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October 15, 1979

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of the Application of)	
Public Service Company of Oklahoma,)	
Associated Electric Cooperative, Inc.)	Docket Nos. STN 50-556
and)	STN 50-557
Western Farmers Electric Cooperative)	
(Black Fox Station, Units 1 and 2))	

Suggestion of Hearing Schedule

On October 9, 1979, the NRC Staff filed its response to Applicants' request for a hearing and supplemental answers of the Intervenor and the Attorney General. The response of the NRC Staff was based on the Commissioners' October 4 Interim Statement of Policy and Procedure, and it supported the position of immediately reopening the hearing record to explore Three Mile Island issues as they may be applicable to this proceeding. The Commissioners' policy statement and its "legislative history" moot the controversy before this Licensing Board concerning the need to await the recommendations of Kemeny and Rogovin, ¹ and it clearly indicates that this Licensing Board should immediately resume the licensing process. ²

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1. The positions of the Intervenor, Attorney General and the Applicants on this issue were considered by the Commission as a result of Applicants' Motion for Commission action filed on September 5, 1979.
 2. See transcript of Public Meeting - Discussion of Procedures for Commission Review of License Applications and Interim Statement on Licensing, pp2-9, dated October 4, 1979, (attached as Exhibit A).

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The purpose of this document is to lend assistance to the suggestion of the NRC Staff that the Licensing Board order the parties to confer regarding a resumed hearing schedule. The "Suggestion of a Hearing Schedule" is timely because the NRC Staff issued its "generic letter" on Three Mile Island issues to Applicants on October 10, 1979. ^{3/} Applicants responded to that letter October 12, and we assume that Supplement No. 3 to the Black Fox SER will issue shortly.

The following schedule is suggested for the consideration of the Licensing Board and parties:

1. Within 3-weeks after the issuance of Supplement No. 3 by the NRC Staff, discovery will be completed based on the TMI issues as identified in Supplement No. 3.
2. Within one-week after the close of discovery, additional TMI issues, if any, will be identified by the parties and Licensing Board.
3. Within two-weeks following the identification of any additional issues, written testimony will be filed.
4. Hearings will commence one-week following the filing of testimony.

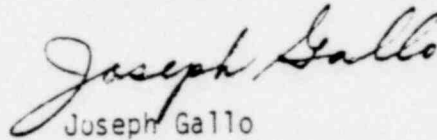
The foregoing schedule could be considered by the Licensing Board and the parties during either a conference call or a prehearing conference. Applicants prefer a prehearing conference because the subject matter, including issue identification, is best explored in the prehearing conference format. Telephone conference calls are unsatisfactory because of (i) difficulty in contacting and gathering the right people for the call,

3. See NRC Staff's answer, p.3.

(ii) difficulty in hearing because of poor connections and (iii) inadequate preparation among the participants because of the inherent short notice of conference calls. Finally, the NRC Staff suggests that the parties confer regarding schedule before involving the Licensing Board. Applicants strongly believe that such efforts will be nonproductive, and that these discussions must be held under the direct supervision of the Licensing Board.

In conclusion, Applicants suggest that the foregoing schedule be used as a basis for establishing procedures for resumed hearings, and that such consideration be conducted at a prehearing conference to be held in Tulsa during the week of October 29.

Respectfully submitted,



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One of the Attorneys
for the Applicants

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October 15, 1979

EXHIBIT A

NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

PUBLIC MEETING

DISCUSSION OF PROCEDURES FOR COMMISSION REVIEW
OF LICENSE APPLICATIONS & INTERIM STATEMENT ON
LICENSING (See 9/24 & 9/26 OGC Memos)

Place - Washington, D. C.

Date - Thursday, 4 October 1979

Pages 1-68

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

PUBLIC MEETING

DISCUSSION OF PROCEDURES FOR COMMISSION REVIEW
OF LICENSE APPLICATIONS & INTERIM STATEMENT ON
LICENSING (See 9/24 & 9/26 OGC Memos)

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Room 1130
1717 H Street, N. W.
Washington, D. C.

Thursday, 4 October 1979

The Commission met, pursuant to notice, at 2:27 p.m.

BEFORE:

DR. JOSEPH M. HENDRIE, Chairman
VICTOR GILINSKY, Commissioner
RICHARD T. KENNEDY, Commissioner
PETER A. BRADFORD, Commissioner
JOHN F. AHEARNE, Commissioner

PRESENT:

Messrs. Bickwit, Buck, Case, Farrar, Gossick, Lazo, Malsch,
Ostrach, and Shapar.

* * *

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1 CHAIRMAN HENDRIE: If we can turn to the item
2 which was originally labeled for the first item for this
3 afternoon, discussion of procedures for commission review
4 of license application and interim statement on licensing.

5 We are joined by representatives of assorted boards, panels,
6 and so on. I welcome you all.

7 The general counsel's office has a general lead on this
8 subject and I think, lest I create havoc by trying to outline
9 it for you, I think I will ask the general counsel to take
10 over. And in those capable hands, it will all be much
11 clearer.

12 MR. BICKWIT: The first order of business is to
13 determine which of these memoranda we take up first.

14 Our suggestion would be that we go first to the interim
15 statement on licensing. The reason for that is that, as we
16 have seen in these past sessions, as we consider the various
17 options for commission participation in license issuance,
18 the matter is not only extremely important, but extremely
19 complicated.

20 The fact that the commission has taken quite some time to
21 resolve this is perfectly understandable, in our view.

22 In view of those factors, we have to acknowledge the
23 possibility that another meeting will go by without resolution.
24 Even if the commission is able to resolve it, as a general
25 matter, these options do call for policy statements which will

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1 have to be drafted and circulated so that there will be
2 application of this interim statement, even if things move
3 as quickly as we can imagine that they will.

4 The other point in favor of going forward first with this
5 interim statement on licensing is that, as was pointed out
6 in the last session on this general subject, all of the
7 options that are being considered by the commission for its
8 own participation, increase the participation in the licensing
9 process, have one thing in common, which is that the process
10 before the licensing boards goes forward.

11 In light of that, in light of our understanding that
12 staff is awaiting the commission's lead on this particular
13 question of what to do next, we would suggest that we go
14 directly to the interim statement on licensing.

15 This statement was — before I go further, is that
16 acceptable?

17 CHAIRMAN HENDRIE: Yes, let's do it.

18 MR. BICKNIT: This statement was put together with
19 the assistance of the executive legal director. I should
20 add that the executive legal director's help was instrumental,
21 except with respect to the last paragraph, which was not
22 a matter which we sought his advice on.

23 COMMISSIONER AHEARNE: That was one thing I wanted
24 to question about.

25 MR. BICKNIT: Basically, the statement provides that

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1 no new licenses will issue without commission action. No new
2 decisions authorizing license issuance will be issued alone.
3 Partial, initial and appellate decisions may continue. The
4 staff should in those cases, it feels, be prepared to proceed
5 with licensing reviews and the presentation of evidence
6 before boards and licensing hearings, and that petitions
7 received from various applicants requesting their proceedings
8 to resume are controlled by this statement.

9 Then in the final paragraph, it specifies the two positions
10 we were referring to, which is that we have petitions for
11 the commission requesting issuance of directives on the
12 future conducts of those proceedings. And this statement is
13 intended to serve as the interim response to those requests
14 for Black Fox and Skagit.

15 COMMISSIONER AHEARNE: I am not sure if I should ask
16 you or Bob, what do you intend the boards in Black Fox and
17 Skagit to do after receiving this, since this is viewed as an
18 interim response?

19 MR. BICKWIT: I think it is appropriate to ask me
20 that they would go forward with hearings on the TMI-related
21 issues.

22 Presently, the boards are not going forward with hearings
23 on those questions.

24 COMMISSIONER AHEARNE: I know.

25 MR. BICKWIT: That they would attempt to decide those

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1 issues with the guidance that is available, recognizing that
2 it is not total and that the boards would not issue initial
3 decisions authorizing license issuance.

4 COMMISSIONER AHEARNE: So you would see this as
5 being guidance to those two boards to go through with their
6 proceedings but stop short of actually reaching a decision?

7 MR. BICKWIT: Exactly.

8 COMMISSIONER AHEARNE: Until the final generic
9 policy.

10 MR. SHAPAR: The statement says that no licenses
11 will be issued. Is it clear that no initial decisions have
12 been reached as well?

13 MR. BICKWIT: It was intended to say that.

14 CHAIRMAN HENDRIE: It says --

15 MR. BICKWIT: No full decision which authorizes
16 issuance of such a permit.

17 Partial decisions would be appropriate.

18 CHAIRMAN HENDRIE: The language is meant to avoid
19 triggering immediate effect on a construction permit.

20 COMMISSIONER AHEARNE: It does say that partial
21 initial decisions may continue.

22 CHAIRMAN HENDRIE: As well as appellate decisions.

23 MR. SHAPAR: There is one other point that I want
24 a correct understanding about. It says that the commission
25 is determined that new construction permits, limited work

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1 authorizations or operating license for any nuclear power
2 plants shall be issued only after action of the commission
3 itself.

4 I understand that to mean not necessarily action on the
5 merits because if you look at the 7 options, I take it that
6 one of the options that the commission has, depending on which
7 option is selected, is to go ahead and issue an initial
8 decision. And the commission chooses to allow it to be
9 immediately effective.

10 It would take commission action, but not on the merits.
11 That is the way that I construe it.

12 MR. BICKWIT: That is correct. These options vary
13 one to the next on what kind of commission action is
14 appropriate.

15 COMMISSIONER KENNEDY: Is this language to be
16 construed in that light —

17 MR. SHAPAR: Not on the merits, depending on which
18 option you take.

19 COMMISSIONER KENNEDY: In that case, we ought to
20 specify.

21 MR. SHAPAR: I don't think so. I think the general
22 counsel has it just right. He is anxious to get this interim
23 policy statement out. And I think it should get out, and in
24 this form without any comment on the last paragraph.

25 That leaves you the more difficult question of the 7 options

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1 which I think you are going to have to have time to focus on.
2 CHAIRMAN HENDRIE: At least it provides guidance
3 which allows the process to go forward. It is, in part, going
4 forward now. But this would allow dealing with TMI-related
5 issues where the staff feels that they are in appropriate
6 shape and of such a nature in a given proceeding to be
7 introduced and dealt with in the proceeding.

8 That seems to me a step forward, which I applaud.

9 MR. SHAPAR: And with the meaning given to the action
10 of the commission, not necessarily on the merits. This is
11 consistent with whatever option you pick.

12 COMMISSIONER GILINSKY: Also recognizing that some
13 of what is done may have to get redone.

14 MR. BICKWIT: That is undoubtedly correct.

15 CHAIRMAN HENDRIE: I think it is a good idea. I
16 recommend it with my colleagues.

17 MR. BICKWIT: It was the idea of the acting chairman.

18 COMMISSIONER GILINSKY: I agree.

19 CHAIRMAN HENDRIE: Peter?

20 COMMISSIONER BRADFORD: It's all right with me.

21 CHAIRMAN HENDRIE: Very well. The commission has now
22 adopted the interim statement policy as laid out in the
23 counsel's memorandum by unanimous vote.

24 Let's get it out post haste, Mr. Secretary.

25 MR. CASE: I would like to point out another thing to

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W gsh 1 get this action, the letters to CP owners and CP applicants
2 which I am awaiting guidance on from the commission.

3 CHAIRMAN HENDRIE: Thank you.

4 (Laughter.)

5 MR. BICKWIT: We've all been through it.

6 (Laughter.)

7 CHAIRMAN HENDRIE: Let's move to the next item,
8 seize this unexpected moment of serenity and plunge ahead.

9 MR. BICKWIT: I have no doubt that it will
10 deteriorate from here on in.

11 (Laughter.)

12 MR. BICKWIT: In going through the options that were
13 raised at the last session, I would say that there is one
14 general statement that ought to preface discussion. We have
15 found no option that has one, simplicity, two, speed, and
16 three, flexibility.

17 CHAIRMAN HENDRIE: To say nothing of not being
18 ambiguous.

19 MR. BICKWIT: Perhaps the executive legal director's
20 option will satisfy that test, but all of these options
21 failed that test.

22 CHAIRMAN HENDRIE: We then are choosing the least
23 painful horn of the multi-horned dilemma.

24 MR. BICKWIT: That is the case. I will be guided
25 by your wishes here, but I assume what you would like is for

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing SUGGESTION
OF HEARING SCHEDULE has been served on each of the following persons by
deposit in the United States mail, first-class postage prepaid, this
15th day of October, 1979.

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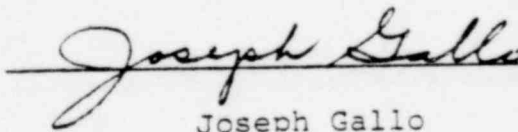
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