NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING APPEAL PANEL
WASHINGTON, D.C. 20555

Attachment 4

February 18, 1981

MEMORANDUM FOR: John F. Ahearne
Chairman

FROM: Alan S. Rosenthal, Chairman
Atomic Safety and Licensing
Appeal Panel

SUBJECT: HEARING BEFORE THE BEVILL COMMITTEE

In our telephone conversation yesterday afternoon, I agreed to address in writing two questions which may come up during the hearing before the Bevill committee tomorrow.

1. In his February 10, 1981 memorandum to the file (a copy of which was supplied to me yesterday), George L. Gleason assigns as one of the reasons for "licensing delays" the provisions of the Rules of Practice which permit licensing and appeal boards to raise on their own initiative in operating license proceedings matters not put into controversy by the parties. 10 CFR 2.760a (licensing boards); 10 CFR 2.785(b)(2) (appeal boards). He points out that, prior to November 1979, these provisions authorized such action only "in extraordinary circumstances" (and admonished the boards to exercise the authority "sparingly"). In that month Sections 2.760a and 2.785(b)(2) were amended to eliminate the references to "extraordinary circumstances" and "sparingly". 44 Fed.Reg. 67089 (November 23, 1979). As they now read, those Sections allow an adjudicatory board to raise sua sponte any "serious safety, environmental, or common defense and security matter".

Calling attention to this amendment, Mr. Gleason states (memorandum, p. 5):

> The appeal board just recently used this expanded authority to retain jurisdiction of an operating license proceeding from which all intervenors had withdrawn. This unnecessarily enlarges the boards' role. The Commission should change its policy to limit board review to matters put in contention by the parties.

Although he does not identify the proceeding specifically, Mr. Gleason obviously has North Anna in mind.*

In that proceeding, the Licensing Board rendered two initial decisions which, in combination, authorized the issuance of operating licenses for North Anna 1 and 2. LBP-77-68, 6 NRC 1127 (1977); LBP-78-10, 7 NRC 295 (1978). No appeals were taken from either of those decisions. As a consequence, the Appeal Board assigned to the proceeding undertook its customary sua sponte review of the decisions and the underlying record.

In ALAB-491, 8 NRC 245 (1978), the Appeal Board announced the results of that review. In large measure, the Licensing Board's determination on the contested issues was affirmed. But, on one of those issues (involving settlement of the ground beneath the facility's pumphouse), the Appeal Board determined that developments occurring subsequent to the Licensing Board's second decision required the retention of appellate jurisdiction to await further information. Additionally, the Appeal Board -- invoking 10 CFR 2.785(b)(2) as it then read -- raised on its own initiative an issue which had not been placed in controversy before the Licensing Board. That issue related to the likelihood that turbine missiles might strike and damage vital facility structures or components. In bringing this issue to the fore, the Appeal Board pointed out this was one of the so-called "unresolved generic safety issues" identified by both the ACRS and the NRC staff. The Board also took note of the fact that the orientation of the North Anna turbines was unfavorable; i.e. they were so positioned vis a vis certain safety structures that, if a turbine blade failed and created a missile, one of those structures might well be in the direct path of the projectile.

After obtaining further documentation on the two issues, the Appeal Board decided that an evidentiary hearing was required on both. The hearing was held before the Appeal Board itself in June 1979. The intervenors in the proceeding participated on the pumphouse settlement issue; only the utility and the NRC staff participated on the turbine missile issue.

In February 1980, the Appeal Board rendered its decision on the pumphouse settlement issue. ALAB-578, 11 NRC 189. Although it had initially intended to dispose of the turbine missile issue

---

* As will be seen, the retention of jurisdiction in North Anna occurred before 1979 and involved the prior version of Section 2.785(b)(2). Nonetheless, there are no other operating license proceedings which fit Mr. Gleason's description.

at the same time, the Board explained that it could not do so because "new information of potential importance to [that] issue [had] recently been brought to [its] attention * * *". 11 NRC at 191. That information had been to the effect that cracking of turbine disks had been uncovered at a number of facilities employing equipment made by the same manufacturer that supplied the North Anna turbines. It brought into at least serious question the validity of some of the conclusions of the experts who testified at the June 1979 hearing.

As of the time of the issuance of ALAB-578, Unit 1 was already in operation but Unit 2 was not. In ALAB-589, 11 NRC 539 (1980), the Appeal Board concluded that, despite the recently disclosed turbine disk cracking at other facilities, operation of Unit 1 need not be halted or Unit 2 kept out of operation. In this connection, the Board noted that Unit 1 was scheduled for a routine refueling shutdown in December 1980 at which time its turbines would receive an ultrasonic inspection. (By subsequent order, the Board directed that Unit 1 not be restarted until after the Board had had an opportunity to study the results of the inspection.)

Unit 1 was shutdown at the end of December and the ultrasonic inspection which took place in early January revealed two relatively small cracks in one low-pressure turbine disk. As a consequence, the utility is replacing the entire rotor of which that disk is a part. As you are aware, the Appeal Board has been closely monitoring the situation and is planning to make a site visit tomorrow. If an emergency hearing on the restart of Unit 1 is required, it will be held next week -- prior to the time when that unit is now scheduled to resume operation. On the basis of the information now at hand, it seems unlikely that the Board will find itself constrained to order a restart delay.

It is clear from the foregoing that, contrary to the impression which might be garnered from Mr. Gleason's memorandum, the retention of jurisdiction over the turbine missile issue has not had any effect to date upon the operation of either North Anna unit. It is true, of course, that the exercise by an appeal board of its Section 2.785(b)(2) authority might in some circumstances bring about a delay in the commencement, or a halt, of plant operations. That would only occur, however, where a serious safety or environmental issue was both present and as yet unresolved

for the reactor in question. One might fairly ask whether, in such a situation, the public interest is adequately served if the reactor is allowed to operate in the face of that unresolved issue.

Needless to say, it is for the Commission to decide (as a matter of policy) whether Sections 2.760a and 2.785(b)(2) should be retained in their present form (or at all). My own judgment is that, so long as the authority conferred upon the adjudicatory boards by those Sections is exercised responsibly, there is no cause to narrow or withdraw it. And, I would submit, there is absolutely no evidence that any board -- licensing or appeal -- has employed the authority in an irresponsible manner. Insofar as the North Anna proceeding itself is concerned (Mr. Gleason's example), the turbine missile issue manifestly warranted board scrutiny. Although it is unfortunate that it has proven necessary for the Appeal Board to retain jurisdiction over the issue for such a long period, the reason is the difficulties which the nuclear industry is encountering in coping with the disk cracking problem. As soon as it receives adequate assurance that the North Anna facility can operate safely over its lifetime notwithstanding the prior history of disk cracking and the undesirable turbine orientation in this facility, the Board will terminate that jurisdiction.

2. I have also been asked to provide an estimate of the time required by appeal boards to render their decisions. In circumstances where no appeal has been taken from the Licensing Board's initial decision, the Appeal Board normally will be able to complete its sua sponte review within a period of 60 days. If, however, that review discloses some serious problem with the Licensing Board decision or record (or the Appeal Board finds it necessary to resort to its Section 2.785(b)(2) authority), a considerably longer period may elapse before the appellate review comes to an end. North Anna bears stark witness to this fact.

These days, almost all of the initial decisions produce one or more appeals. Under the Rules of Practice, the interval between the rendition of the initial decision and the filing of the last brief will be approximately three months (This assumes no extensions of time are sought and granted; an unreasonable assumption in a proceeding involving numerous and complex issues.). Oral argument will usually take place approximately a month after all briefs are on file.

How long it will take the appeal board to render its decision following argument will vary widely from case to case. The principal influencing factors are (1) the number and complexity of the issues presented by the appeal; (2) the length and the quality of the evidentiary record on those issues; (3) the completeness of the Licensing Board's treatment of those issues in its decision; (4) the other demands upon the time of the members of the Appeal Board assigned to the proceeding. On the last score, it is to be kept in mind that the Appeal Panel has very few members and an even smaller supporting professional staff. Very frequently, it is not possible for an Appeal Board to turn to the decision in a particular case promptly after argument -- for the reason that its members are reviewing the record or writing opinions in other cases. If there is a sudden outpouring of licensing board decisions in operating license proceedings, this consideration will become even more significant.

My best present estimate is that, in the typical proceeding producing an appeal, between 7 and 10 months is likely to elapse from date of licensing board initial decision to date of appeal board decision. Candor compels the notation, however, that the first post-TMI operating license proceedings (which will involve numerous so-called "TMI requirements") may prove to be quite atypical insofar as the amount of necessary appeal board review time is concerned. It is just too early to tell.

I readily appreciate that, to some, the thought of an appellate process of such duration is abhorrent. But I have no apologies to make. So long as licensing proceedings are open to the litigation -- on both the trial and appellate levels -- of an almost limitless number and variety of safety and environmental issues, the review of licensing board decisions will be time-consuming. At least this is so if the appeal boards faithfully discharge their responsibility to give thorough and careful consideration to the issues before them and to render reasoned decisions on those issues. I would add that the members of the Appeal Panel not only regard that to be their mandate but also would have it no other way.

cc: Commissioner Gilinsky
Commissioner Hendrie
Commissioner Bradford