

Commission acted. We declined to halt the hearings and ordered their resumption on March 21, 1977, as had been previously contemplated.

Our reasons for denying the motion are not profound. The first is that we are now proceeding as ordered by the Commission and we are reluctant to do otherwise unless we are directed to do so. Practicality is the second reason that inclines us to continue.

Evidentiary hearings on suspension began November 30, 1976, and to this date we have been in session 20-odd days. Perhaps another 10 or 15 days will be needed to finish. We have had to recess several times because of the unavailability or the incapacity of Board members, counsel or witnesses. A stop now would likely result in several weeks delay in beginning again while schedules are reviewed and adjusted to accommodate the change. This delay added to hearing time remaining would extend a decision date into the summer. If, however, we proceed and in a few days the Commission orders us to stop, nothing is lost except a few days time and expense on the part of the parties involved. This lost effort though significant would not seriously affect the Licensee, Dow, or the Staff; the only real effect would be on the Intervenors and they urge us to proceed.

MOTION TO DEFER

Intervenors urge that our order denying financial assistance be certified or referred for review. The reasons for the requested referral are that in this case the Board has indicated that Intervenors have provided valuable assistance in developing the record and that the Commission has lately provided financial assistance in the GESMO proceeding.^{1/}

That Intervenors can and do provide worthwhile assistance in licensing proceedings was recognized by the Commission in its November 12, 1976, policy statement.^{2/} That document specifically provided for funding of Intervenors in the GESMO proceeding while denying it in licensing cases. We find no circumstance in this case that causes us to certify or refer a question so recently and clearly dealt with by the Commission.

DISCLOSURE OF TESTIMONY

Pre-filed testimony was provided in this case in November, 1976. Hearings were conducted during the weeks of November 30, January 18, January 31, February 7 and

^{1/} In the Matter of Generic Environmental Statement on Mixed Oxide Fuel, Docket No. RM 50-5, Order dated March 4, 1977.

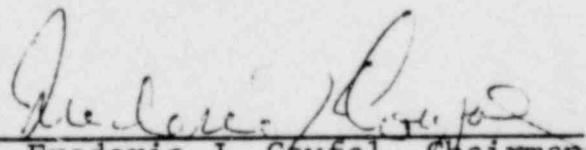
^{2/} In the Matter of Nuclear Regulatory Commission (Financial Assistance to Participants in Commission Proceedings) NRCI 76/11 494, 502.

February 14, 1977. By this time all of Staff and Licensee pre-filed testimony had been presented through the witnesses and cross-examination of those witnesses had been concluded. By February 10, there was indication by the Staff and the Licensee that they each wished to provide further testimony in their direct cases. To obtain sufficient information so that the Board might be able to control the dimensions of the case, it was ordered on February 10 that Staff and Licensee pre-file all planned additional testimony whether relating to their direct or rebuttal cases by February 28, 1977. That testimony was filed and the Board, at the request of Staff and Licensee, ordered that Intervenors' witness Dr. Timm be not shown the testimony until after he testified. Our March 11, order released to Dr. Timm some of that testimony and further ordered that at the conclusion of his testimony Dr. Timm could read all pre-filed material so that he could help prepare Intervenors' attorney to cross-examine witnesses.

The reason for the protective order was that the disclosure to Dr. Timm of rebuttal material prior to the time that he testified might unfairly apprise him of the areas of inquiry the other parties wished to pursue in cross-examination.

Usually a witness is not aware of the rebuttal case before he testifies and it seems reasonable to the Board that Dr. Timm be not so surprised. The parts ordered disclosed did not seem to be of a nature that disclosure would interfere with cross-examination.

THE ATOMIC SAFETY AND
LICENSING BOARD


Frederic J. Coufal, Chairman

Dated at Bethesda, Maryland,
this 16th day of March, 1977.