

11/13/72

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)

WISCONSIN PUBLIC SERVICE CORPORATION)

WISCONSIN POWER AND LIGHT COMPANY)

and)

MADISON GAS AND ELECTRIC COMPANY)

(Kewaunee Nuclear Power Plant))

Docket No. 50-305

MOTION OF INTERVENORS
FOR A FREE TRANSCRIPT

Intervenors move that an Order be entered providing that Intervenors be provided with a free copy of the transcript of all hearings to be conducted in this proceeding, said transcript to be provided to Intervenors at the same time a copy is provided to the Staff of the Atomic Energy Commission.

In support of this motion there are attached hereto an order form and price schedule of Ace-Federal Reporters, Inc. (Exhibit 1) and an Affidavit of Alexander Polikoff, Executive Director of Businessmen for the Public Interest

(Exhibit 2).

Intervenors are not-for-profit organization who operate with extremely limited resources. One of their objectives is to insure that the development and utilization of atomic energy for peaceful purposes is consistent with the Congressional policies of health and safety of the public. (42 U.S.C. §2013(d). See, 42 U.S.C. §4331). Recent judicial opinions have held that regulatory commissions should welcome and encourage the participation of groups which seek to perform public service by assisting the administrative agency in protecting the public. Scenic Hudson Preservation v. FPC, 354 F.2d 608 (C.A.2, 1965) and Office of Communications of the United Church of Christ v. FCC, (I) 359 F.2d 994 (C.A. D.C. 1966). The "hospitable reception" is not to end with the granting of intervention. Office of Communication of the United Church of Christ v. FCC, 425 F.2d 543 (II) (C.A. D.C. 1969).

To enable Intervenors to properly fulfill their function of representing the public interest, they must have available to them the same legal tools as the applicants and staff counsel. Immediate and complete access to transcripts of all proceedings is necessary for purposes of full and complete presentation of technical data, cross-examination, and legal argument. There is an insurmountable hardship placed upon a party to any litigation deprived of a transcript of the

proceedings when other parties have immediate access to a transcript.

As evidenced by Exhibit 1, the cost of purchasing a transcript is extraordinarily high. It is not unreasonable to assume, for purposes of an example, that there may be 20 days of hearings in this matter, and that an average hearing day would result in 210 pages of transcript. If hearings run continuously, it is likely that counsel for the applicant and for the staff will be receiving transcript 5 hours after the close of the hearing day. It would cost Intervenor \$10,416 to have the same transcript on the same basis. The public interest intervenors here, simply do not have the financial resources to meet the heavy costs of obtaining transcripts. The full responsibility for the representation of the interests of all of these public interest intervenors will be on the staff of Businessmen for the Public Interest. Exhibit 2 demonstrates the unfortunate fact that BPI has been required to go into debt to meet its current, ordinary operating expenses for such items as rent and salaries. It cannot afford to buy copies of the transcripts of this proceeding.

The AEC has granted the right of Intervenor to participate, yet there is no question that ready access to the hearing transcript is essential to effective participation by the Intervenor. The hearing will involve lengthy and complex

testimony. Since intervention was granted to allow Intervenor to serve a public purpose, there can be no purpose served by depriving Intervenor of full and meaningful participation by denial of a transcript. Intervention without having a copy of the transcript at the same time that counsel for other parties have it, is little more than a sham.

Utilization of the transcript available in the public document room does not offer a realistic alternative to providing Intervenor with a free copy of the transcript. Hearings may be held in places far away from the public document room. Moreover, access to the copy in the public document room during normal working hours hardly would enable adequate preparation of the case by Intervenor's representatives, particularly during the course of continuous hearings. And, of course, members of the public who have not chosen to intervene but who nevertheless have an interest in the proceeding, should not be deprived of access to the copy of the transcript in the public document room.

The unfairness resulting from financial inequality between parties has been recognized by the federal judiciary. In Lee v. Habib, 424 F.2d 891 (C.A.D.C. 1970), the Circuit Court of Appeals for the District of Columbia held that a party in a civil case cannot receive a "meaningful review" of his case without a transcript. In Habib Judge Wright stated, "[C]ourt

procedures which of themselves invidiously discriminate between rich and poor impair guarantees of equal justice which the Constitution was designed to protect." (at p. 902) The right of equal protection in federal proceedings is an aspect of procedural due process under the Fifth Amendment of the Constitution. Bolling v. Sharp, 349 U.S. 294 (1955). Administrative agencies must conduct adjudicative proceedings with due process requirements that are traditionally associated with the judicial process. Hannah v. Larche, 363 U.S. 400, 442 (1960). For example, the Federal Trade Commission (FTC) provided counsel for an indigent party in In the Matter of America Chinchilla Corporation (F.T.C., Docket No. 8774, December 23, 1969). Commissioner Jones ruled that principles of fairness and due process compelled the FTC to provide counsel for an indigent defendant. Those same principles of fairness and due process require that in this administrative hearing the Intervenor be provided with copies of the transcripts at no cost.

The Administrative Conference of the United States has concluded that the cost of litigation in administrative hearings renders the right of intervention meaningless to those with limited resources. The Committee on Agency Organization and Procedure stated in recommendations promulgated on November 15, 1971, that, "[T]ranscripts should be available without charge to indigent participants to the extent necessary

for the effective representation of their interests."

(at p. 4).

There can be no doubt the authority exists to provide Intervenorors with a free copy of the transcript. The Atomic Energy Act of 1954 at 42 U.S.C. §2231 states that the Administrative Procedure Act applies to "agency action". The license sought by applicant in this proceeding comes within the plain definition of agency action (5 U.S.C. §551(13)). The Administrative Procedure Act at 5 U.S.C. §556(e) states further that transcripts of hearing testimony and exhibits shall be made publically available at a "lawful fee." The determination of a "lawful fee" is governed by 31 U.S.C. §483a, which provides that documents provided by a federal agency to any person or group shall be self-sustaining to the fullest extent possible. Section 483a indicates that in determining the amount of a fee, consideration is to be given the public policy or interest served. As stated by the Court of Appeals for the Seventh Circuit in Aeronautical, Radio, Inc. v. United States, 335 F.2d 304 (C.A. 7, 1964) "each agency must weigh the policy of making its services 'self-sustaining' against the public policy considerations for which it was formed." (at p. 307) (See also 42 U.S.C. §2201(c).)

In weighing these factors the regulatory agency must bear in mind its duty to public interest intervenors as

reflected in Office of Communication of the Church of Christ (II), supra., and the special clients protection assigned by the Courts to such matters touching on fundamental personal interests in life, health, and liberty in comparison with the economic interests at stake in a national licensing proceeding. EDF v. Ruckelshaus, 439 F.2d 584 (C.A.D.C. 1971).


In sum, Intervenorors do not seek and will not gain any private or financial benefit from either the granting or denying of a license in this proceeding. They seek only that the public interest is fully represented and protected. In order to accomplish that, they must have a free copy of the transcript.

CONCLUSION

For the foregoing reasons, Intervenorors' Motion for a Free Transcript in this proceeding should be granted.

DATED: November 13, 1972

Respectfully submitted,



Robert J. Vollen
Attorney for Intervenorors

Robert J. Vollen
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ACE--FEDERAL REPORTERS, INC.
Official Reporters
415 Second Street, Northeast
Washington, D. C., 20002

PROCEEDINGS BEFORE THE UNITED STATES ATOMIC ENERGY COMMISSION
January 1, 1972, through December 31, 1972.

Please note your appearance:

PLACE _____
IN THE MATTER OF _____
YOUR NAME (Please print) _____
ADDRESS _____
CITY, STATE, ZIP CODE _____
APPEARING FOR _____

ORDER FOR OFFICIAL TRANSCRIPT OF HEARING

We herewith place our firm order for _____ copies of the
official transcript in the above-described matter:

DELIVER TO: _____
BILL TO: _____
SPECIAL INSTRUCTIONS (if any): _____

With the placement of this order, purchaser agrees that no electrostatic copy will
be made of the pages contained in the transcript in their typographical form ex-
cept for purposes of filing briefs.

SIGNATURE: _____

PRICES ARE PER COPY: (Please indicate delivery desired)

- () 10-day delivery, \$1.00 per page; additional copies, 13¢ per page.
- () 5-day delivery, \$1.25 per page; additional copies, 18¢ per page.
- () Daily delivery, \$2.00 per page; additional copies, 31¢ per page.
- () 5-hour delivery, \$2.06 per page; additional copies, 38¢ per page.

These prices are arranged by contract between the Atomic Energy Commission and
Ace-Federal Reporters, Inc., for the Calendar Year 1972. If, however, a public
sale involves faster delivery than that ordered by AEC, the prices below prevail
in place of the above-listed prices.

- () 5-day delivery, \$1.50 per page; additional copies, 15¢ per page.
- () Daily delivery, \$2.40 per page; additional copies, 30¢ per page.
- () 5-hour delivery, \$2.48 per page; additional copies, 45¢ per page.

AFFIDAVIT

State of Illinois)
) SS.
County of Cook)

ALEXANDER POLIKOFF, being duly sworn on oath,
deposes and says:


1. I am the Executive Director of Businessmen
for the Public Interest and am duly authorized to make
this affidavit.

2. Businessmen for the Public Interest has
intervened in the Atomic Energy Commission proceedings in-
volving applications for operating licenses for nuclear
power plants at Kewaunee, Wisconsin, Zion, Illinois, and
the Donald C. Cook Plant at Bridgman, Michigan.

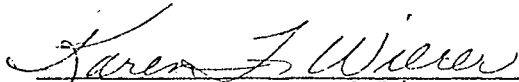
3. The sole source of money to finance the work
of Businessmen for the Public Interest is voluntary contri-
butions.

4. The financial condition of Businessmen for the
Public Interest is such that it cannot afford to pay for
copies of the transcripts in any of the above three named
Atomic Energy Commission proceedings in that Businessmen for
the Public Interest has borrowed approximately \$50,000 to
meet its ordinary, current operating expenses for the calendar

year 1972 and I anticipate that it will be necessary to borrow additional amounts to meet current operating expenses during the remainder of calendar year 1972.


Alexander Polikoff

Subscribed and sworn to
before me this 13th day
of November, 1972.


Notary Public

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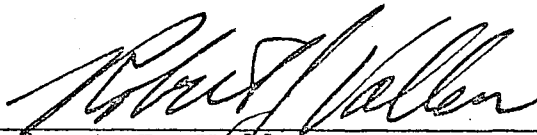
(Kewaunee Nuclear Power Plant))
)

Docket No. 50-305

CERTIFICATE OF SERVICE

I hereby certify that copies of Motion of Intervenor for a Free Transcript, dated November 13, 1972, were served upon the persons named on the attached Service List by deposit in the United States mail, properly addressed and postage prepaid, this 13th day of November, 1972.

DATED: November 13, 1972



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