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NUCLEAR REGULATORY COMMISSION

Title: Nuclear Management Company
Palisade Nuclear Plant

Docket Number: 50-255-LR; ASLBP No.: 05-842-03-LR

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September 14, 2005 (11:31am)

OFFICE OF SECRETARY
RULEMAKINGS AND
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Location: (telephone conference)

Date: Monday, September 12, 2005

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NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD (ASLB)

CONFERENCE

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IN THE MATTER OF: :

NUCLEAR MANAGEMENT : Docket No. 50-255-LR

COMPANY, LLC : ASLBP No. 05-842-03-LR

(Palisades Nuclear Plant) :

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Monday, September 12, 2005

The conference came to order telephonically, pursuant to notice, at 1:30 p.m.

BEFORE:

JUDGE ANN M. YOUNG

JUDGE ANTHONY J. BARATTA

JUDGE NICHOLAS G. TRIKOUROS

APPEARANCES:

On Behalf of the Applicant:

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Also Present on Behalf of the Applicant:

BRITTA JOHNSON, Nuclear Management Company

DOUG JOHNSON, Nuclear Management Company

On Behalf of the Petitioners:

TERRY J. LODGE, ESQ.

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Also Present on Behalf of the Petitioners:

PAUL GUNTER, Nuclear Information and Resource Service

ALICE HIRT, Western Michigan Environmental Action Coalition

KEVIN KAMPS, Nuclear Information and Resource Service

MICHAEL KEEGAN, Don't Waste Michigan

On Behalf of the Nuclear Regulatory Commission:

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Also present on Behalf of the Nuclear Regulatory Commission:

SHERVERNE CLOYD

MICHAEL MORGAN

JONATHAN RUND

PROCEEDINGS

(1:38 p.m.)

JUDGE YOUNG: Thanks everyone for calling in. I don't think we have a whole lot that we need to talk about today. But I do have a list that I wanted to go through. And then the last thing on the list is to ask if any of you have any questions that you would like to have addressed today.

First off, just sort of a housekeeping issue, we did see a reference to I believe under Contention One to the opinion of petitioner's experts. We wondered whether there was a written opinion somewhere that we don't have. And if so, we'd like to get a copy of that. Is there? Or is that a more generalized reference?

MR. LODGE: This is Terry Lodge. There is -- other than e-mail correspondence, there is not a written opinion. And the e-mail correspondence essentially is almost verbatim the wording that we used in that contention.

JUDGE YOUNG: Okay. The next thing is sort of a related thing. It would be helpful to us if we could get copies of the application. And I guess that would be one copy for each of the judges and one copy for our law clerk. Would that be possible Mr.

Lewis?

MR. LEWIS: Yes, Judge Young. Would you like the CD version?

JUDGE YOUNG: Well, I actually find paper copy -- would find a paper copy and a CD useful.

MR. LEWIS: I'll be glad to provide, you know, whatever is requested and would expend the same courtesy to the petitioners.

JUDGE YOUNG: Okay. Thank you.

MR. LODGE: Thank you.

JUDGE YOUNG: Let's see. Oh, one of thing. It's sort of related. It would be helpful to us also if we could get electronic, copy-able versions of all the pleadings. I think we have that already with the possible exception of Nuclear Management. It seems like that was PDF that I didn't know how to copy. Am I remembering that wrong, Mr. Lewis?

MR. LEWIS: We did file it as a PDF. I can't remember whether we -- did we file the forms? No, that was -- yes, we filed it as a PDF with the Licensing Board.

JUDGE YOUNG: Would it be possible to get a text version?

MR. LEWIS: Yes, we can do that.

JUDGE YOUNG: It's just -- I mean without

indicating how we're going to decide on anything, it is helpful for us to have from all parties electronic versions so that when we are writing up a decision, if we should decide to use any portions or any cites or anything like that from any of your pleadings, that will save us time.

MR. LODGE: Your Honor, this is Terry Lodge. I have a question. Prospectively, would it be a good idea if we dual submitted electronically in say Word Perfect and PDF?

JUDGE YOUNG: That's fine. I don't know that we particularly need the PDF.

MR. LODGE: Oh, okay. All right.

JUDGE BARATTA: Well, the PDF are helpful because it preserves the pages.

MR. LODGE: Right.

JUDGE YOUNG: Okay, okay.

JUDGE BARATTA: And Word doesn't.

JUDGE YOUNG: Yes, that would be --

JUDGE BARATTA: I'm sorry. That was Judge Baratta.

JUDGE YOUNG: But yes, thank you. That would be helpful.

MR. LODGE: Okay.

MS. UTTAL: Judge, this is Susan Uttal.

I think for ADAMS purposes, the PDF may be required. I'm not sure on that though.

JUDGE BARATTA: I think you're right. As a result, it would be helpful for us to get both.

JUDGE YOUNG: Okay. Anything else on just sort of housekeeping paperwork kind of things?

(No response.)

JUDGE YOUNG: Okay. A question that I have in getting now to the oral argument that we have scheduled for November 3rd and 4th. First of all, I guess just a couple of ground rules.

We would encourage all of you to pay close attention to the contention rule and to the decisions that are cited in the original scheduling order in this proceeding so that you will be fully familiarized with the existing law and rules relating to license renewal proceedings.

Related to that, when we're in oral argument, I don't think that we're going to necessarily set rigid timelines. We will be issuing an order setting the beginning times and the location and so forth.

But we would strongly encourage you not to merely repeat what you've said in your pleadings but address issues that you feel have not been adequately

argued to us. And we will definitely probably have questions for you.

One thing I noticed in the answers, it does not appear that standing is going to be a significant -- or an issue at all. Mr. Lodge, do you -- I think the staff had distinguished between the representational standing and the organizational standing. Do you have any -- I guess you can indicate that in your reply but we, I think, are expecting the argument to be primarily on the contentions.

MR. LODGE: And so are we, Your Honor. And I appreciate, frankly, the staff and the utility responses kind of laying that issue largely to rest.

JUDGE YOUNG: Okay. All right. Let's see. One of the things that we have been discussing and we think we'll go ahead and do probably in the early evening of the 3rd is hold limited appearance statements, a time for that. And we're thinking about doing that between five-thirty and seven-thirty in the evening.

I don't know, Mr. Lodge, if you are familiar -- I'm sure Mr. Gunter and the NIRS people are familiar with those from past participation in NRC proceedings. That is an opportunity for members of the public -- any member of the public to come in and

make a short statement that will be included in the record. It's not evidence for us to consider. But it is an opportunity for the public to contribute.

What we would do is adjourn the oral argument at around five and then come back at five-thirty so that people who have been working during the day can come if they wish and make statements.

We'll probably limit those statements to five minutes for each person depending upon the number of people. If there are a much larger number of people then would allow for that, we might reduce that a bit.

But we wanted to notify you of that at this point. We will confirm that in a written order.

With regard to that and with regard to the oral argument, we will have security in some form there. And there are some sort of basic ground rules for adjudication proceedings. And that is we know people feel strongly about these issues but we won't allow signs, posters, or anything like that.

We're going to try to get a room large enough for anyone who wants to come to fit into and we will probably do that in a conference room in a hotel in South Haven. We'll notify you of that when we know the exact location.

It would be helpful for us to know from all parties how many you expect to attend. Or if you have any idea also how many other members of the community may wish to attend. Any of you can start.

MR. KEEGAN: Michael Keegan. I don't have a notion at this point. I know there is quite a great deal of interest of the members over there. Could I get back to you closer to the date?

JUDGE YOUNG: Well, we're going to need to reserve a room. I think we may have access to a room that would hold 100 people. Does anyone think that that might not be sufficient?

MR. LEWIS: Judge Young, I hope that would be sufficient. This is David Lewis. I haven't got the number of people who will attend for NMC but I would guess that in addition to Mr. Gaulker and myself, it might be a half dozen.

JUDGE YOUNG: All right.

MR. GUNTER: Judge Young, this is Paul Gunter with Nuclear Information Resource Service. I noticed that with regard to the signs, it is my understanding that the Commission does allow signs that are 18 by 18. And that it does not allow any signs over that.

Is there any particular reason why there

is this blanket statement on signs?

JUDGE YOUNG: Yes, I think that there -- I have two answers to that which I don't know how satisfactory they are. But one is that in adjudication proceedings, it's a little bit different than other types of public meetings. And two, security. We've been more, obviously, security conscious since 9/11. And security figures that that is an issue that we want to -- I don't know whether it is a view line. I know that they have asked us to follow that rule.

And when I say rule, I don't think there is a written rule but -- or do you think there is a written rule?

JUDGE BARATTA: Yes, I think that -- this is Judge Baratta, I think the maintenance of a decorum of an adjudicatory proceeding is such that signage is just not appropriate. That's been a longstanding tradition. It's nothing new if that's what you are getting at.

It is true that for staff hearings that may be conducted such signage of that nature is allowed. However, signage at these adjudicatory proceedings is not allowed.

MR. GUNTER: This is Paul Gunter again.

I would respectfully request that we could see in writing because I know that the current Code of Federal Regulation applies to not only staff but also Commission meetings. So I'm just -- I'm inquiring because this is news to me.

JUDGE YOUNG: And could you give us either now or subsequently through Mr. Lodge the cite to the provision that you are talking about?

MR. GUNTER: Yes, ma'am.

MR. LODGE: We'll definitely forward it.

JUDGE YOUNG: Okay. And once we get that, we'll consider your argument and your request.

MR. LODGE: Yes, for the record, this is Terry Lodge. I would just like to embody what Mr. Gunter was saying into an oral motion that the Panel please reconsider the prohibition against signs subject to our providing the regulation.

JUDGE YOUNG: Okay. When you provide the regulation, why don't you just provide a short motion as well.

MR. LODGE: Very good.

JUDGE YOUNG: Okay? And I don't want you to wait until the last minute. So could you do that within a week or so?

MR. LODGE: Yes.

JUDGE YOUNG: Okay. So let's see that would be September 19th. Is that a -- okay, that's next Monday, September 19th?

MR. LODGE: Fine.

JUDGE YOUNG: Okay. Let's see. I think that is all from my list. Do either of you have anything else before we ask the parties if they have any questions?

(No response.)

JUDGE YOUNG: Do any of the parties have any issues that we may have overlooked or that you would like to raise at this point?

MS. UTTAL: Judge, this is Susan Uttal. I have a couple of issues.

First of all, I didn't get -- I don't have in my file a notice of appearance from counsel. And I was wondering whether a notice of appearance was filed for both counsels.

MR. LODGE: Are you talking -- is that required of the petitioners?

MS. UTTAL: The petitioner's counsel.

MR. LODGE: I will file one to perfect the record. My apology. I assumed that submission of a petition constituted that. But I'll certainly file something separate.

MS. UTTAL: And my second issue also relates to notices of appearance. I see that representatives from each organization have filed notices of appearances. And they are also represented by counsel.

And I think that the Board should lay down some ground rules for who will speak during oral argument because usually the retained counsel or the counsel representing the parties that does the oral argument, not representatives of the various organizations. So I'd like to make that clear.

JUDGE YOUNG: I think my expectation would be that argument would be made by counsel. Mr. Lodge -- now I know we've let Mr. Gunter speak before. He's participated in NRC proceedings before. So in this somewhat informal context, I have no problem with that.

But I think that argument should be through counsel unless a specific request is made that someone else do some portion of an argument.

Mr. Lodge, do you have any problem with that?

MR. LODGE: As a sort of general rule, no, except for the fact that as you have correctly noted, my friends from NIRS do have uncommon expertise in

some technical areas in particular. And it may be more efficient for the purpose of the proceedings from time to time to have Mr. Gunter or even Mr. Kamps participate as our designated speakers.

We haven't worked that out, of course, yet. But I would ask that the Board keep an open mind on that possibility.

JUDGE YOUNG: Could you perhaps when you file your reply indicate whether you wish to have any of the oral argument made by anyone other than yourself? And I guess in that context, we expect the oral argument to be, as in any proceeding, to be primarily legal argument. So that would address the requirements in the contention rule and in the relevant case law.

So if you do make a request that someone else make an argument -- and I guess let me just give you my reasoning for this, lawyers are trained and know what types of argument they are expected to make in an oral argument. And sometimes non-lawyers may not make the distinction between the type of argument that -- legal argument on legal issues and factual argument which would not necessarily be very relevant at this point.

MR. LODGE: I understand. And I will

certainly make that type of request when we reply.

JUDGE YOUNG: Okay. Great. Anything else? And, Ms. Uttal, does that address your concerns?

MS. UTTAL: Yes, it does. I have one final point. And I'm not too clear on it regarding the limited appearances. I was looking for the regulation that governs that to see whether parties are permitted to make limited appearances when they are also appearing as parties.

JUDGE YOUNG: I know we've had proceedings where say employees of parties have made limited appearance statements. So I mean I don't think there is any limitation on that. But --

MS. UTTAL: Well, Judge, how about this, if I find something, I'll let the Board and the parties know.

JUDGE YOUNG: Okay.

MS. UTTAL: That's all I have.

JUDGE YOUNG: Anybody else?

MR. LEWIS: Yes, Judge, just on your request for copies of the application, I was going to provide you a paper copy as well as a CD. In the interest of saving trees, is it okay for me to provide the other judges and the petitioners CD copies? Or

does anybody else need a paper copy?

MR. LODGE: The petitioners will certainly accept it on CD.

MR. LEWIS: Thank you. That will save me some postage.

MR. LODGE: Thank you.

JUDGE YOUNG: Okay. Thank you. We'll share the one paper copy. I guess I'm still living in the Dark Ages sometimes.

(Laughter.)

JUDGE YOUNG: I like books still.

All right, let's see. Anything else?

(No response.)

JUDGE YOUNG: All right. Then we'll look forward to hearing from petitioners I guess both this Friday and then Monday on your motion on the signs, from Ms. Uttal on anything related to who can provide a limited appearance statement. And if anything else arises, you are free to file anything in writing with us.

Try to communicate with each other, obviously, on anything as well so that anything you can work out between you, you can do that.

We will send you more specific notification on the time and also on the location for

the oral argument in South Haven. And we'll look forward to seeing everyone November 3rd.

MR. LODGE: Very good.

JUDGE YOUNG: Does the Court Reporter need anything else from us? Do we still have the Court Reporter?

COURT REPORTER: Yes, I'm still here. I don't need anything right now.

JUDGE YOUNG: Okay. Thank you all.

(Whereupon, the above-entitled conference was concluded at 1:58 p.m.)

CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name of Proceeding: Nuclear Management Company
Palisades Nuclear Plant

Docket Number: 50-255-LR
ASLBP No.: 05-842-03-LR

Location: teleconference

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.

William Click

William Click
Official Reporter
Neal R. Gross & Co., Inc.