



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of
PUBLIC SERVICE ELECTRIC &
GAS COMPANY

(Salem Nuclear Generating
Station, Unit No. 1)

)
) Docket No. 50-272
) Proposed Issuance of Amendment
) to Facility Operating License
) No. DPR-70
)
)

NRC STAFF RESPONSE TO COLEMAN MOTION TO CONVENE
THE BOARD TO RECEIVE PUBLIC TESTIMONY AND
MOTION TO ADD ADDITIONAL NAMES TO SERVICE LIST

On November 9, 1978, Intervenors Alfred and Eleanor Coleman ("the Colemans" or "Intervenors") filed a "Motion to Convene the Board to Receive Public Testimony" (Motion To Convene The Board). Contained in the Motion was a separate request that the names of Dale Bridenbaugh and Gregory Minor, Intervenor Consultants, be added to the service list. The Staff opposes, in part, the motion for convening the Board. It does not oppose adding an additional name to the service list.

The Intervenors Motion to Convene the Board requested that: (1) a special hearing be convened to receive testimony and written statements from members of the public, (2) notice of the hearing be given to those who want to appear, (3) the special hearing should be scheduled so that there would be maximum public participation, and (4) parties be directed to inform the Board if, as a result of the special hearing, it appeared that new contentions should be admitted. Because of the special circumstances of this case, the Staff does not oppose a prehearing conference for the

purpose of hearing limited appearance statements. The Staff opposes the taking of evidence from persons making a limited appearance and the proposed requirement that the parties review the limited appearance statements for the sole purpose of finding new contentions. The Staff does not oppose request number 2 and 3.

As will be demonstrated below, many of the procedures requested in the Motion to Convene the Board already exist under, or are in accord with the spirit of, NRC regulations. For example, limited appearances may be made at a prehearing conference (10 CFR 2.715), notice of a prehearing conference can be given to any person who has requested such notice, See: 10 CFR 2.715(b), the scheduling of prehearing conference can be made to accommodate the interested public, (10 CFR Part 2, Appendix A, §V, (6)); a party can at any time move to amend its petition to intervene, and the Board has the discretion to expand the issues in controversy if it deems necessary. (10 CFR 2.714, Consolidated Edison Company of New York, Inc. (Indian Point Nuclear Plant, Units 1, 2, & 3) ALAB-319, 3 NRC 188, 190.

The four separate elements of the Colemans' Motion to Convene the Board are discussed below:

Request No. 1 and 4 - Convene Special Hearing and Respond to Statement

- 1-Convene a special session of the Board and parties for the purpose of receiving testimony and written statements from all interested members of the public;
- 4-Direct the parties within thirty (30) days of receipt of the transcript of the special session, or other reasonable time, to inform the Board of any issues or concerns raised at the session which should be admitted as issues in controversy for the presentation of evidence or legal argument.

The Staff interprets the Colemans' request No. 1 to be that a prehearing conference be held prior to the evidentiary hearing in this proceeding and that time be allowed for limited appearance statements to be made. As stated in the Colemans' Motion, the Commission has recently amended its rules to allow limited appearance at a prehearing conference (10 CFR 2.715 (a)). The amended regulation did not become effective until May 26, 1978 (43 Fed. Reg. 17798). A prehearing conference in this proceeding was held May 18, 1978. Therefore, a person who may have wanted to make a limited appearance at this time did not have the opportunity to do so. The Staff does not oppose the scheduling of another prehearing conference, under the circumstances of this case, for the purpose of receiving limited appearance statements. Such a prehearing conference can also be used by the Board and parties to discuss and resolve any procedural problems that may exist.^{1/} If this portion of the motion is granted by the Board, we assume that the Board would not permit the same persons to repeat such limited appearance statements at or during the hearing.

The Staff objects to that part of request No. 1 which would require the Board, at a prehearing conference, to treat a limited appearance statement as testimony. The recent amendments to 10 CFR Part 2 do not change the

^{1/} If the Board grants this Motion to Convene the Board, the Staff suggests that the prehearing conference take place after the Staff documents are issued.

rules governing the taking of evidence. The NRC rules are very clear regarding the presentation of evidence. 10 CFR 2.743. A person making a limited appearance is not a witness or a party to the proceeding and is limited to making an oral or written statement, not under oath. 10 CFR 2.715 (a). Therefore, a limited appearance statement cannot be treated as evidence; however, "it serves to alert the Board and parties to areas in which evidence may need to be addressed." Iowa Electric Light and Power Company, et al. (Duane Arnold Energy Center) ALAB-108, 6 AEC 195, 106, fn 4.^{2/} All parties will benefit from early identification of such matters.

The Staff is not certain as to what request No. 4 means. If it requires the parties to examine the limited appearance statement for the purpose of determining if new contentions should be admitted, the Staff objects. The purpose of the limited appearance statement is to provide an opportunity for members of the public to raise questions, present information or to identify concerns for the Board and parties consideration. See: Duane Arnold supra, 10 CFR Part 2, Appendix A, §III (b), §V (4). The Board can accomplish this by the common practice of directing the Staff or licensee to respond to particular questions or by exploring for itself any significant safety or environmental considerations raised by the limited appearance. Indian Point, supra. Any new information contained in the

^{2/} It may be that counsel for the Coleman's used the term "testimony" as synonymous with "oral statement". If this is the case, the Staff does not and could not object to an oral statement.

limited appearance statements would, of course, pursuant to the responsibilities assigned to the parties by Commission precedent, be brought to the attention of the Board and taken into account in the evidentiary presentations of the parties. Virginia Electric & Power Company (North Anna Power Station, Units 1 and 2) CLI-76-22, 4 NRC 480, 491 at n. 11; Duke Power Company (Alvin W. Vogtle Nuclear Power Plant, Units 1 and 2), ALAB-291, 2 NRC 404, 408.

Request No. 2 - Notice of Special Hearing

Provide written notice of the special session to all who request the opportunity to appear and make statements;

If the motion is intended to seek notification of those who have expressed an interest in making a limited appearance, Staff would have no objection. See: 10 CFR 2.715 (b).

Request No. 3 - Scheduling of Hearing

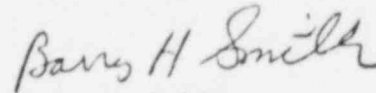
Schedule the time and location of the hearings so as to assure maximum public convenience and participation (preferably combining a day and evening session at the Cape May County Court House during the first week of December or January).

If the Board decides to conduct the requested prehearing conference, the Staff would not object to it being scheduled at a time convenient for maximum public participation. This would be consistent with the Commission's policy on OPEN Meetings and Statements of NRC Staff Policy, 43 Fed. Reg. 28058, and 10 CFR Part 2, Appendix A, §V, (6).

Request For Additional Names To Be Placed On Service List

By letter to Staff Counsel of July 17, 1978, counsel for the Colemans' made a request that only the name of Dale Bridenbaugh be placed on the service list for this proceeding. No reason was given why the name should be added except for the fact that Mr. Bridenbaugh was the Public Advocate's technical advisor. We regret that counsel for the Colemans' has seen fit to escalate this matter for Board consideration. As is evident from Staff counsel's correspondence with counsel, Staff was prepared to accommodate this request on an informal basis. Placing of Mr. Bridenbaugh's name on the service list does not call for Board action. The Staff will assure that Mr. Bridenbaugh's name is placed on the Staff's service list. Since Mr. Minor is associated with Mr. Bridenbaugh, the Staff is of the opinion that service on Mr. Bridenbaugh is sufficient.

Respectfully submitted,



Barry H. Smith
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 29th day of November, 1978.

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CERTIFICATE OF SERVICE

I here by certify that copies of NRC STAFF RESPONSE TO COLEMAN MOTION TO CONVENE THE BOARD TO RECEIVE PUBLIC TESTIMONY AND MOTION TO ADD ADDITIONAL NAMES TO SERVICE LIST, 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 29th day of November, 1978.

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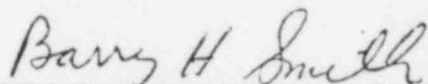
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