

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

PORTLAND GENERAL ELECTRIC COMPANY,
ET AL.

(Trojan Nuclear Plant)

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Docket No. 50-344
(Control Building)

NRC STAFF'S RESPONSE TO OREGON'S MOTION
FOR RECONSIDERATION OF THE INITIAL DECISION

A. Introduction

On July 23, 1980, the State of Oregon filed "State of Oregon's Motion for Reconsideration of the Initial Decision" (Motion) and "State of Oregon's Memorandum of Points and Authorities in Support of its Motion for Reconsideration" (Supporting Memorandum).^{1/} In its Motion, the State requests that the Licensing Board reconsider its initial decision

for the purpose of providing findings, conclusions and rulings with the reasons or basis for them on the material issues of fact[,] law and discretion presented on the record by the State of Oregon in its Proposed Findings of Fact and Conclusions of Law, filed with the Licensing Board on May 19, 1980. (Motion, p. 1).

^{1/} On August 6, 1980, the Staff filed "NRC Staff Motion for Extension of Time" seeking an extension, until August 18, 1980, of the time within which the Staff could respond to Oregon's Motion. The additional time sought by the Staff was granted by the Licensing Board in its "Order Granting Extension of Time" issued on August 7, 1980.

For the reasons set forth below, the NRC Staff supports Oregon's Motion requesting that the Licensing Board provide findings and the basis for its ruling rejecting Oregon's proposed findings.

B. Background

In its Proposed Findings and Memorandum of Points and Authorities in Support of Proposed Findings, the State of Oregon proposed that, where changes in or deviations from approved Control Building modifications may be undertaken without prior NRC approval pursuant to 10 CFR § 50.59, the Licensee be required to comply with the reporting requirements of Section 50.59 for such changes or deviations on an accelerated basis. Specifically, Oregon proposed that the Licensing Board impose license conditions which would mandate the submission to the NRC of reports on design changes or deviations prior to implementation of such changes or, in some instances, within 14 days of the Licensee's decision to make such changes, rather than annually as otherwise provided for in 10 CFR § 50.59(b).^{2/} The Staff, which filed its proposed findings simultaneously with the State of Oregon, did not oppose Oregon's proposed condition but the Licensee, in "Licensee's Response to the Proposed Findings of Fact and Conclusions of Law Filed by the NRC Staff and the State of Oregon," filed on May 29, 1980, objected to the imposition of such a condition on the grounds that it is unnecessary and potentially burdensome. The Licensing Board, in its initial decision, did not impose

^{2/} State of Oregon's Proposed Findings of Fact and Conclusions of Law Concerning Design Modifications for the Trojan Control Building, May 19, 1980, pp. 2-5.

Oregon's proposed license condition and did not explicitly address Oregon's proposal or set forth the reasons for rejecting it.

Oregon now, in its Motion and Supporting Memorandum, asserts that its proposed license condition, opposed by the Licensee, constitutes a material issue of fact, law and discretion on the record. Accordingly, Oregon argues that, under 10 CFR § 2.760(c)(1), the Licensing Board is required to address Oregon's proposed condition, and provide the basis for rejecting it, in its initial decision.

C. NRC Staff's Position on Oregon's Motion for Reconsideration

In the Staff's view, there appears to be merit to Oregon's argument that its proposed license condition presents a material issue of fact, law or discretion which, under 10 CFR § 2.760(c)(1), should appropriately be addressed in the initial decision. That proposed license condition was the only matter Oregon found it necessary to address in detail in its proposed findings and, in view of the Licensee's opposition to the proposed condition, constitutes, at bottom, the only matter that appears to be contested with regard to the Control Building modifications. Consequently, Oregon's request that the Licensing Board provide a discussion of, and the reason for rejecting, Oregon's proposed license condition is reasonable and is consistent with the requirements of 10 CFR § 2.760(c)(1). In view of this, the Staff supports

Oregon's request that the Licensing Board elaborate on the reasons for rejecting Oregon's proposed license condition.^{3/}

As to the merits of the license condition proposed by Oregon, the Staff is unaware of any evidence of record in this proceeding which demonstrates that accelerated reporting of minor changes or deviations undertaken pursuant to 10 CFR § 50.59 is necessary. In fact, what evidence there is on the matter indicates that accelerated reporting is not necessary.^{4/} For this reason, the Staff itself did not propose that a license condition requiring accelerated reporting be imposed. In sum, it is the Staff's view that accelerated reporting, as proposed by Oregon, is unnecessary and need not be imposed as a condition of the proposed Control Building modifications.^{5/}

D. Conclusion

Based on the foregoing, the NRC Staff supports Oregon's request that the Licensing Board elaborate upon, and provide the basis for, its rejection of

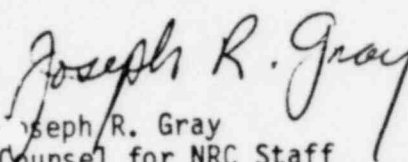
^{3/} It is a licensing board's "duty not only to resolve contested issues but 'to articulate in reasonable detail the basis' for the course of action chosen." Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-422, 6 NRC 33, 41 (1977).

^{4/} See, e.g. Tr. 4621-23 (Herring) wherein the Staff expressed the view that minor deviations or changes from the proposed work sequence could be undertaken without the need for prior reporting or NRC review.

^{5/} This view is set forth at some length in "Licensee's Response to the Proposed Findings of Fact and Conclusions of Law Filed by the NRC Staff and the State of Oregon," May 29, 1980. The discussion set forth by the Licensee at pp. 6-11 of that document provides ample basis for the rejection of Oregon's proposed license condition on accelerated reporting.

Oregon's proposed license condition on accelerated reporting of minor deviations from the approved Control Building modifications. As to the merits of such a license condition, the evidence of record does not establish the need for such a condition and the Licensing Board's rejection of the proposed condition was proper.

Respectfully submitted


Joseph R. Gray
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 15th day of August, 1980.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO OREGON'S MOTION FOR RECONSIDERATION OF THE INITIAL DECISION" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 15th day of August, 1980:

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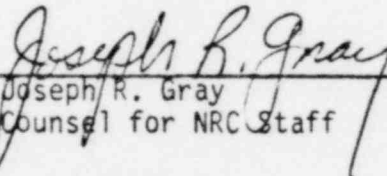
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