

October 2, 1981

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
PUBLIC SERVICE COMPANY OF OKLAHOMA,)
ASSOCIATED ELECTRIC COOPERATIVE, INC.)
)
AND)
WESTERN FARMERS ELECTRIC COOPERATIVE,)
INC.)
)
(Black Fox Station, Units 1 and 2))

Docket Nos. STN 50-556
STN 50-557

RESPONSE OF THE NRC STAFF TO JOINT
MOTION TO ESTABLISH HEARING SCHEDULE



I. DISCUSSION

On September 25, 1981, Public Service Company of Oklahoma ("Applicant"), the State of Oklahoma, and Citizens Action for Safe Energy, Mr. Lawrence Burrell, Ms. Ilene Yonnghein ("Intervenors")--three of the four parties--moved to establish a hearing schedule.^{1/} The NRC Staff was unable to completely agree with the schedule as proposed.

Pursuant to the Board's October 25, 1979 Order, the four parties met on August 28, 1981 to try to reach agreement on the scope or and a schedule for the Black Fox proceeding. Numerous subsequent phone conversations were held. As a result, the four parties reached substantial agreement on a schedule for presentation to the Licensing

^{1/} "Joint Motion to Establish Hearing Schedule," September 25, 1981 ("Joint Motion").

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Board, even though the NRC Staff prefers, and argued for, a more expeditious timetable.^{2/}

Although the Staff was willing, albeit reluctantly, to join in the proposed schedule, the other parties, particularly the Applicant, in negotiations subsequent to the August 28 meeting insisted on including a provision for the filing on January 15, 1982 of petitions under § 2.758 for a waiver of or exception from the Commission rules.^{3/}

The Staff particularly objects to the inclusion in that schedule of any reference to the time for the filing of such petitions. § 2.758 by its very terms states that "the sole grounds" for such petitions that "special circumstances with respect to the subject matter of the particular proceeding are such that application of the rule or regulation (or provision thereof) would not serve the purposes for which the rule or regulation was adopted."^{4/} As the Commission has made clear, such a waiver or exception can be granted

^{2/} In its October 25 Order, the Board had directed the parties "to confer in an effort ... to agree upon a schedule ...", at 2. The Commission has suggested a model schedule allowing 300 days between the issuance of the Safety Evaluation Report and the Licensing Board's initial decision (see Memorandum from Samuel J. Chilk to William J. Dircks and Paul B. Cotter, Jr., dated June 29, 1981), a deadline difficult to achieve if the hearing begins more than 5 months after the issuance of the SER. During the course of negotiations, the Staff reluctantly agreed to a timetable with a period longer than 5 months because of the Board's Order and the parties' desires that a mutually acceptable accommodation of interests be reached and because of the Staff's hope that the schedule could be accelerated if no contentions are filed in the second round.

^{3/} See, e.g., paragraph 4 of the schedule in the Joint Motion.

^{4/} 10 C.F.R. § 2.758(b), emphasis added.

only in unusual and compelling circumstances.^{5/} Because the relief requested by a petition under § 2.758 is not a usual and expected occurrence in NRC proceedings, it would be erroneous to include in a timetable of anticipated events a date for filing extraordinary petitions.

The Staff's objection to the inclusion of a time for filing § 2.758 petitions was known to the other three parties before they filed their Joint Motion. The parties had ample opportunity to express in the Joint Motion their reasons, if any, why such an extraordinary event should be included in this schedule. Therefore, the "request"^{6/} of the three parties for an exception to the requirement that "the moving party shall have no right to reply"^{7/} lacks good cause and should be denied.

II. CONCLUSION

The Licensing Board should adopt a proposed schedule which does not include any reference to extraordinary petitions under § 2.758. A copy of such a schedule, reflecting this recommendation, is attached.^{8/} In

^{5/} Northern States Power Company (Monticello Nuclear Generating Plant, Unit 1), CLI-72-31, 5 AEC 25, 26 (1972).

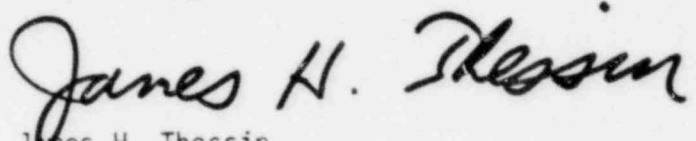
^{6/} See Letter to the Members of the Licensing Board from Joseph Gallo, dated September 25, 1981. Buried in this letter is also a "motion" for a sharply reduced time for the Staff's response to the "Joint Motion to Establish Hearing Schedule." In view of this response the "motion" is moot.

^{7/} 10 C.F.R. § 2.730(c).

^{8/} A small number of recommended clarifying changes are also noted.

addition, because the three parties to the Joint Motion had ample opportunity to address the § 2.758 issue in their motion, and because the first milestone in the schedule (October 5) is rapidly approaching, the Licensing Board should rule forthwith without awaiting replies to the Staff's response.

Respectfully submitted,

A handwritten signature in black ink that reads "James H. Thessin". The signature is written in a cursive, flowing style.

James H. Thessin
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 2nd day of October, 1981

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PROPOSED SCHEDULE^{1/}

On August 28, 1981, counsel for the Intervenors, the State of Oklahoma, the Applicant, and the NRC Staff met pursuant to the Licensing Board's October 25, 1979, Order to try to reach agreement on the scope of, and a schedule for, the reopened hearing in Black Fox. At that time, the NRC Staff indicated the following projected review schedule for Black Fox Station.

Applicant's Emergency Plan Submitted	8/31/81
Applicant's TMI Amendments to PSAR Submitted	10/5/81
SR Supplement No. 3 Issued	12/15/81

^{1/} Except where otherwise noted, this schedule is identical to that contained in the three party "Joint Motion to Establish Hearing Schedule," dated September 25, 1981. Additions recommended by NRC Staff counsel are underlined; recommended deletions of schedule items are crossed out.

Applicant's Emergency Plan and TMI Amendments or motions to reopen the record which are filed by the date specified above.)

2. Thirty days after the contentions and motions to reopen the hearing record are filed, the Licensing Board will hold a prehearing conference to consider them. [December 7, 1981]. Formal discovery on accepted contentions commences immediately after the Licensing Board's order ruling on contentions.
3. All discovery on admitted contentions will be concluded 45 days after the Licensing Board's order [January 21, 1982]. Parties will ensure that all interrogatories on admitted contentions are received by the answering party at least 14 days prior to the conclusion of discovery [January 7, 1982].
4. Within 31 days after SER Supplement No. 3 is issued, any contentions based on any matters newly raised in the Supplement ~~and any challenges to NRC regulations pursuant to 10-C.F.R. §-2.758~~ will be filed [January 15, 1982].

Responses to this second round of contentions ~~and to any rule challenges~~ are due within 15 days after these contentions ~~and rule challenges~~ are filed [February 1, 1982]. Informal discovery begins between any two parties on contentions proposed by one and not challenged by the other.

5. Licensing Board will hold a second prehearing conference 15 days after responses are filed to consider the contentions ~~and rule challenges~~ identified in paragraph 4 [February 16, 1982]. Formal discovery on any contentions admitted in this

second round will commence immediately after the Licensing Board's order ruling on contentions.

6. All discovery on contentions admitted in this second round will be concluded 30 days after the Licensing Board's Order [March 18, 1982]. Parties will ensure that all interrogatories on these contentions are received by the answering party at least 14 days prior to the conclusion of discovery [March 4, 1982].
7. All motions for summary disposition will be filed no later than 14 days after the conclusion of discovery or the Licensing Board's order following the second prehearing conference, whichever is later [April 1, 1982].

Responses to any motions for summary disposition will be filed within 25 days after such motions are filed [April 26, 1982].

8. All testimony will be filed 30 days after the Licensing Board's ruling on motions for summary disposition.
9. Hearing to commence two weeks after testimony filed.

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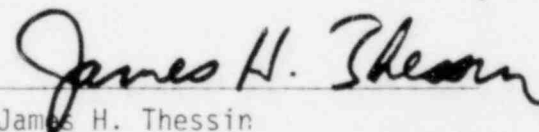
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