



ISHAM, LINCOLN & BEALE
COUNSELORS AT LAW

1050 17TH STREET, N.W. SEVENTH FLOOR
WASHINGTON, D. C. 20036
TELEPHONE 202-833-9730

CHICAGO OFFICE
ONE FIRST NATIONAL PLAZA
FORTY-SECOND FLOOR
CHICAGO, ILLINOIS 60603
TELEPHONE 312-786-7500
TELEX: 2-5288

September 20, 1979

Sheldon J. Wolfe, Esquire
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Mr. Frederick J. Shon, Member
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

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

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))

Gentlemen:

It is the purpose of this letter to respond to a pleading filed by the NRC Staff in this proceeding on August 27, 1979 and styled as "NRC Staff Response to Licensing Board Order On ECCS Matters."

As previously indicated in our Reply^{1/} to the NRC Staff's draft findings of fact on Board Questions 2-1, 2-2 and 2-3, Applicants continue to find the procedural and substantive aspects of the NRC Staff's position objectionable.

^{1/} See Applicants' Reply to the NRC Staff's Findings of Fact Concerning ECCS Matters, filed on May 17, 1979.

1262 300

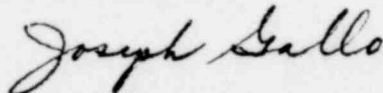
~~7911~~
7911020

320

Specifically, the position of the NRC Staff is still dehors the record, and although this legal defect was stressed in our Reply to the draft findings, the Staff continues to offer no remedy. Moreover, we do not agree that the Staff's "concerns" are based on either (i) new information developed subsequent to the testimony of the witness Hodges on February 22, 1979 (Tr. 8033), or the close of the hearing record on February 28, 1979; or (ii) information that is significant in any way to the findings required by 10 C.F.R. § 50.35. Finally, we reject the notion that the alleged concerns of the NRC Staff are subject to the rule enunciated by the Appeal Board in the River Bend decision.^{2/} This is true because the NRC Staff has made no showing it has complied with its internal procedures for properly identifying and addressing their "concerns" with the GE ECCS evaluation model as generic unresolved safety questions.

However, Applicants do not intend to argue the matter further since the conclusion set forth in the Staff's Response continues to support the issuance of the construction permits for the Black Fox Station. We do, however, expressly reserve the right to interpose these objections should any party or the Licensing Board desire to hear additional witnesses on this subject.

Sincerely,



Joseph Gallo
One of the Attorneys
for the Applicants

^{2/} 6 NRC 760 (1977).

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

CERTIFICATE OF SERVICE

1262 302

Sheldon J. Wolfe, Esquire
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Mr. Frederick J. Shon, Member
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

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

Docketing and Service Section
Office of the Secretary of
the Commission
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555
(20 copies)

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

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

L. Dow Davis, Esquire
Counsel for NRC Staff
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Joseph R. Farris, Esquire
John R. Woodard, III, Esquire
Feldman, Hall, Franden, Reed
& Woodard
816 Enterprise Building
Tulsa, Oklahoma 74103

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

Andrew T. Dalton, Esquire
1437 South Main Street
Room 302
Tulsa, Oklahoma 74119

Mrs. Carrie Dickerson
Citizens Action for Safe
Energy, Inc.
P.O. Box 924
Claremore, Oklahoma 74107

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

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

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

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

Mr. T. N. Ewing, Manager
Black Fox Station Nuclear Project
Public Service Company of Oklahoma
P.O. Box 201
Tulsa, Oklahoma 74102

Charles S. Rogers, Esquire
Assistant Attorney General
112 State Capitol Building
Oklahoma City, Oklahoma 73105

1262 303