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ATOMIC SAFETY AND LICENSING BOARD PANEL
WASHINGTON, D. C. 20555

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Mr. S. J. Chilk, Secretary
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Dear Sir:

Your invitation to comment upon the matter of permitting cross-examination of consultants to the ACRS at a licensing proceeding is welcomed by me, as is the fact that the Commission is preparing to consider this matter on a generic basis. However, it is not clear to me what is intended by your use of the term "cross-examination". To the extent that the term might embrace a probing into a consultant's input to the ACRS, I do not believe this would be appropriate for reasons adequately expressed in Mr. Bender's December 12, 1977 memo attached to your letter. If, however, what is being considered is an opportunity for the parties and the board to examine, in an evidentiary hearing of a proceeding, a person who may have previously consulted with the ACRS or may currently be so consulting, it is my personal and emphatic view that such examination should not be proscribed. Indeed, the effectiveness and efficiency of the adjudicative process can potentially be significantly enhanced by permitting the parties in a proceeding to have access to these consultants.

The merit I see to such access derives not from the opportunity to look behind a report of the ACRS relative to any given docket: such reports are not received in evidence and hence should not be subjected to the scrutiny of the hearing process. Rather, the merit derives from the opportunity to obtain for the record potentially valuable factual information and expert opinions, the lack of which might result in a less than complete record; and a possibly flawed decision by the board involved. Specifically, Mr. Bender's memorandum makes the following statement -- "...it should also be noted that ACRS consultants do not have 'direct personal knowledge of a material fact not known to other witnesses made available by the Commission Staff'." (Source of quotation

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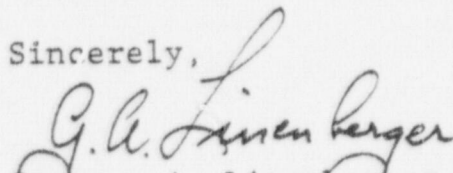
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not identified.) It is not abundantly clear to me that the Commission Staff regorously and routinely adheres to this precept as a matter of policy. Granting for sake of argument that the Staff does so, however, still leaves room for honest differences regarding the relevance and materiality of said facts to the issues at bar. Moreover, Mr. Bender's statement as quoted is silent with respect to valuable expert opinions and professional judgments that ACRS consultants can offer by virtue of their expertise and their possible prior direct exposure to relevant facets of the case.

Mr. Bender's well stated objections, apart from the specific quotation discussed above, appear to me to address the proscribed critiquing of an ACRS report, and not to be on point with respect to the benefits that I see potentially flowing from the examination of ACRS consultants. Nevertheless, I do endorse the thesis that said consultants should not be frivolously or irresponsibly called to testify but only at the boards' discretion when it judges that good cause has been shown. I sincerely believe that the Commission will find the boards to be sensitive to and respectful of the limitations on the availability of these consultants and to be more than willing to assure that the privilege of their availability for examination will not be abused by the parties. Perhaps a formal mechanism for reimbursing the consultants for their time and expenses should also be considered.

I trust that these observations will be useful to the Commissioners' deliberations, and, again, I appreciate the invitation to offer them.

Sincerely,



Gustave A. Linenberger
Member, Atomic Safety and
Licensing Board Panel

cc: James R. Yore, ASLBP
Samuel W. Jensch, ASLBP
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