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Docket Nos. 50-247 SP
50-286 SP

June 16, 1982

PROCEDURAL MATTERS

The Union of Concerned Scientists (UCS) and the New York Public Interest Research Group, Inc. (NYPIRG) request the Atomic Safety and Licensing Board (Board) to order:

- 1) That a free daily transcript of the evidentiary hearing be provided to the intervenors to be kept for the use of intervenors and their witnesses in a room accessible to the proceedings;
- 2) That intervenors be permitted to make opening statements to the Board at the commencement of the intervenors' direct case on emergency planning;
- 3) That the intervenors be permitted to present their direct case on emergency planning after the NRC Staff has presented its witnesses and before the Licensees have presented their witnesses; and
- 4) That cross-examination of all witnesses be limited to a reasonable period of time.

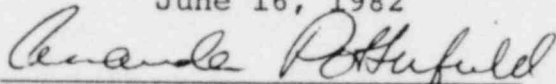
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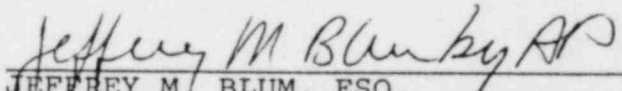
The presiding officer of the Board has full authorization to grant each of the procedural requests listed above, pursuant to his powers to "conduct a fair and impartial hearing according to law, to take appropriate action to avoid delay, and to maintain order". 10 C.F.R. 2.718.

The authorization to allow free daily transcripts is specifically contained in the attached Opinion of the Comptroller General dated May 21, 1982. However, if the Board denies the request for a free daily transcript for the intervenors, UCS and NYPIRG respectfully request that the issue be certified to the Commission pursuant to 10 CFR 2.718(i), in light of the decision of the Comptroller General.

Service of this motion will be made by hand on the morning of June 17, 1982 at the pre-hearing conference, when UCS and NYPIRG will request permission to orally argue the separate points contained herein.

Dated: New York, New York
June 16, 1982


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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-200585

DATE: May 11, 1981

MATTER OF: Free transcripts of adjudicatory proceedings—
Nuclear Regulatory Commission

DIGEST: Nuclear Regulatory Commission may use funds appropriated by Energy and Water Development Appropriation Act, 1981, to implement proposal to provide free hearing transcripts to all parties to Commission proceedings. Proposal is designed to increase efficiency of Commission and expedite handling of license applications. Appropriation Act prohibition on using appropriated funds to pay expenses of intervenors was not intended to prohibit expenditure, no matter how necessary or desirable to Commission, simply because it incidentally benefits intervenors.

The General Counsel of the Nuclear Regulatory Commission has asked for our decision on the legality of a proposed Commission plan to provide free transcripts of hearings to all parties to Commission adjudicatory proceedings, including intervenors. In his letter, the General Counsel refers to our letter dated December 3, 1980 (B-200585), to the former chairman, Subcommittee on Energy Research and Production, Committee on Science and Technology, House of Representatives, in which we concluded that the Commission could not lawfully use its fiscal year 1981 appropriation to provide free transcripts and other services to intervenors in its proceedings. The General Counsel asserts that the purpose of the new Commission proposal is to make the hearing process as efficient and timely as possible and thus eliminate unnecessary delays in the Commission's issuance of licenses.

For the reasons indicated below, we conclude that the Nuclear Regulatory Commission may lawfully implement its proposal to provide free transcripts to all participants in its proceedings even though the proposal may incidentally benefit intervenors.

THE STATUTE

Funds for the Commission's operations for this fiscal year were appropriated by the Energy and Water Development Appropriation Act, 1981, Pub. L. No. 96-367, 94 Stat 1331. Section 502 of the Act provides:

"None of the funds in this Act shall be used to pay the expenses of, or otherwise compensate, parties intervening in regulatory or adjudicatory proceedings funded in this Act." 94 Stat 1345.

THE DECEMBER OPINION

The subject of our December 3 letter was the Commission's announced procedural cost reduction program. This program was designed to ease the economic burden on intervenors in Commission proceedings by providing free transcripts and by copying and serving at no cost certain documents filed by intervenors. In our letter we concluded that, because the program was intended to provide assistance to intervenors, and because its effect would be to "pay the expenses" of intervenors, the Commission could not use its fiscal year 1981 appropriation to implement the program without violating the statutory prohibition quoted above.

THE COMMISSION PROPOSAL

The Commission now proposes to provide free transcripts of hearings to any party that requests them. The General Counsel indicates that the purpose of the proposal is to expedite Commission proceedings and the issuance of licenses by the Commission. In the words of the General Counsel,

****After examining the issue, the Commission is convinced that its interest and that of the public would be best served by providing transcripts to all participants in our licensing proceedings, and that such a program is needed to make the process function effectively.****

With his letter, the General Counsel enclosed a memorandum from the Chairman of the Atomic Safety and Licensing Board Panel which conducts hearings on utilities' applications for nuclear licenses. In the memorandum, the Chairman indicates "that the quintessential purpose of furnishing transcripts and other documents to any party is to expedite licensing proceedings." In the Chairman's opinion, denying transcripts to any party can only result in delays both in the hearing itself and in the licensing board's preparation of its initial decision. Providing transcripts to all parties is thus "essential to expediting licensing proceedings and insuring complete Initial Decisions." The Chairman concludes,

"In sum, the Licensing Panel feels strongly that copies of transcripts and other evidence of record to intervenor and other parties have the following benefits:

"1. They expedite hearings thus saving much more money than the cost of the transcripts;

"2. They aid in establishing a complete and accurate record by supporting cross-examination and identifying the need for, and extent of, rebuttal evidence;

"3. They aid in prompt initial decisions following the hearing because unless the parties can cite the record, the board must search the record, a time consuming, and inefficient expenditure of board time; and

"4. The need for transcripts is so intertwined with the statutorily mandated opportunity for proposed findings and conclusions that the denial of transcripts could result in a reversal of a long and complex NRC proceeding on due process grounds. The cost to the public and industry if this should happen is obviously enormous.

* * * * *

"In short, what is at issue here is not a cost reduction program, but rather a program to aid licensing boards in their mission of insuring that their initial decision adequately protects the public health, safety, and environment."
(Emphasis in original.)

Based on the General Counsel's letter and the Chairman's memorandum, it is our opinion that the purpose of the Commission's proposal to provide free transcripts to all parties is to expedite and improve the nuclear licensing procedure. Any benefit which will accrue to intervenors because of the implementation of the proposal will be incidental and not the motivating factor in the Commission adopting the proposal.

CONCLUSION

The Commission's fiscal year 1981 appropriation act, quoted above, bars the expenditure of funds appropriated by the act "to pay the expenses of, or otherwise compensate" intervenors in the Commission's proceedings. In our opinion, the intent of this provision was to preclude the Commission from implementing any program which was intended to and had the principal effect of paying the adjudicatory expenses of intervenors as a special class. The Commission's procedural cost reduction program which we found unlawful in our December opinion in fact benefited intervenors to the exclusion of others.

The Commission's new proposal is designed to increase the efficiency of its own operations and to expedite the handling of license applications. It will provide free transcripts not only to intervenors but to all parties to Commission proceedings. The Commission has decided that the implementation of this proposal will facilitate its operations, and we find no basis upon which to object to the Commission's determination that funds made available to it are reasonably necessary for such purpose. We cannot conclude that this proposal will violate the statutory prohibition simply because it, incidentally, eases the cost burden on intervenors. Cf. B-92288, February 19, 1976. Therefore, in our opinion, the Commission may lawfully use its fiscal year 1981 funds to implement the proposal.

For the

Harry R. Van Cleave
Acting Comptroller General
of the United States