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October 18, 1979

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In the Matter of
Offshore Power Systems
(Floating Nuclear Power Plants)
Docket No. STN 50-437

Dear Mr. Chairman and Members of the Board:

The Applicant, Offshore Power Systems, herein responds to the NRC Regulatory Staff letter to the Board dated October 11, 1979.

While the Applicant is greatly disappointed that a Staff witness will not be available for a hearing session on October 26, 1979, it is the Applicant's understanding from informal discussions with counsel for the Regulatory Staff that the Staff's witness panel will be available on October 31 and November 1-2 and 5-6, 1979. In view of this near term availability, the Applicant respectfully requests the Board to schedule a hearing session which will address

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Board questions pending since March, 1979. It is the Applicant's view that a manageable segment of the hearing process should be carried out when the Staff and the Board are available to address the matter. As a consequence, the Applicant urges the Board to reschedule an early hearing session.

As the history of this proceeding clearly demonstrates, Regulatory Staff representations as to the availability of the SER Supplement No. 3 "until at least the end of this year" indicates a vaguely defined goal. The Applicant respectfully requests that the Board order the Staff to publish a schedule leading to the availability of SER Supplement No. 3 and periodically report to the Board and the parties progress on the schedule. It is the Applicant's firm conviction that in the absence of such a schedule and periodic reporting, Staff expectations respecting the publication of documents will lose visibility and result in untoward delays.

As the Board is well aware, the manufacturing license application of Offshore Power Systems has been pending before the NRC for more than six years. In this proceeding there has been a history of delay in the publication of various Staff documents needed to complete the hearing record. That history gave rise to a dispute between Applicant and Staff concerning the scope of this Board's authority to assure that decision-making in this case by the Commission is both sound and timely. This dispute was resolved by the Atomic Safety and Licensing Appeal Board ("Appeal Board") in Offshore Power Systems (Floating Nuclear Power Plants), 8 NRC 194 (1978), ALAB-489, where the Appeal Board held inter alia, that:

"Once an application is on its way through the hearing process . . . the Licensing Board must be able to insure the 'prompt and orderly dispatch of [this] public business' and a 'sound and timely' decision. Especially in the face of numerous and prolonged delays, one step toward that end can be a properly executed scheduling order."
(8 NRC at 206; citations and footnotes omitted.)

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Applicant submits that what the Appeal Board said about the long pendency of this proceeding in ALAB-489 in August, 1978, is more than ever the case today:

"Beyond doubt, the proceedings here hardly exemplify timeliness.

* * *

Without either finding fault with the staff for revising documents that were initially unsatisfactory or assigning blame for the numerous delays, we can certainly state the obvious: the current state of these proceedings is beneficial to no one and is antithetical to Commission policy." (8 NRC at 204 and accompanying footnote 29.)

In view of the numerous delays which have plagued this matter in the past six years, Applicant submits that issuance of a scheduling order and Board monitoring of adherence thereto will significantly assist in insuring decision-making which is both "sound and timely" in this proceeding.

With respect to requirements relating to TMI-2*, it is the Applicant's understanding that rather than a case-by-case review of each license, the Staff is encouraging Owner group participation in generic resolution. There is such a Westinghouse Owner group in communication with the Staff on generic resolution. The Applicant believes that such generic resolutions will be applicable equally to the Floating Nuclear Plants. More importantly, the Applicant is not aware of any lessons learned from TMI-2 that would be applicable to the design and manufacture of the Floating Nuclear Plants that could not be handled subsequent to award of a license to manufacture, but prior to a license amendment for final design under 10 CFR 50, Appendix M (see specifically paragraph 5(b) and paragraph 7).

*Applicant notes that the Commission has recently published interim guidance as to how licensing proceedings should be conducted during the pendency of TMI-2 investigations, see U.S. Nuclear Regulatory Commission "Interim Statement of Policy and Procedure", 44 Fed. Reg. 58559 (October 10, 1979).

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In summary, the Applicant urges the Board to reschedule a hearing session during the Staff's availability on October 31 or November 1-2 and 5-6, 1979, to address Board questions pending since March, 1979. Additionally, the Applicant respectfully urges the Board to order the Regulatory Staff to publish a schedule leading to the availability of SER Supplement No. 3 and to require periodic reporting of progress by the Regulatory Staff to this schedule. The Applicant believes that these two actions are essential and may be the only hope of the eventual completion of Staff review and closing of the record in this proceeding which has suffered so many delays.

Respectfully submitted,

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Thomas M. Daugherty / JRK

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cc: Per OPS Service List,
Attachment 1

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ATTACHMENT 1

OPS SERVICE LIST

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