

NRC PUBLIC DOCUMENT ROOM

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



Before the Commission

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

INTERVENOR'S RESPONSE TO APPLICANT'S
MOTION FOR COMMISSION ACTION

In light of the Commission's holding in United States Energy Research and Development Administration (Clinch River Breeder Reactor Plant), CLI-76-13, 4 NRC 67, 74-76 (1976), there appears little doubt that the commission considers itself authorized to intercede in an adjudicatory proceeding to exercise its supervisory authority. Surely, though, the Commission would agree such action on its part is extraordinary and the movant must show exceptional circumstances to warrant circumvention of the adjudicatory process. Otherwise, it would quite obviously follow that the Commission would find itself confronted with a request for its intercession every time a litigant receives an adverse ruling from an ASLB panel. However, having said that such motions as the instant one should only be entertained rarely, Interventors would agree with Applicants

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that this may indeed be a situation that justifies the Commission's intercession -- albeit to provide direction to the Board contrary from that requested by Applicants.

Certainly the Three Mile Island Unit Two ("TMI-2") accident, as the worst nuclear accident in history, has presented important issues of law and policy for the NRC. The mere existence of the Kemeny and Rogovin inquiries are evidence enough of this. And, the obvious question for the NRC that emerges from TMI-2 is: What impact does (or should) such an incident have on the licensing process?

Applicants apparently would have the Commission find at this juncture that simple technical issues are all that are at stake and these, of course, will be worked out well before Black Fox Station (BFS) goes on line. Indeed, Applicants say they will ultimately be required to comply with whatever new requirements may result from TMI-2 anyway, so why not let them go ahead and build BFS now? The fault with such reasoning is, quite clearly, that it assumes neither (1) any recommendations for sweeping changes in the licensing process (contrary to the Kemeny Commission's public projections), nor (2) any recommendations for basic, conceptual design changes in the NSSS for BFS which couldn't be readily "back-fitted".

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Applicants would downplay the significance of TMI-2. Yet, in at least one other proceeding¹, the Staff has characterized TMI-2 as a Class 9 accident -- the accident that is not supposed to happen. Current regulations provide that Class 9 accident sequences need not be considered in considering a plant's design in making radiological health and safety findings.² Is it presumptuous to suggest, then, that one recommendation by either the Kemeny Commission or Rogovin Special Inquiry might be that the NRC should consider possible Class 9 accident sequences? If not, then granting BFS a Construction Permit (CP) without such analyses when only a couple of months' delay are at stake hardly seems oppressive.

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1. In the matter of Public Service Electric & Gas Company (Salem Generating Station Unit No.1), No. 50-272- "NRC Staff Response to Board Question No. 4, Regarding the occurrence of a Class 9 accident at Three Mile Island."
 2. Proposed Annex 1 to App. D of Part 50, 10 C.F.R.

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As Intervenor's pointed out in their pleading³ filed with the ASLB, Applicant's desire to complete hearings on TMI-2's relevancy assumes that the Kemeny and Rogovin results will be insignificant. Intervenor's submit that the Commission should recognize these investigations as serious attempts to improve the safety of nuclear plants and to give due credit to the members of each group as scientists and policy makers charged with important responsibilities. To extend such courtesy and respect to these inquiries would surely enhance the dignity and autonomy of the NRC, not detract from it as Applicant suggests (Br. p.13)

As to the length of delay that might eventuate should the moratorium be extended, Applicants again second-guess the Kemeny Commission and submit that it will not meet its own schedule for issuance of a report. And then, heaping insult on injury, Applicants grab a two-year time period out of thin air for the report to be "digested and implemented" by the President. Intervenor's would take these ladies and gentlemen at their word as to publication of their report and submit that the Commission could make its own evaluation

3. Intervenor's Response to Applicant's Motion to Establish Hearing Schedule, August 27, 1979.

of the report at that time, regardless of what recommendations the President might ultimately make.⁴ At least at that time, however, the Commission would be able to establish the "upper bounds" of any potential recommendations and be able to intelligently decide whether there is a basis for continued licensing which could accommodate such recommendations should they be implemented. To proceed with licensing now only invites later confusion, requests for "grandfathering", and back-fitting.

Intervenors find it ironic that Applicants, ever solicitous of the ratepayers' interest, apparently are unconcerned with the cost to these ratepayers if wholesale back-fitting had to be performed if significant new requirements were forthcoming as the result of TMI-2 investigations. Indeed, requirements could conceivably be made which would cause Applicants to decide against a nuclear powered plant in the first place.

As the Commission pointed out in Clinch River, supra, it was the spectre of unnecessary delay which warranted its intercession in that proceeding. Intervenors contend here that the Commission's direction to the ASLB is needed to order necessary delay -- delay, that is until the results of

4. It could very well be that no new recommendations -- i.e., different from the Staff's present short-term recommendations -- will be forthcoming. In such event licensing could resume immediately on the basis of the Staff's recommendations.

the Kemeny Commission and Rogovin Special Inquiry are available for consideration by the Commission and the ASIB, and upon which recommendations may be implemented and findings can be made to further enhance the public's health and safety.

Nor is it clear (as Applicants suggest) that the NRC Staff universally supports a return to licensing at this time. In a memorandum transmitting NUREG-0600 ("Notification of Licensing Boards of Results of Investigation into the March 28, 1979 Three Mile Island Accident by Office of Inspection and Enforcement"), the Director, Division of Reactor Operations Inspection, I.E., observed that

[f]urther study is clearly needed with respect to the contributions of various other organizations that influence the operation of nuclear power plants, including designers, reviewers, builders, vendors and regulatory agencies. These various studies are now underway; most notably the Presidentially appointed Kemeny Commission, as well as a wide-ranging internal NRC study under Mr. Mitchell Rogovin. A full assessment of all the underlying causes of the Three Mile Island accident must await completion of these studies. [Emphasis supplied.]

Certainly the Commission does not have to accede to the so-called "demand" by the Kemeny Commission that the moratorium on licensing be extended. However, the Commission should resist Applicant's blatant attempt to make this controversy a matter of pride with the Commission. Such attempt should be resisted, if for no other reason than respect for the

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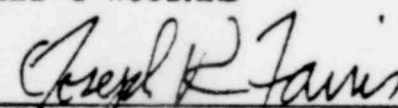
credentials of the Kemeny Commission's members and out of deference to the authority whose charge created it. Applicants assume no "compensating benefit" will derive from awaiting further input from these investigations. Perhaps so. But Intervenor would give them the benefit of any doubt and respectfully submit and urge that this Commission do likewise.

Intervenor therefore respectfully request that the Commission deny Applicants' Motion in its entirety, and instead direct the Black Fox Licensing Board to forestall hearings on TMI-2 related issues until the results of the Kemeny Commission and Rogovin Special Inquiry are published and until the Commission gives further guidance on the scope of hearings after these reports are available.

Respectfully submitted,

FELDMAN, HALL, FRANDEN,
REED & WOODARD

By


Joseph R. Farris

Attorneys for Intervenor

816 Enterprise Building
Tulsa, Oklahoma 74103
(918) 583 7129

September 20, 1979

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NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of the Application of)
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(Black Fox Units 1 and 2)) STN 50-556
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CERTIFICATE OF SERVICE

I, Joseph R. Farris, one of the attorneys for Citizens Action for Safe Energy (C.A.S.E.), certify that copies of the following:

Intervenor's Response to Applicant's
Motion for Commission Action

have been served on the persons shown on the attached list by United States Mail, postage prepaid, this 20th day of September, 1979.

Joseph R. Farris
Joseph R. Farris



Chairman Joseph M. Hendrie
United States Nuclear
Regulatory Commission
Washington, D. C. 20555

Commissioner Richard T. Kennedy
United States Nuclear
Regulatory Commission
Washington, D. C. 20555

Commissioner Victor Gilinsky
United States Nuclear
Regulatory Commission
Washington, D. C. 20555

Commissioner Peter A. Bradford
United States Nuclear
Regulatory Commission
Washington, D. C. 20555

Commissioner John F. Ahearne
United States Nuclear
Regulatory Commission
Washington, D. C. 20555

Stephen S. Ostrach
Office of the General Counsel
United States Nuclear
Regulatory Commission
Washington, D. C. 20555

Sheldon J. Wolfe, Esq.
Atomic Safety and Licensing
Board Panel
United States Nuclear
Regulatory Commission
Washington, D.C. 20555

Mr. Frederick J. Shon
Atomic Safety and Licensing
Board Panel
United States Nuclear
Regulatory Commission
Washington, D.C. 20555

Dr. Paul W. Purdom
Director,
Environmental Studies Group
Drexel University
32nd and Chestnut Streets
Philadelphia, Pennsylvania 19104

L. Dow Davis, Esq.
Office of the Executive Legal Director
United States Nuclear Regulatory
Commission
Washington, D.C. 20555

Richard S. Salzman, Esq.
Atomic Safety and Licensing
Appeal Board
United States Nuclear
Regulatory Commission
Washington, D. C. 20555

Dr. W. Reed Johnson
Atomic Safety and Licensing
Appeal Board Panel
United States Nuclear
Regulatory Commission
Washington, D. C. 20555

Jerome E. Sharfman, Esq.
Atomic Safety and Licensing
Appeal Board Panel
United States Nuclear
Regulatory Commission
Washington, D. C. 20555

Docketing and Service Section
Office of the Secretary of the
Commission
United States Nuclear
Regulatory Commission
Washington, D. C. 20555
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Atomic Safety and Licensing
Board Panel
United States Nuclear
Regulatory Commission
Washington, D. C. 20555

Atomic Safety and Licensing
Appeal Board Panel
United States Nuclear
Regulatory Commission
Washington, D. C. 20555

Mr. Clyde Wisner
NRC Region 4
Public Affairs Officer
611 Ryan Plaza Drive
Suite 1000
Arlington, Texas 76011

Andrew T. Dalton, Esq.
Attorney at Law
1437 South Main Street
Room 302
Tulsa, Oklahoma 74119

Mrs. Ilene Younghein
3900 Cashion Place
Oklahoma City, OK 73112

Mrs. Carrie Dickerson
Citizens Action for
Safe Energy
P. O. Box 924
Claremore, Oklahoma 74017

Joseph Gallo, Esq.
Isham, Lincoln & Beale
1050 17th Street, N.W.
Washington, D.C. 20036

Martha E. Gibbs
Michael I. Miller
Isham, Lincoln & Beale
One First National Plaza,
Suite 4200
Chicago, Ill. 60603

Mr. Maynard Human
General Manager
Western Farmers Electric
Cooperative
P. O. Box 429
Anadarko, Oklahoma 73005

Mr. Gerald F. Diddle
Associated Electric
Cooperative, Inc.
P. O. Box 754
Springfield, Missouri 65801

Mr. Lawrence Burrell
Rt. 1, Box 197
Fairview, Oklahoma 73737

Dr. M. J. Robinson
Black & Veatch
P. O. Box 8405
Kansas City, Mo. 64114

Mr. Vaughn L. Conrad
Public Service Company of Oklahoma
P. O. Box 201
Tulsa, Oklahoma 74102

Mr. T. N. Ewing
Public Service Company of Oklahoma
P. O. Box 201
Tulsa, Oklahoma 74102

Hon. Charles Rogers
Assistant Attorney General
State of Oklahoma
State Capitol Building
Oklahoma City, Oklahoma 73105

Mr. Gregory Minor
MHB Technical Associates
1723 Hamiton Ave.
Suite K
San Jose, CA 95125

Samuel J. Chilk
Secretary of the Commission
United States Nuclear
Regulatory Commission
Washington, D.C. 20555

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