UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

CHAIRMAN

March 31, 1981

COMMISSION
CORRESPONDENCE

SD-961

The Honorable Tom Bevill, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States House of Representatives
Washington, DC 20515

Dear Congressman Bevill:

I have received your recent letter about the conduct of a Commission Atomic Safety and Licensing Board and NRC staff counsel in providing advice and suggestions to a petitioner for leave to intervene in the Clinton operating license proceeding. Your letter attached correspondence from the Illinois Power Company commenting on the practice generally and on some of the particular circumstances at Clinton. Because the issue of whether the petitioner should be admitted to the proceeding is now pending before that Licensing Board, my response is necessarily confined to the general focus of your letter. 5 U.S.C. 557(d).

Your letter inquires about a long-standing Commission practice -- one which we believe is not in any way improper. It is clear that agencies have some inherent authority -- indeed, an obligation -- to explain the scope and operation of their regulations to those affected by them. This practice is reflected, for example, in the issuance of staff guidance documents and Regulatory Guides to potential applicants, licensees, and the public to aid the interpretation of NRC substantive requirements. This practice is also seen daily in the many informal contacts between the staff and those it regulates. The staff's practice of explaining what is expected of potential intervenors under those regulations is in keeping with this role. In its rules of practice, the NRC has insisted that a potential public participant adhere to certain rules of pleading, including a statement of interest and of specific concerns about the facility.

The Commission has recognized through its experience that some of these participants, especially those not represented by counsel, often raise issues of central concern to the licensing action but, unfortunately, in rather generalized fashion. This experience also demonstrates that there will be substantial time and resource savings if the staff, which may be joined by the applicant, negotiates informally with these potential intervenors either to resolve the concerns short of hearing or to stipulate a set of particularized issues for hearing. This does not mean that the staff waives any of its objections to contentions through these negotiations -- the ultimate decision on matters to be litigated rests with the Licensing Board. What it means to the staff and the applicant is that the Board's decision on the issues to be

litigated, if any, may not include any generalized contentions which are difficult to address in the proceeding. This process saves time and resources because it discourages preliminary contests on these matters, builds rapport between the parties usually resulting in a more efficient and less disruptive hearing, and enables the parties to prepare for and ultimately litigate only well-defined issues. Consequently the NRC amended its rules in 1978 to facilitate the negotiations. See generally, Statement of Considerations to Part 2 Amendments, 43 Fed. Reg. 17798, 17799 (April 26, 1978). The Commission has also encouraged parties to reach a "fair and reasonable settlement of contested ... proceedings" and expects its Boards and parties to take "appropriate steps to carry out this purpose." 10 CFR 2.759. These policies are reflected in the actions of the Clinton Board. In our view this does not constitute funding or assistance for intervenor participation but is a time-tested way in which the licensing process is expedited at a net savings to the taxpayers and with an increase in public confidence. A narrowly focused proceeding is in the best interests of all concerned.

Sincerely,

Joseph M. Hendrie