

## Coalition for Safe Power

WASHINGTON D.C. OFFICE  
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RELATED CORRESPONDENCE

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50-460/508 06

DOCKETED  
USNRC

May 1, 1984

'84 MAY -9 A11:20

Nunzio J. Palladino, Chairman  
Victor Gilinsky, Commissioner  
Thomas Roberts, Commissioner  
James Asselstine, Commissioner  
Frederick Bernthal, Commissioner

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

Dear Commissioners:

On January 27, 1984, on behalf of the Coalition for Safe Power -- intervenors in the Washington Public Power Supply System Nuclear Projects Nos. 1 and 3 operating license proceedings -- I wrote to William Dircks concerning Mr. Eisenhower's failure to serve the Licensing Board and parties in those two proceedings with certain relevant Board Notifications. I pointed out to Mr. Dircks that in both cases there was an admitted contention on the subject of environmental qualification of safety-related equipment -- the subject of the Board Notifications in question -- and requested an explanation for the decision to withhold them. On February 28, I received a letter from Mr. Harold Denton replying to my inquiries. I am astonished by its content and believe it imperative that the Commission review the policy which he appears to advocate.

Mr. Denton establishes the following policy guidelines for the sending of Board Notifications, but does not state whence they derive:

1. Board Notifications are sent when the Licensing Board establishes the date for beginning an evidentiary hearing and issues a notice to that effect;
2. Prior to thirty days before commencement of an evidentiary hearing new material is presented to the Licensing Board in the form of Safety Evaluation Reports (SER) or "other documents". (If there are items not included or inadequately included in the SER, the project manager may provide the information to the Board by a "summary Board Notification" thirty days before the evidentiary hearing begins); and
3. Within thirty days of, or during, an evidentiary hearing, new information is included in Board Notifications and provided directly.

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OREGON OFFICE: 410 Governor Building, 408 S.W. 2nd Ave., Portland, OR 97204 (503) 295-0490

Mr Denton concludes, therefore, that the Licensing Board and parties in the two proceedings in which the Coalition is an intervenor are not entitled to Board Notifications until 30 days prior to commencement of hearings.

Mr. Denton's statement of NRC policy flies in the face of all information and relevant case law I have seen in 6 years of participation in NRC proceedings. In fact, the question of how much new information should be provided to both licensing boards and parties, and when such information should be provided, is the subject of numerous NRC cases and testimony before Congress, as well as instructions to project managers on the procedures for disclosure of new technical information.

Beginning in 1973, with the publication of an Atomic Safety and Licensing Appeal Board order in a case regarding the McGuire plant, the staff was admonished for not bringing to the Licensing Board new information in a prompt manner. The Appeals Board also noted that the staff and applicant carry an obligation to inform the Licensing Board and parties of new, relevant materials. Subsequently, the staff improved its practices but no formal procedures were instituted. By November 1976, however, such a procedure had been developed: PM Operating Procedure 218 "Coordination and Disclosure of New Technical Information Relevant to One or More Licensing Proceedings." In essence, this procedure reflected the Commission's views as stated in its November 12, 1976 decision in North Anna:

We find the staff's delay in informing the Board and the explanations given for that delay unacceptable. The Licensing Board, the parties and the public have a right to be promptly informed of a discovery of this magnitude, before staff evaluation of that discovery and regardless of whether the record is technically open. No other policy is consistent with the staff's obligation to help the Commission fulfill its statutory mandate.

In testimony before Congress, then-Chairman Joseph Hendrie concluded that such a policy was proper because it served the dual purpose of protecting the public health and safety according to the NRC's mandate from Congress, and eliminating unnecessary delays in the licensing process.

It is ironic that at a time in the nuclear industry when "delays" are of such importance that the Chairman of the Commission can exhort the staff to consider all necessary means to expedite a handful of hearings, that Mr. Denton, representing the staff, would dictate a policy intended to do the very opposite. Mr. Denton's statements constitute an

attempt by the staff to prejudice the parties to proceedings and the public at large. This not only violates the mandate of the NRC and Commission policy, but will have the result of slowing the licensing process.

There is no justification under law for this new modus operandi adopted by the staff. Furthermore, Mr. Denton's letter does not even accurately reflect current procedure. In fact, parties without evidentiary hearings scheduled and parties with proceedings which are no longer ongoing receive Board Notifications regularly. This, I presume, is due to the individual judgement of those responsible, which is in full accord with past directives of the Commission.

I sincerely hope that you will review whatever formal or informal procedures are now in use by the staff to fulfill its obligation to provide new and relevant technical information to Licensing Boards and parties. I would remind the Commission that its past failures in this area caused the U.S. Department of Justice to charge the staff with concealment and a pervasive bias against public scrutiny. This practice was rightfully outlawed. If the Commission now condones it, a record justifying it should be made and a legal basis forthcoming to those of us who practice before the NRC. If, on the other hand, the Commission rejects this attempt at secrecy, it should ensure corrective actions are taken.

Sincerely,

A handwritten signature in cursive script, appearing to read "Nina Bell".

Nina Bell  
Staff Intervenor

Encls.



## Coalition for Safe Power

410 Governor Building  
408 Southwest Second Avenue  
Portland, Oregon 97204  
(503) 295-0490

January 27, 1984

William Dircks  
Executive Director for Operations  
U.S. Nuclear Regulatory Commission  
Washington D.C. 20555

Re: Licensing Board Notifications  
84-004 (1/5/84) and 84-007 (1/12/84)

Dear Mr. Dircks:

The above-referenced Board Notifications regarding Chairman Palladino's briefing on environmental qualification of equipment by Sandia Labs in December 1983 and the subsequent Commission meeting of January 6, 1984, were sent to the Board and parties of several operating license proceedings. Not included in either service list as recipients were the Licensing Board and parties to the Washington Public Power Supply System Nuclear Projects 1 and 3 proceedings. In both of these cases, there is an admitted contention regarding the environmental qualification of safety-related equipment -- the very subject of these documents.

This, of course, is not the first time we have had to discover information the "hard way". We find it irreprehensible, however, that on an issue as important to safety as this, for two outstanding applications for operating licenses where the issue has been admitted for litigation, that your Mr. Eisenhut could twice neglect to ensure service. This raises a few issues other than the competency of your staff, namely:

- Is it the status of construction or of the proceedings for WNP-1 and WNP-3 the reason for omission of service?
- If so, what other Board Notifications of relevance to these plants have not been served on the Board and parties to these proceedings?
- If the reason is unrelated to the current status of construction of the proceedings, what was the basis for the omission?

We look forward to a full response to these queries, as well as the appropriate remedy to the specific matter we have raised here.

For a non-nuclear future,



Nina Bell  
Staff Intervenor

cc: Service List  
WNP-1 OL & WNP-3 OL

FEB 28 1984

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'84 MAR -9 P7:38

Docket Nos.: 50-460  
and ~~50-508~~

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Ms. Nina Bell  
Coalition for Safe Power  
410 Governor Building  
408 Southwest Second Avenue  
Portland, Oregon 97204

Dear Ms. Bell:

Subject: Licensing Board Notifications - Washington Public Power Supply  
System Nuclear Projects 1 and 3

Your January 27, 1984, letter inquired why the Licensing Board and parties to the Washington Public Power Supply System Nuclear Projects 1 and 3 (WNP-1 and 3) did not receive Board Notifications relevant to proceedings on these two facilities. You expressed a particular interest in two recent Board Notifications on environmental qualification of equipment; a contention raised by you in both proceedings.

The key to commencement of sending Board Notifications on a specific case is the establishment of the date for beginning the evidentiary hearing and issuance of related notice by the Board. Prior to 30 days before the hearing, new material which is considered material and relevant to a proceeding is presented to the Boards via the Safety Evaluation Report (SER) or other documents. However, if there are items that have not been appropriately disposed of in the SER, a summary Board Notification is provided by the project manager to the Board 30 days before the start of the hearing. For cases within 30 days of (or during) the evidentiary hearing, new information found relevant and material is forwarded promptly to the Board. Since the hearing for WNP-1 is not yet scheduled and the hearing for WNP-3 is currently scheduled to begin in May 1985, relevant Board Notifications have not been sent to the Licensing Boards and will not be sent until 30 days prior to the commencement of their hearings.

For your information, attached is a listing of all Board Notifications issued since the docketing of WNP-1 on July 16, 1982. You will note that there are subjects that are not relevant to the OL proceedings of WNP-1 and -3. However, providing you with the complete list assures that the NRC has not omitted any

Board Notifications that you may conclude are relevant and material to these proceedings. Copies of these Board Notifications may be obtained from the NRC Public Document Room, 1717 H Street, N. W., Washington, D. C. 20555.

Sincerely,

Original Signed by  
H. R. Denton

Harold R. Denton, Director  
Office of Nuclear Reactor Regulation

Enclosure:  
Board Notification Listing

DISTRIBUTION:

Docket Nos. 50-460/508

NRC PDR

Local PDR

PRC System

EDO r/f (#14038)

LB #4 r/f

TKenyon

MDuncan

MLambor (EDO-14038)

OELD, Attorney

TNovak/PO'Brien (EDO-14038)

MBridgers (EDO-14038)

PPAS

SECY (3)

MGarver (EDO-14038)

JRoe

TRehm

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JMartin

JNGrace

BSnyder

HThompson

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\*NOTE: SEE PREVIOUS WHITE

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