and the DBT as described in 10 C.F.R. 73.1 is a matter of public record. Contrary to your assertion, there has been no lack of diligence in protecting public health and safety.

The third item of information listed in your August 7 letter is the NRC Staff's cover letter to DCS dated July 28, 2003, whereby the Staff transmitted to DCS confidential classified information (the revised DBT imposed on BWX Technologies and Nuclear Fuel Services Inc.). I forwarded to you and the Board decontrolled copies of the July 28 letter in my cover letter dated July 31, 2003. Note that the "Confidential" headers and footers are crossed out on the decontrolled copies of the July 28 letter I distributed, because those copies did not include the confidential classified information transmitted to DCS.

Sincerely,

/RA/

John T. Hull
Counsel for NRC Staff