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December 1, 1978

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RE: Portland General Electric Company, et al.
(Trojan Nuclear Plant)
Docket No. 50-344
(Control Building Proceeding)

Gentlemen:

On November 3, 1978, evidentiary hearings were concluded on all matters concerning interim operation of the Trojan Nuclear Plant other than qualification of safety-related equipment in the Control-Auxiliary-Fuel Building Complex based on the STARDYNE floor response spectra. Even as to the equipment qualification matter the Board had the opportunity to examine Licensee's witnesses, Anderson and White, although the other parties to this proceeding deferred any questioning of Licensee's witnesses, as well as the presentation of any direct testimony of their own on this subject. Resumption of evidentiary hearings to complete the taking of evidence on this limited subject is scheduled for December 11, 1978. (Tr. 2328-31; Board Order Regarding Conclusion of Evidentiary Hearings on Interim Operation, dated November 6, 1978).

In accordance with the schedule prescribed by the Board at the hearing on November 6, 1978, and confirmed in the Board's Order of November 6:

- (1) Licensee, the NRC Staff and the State of Oregon, on November 6, 1978, submitted proposed findings of fact and conclusions of fact in respect to all matters other than qualification of safety-related equipment on the basis of STARDYNE floor response spectra; and

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- (2) The NRC Staff on November 25, distributed its prepared written testimony on qualification of the equipment.*/

In light of the evidentiary hearings held from October 23 through November 3 and the foregoing submittals, the decisional record concerning the issue of interim operation of the Trojan Nuclear Plant is at an advanced stage. The preponderant portion of the evidentiary record has been complete since November 3 and, by December 11, the Board will have had in its possession for several weeks the proposed findings and conclusions filed by all parties which wished to make such submittals.**/ As to the matter of the qualification of the equipment, the Board has already examined the Licensee's witnesses; and all that remain are any further questioning by the Board and the parties of the Licensee's witnesses, questioning by the Board and all parties of the NRC Staff's witness, and an opportunity for the parties to inform the Board of their views as to how such remaining matter impacts authorization for interim operation of the Trojan Nuclear Plant.

Not only is the decisional record at an advanced stage, but the testimony concerning the safety of interim operation of the Trojan Nuclear Plant is uncontroverted. Thus, all of the structural experts who testified in this proceeding agreed that the as-built Control Building can safely withstand an earthquake at least 50% higher than the specified Safe Shutdown Earthquake of 0.25g, and that the shutdown and inspection level of 0.08g recommended by the NRC Staff and accepted by the Licensee is conservative. Similarly, the experts agreed that structural displacements will not adversely affect safety-related equipment. Finally, no proposed written testimony has been distributed

* /Licensee filed with the Board and parties supplementary documentation of previously submitted information on equipment qualification on November 22 and a clarification of such documentation on November 24. Licensee contemplates introducing these documents as evidence on December 11.

** /In a letter dated November 17, 1978 (a copy of which, postmarked November 24, was received by counsel for Licensee in Washington on November 27), Ms. Nina Bell informed the Board that she would not be submitting proposed findings and conclusions by November 20, but intended to do so "at the conclusion of the second set of hearing on Interim Operation." As the Board indicated at the hearing on November 3, any findings filed after the December 11 hearing session would, of course, be limited to evidence introduced at such hearing session or the impact of such evidence on the previous record (Tr. 2318). Any findings or conclusions as to the record through November 3 were to be filed by November 20.

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controverting the conclusions of Licensee's witnesses on November 3 and contained in the NRC Staff's prefiled testimony of November 25 that impacts of changes in floor response spectra have been properly taken into account.

Under these specific circumstances and particularly in light of the Commission's directive to the Licensing Board in its Order of July 7, 1978, "to proceed expeditiously, consistent with arriving at a sound decision," we respectfully request that the Board, in its discretion, take the following procedural action to expedite its decision concerning interim operation. At the conclusion of the hearing session commencing December 11 concerning equipment qualification, we suggest that the Board ask each party to state for the record its factual and legal position on this limited matter. Licensee proposes such closing statement in lieu of a subsequent period for the filing of written findings and conclusions.

In addition we respectfully request that the Board reach its decision at the earliest possible date and announce to the parties, hopefully at the conclusion of the hearing, the expected date of its decision.

The bases and reasons for these requested actions are set forth below.

Submittal of Findings and Conclusions at Hearings

Section 2.754 of the Commission's regulations provides for the filing by parties of proposed findings of fact and conclusions of law within specified periods "or within such reasonable lesser or additional time as may be allowed by the presiding officer" Thus, whether or not parties are entitled to submit proposed findings and conclusions as a matter of right, it is within the broad discretion of the Licensing Board to determine what constitutes a reasonable opportunity */ to make such submittal.

The purpose of providing for submission of proposed findings and conclusions is to ensure that a licensing board understands, and the record reflects, the position of the parties on and the substance of the issues at hand. See Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-244, 8 AEC 857, 863 (1974).

*/Section 8 (b) of the Administrative Procedure Act states that: "Before a recommended, initial, or tentative decision, . . . the parties are entitled to a reasonable opportunity to submit . . . (1) proposed findings and conclusions . . ." 5 USCA 557 (c)

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What opportunity is required for these purposes will necessarily depend on the circumstances of a specific proceeding.*

In the instant proceeding, the issue to be determined by the Board -- whether interim operation should be authorized -- is relatively narrow. The preponderance of the record on this issue was compiled at the hearing session ending November 3, and the parties were allowed until November 20 to submit written proposed findings and conclusions on all matters other than equipment qualification. Remaining testimony on this limited subject was to be prefiled at least 15 days in advance of the hearing to commence on December 11. Under these circumstances, no party would be prejudiced by being required to state its position, i.e., its proposed findings and conclusions concerning this remaining subject, at the conclusion of the hearing session rather than in written form subsequently. In order to facilitate such presentations by the parties at the hearing, Licensee will submit to the Board and the parties within a few days, its proposed findings and conclusions based on the existing record of November 3 and the additional prefiled testimony.**/ Thus, by the conclusion of the December 11 hearing, each party will be able to inform the Board precisely how its position accords with or differs from that of Licensee.

This proposed procedure is consistent not only with the Board's specific powers under Section 2.754, but also its general powers under Section 2.718 "to take appropriate action to avoid delay," as well as to "[r]egulate the course of the hearing and the conduct of the participants" (Section 2.718(d)), "[d]ispose of procedural requests or similar matters" (Section 2.718(f)), and "[t]ake any other action consistent with the Act, this chapter, and sections 551-558 of title 5 of the United States Code (5 U.S.C. 551-558)" (Section 2.718(1)). The regulations instruct a Board to "use its powers under [§]2.718 . . . to assure that . . . the hearing process for the resolution of controverted matters

*/As to general aspects of procedural due process in administrative hearings, it should be noted that due process "is not a technical conception with a fixed content unrelated to time, place and circumstances [D]ue process is flexible and calls for such procedural protections as the particular situation demands" Mathews v. Eldridge, 424 U.S. 319, 334, 96 S.Ct. 893, 902 (1976).

**/Under this suggested procedure each of the parties could, of course, submit written proposed findings and conclusions concerning equipment qualification prior to or at the hearing session if it preferred not to do so orally. The only limitation suggested by Licensee is that the Board not delay completion of the proceeding by permitting such filings after the hearing session. Licensee, of course, would indicate on the record any modification or supplement of its previously filed findings based on the evidence adduced at the hearing session.

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is conducted as expeditiously as possible, consistent with the development of an adequate decisional record." 10 CFR Part 2, Appendix A, Part V.

A procedure analogous to the one we request was utilized by a licensing board in a similar situation where it had previously heard (and issued a decision on) almost all of the matters relevant to issuance of a limited work authorization, but had reopened the record at an additional evidentiary hearing solely to receive testimony in three specific areas. See Duquesne Light Company, et al. (Perry Nuclear Power Plant Units 1 and 2), LBP-74-76, 8 AEC 701 (1974). Applicants in Perry cited the fact that if construction did not commence by October 23, 1974, certain provisions of State law would delay construction for one year or more. Id. at 702. Testimony was heard on October 11 and 12. Id. at 704. At the conclusion of the hearing, Applicants were permitted to read their proposed findings of fact and conclusions of law into the record. (Tr. 2477-90, October 12, 1974). The Board granted other parties 5 days to submit their proposed findings and conclusions, and issued its decision on October 20, 8 days following the hearing.

In the instant proceeding, we believe that even the 5 day period^{*/} for written submittals provided by the Board in Perry is unnecessary. Unlike Perry, at the time of the December 11 hearing the parties in this proceeding will have had the bulk of Licensee's evidence (and its answers to the Board's questions thereon) for over a month. The only additional evidence to be presented consists of 2 exhibits of Licensee supplementing and clarifying previously submitted information and 4 pages of NRC Staff testimony prefiled by November 25, well in advance of the December 11 hearing. Finally, prior to the hearing the parties will have Licensee's proposed findings and conclusions to be used as a basis for developing their own positions. There is no reason why, in preparing to cross-examine witnesses at the hearing, they cannot similarly prepare to state their positions for the record at the conclusion of the hearing.

The situation in the instant proceeding is even more urgent than in Perry, where presumably construction delays might have been able to be made up later. Here, a fully constructed plant lies idle until a decision can be reached. Every day of idleness is irrevocably lost at a large cost, which can never be made up. This situation unfortunately continues even though there is no testimony contradicting the safety of

^{*/}It may be recalled that the Board had expected the parties herein to file their proposed findings and conclusions on the entire issue of interim operation within a week of the conclusion of the hearing (Tr. 827). The parties were in fact granted over two weeks -- until November 20 -- as to the record compiled to November 3. No additional time after the conclusion of the December 11 hearing session should be required as to the limited matter to be heard during that session.

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resumption of operation. In these unique circumstances, we respectfully suggest that the period of delay be reduced by at least a few days by requiring parties to express their position at the conclusion of the December 11 hearing session, rather than prolonging the proceeding while awaiting submission of subsequent written proposals.

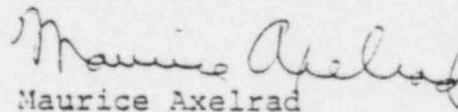
Schedule for Issuance of Decision

Licensee is fully aware and appreciative of the efforts made by the Board to reach a prompt decision. By obtaining the proposed findings of fact and conclusions of law of the parties on the previously compiled record by November 20, the Board has enabled itself to begin preparation of its decision prior to the December 11 hearing session and to issue such decision shortly thereafter.

We can only repeat what the Board already knows well -- that Licensee and the public served by the Plant are severely affected by the continuing shutdown of the Plant and that issuance of the Board's decision at the earliest possible date is essential. We would hope that, in view of the advanced stage of the decisional record described above, the Board would use its best efforts to issue its decision by December 22.

In addition, we respectfully request that, if possible, the Board inform the parties in advance as to the date it expects to issue its decision. A number of preliminary steps will be required at the Plant in the course of preparing for resumption of operation. We do not mean to prejudge the Board's ultimate decision. However, particularly in light of the uncontroverted nature of the evidence in this proceeding, Licensee would be prepared to take the time and effort required for such preliminary steps if it had advance notice of the schedule for issuance of the Board's decision.

Very truly yours,


Maurice Axelrad

MA/aps

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
PORTLAND GENERAL ELECTRIC COMPANY,) Docket No. 50-344
 et al.)
) (Control Building Proceeding)
(Trojan Nuclear Plant))
_____)

CERTIFICATE OF SERVICE

I hereby certify that on December 1, 1978, I served a copy of the letter from Maurice Axelrad to the Atomic Safety and Licensing Board, dated December 1, 1978, by placing a true copy of said letter in a sealed envelope with postage fully prepaid, in the United States mail at Washington, D. C., addressed as follows:

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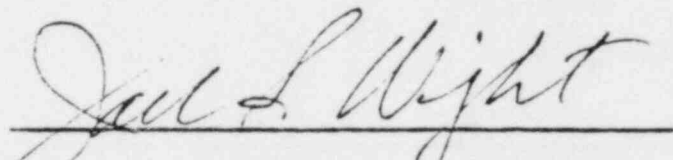
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