

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Docket Nos. 50-400 OL
50-401 OL

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for enforcement actions in the event of nonconformance to the NRC requirements.

4. I have been involved in several activities related to the processing of allegations representing potential safety problems including:

- (a) Development of the proposed NRC Manual Chapter 0517 "Management of Allegations" issued 9/13/84.
- (b) Inspection of the "Quality First" program established by Kansas Gas and Electric Company (KG&E) for Wolf Creek and its implementation.
- (c) Audit of the SAFETEAM program established by Detroit Edison for Fermi 2 and its implementation.
- (d) Preparation of a Commission Paper addressing the need for a more formal inspection program to determine the acceptability of licensee-initiated allegation processing programs to assess credit in the licensing process.
- (e) Managing the processing of an NSSS employee allegation to close-out.

5. The purpose of this affidavit is to address a series of questions propounded by the Atomic Safety Licensing Board in the above-captioned proceeding. The questions are intended to elicit the NRC Staff's views as to whether the public disclosure of information contained in certain documents created voluntarily by the Applicant but in the possession of the Licensing Board would impair the NRC Staff's future ability to obtain the same or similar type of information. The documents in question were generated by the Applicant in connection with a self-initiated effort to determine whether any of the quality control inspectors employed at the Shearon Harris facility were aware of any

potential safety problems or had unresolved safety or quality concerns. I will address these questions seriatim.

6. The first question asked by the Licensing Board is whether "the documents in question here, and those of the type it [sic] represents, [are] an important means by which the NRC obtains or might obtain safety information about nuclear facilities[.]" In answering the question it is important to keep in mind the nature of the information contained in the documents in question. My review of these materials indicates that they reflect concerns and problems (some with potential safety significance) voiced by various inspectors affiliated with the construction of the Shearon Harris facility. Obviously, ascertaining, reporting, and resolving construction and safety concerns by an applicant or its agents serves a valuable purpose in that it supplements the Staff's inspection efforts and in some cases may result in the Staff obtaining information that, due to its limited resources, it would not obtain otherwise. Informing the NRC Staff of the results of internal safety audits assists the Staff appreciably in accomplishing its statutory mission to protect the public health and safety. In this sense, the documents in question represent a potentially important and useful source of information regarding the safety of nuclear facilities.

7. The second question propounded by the Licensing Board is whether information of the type contained in the documents in question is required to be compiled and reported to the NRC either by law or pursuant to a licensee's quality assurance program.

The investigatory effort initiated by the licensee which culminated in the generation of the documents requested by the Intervenor was not required to be undertaken by any NRC regulation. A Commission regulation, Appendix B of 10 C.F.R. Part 50, requires every applicant for a construction permit "to include in its preliminary safety analysis report a description of the quality assurance program to be applied to the design, fabrication, construction, and testing of the structures, systems and components of the facility." In addition, Appendix B requires every applicant for an operating license "to include in its final safety analysis report, information pertaining to the managerial and safety controls to be used to assure safe operation." Appendix B also applies specifically to all activities affecting the function of safety related systems, structures, and components that prevent or mitigate the consequences of postulated accidents that could cause undue risk to the health and safety of the public. Id. To that end, Appendix B establishes broad quality assurance requirements for the design, construction, and operation of nuclear power plants. Among other features, these requirements include provisions for inspections and the documenting of nonconformances. The identification of a nonconformance could very well result from the investigation of an allegation. Further, all design, construction, quality assurance, or performance deficiencies (that may have been identified as a result of an allegations) which, if uncorrected, could adversely affect operational safety must be reported to NRC in accordance with 10 C.F.R. § 50.55(e). Likewise component deficiencies are required to be reported to NRC under the provisions of 10 C.F.R. Part 21.

To the best of my knowledge, the Shearon Harris quality assurance program does not require the Applicant to undertake the broad type of investigatory effort which culminated in the creation of the documents here sought by the Intervenor. Nor, to the best of my knowledge, does any other quality assurance program approved by the NRC to date mandate such an effort.

Regarding the Board's question whether the NRC could promulgate a regulation requiring the compilation and disclosure of such information, I would answer in the affirmative in view of the Commission's statutory authority "to make, promulgate, issue, rescind, and amend such rules and regulations as may be necessary to carry out the purposes of [the Atomic Energy] Act." 42 U.S.C. § 2201(o). However, no rulemaking proceeding which would do so is pending and I am unaware of any information which suggests that the Commission is contemplating such action in the future.

8. The next question is whether "an enforceable pledge of confidentiality from the licensee to its employees, such that resulting reports are exempt from disclosure under the Freedom of Information Act, [is] an essential element in having licensees generate useful documents of the kind in question." In answering this question, it is necessary for me to state subjective judgments and my response should be read with that in mind. In my experience, persons employed at nuclear facilities who have knowledge of potential safety problems are more likely to make those concerns known and to express them with candor if they are assured that their confidentiality will be protected. However, this concern for

confidentiality is directed more toward the non-disclosure of their identity rather than the nature of the information they provide. The Board's question does not appear to take this distinction into consideration. To be sure, some employees have elected to waive confidentiality and for this reason, it cannot be said that an enforceable pledge of confidentiality is always an essential element in obtaining information from persons employed at nuclear facilities. It is my strong, albeit not statistically tested, belief (and one born of experience) that such individuals are apt to be more forthcoming in revealing information when they are secure in the knowledge that their identities will not be disclosed.

An applicant, on the other hand, may well be disinclined to reduce to writing such information elicited from its employees if it knew that such writings, once in the hands of the NRC, would not be exempt from disclosure under the FOIA. At a minimum, it is not unreasonable to assume in such circumstances that an applicant would harbor serious reservations about voluntarily providing the NRC Staff with copies of such reports, particularly those reports which contain information reflecting adversely on the applicant. Because corporate records are not subject to the FOIA, it is less certain whether an applicant would refrain altogether either from encouraging its employees to express their safety concerns or from generating a report containing its findings in this regard. (Indeed, it is not inconceivable that an applicant might determine that the benefits of obtaining that information from its employees and reporting it to the NRC outweigh the risks of possible adverse consequences.) However, because such records once in the custody or under the control of the NRC are

considered agency records for purposes of the FOIA, an applicant would have a positive incentive not to provide those records voluntarily to the NRC if such records are not exempt from disclosure.

9. The final question to be addressed is whether "an unrestricted grant of the pending Freedom of Information Act request [would] be likely to impair the NRC's ability to obtain safety information in the future."

An unrestricted grant of the pending FOIA request would not impair the NRC Staff's ability to obtain safety information relating to a significant deficiency in design, construction, quality assurance, or performance which, "were it to have remained uncorrected, could have adversely affected the safety of operations of the nuclear power plant at anytime throughout the expected lifetime of the plant." This is because 10 C.F.R. § 50.55(e)(1) of the Commission's regulations requires an applicant to notify the NRC of any known deficiency meeting the above description. Consequently, even were the Board to grant the pending FOIA request in its entirety, the NRC Staff would not be deprived of information known to an applicant relating to: (i) "a significant breakdown in any portion of the quality assurance program"; (ii) "a significant deficiency in final design"; (iii) "a significant deficiency in construction of or significant damage to a system, structure, or component"; or (iv) "a significant deviation from performance specifications[.]" 10 C.F.R. § 50.55(e)(1).

Similarly, because 10 C.F.R. Part 50, Appendix B, Criterion XV requires that "measures be established to control material, parts, or components which do not conform to requirements in order to prevent their

inadvertent use or installation," and that records relating to nonconforming conditions be maintained, the Staff's ability to obtain information regarding nonconformances bearing on safety would not be appreciably affected by an unrestricted grant of the pending FOIA request.

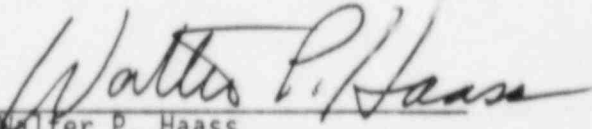
Where the impact of acceding to Intervenor's FOIA request would be most noticeable is with respect to information that may bear on safety but which does not fall into either of the categories described above. An unrestricted grant of the pending FOIA request may induce applicants in the future to refrain from disclosing voluntarily information of this kind to the NRC Staff. If that were to happen, to obtain that information the NRC Staff would be required to: (i) resort to the potentially time-consuming subpoena process (assuming it was even aware that the information existed) or (ii) expend its limited resources to obtain the information itself. For an agency structured to operate in a regulatory atmosphere "of cooperation and trust," (U.S. Nuclear Regulatory Commission Policy and Planning Guidance, NUREG-0885 No. 4 at 3 (February 1985)), any action that has the consequence of impeding the free flow of information from applicants to the NRC Staff should not be taken lightly.

Additionally, the Board should note that an unrestricted grant of the pending FOIA request appears to be at cross purposes with the Commission's stated policy of encouraging "industry initiatives to improve safety." Id. This is because a grant of the pending FOIA request would send a powerful and unmistakable signal to the industry that there is little benefit in undertaking and sharing with the NRC Staff the results of a self-initiated effort to improve safety,

particularly where there exists the possibility that that effort may yield information unfavorable or adverse to the applicant's position.

10. The Board should recognize that predicting the future behavior of applicants and assessing the impact of a proposed action on the Staff's regulatory efforts is at best an inexact science. In this affidavit, however, I have tried to advise the Board of the factors which should be considered in determining whether the pending FOIA request should be granted. In so doing, I have, as the Board requested, provided the Staff's best judgment as to the effect disclosure of the documents in question would have on the continued availability to the Staff of information of the same or similar type as that reflected in the documents which are the subject of the pending FOIA request.

11. The foregoing is true to the best of my personal knowledge and belief.


Walter P. Haass

Subscribed and sworn to before me this 23rd day of August, 1985


Notary Public

My Commission expires: 7/1/86

Walter P. Haass
Professional Qualifications
Senior Vendor Inspection Specialist
Office of Inspection and Enforcement
U.S. Nuclear Regulatory Commission

In February 1985, I was assigned to my present position as Senior Vendor Inspection Specialist. My duties and responsibilities are to evaluate events and malfunctions involving vendor products at nuclear plants under construction and operation with regard to their safety significance and generic implications, to compile vendor inspection packages, and to formulate vendor inspection policies and procedures in accordance with NRC objectives. I am also involved in the inspection and evaluation of licensee-initiated allegation processing programs for nuclear plants under construction as assigned.

I received a Mechanical Engineering degree from Stevens Institute of Technology in 1952. Upon graduation, I joined the Westinghouse Electric Corporation in Pittsburgh, Pennsylvania with an initial assignment on the Graduate Student Training Program. As part of this program, I was given one year of specialized training at the Oak Ridge School of Reactor Technology. Upon my return to the Atomic Power Division, I was assigned to perform various thermal-hydraulic, physics, and systems design analyses for proposed slurry and PWR type nuclear power plants. During this period, I also attended the University of Pittsburgh to do graduate work toward an MS degree in Mechanical Engineering.

In 1959, I accepted a position at the Martin Marietta Corporation, Nuclear Division in Baltimore, Maryland. My activities included project engineering work on the mechanical design aspects of the PM-1 and PM-3A portable nuclear power plants at Sundance, Wyoming and McMurdo Sound, respectively; and program management work for several radioisotopic SNAP programs including SNAP-11 and SNAP-13.

In 1968, I joined the Atomic Energy Commission's regulatory staff (now NRC) in Bethesda, Maryland as a licensing program manager responsible for overall management of the staff's review of several nuclear power plant applications for construction permits. I was also involved in the development of guidance for the review of quality assurance program descriptions based on the QA criteria given in Appendix B to 10 CFR Part 50. In 1972, I became the Technical Assistant for Boiling Water Reactors (BWRs), reporting to the Assistant Director for BWRs. In 1974, I was assigned to the position of Special Assistant for Standardization with the responsibility for developing the programmatic requirements for the licensing of standardized nuclear power plants.

In June 1978, I was appointed to the position of Chief, Quality Assurance Branch. My primary duties and responsibilities were to direct, supervise, and coordinate the review of nuclear power plant license applications and topical reports to determine compliance with the Commission's quality assurance criteria as given in Appendix B to 10 CFR Part 50 for plant design, construction, and operation to assure protection of the public health and safety. My

assignment also included the development of amplified quality assurance requirements within the scope of Appendix B, and work with industry groups to develop ASME standards consistent with NRC needs. During this time, I participated extensively in ASQC conferences presenting several talks on quality assurance, and in AIF discussions on quality assurance. I also authored an article on quality assurance for operations that was published in "Nuclear Safety." In 1983, the Quality Assurance Branch was expanded and reorganized and I was appointed Deputy Chief with some added responsibilities.

In November 1983, I was detailed to report to the Office Director to serve as Special Assistant for Allegations and Investigations. My duties and responsibilities were to develop and establish the overall policies and procedures for the processing of allegations by the Program and Regional Offices, and for management control of these activities. I was also responsible for making independent technical and management evaluations for certain investigations and related enforcement actions.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

Chen

AUG 6 1985

Dean D. Aulick, Esq.
Shaw, Pittman, Potts & Trowbridge
1800 M Street, N.W.
Washington, D.C. 20036

Re: FOIA 85-123

Dear Mr. Aulick:

During the conduct of an investigation at Louisiana Power and Light Company's (LP&L) Waterford 3 site, your office provided the Office of Investigations (OI) a copy of internal investigative files Q1-84-057 and Q1-84-057-01. Upon receipt of a Freedom of Information Act (FOIA) request from the Government Accountability Project, Carol Ann Reed of my staff contacted you in order to determine what information, if any, LP&L considered sensitive. By letter dated May 31, 1985, you stated LP&L objected to the release of the files in their entirety citing Exemptions 4, 6 and 7(C).

We have carefully reviewed your letter of May 31, 1985, and for the reasons set forth below cannot agree that your claim for withholding meets the threshold requirements of 5 U.S.C. 552(b)(4) which covers "trade secrets and commercial or financial information obtained from a person and privileged or confidential." LP&L claims that the Quality Technology Investigation Reports constitute commercial information. Although the threshold for "commercial" information Exemption 4, is low, the exemption, at least in the D.C. Circuit, does not yet encompass "every bit of information submitted to the government." Public Citizen Health Research Group v. FDA, 704 F.2d 1280, 1290 (D.C. Cir. 1983). Notwithstanding the information provided in the May 31 letter, the reports do not appear to be commercial information within the ordinary meaning of "commercial." Even though the reports indirectly concern employer/employee relations LP&L has not provided, and we cannot establish, a factual basis for a finding that release of the reports will affect the business operations and relative commercial position of LP&L.

Assuming, arguendo, that the reports are commercial information, we do not find the May 31, 1985, letter to give sufficient factual detail to substantiate LP&L's claim of confidentiality. LP&L asserts that it has treated the reports as confidential, does not ordinarily release such reports to the public, and that their release would cause LP&L competitive harm. LP&L also maintains that disclosure of this information is likely to impair the government's ability to obtain such information in the future. For the reasons set forth below we do not find these claims to be factually substantiated by the May 31 letter.

First, the competitive harm from the release of such material, as postulated in the letter, is both nebulous and factual unsubstantiated. LP&L states without elaboration that disclosure of these materials would affect LP&L's current relationship with its employees. While this may be true, proof of such harm cannot flow simply from such a statement. See, Worthington Compressors, Inc. v. Costle, 662 F.2d 45, 54 (D.C. Cir. 1981); Braintree Electric Light Department v. Dept. of Energy, 494 F. Supp. 287 (D.D.C. 1980). LP&L also states that public disclosure of such materials could impact upon LP&L's ability to attract new, highly qualified employees. The letter does not say how this consequence of disclosure would result. Obviously, LP&L employees know of the existence of the Quality Technology program. Otherwise, the action complained of in the reports would never have come to the attention of the Quality Technology investigators. Moreover, the fact that the specific investigations occurred is already known to the principals and will be publicly known when the NRC releases its own case notes on the investigation. To the extent that current LP&L employees could be personally harmed, we believe that redaction of individual names and other identifying characteristics should cure any potential harm that could result from public disclosure.

Secondly, it is unlikely that the release of this information will impair the government's ability to receive such information in the future. Although the NRC prefers a cooperative relationship between itself and the licensee which results in the voluntary sharing of information, the Director of the Office of Investigations, unlike the Commissioner of the Bureau of Labor statistics in Hustead v. Norwood, 529 F. Supp. 323 (S.D. Fla. 1981), may obtain the type of information contained in the reports by subpoena.

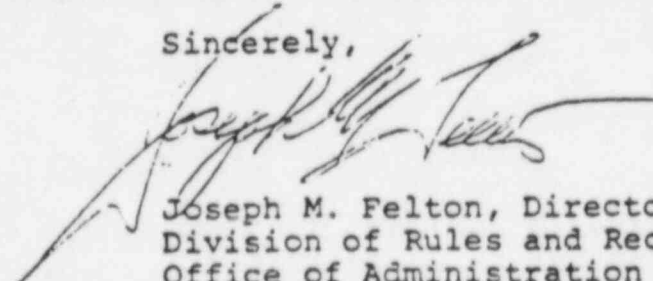
Section 161(c) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(c), authorizes the Commission to issue subpoenas to any person requiring the production of documents. The Commission has delegated this power to, inter alia, the Director of the Office of Investigations. Furthermore, the sharing of such reports with the NRC is in the licensee's interest in that it enables the matters in question to be resolved expeditiously and thereby avoid possible adverse licensing or enforcement action.

Accordingly, we believe the factual basis for an assertion of Exemption 4 claim is not substantiated by the May 31, 1985, letter.

We do, however, find your arguments for partial withholding of the documents under Exemptions 6 and 7(C) to be persuasive, and we have determined that certain information should be withheld from public disclosure because its release would cause a clearly unwarranted invasion of the personal privacy of certain individuals named in the documents. The enclosed documents reflect this determination, and the personal privacy information has been deleted.

In accordance with the requirements of the Freedom of Information Act and NRC regulations, the NRC will place copies of the enclosed documents in the NRC Public Document Room, 1717 H Street, NW, Washington, DC, 15 days after the receipt of this letter unless you take appropriate legal action to prevent the agency from doing so. If you have any questions regarding this determination, please contact Carol Ann Reed at 492-7246 or Theresa Hajost, Office of the General Counsel, at 634-1493.

Sincerely,



Joseph M. Felton, Director
Division of Rules and Records
Office of Administration

Enclosures:
As stated

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of

CAROLINA POWER AND LIGHT COMPANY AND
NORTH CAROLINA EASTERN MUNICIPAL
POWER AGENCY

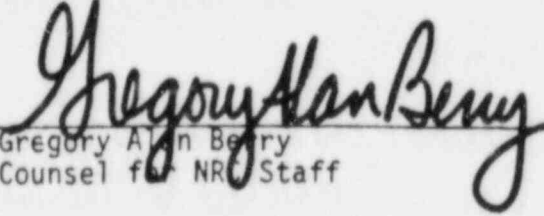
(Shearon Harris Nuclear Power Plant,
Units 1 and 2)

Docket Nos. 50-400 OL
50-401 OL

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the above-captioned matter. In accordance with 10 C.F.R. § 2.713(b) the following information is provided:

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Admission	- Supreme Court of the Commonwealth of Pennsylvania; Court of Appeals for the District of Columbia; United States District Court for the District of Columbia; United States Court of Appeals for the District of Columbia; and United States Supreme Court
Name of Party	- NRC Staff U.S. Nuclear Regulatory Commission Washington, DC 20555


Gregory Alan Berry
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 23rd day of August, 1985

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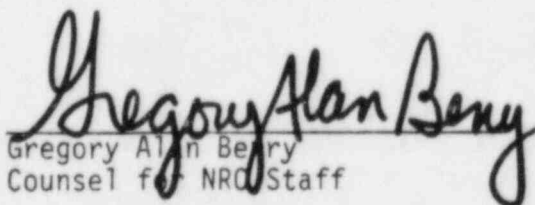
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