

05000522 - 05000523

October 5, 1981

Ms. Nina Bell
Coalition for Safe Power
Suite 527
408 Southwest Second Avenue
Portland, Oregon 97204



Dear Ms. Bell:

This is in response to your letter seeking clarification as to the status of the Skagit proceeding. As I have indicated to you on the telephone, the Skagit proceeding pertaining to the construction permit (CP) application for the facility proposed to be located in Skagit County, Washington has been terminated by Board Order dated August 27, 1980. That means that the hearings conducted with respect to that facility are considered concluded and that no Board decision will be issued. However, as you are aware, the utility Applicants are amending the CP application to reflect the relocation of the proposed facility to the Hanford Reservation. The amendments to the application are expected to be completed by December 1981, at which time they will be reviewed by the NRC to ensure that sufficient information is contained in them for docketing. After docketing by the NRC, a notice of hearing will be issued by the Commission affording opportunity for public intervention and participation with respect to the Skagit/Hanford CP application to those who have standing on this amended application and who could not have previously intervened. We expect the Skagit/Hanford CP hearings to commence around late-summer 1982 with portions to be held jointly with the State of Washington Energy Facilities Siting Evaluation Council.

The previous hearings with respect to the Skagit facility pertained to environmental matters and, thus, were largely site-specific. However, please understand that the nuclear power plant facility known as Skagit is being transferred to a new site on the Hanford Reservation. Accordingly, the facility systems, design, equipment, hardware, etc. remains essentially the same except for changes made to reflect new requirements and site conditions. Therefore, the "Summary of Skagit/Hanford CP Application Schedule Meeting, June 18, 1981" letter that you referred reflects a continuation of the Staff safety review schedule for this facility and, in addition, a schedule for the commencement of the environmental review.

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You have also requested information about the NRC's policy of providing certain free documents to intervenors. Please find enclosed a copy of the December 3, 1980 letter from the Comptroller General to Congressman McCormack concluding that "if the Commission implements its procedural cost reduction program using its fiscal year 1981 appropriations it will be violating Section 502 of the Appropriation Act [Pub. L. No. 96-367, 94 Stat. 1331 (1981)]." The procedural cost reduction program implemented by the Commission on July 25, 1980 was a limited form of intervenor funding. Accordingly, the Comptroller General's opinion has largely curtailed the Staff's dissemination of free documents to intervenors which might be construed as the type of funding prohibited by Section 502 of the Appropriation Act. However, each request for documents by intervenors in the future will be considered on a case-by-case basis to determine if the request is appropriate.

Finally, you have requested that Coalition for Safe Power be placed on the Staff's licensing service list in order that it may be kept informed of the events involved in the Skagit/Hanford application. The Division of Licensing informed me that this was done several months ago.

Sincerely,

Richard L. Black
Counsel for NRC Staff

Enclosures: As stated

Distribution:

PDR, LPDR

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

December 4, 1980

CHAIRMAN

MEMORANDUM FOR: Secretary
Executive Director for Operations

FROM: John Ahearne *J. Ahearne*

SUBJECT: PROCEDURAL ASSISTANCE

Attached is a letter I have just received from the Comptroller General concluding that our procedural assistance program may not use any FY 81 funds. Therefore, by this memorandum, I am directing the office of the Secretary and the NRC staff to immediately cease such program until the General Counsel and the Commission have had an opportunity to examine this decision and reach a conclusion as to what our future action should be. Any documents that are in the process of being transmitted should be held and no further processing should occur without further direction from the Commission.

By copy of this memorandum, I am also asking the Controller to determine how much in FY 81 funds have been expended to date on this program.

cc: Commissioner Gilinsky
Commissioner Hendrie
Commissioner Bradford
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CON
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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

IN REPLY
REFER TO: B-200585

December 3, 1980

The Honorable John F. Ahearne
Chairman, Nuclear Regulatory Commission

Dear Mr. Chairman:

We are enclosing for your information our letter of this date to the Chairman, Subcommittee on Energy Research and Production, Committee on Science and Technology, House of Representatives. In our letter we conclude that the Nuclear Regulatory Commission may not lawfully use funds appropriated by the Energy and Water Development Appropriation Act, 1981, Pub. L. No. 96-367, 94 Stat. 1331, to implement the procedural cost reduction program announced by the Commission in the Federal Register on July 25, 1980 (45 Fed. Reg. 49535).

Sincerely yours,

Comptroller General
of the United States

Enclosure

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-200585

December 3, 1980

The Honorable Mike McCormack
Chairman, Subcommittee on Energy Research
and Production
Committee on Science and Technology
House of Representatives

Dear Mr. Chairman:

You have requested our opinion on the propriety of the procedural cost reduction program for intervenors being instituted by the Nuclear Regulatory Commission. This program is designed to ease the economic burden on intervenors in the Commission's adjudicatory proceedings by providing free copies of transcripts and by copying and serving without charge certain of the documents the intervenors need to participate in the proceedings. Under the program the Commission has also reduced from 20 to 2 the number of copies of filings required of all parties.

For the reasons indicated below, we conclude that, with the exception of the reduction of required copies, the Commission may not lawfully use its fiscal year 1981 appropriation to implement the cost reduction program.

The Commission's adoption of the program was announced in the Federal Register on July 25, 1980, (45 Fed. Reg. 49535). The program was effected by means of three amendments to the Commission's regulations relating to adjudicatory licensing proceedings in 10 CFR Part 2. First, Section 2.708(d) of that part was amended by reducing from 20 to 2 the number of copies of pleadings or other documents that every party to the proceeding is required to file. Second, Section 2.712 was amended by adding a provision that, except in antitrust proceedings, the Commission will copy and serve, at no cost to the party, the party's testimony, proposed findings of fact and conclusions of law, and responses to discovery requests. This free copying and service is available to all parties to the proceeding except the applicant for the license. Third, Section 2.750 was amended by adding a provision allowing the presiding officer at the proceeding to provide a free transcript of the proceeding to any party, other than the applicant, at the same time that the Commission staff receives its copies.

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Funds for carrying out the Commission's functions for fiscal year 1981, were appropriated by the Energy and Water Development Appropriation Act, 1981, Pub. L. No. 96-367, 94 Stat. 1331. Section 502 of this Act provides:

"None of the funds in this Act shall be used to pay the expenses of, or otherwise compensate, parties intervening in regulatory or adjudicatory proceedings funded in this Act." (94 Stat. 1345)

It is clear from this language that if the procedural cost reduction program will pay the expenses of intervenors in the Commission's adjudicatory proceedings the Commission may not use funds appropriated by the fiscal year 1981 Appropriation Act to implement the program.

Obviously the cost reduction program will apply to the Commission's adjudicatory proceedings. The very title of the Federal Register announcement ("Procedural Assistance in Adjudicatory Licensing Proceedings") and the Federal Register summary ("NRC is amending its regulations in order to provide a one-year pilot program of procedural assistance in adjudicatory proceedings ***") make this clear.

It is equally clear that the beneficiaries of the program are to be intervenors in the Commission's proceedings. The amended regulations state that the free transcripts, copies, and service, are to be provided to parties "other than the applicant." The explanatory material in the Federal Register announcement indicates that procedural assistance will be offered "to all intervenors without qualification" (45 Fed. Reg. 49535), that copies of transcripts will be "mailed to intervenors" (Id. at 49536), and that the free copies of documents will reduce costs "to intervenors" (Id.).

Finally, it is certain that the program will "pay the expenses of" the intervenors. Clearly if the Commission did not adopt the cost reduction program then the costs of purchasing transcripts and copying and serving documents would be expenses that the intervenors would have to bear if they were to participate in the Commission's proceedings. By bearing these costs itself, the Commission is necessarily paying expenses of the intervenors even though the Commission is not making any cash payments directly to the intervenors.

Although the Commission's amended regulations speak of copies "without cost" to the intervenor, and of "free" transcripts, these copies and transcripts will not be "without cost" or "free" to the

Commission. The Commission will have to expend its appropriated moneys to make copies of documents and to pay the reporters the price of the transcripts.

The Commission itself, in its Federal Register announcement recognizes that it will be paying intervenor expenses. The announcement indicates that intervenors might ordinarily pay as much as \$1,000 per day to obtain transcripts and that by providing them to the intervenors at its own expense the Commission is providing "an expensive service," 45 Fed. Reg. 49535. Further, by providing free copies of certain documents and by serving them on behalf of the intervenors, the Commission would be performing "a service which would have high payoff in terms of reducing costs to intervenors ***" Id. at 49536.

Therefore, we must conclude that if the Commission implements its procedural cost reduction program using its fiscal year 1981 appropriations it will be violating Section 502 of the Appropriation Act.

The Commission's legal analysis, submitted with the request for our opinion, discusses language in the House report on the fiscal year 1980 Commission Appropriations Act that "The budget request and the committee recommendation do not include funds for intervenors." (H.R. Report No. 96-243, 96th Cong., 1st session 136 (June 7, 1979)). The language of Pub. L. No. 96-367, quoted above, however, is stronger because it precludes paying the expenses of or otherwise compensating intervenors in addition to precluding the direct provision of funds to intervenors. The legal analysis also asserts that our 1976 decision on Commission intervenor funding, B-92288, February 19, 1976, found "no legal problems" with procedural cost reductions of the sort now proposed. However, the context of the discussion of cost reduction in that decision was limited to "simplifying procedures and eliminating unnecessary or unduly burdensome requirements" rather than shifting the cost burden of unchanged procedures and requirements from intervenors to the Commission.

Our conclusion does not apply to the Commission's amended regulation which states that all parties to the proceeding need file only the original and 2 copies of pleadings and other documents instead of the original and 20 copies which was formerly required. In our opinion by making this amendment the Commission is not paying intervenors' expenses, but rather is eliminating an adjudication cost for all of the parties by modifying its procedural requirements. As indicated in the previous paragraph, we determined in our 1976 decision that the Commission does have the authority to simplify procedures or eliminate unnecessary or

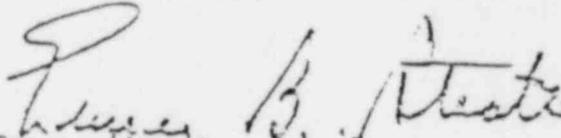
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unduly burdensome requirements which increase parties' costs in participating in the Commission's proceedings. B-92288, February 19, 1976.

The Federal Register announcement indicates that the 20 copy requirement was "for the Commission's convenience for internal informational distribution ***" 45 Fed. Reg. 49536. Further, these 20 copies only partially met the Commission's needs and the Commission therefore produced additional copies. Therefore, the cost of producing the 20 copies was not a necessary expense of participating in the Commission's proceedings, but rather was an instance of the Commission requiring the parties to bear part of its own expenses. By eliminating this requirement for all parties, including intervenors, the Commission is not paying intervenor's expenses.

In your letter you posed questions concerning whether the Commission's program was consistent with the wishes of the Congress as expressed at H.R. Report No. 96-243, 96th Cong., 1st Sess. 139 (1979); with the Independent Offices Appropriation Act of 1952, 31 U.S.C. § 483a; and with Office of Management and Budget Circular No. A-25. The enactment of Pub. L. No. 96-367, after you sent your letter, makes it unnecessary, in our opinion, to address the other questions posed in your letter. We have discussed this with a member of the subcommittee staff who indicated that in the interest of avoiding unnecessary delay we need not answer the other questions in your letter.

Sincerely yours,


James B. Austin
Comptroller General
of the United States