

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONBEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of the Application of)
Public Service Company of Oklahoma,)
Associated Electric Cooperative, Inc.)
and)
Western Farmers Electric Cooperative)
(Black Fox Units 1 and 2))

Docket Nos.
STN 50-556
STN 50-557



APPLICANTS' OPPOSITION TO INTERVENORS'
"MOTION FOR DIRECTED CERTIFICATION"

Public Service Company of Oklahoma, Associated Electric Cooperative, Inc. and Western Farmers Electric Cooperative ("Applicants") oppose Intervenor's Motion For Directed Certification on the grounds that the issue sought to be certified does not meet the well-established criteria for certification.

Argument

The Appeal Board has held "that, at the very minimum, a party asking that we invoke our Section 2.718(i) certification authority must establish that a referral would have been proper; i.e., that, failing a certification, the public interest will suffer or unusual delay or expense will be encountered." Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-271, 1 NRC 478, 483 (1975). The very cases cited by Intervenor's in support of their Motion have held that the very type of so-called "exceptional circumstances" described by Intervenor's do not

warrant certification. Toledo Edison Co. (Davis-Besse Nuclear Power Station, Unit 1), ALAB-314, 3 NRC 98 (1976); Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 and 2), ALAB-353, 4 NRC 381 (1976); Power Authority of the State of New York (Greene County Nuclear Power Plant), ALAB-439, 6 NRC 640 (1977). See also, Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 and 2), ALAB-318, 3 NRC 186 (1976).

Intervenors' complaints fall into two categories:

a) Intervenors have inadequate discovery opportunities and time to prepare a response to the NRC Staff's Task Action Plan testimony (the "TAP-1" testimony).

This issue has been totally mooted by the fact that the "TAP-1" testimony was not, in fact, presented at the October 10-20, 1978 hearings, and by the Board's Order granting Intervenors an opportunity for discovery with respect to the Staff's "TAP-1" testimony (Tr. p. 4455).

b) Intervenors claim there are inadequacies in the "TAP-1" testimony that justify a continuance of the hearing.

In essence, Intervenors are making the incredible request that an appellate tribunal be saddled with the burden of determining the sufficiency of the evidence before the material has even been evaluated by the trier of law or placed in evidence before the trier of fact. Evidentiary questions must always be decided by the Licensing Board in the first instance. Any determination by the Licensing Board

concerning the sufficiency of the proposed evidence would be premature prior to an opportunity for cross-examination, redirect examination and rebuttal testimony. Even if Intervenor's list of so-called inadequacies in the NRC Staff's proposed evidentiary presentation were correct, a very high probability exists that any such inadequacies would be mooted during upcoming hearings.

The Appeal Board has on several occasions stated unequivocally that it will not allow interlocutory appeals under 10 CFR §2.713(i) of Licensing Board evidentiary rulings. Jamesport, ALAB-318, supra, 3 NRC 186, 187; Davis-Besse, ALAB-314, supra, 3 NRC 98, 99. Obviously, if the Appeal Board will not accept certification of evidentiary questions already decided by a Licensing Board, it will not prejudge evidentiary questions not yet ripe for determination by a Licensing Board.

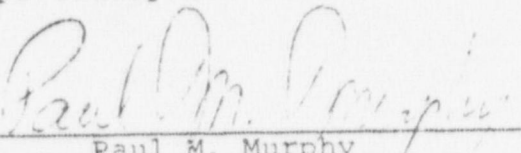
In short, Intervenor's claim of "exceptional circumstances" amounts to nothing more than an argument that if their own erroneous interpretation of the Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760 (1977) decision and premature evaluation of the evidence are adopted by the Appeal Board, then the possibility exists that error has been or will be committed by the Licensing Board in this case. The mere possibility that an erroneous decision has been or will be made is never in itself an exceptional circumstance warranting certification.

Davis-Besse, ALAB-314, supra, 3 NRC 98, 100; Seabrook,
ALAB-271, supra, 1 NRC 478, 485.

WHEREFORE, Intervenor's Motion For Directed Certification should be denied.

DATED: October 27, 1978

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Paul M. Murphy, one of the attorneys for Public Service Company of Oklahoma, certify that copies of "Applicants' Opposition To Intervenor's 'Motion For Directed Certification'" have been served in the above-captioned matter on the following by United States mail, postage prepaid, this 27th day of October, 1978:

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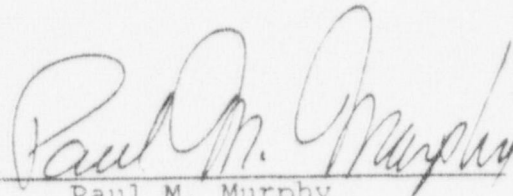
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