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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judge:

Charles Bechhoefer

OFFICE OF SECRETARY
DOCKET ROOM
NRC

SERVED OCT 27 1989

In the Matter of
COMBUSTION ENGINEERING, INC.
(Hematite Fuel Fabrication
Facility, Special Nuclear
Materials License No. SNM-33)

Docket No. 70-36-MLA
ASLBP No. 89-593-01-MLA
October 27, 1989

PREHEARING CONFERENCE ORDER
(Settlement Agreement and Termination of Proceeding)

This proceeding involves a proposed amendment to the materials license of Combustion Engineering, Inc. (Applicant), to authorize the Applicant to operate new pellet production lines at its facility in Hematite, Missouri. The undersigned has been designated Presiding Officer.¹ Parties to the proceeding, which is being conducted under 10 C.F.R. Subpart L, the Commission's Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings, are the Applicant and three intervenors: State Senator Jeremiah W. (Jay) Nixon,

¹54 Fed. Reg. 31749 (August 1, 1989).

Ms. Martha T. Dodson, and Ms. Karen Sisk.² The Coalition for the Environment had also sought admission to the proceeding; ruling on its petition had been deferred.³

On October 25, 1989, the Presiding Officer conducted a prehearing conference in Hillsboro, Missouri.⁴ Participating parties at the conference were the Applicant, Senator Nixon, and Ms. Dodson. At the conference, the participating parties agreed to a settlement designed to terminate the proceeding, subject to specified conditions.

²By letter dated August 3, 1989, the NRC Staff, as permitted by 10 C.F.R. § 2.1213, declined to participate in the proceeding. The Staff responded satisfactorily to certain questions which I posed to it.

³Rulings on various intervention petitions appear in Memorandum and Order (Requests for a Hearing), LBP-89-23, 30 NRC ____ (August 18, 1989), and in Memorandum and Order (Additional Intervention Petitions, Issues and Schedules), LBP-89-25, 30 NRC ____ (September 25, 1989).

⁴On the prior evening, October 24, 1989, the Presiding Officer heard limited appearance statements from members of the public, as authorized by 10 C.F.R. § 2.1211(a). The conference and limited appearance session were each announced in LBP-89-25, supra, n.3. Notice of the conference and limited appearance session, dated September 26, 1989, was published at 54 Fed. Reg. 40548 (October 2, 1989).

The text of the agreement is set forth as an Appendix to this Order.⁵

In LBP-89-25, supra, I had directed the Intervenors and petitioner to file statements of proposed issues that they wished to litigate. Senator Nixon and Ms. Dodson filed statements which together included nine issues. By letter dated October 19, 1989, the Coalition stated that it was withdrawing its intervention petition. Ms. Sisk neither filed a statement of proposed issues nor appeared at the prehearing conference.

In LBP-89-25, supra, I urged the parties to attempt to settle the outstanding issues. I suggested the prehearing conference as an appropriate medium for conferring on settlement. The agreement presented to me at the conference represents a fruitful outcome of this effort. The participating parties each agreed that, subject to my approval of the stipulation, the proceeding should be terminated. Tr. 54 (Applicant); Tr. 53 (Sen. Nixon); Tr. 54 (Ms. Dodson).

⁵The Appendix consists of a retyped version of the original, which included hand-written changes to a typewritten document. Copies of the original are bound into the transcript, following the last page of each session (ff. Tr. 37 and 55). Pages of the October 25, 1989 transcript were initially numbered 1-18 but have been renumbered as Tr. 38-55, following consecutively the numbers of the October 24, 1989 session. This Order refers to the renumbered transcript pages.

As I stated at the conference, I am accepting the stipulation (Tr. 48-49, 54). Its terms are not inconsistent with NRC regulations and represent a fair settlement for the parties. As I also announced, I am accepting the withdrawal of the Coalition for the Environment and am dismissing the petition of Ms. Sisk for failure to file a statement of issues or to appear at the conference (Tr. 49, 54).⁶

Finally, the questions which I posed to the Applicant and Staff in LBP-89-25, concerning criticality standards inherent in certain of the concerns expressed by the initial intervention petitions, were satisfactorily answered. During the limited appearance session, I asked for a report at the prehearing conference concerning the Applicant's plans for conforming to the Commission's regulations on offsite emergency planning, which go into effect next year but, to some extent, were inherent in the relief sought by certain of the Intervenors' issues (Tr. 19). After receiving the proposed stipulation, I made no further inquiry on this question, inasmuch as the terms of the

⁶The Applicant advised that it had unsuccessfully attempted to contact Ms. Sisk concerning issues which she wished to raise (Tr. 41). I previously had ascertained by telephone that the date for the conference was convenient for Ms. Sisk (as well as for the other participants). When Ms. Sisk filed no statement of issues, I again sought to contact Ms. Sisk to ascertain her continuing interest in the proceeding but was unable to reach her.

stipulated agreement appear to respond to the Intervenor's concerns in this regard.

Accordingly, on the basis of the foregoing, it is, this 27th day of October, 1989

ORDERED:

1. The stipulation of Senator Jeremiah W. (Jay) Nixon, Ms. Martha T. Dodson and the Applicant, as set forth in the Appendix to this Order, is approved.

2. The withdrawal of the intervention petitions of Senator Jeremiah W. (Jay) Nixon and Ms. Martha T. Dodson is approved, subject to the terms of the above-referenced stipulation.

3. The requested withdrawal of the petition of the Coalition for the Environment is granted.

4. The intervention petition of Ms. Karen Sisk is dismissed for failure of Ms. Sisk to have filed a statement of issues or to have participated at the prehearing conference.

5. This proceeding is terminated.

6. Pursuant to 10 C.F.R. § 2.1251, this Order is effective immediately and will constitute the final action of the Commission thirty (30) days after the date of its issuance unless an appeal is taken in accordance with 10 C.F.R. § 2.1253. As set forth in 10 C.F.R. §§ 2.1253 and 2.762, any party may file an appeal from this Order within

10 days of service hereof. Appeals are to be filed with the Atomic Safety and Licensing Appeal Board and must conform to the standards set forth in 10 C.F.R. §2.762.

Charles Bechhoefer
Charles Bechhoefer
Presiding Officer
ADMINISTRATIVE JUDGE

Bethesda, Maryland
October 27, 1989

APPENDIX

Joint Stipulation Among Combustion Engineering, Inc.,
Sen. Jeremiah W. (Jay) Nixon, and Mrs. Martha Dodson

1. The amendment does not authorize an increase in the limitations on quantities of radioactive material authorized on site.
2. The amendment will not authorize an increase in quantities of uranium product transported to and from the site by Combustion Engineering.
3. Combustion Engineering's intention is to remove low level radioactive waste produced by the pelletizing operations under the amendment from the site for disposal at an approved off-site facility, as reasonably available. Except for high efficiency filters (used to remove uranium from exhaust air), Combustion Engineering does not anticipate any significant increases in the quantity of low level radioactive waste from this amendment.
4. On or before July 27, 1990, Combustion Engineering will comply with the NRC's new regulations on funding decommissioning (10 C.F.R. 70.25). These regulations provide greater independent assurance of the availability of funds for decommissioning than under the NRC's practices in 1979.
5. Upon approval by the NRC, Combustion Engineering will provide an additional remote sampling site. In the unlikely event of releases of radioactive material in excess of license "action levels", Combustion Engineering will perform radiation surveys, including, as appropriate, off-site surveys.
6. In the event of an off-site release--similar or more severe than that which occurred in August 1989-- Combustion Engineering will notify, as appropriate, off-site response organizations.
7. Combustion Engineering will continue to work with the NRC to meet the NRC's regulatory requirements concerning the evaporation ponds.

This Joint Stipulation will become effective upon the Presiding Officer's approval of the withdrawal of the petitions of Senator Nixon and Mrs. Dodson and the termination of the NRC proceedings.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

COMBUSTION ENGINEERING, INC.

(Hematite Fuel Fabrication Facility
License No. SNM-33)

Docket No. (s) 70-36-MLA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB PREHEARING CONF. ORDER have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Atomic Safety and Licensing Appeal
Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Atomic Safety and Licensing Appeal
Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Charles Bachhoefer
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
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Administrative Judge
Jerry R. Kline
Atomic Safety and Licensing Board
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Office of the General Counsel
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Missouri State Senator
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Martha Dodson
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Arlene Sandler
President
Coalition for the Environment
St. Louis Chapter
6267 Delmar Boulevard
St. Louis, MO 63130

Docket No. (S)70-36-MLA
LB PREHEARING CONF. ORDER

Dated at Rockville, Md. this
27 day of October 1989

Emile J. Julian

Office of the Secretary of the Commission