

UNITED STATES OF AMERICA
 NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

| | | |
|------------------------------------|---|-----------------------|
| In the Matter of |) | |
| GENERAL ELECTRIC COMPANY |) | Docket Nos. 50-70-OLR |
| |) | 70-754-SMNR |
| (Vallecitos Nuclear Center - GETR, |) | |
| Operating License No. T-R-1, and |) | |
| Special Nuclear Material License |) | |
| No. SNM-960) |) | |

NRC STAFF'S RESPONSE TO BOARD'S
 ORDER OF NOVEMBER 12, 1982

I. INTRODUCTION

The Atomic Safety and Licensing Board (Board) by Memorandum and Order dated November 12, 1982, as amended by Memorandum and Order dated November 19, 1982, directed the Petitioners/Intervenors and the NRC Staff (Staff) to provide the Board with their views on certain procedural requests made by General Electric Company (GE or Licensee) as to the manner of proceeding with GE's application to renew its Special Nuclear Material (SNM) license for the Vallecitos Nuclear Center. GE's requests were contained in its November 5, 1982 response to the Board's October 21, 1982 Memorandum and Order. This constitutes the Staff's response to the referenced Orders.

II. BACKGROUND

In its Memorandum and Order dated October 21, 1982, the Board set forth a brief background of three separate pending proceedings involving aspects of the Vallecitos Nuclear Center. These proceedings include the

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GETR Show Cause proceeding (Docket No. 50-70 (Show Cause)), the GETR Operating License Renewal proceeding (Docket No. 50-70-OLR), and the renewal of the special nuclear material license for the Vallecitos Nuclear Center, SNM-960 (Docket No. 70-54-SNMR). The Board noted that the Show Cause hearing was completed and that an Order and Initial Decision was issued on August 16, 1982, which authorized the GETR to restart after certain modifications were made. That decision also resolved certain legal questions regarding the applicability of certain NRC regulations to the GETR.

The renewal proceedings involving GETR and the SNM-960 were noticed in a joint Federal Register notice, which provided for the opportunity for petitions for leave to intervene and requests for hearing in the two proceedings. 42 Fed. Reg. 46427 (Sept. 15, 1977). Pursuant to the notice, a number of persons joined in a Petition for Leave to Intervene In License Renewal Procedures (sic), Request For Hearing, and Request For Further Relief (Petition) which was filed by Jed Somit, on behalf of the several named individuals and organizations. Although a prior Board orally granted the joint Petition in a prehearing conference of March 16, 1978, a written order addressing the Petition was never issued nor has there been any statement by the Board regarding the acceptability of proposed contentions contained in the Petition.

In light of the amount of time that has passed since the original Petition was filed, and the intervening decision in the Show Cause proceeding, the Board in its Memorandum and Order instructed GE to provide its intentions with regard to its applications for renewal of the two licenses. On November 5, 1982, the Licensee submitted "General Electric's

Response to October 21, 1982 Memorandum and Order" (GE Response). In that response, GE requested the Board to do the following: (1) rule that the consolidation of the two renewal proceedings is not appropriate; (2) defer consideration of the GETR license renewal pending completion of the Appeal Board's sua sponte review of the Show Cause initial decision; and (3) refer the application for renewal of the SNM-960 license to the Director, Nuclear Material Safety and Safeguards (NMSS) for disposition, canceling the judicatory hearing before the Board. Memorandum and Order of November 12, 1982 at 1, 2. GE requested that, if the Board should determine that such a referral is not appropriate, it should proceed with the SNM-960 renewal proceeding, and order Petitioners to amend their Petition to provide the requisite specificity and basis in regard to their proposed contentions 8 and 13.

By a Memorandum and Order dated November 12, 1982, as amended on November 19, 1982 and December 27, 1982, the Board directed the Petitioners and the Staff to respond to the request contained in the GE Response.

On December 20, 1982 and January 5, 1983, Petitioner Jack Turk submitted responses to the Orders, wherein he stated that he opposed the GE proposals regarding the SNM-960 license, but did not specifically address the issue of deferral of the GETR license renewal proceeding.

III. DISCUSSION

A. Deferral of GETR Renewal Proceeding

GE has stated that, until completion of the Appeal Board review and a final decision as to the seismic and geologic design bases and modifications which are discussed in the Show Cause Initial Decision, it does

not intend to engage in activities associated with the license renewal review. GE Response at 2. In the interim, GETR, by virtue of the Show Cause Order of October 27, 1977, and the Initial Decision of 1982, is required to remain in cold shutdown condition until the modifications are completed.

GE has indicated that only upon receipt of a final decision will it decide to undertake steps that are appropriate in light of the conditions set forth in the Initial Decision, as it may be modified. Inasmuch as GE would require approximately two years to complete the steps necessary for restart, there is virtually no chance that the Board or parties would be deprived of an opportunity to litigate issues involving the GETR renewal prior to startup of the GETR. Accordingly, the Staff perceives of no reason to proceed with license renewal hearings at this time on the GETR, considering the uncertain nature of the GETR in light of the position taken by GE. To devote considerable Board, Intervenor, and Staff resources in a license renewal effort at this time may well prove to be futile since GE is not committed to pursuing its license renewal at this time. Furthermore, in light of the time interval which could occur before GE takes a final position on whether to pursue its license renewal, issues litigated today on this matter may well be rendered moot by subsequent action by GE.

The Staff submits that the Board has jurisdiction to defer hearings in a situation such as that presented by GE. 10 CFR § 2.718(e) specifically empowers the presiding officer to regulate the course of a hearing. The current situation regarding the renewal of the GETR license is analogous to a situation where operation of a facility, which is under-

going operating license review, is deferred. In such a situation, the Commission has indicated that a Board has the express power to adjust the hearing schedule to account for such a deferral. Wisconsin Electric Power Co., et al. (Koshkonong Nuclear Plant, Units 1 and 2), CLI-75-2, 1 NRC 39, 42 (1975).

Petitioner Turk does not specifically address the issue of deferral of the GETR license renewal proceeding, although his request for consolidation of the two proceedings, when combined with his request for moving forward with the SNM-960 proceeding (December 20, 1982 letter, p. 1), suggests movement forward with the GETR license renewal proceeding. However, Mr. Turk does not offer any argument against GE's reasons for deferring consideration of the GETR.

Accordingly, the Staff supports GE's request that the license renewal proceeding for the GETR operating license be deferred until the Appeal Board has completed its sua sponte review of the Show Cause Initial Decision.

B. SNM-960 Renewal

In light of recent Commission decisions holding that adjudicatory hearings are not required in the case of certain materials license actions (see Kerr-McGee Corp. (West Chicago Rare Earth Facility), CLI-82-2, 15 NRC 232 (1982) and Kerr-McGee Corp. at CLI-82-21, 15 NRC ___ (1982)), GE argues that the hearing should be dispensed with on its application for renewal of SNM-960. GE Response at 7. Unlike Kerr-McGee, however, here it has been determined that opportunity for a

hearing is required in the public interest (see Notice of Hearing, supra, and 10 CFR 2.104(a)). Therefore, even though formal hearings may be dispensed with in some materials licensing matters, that is not the case here.

The public interest in the Staff's consideration of the license renewal applications for both GETR and the SNM-960 licenses initially was demonstrated by the several persons who jointly petitioned for leave to intervene in the proceedings. See Petition at 4-7. Despite the passage of years since the filing of the petition to intervene, at least one Petitioner continues to evidence interest in public hearings for consideration of the renewal applications. See Turk letters of December 20, 1982 and January 5, 1983. Thus, there still exists an indication of public interest which prompted the initial noticing of this proceeding.^{1/} In addition to the expression of public interest, the record of this docket indicates that a Licensing Board has been appointed and that a tentative ruling has already been made on admission of Petitioners jointly as a party. In these circumstances, it is appropriate for the Board to continue to preside over an adjudicatory proceeding considering the application for renewal of SNM-960. Intervention in this proceeding should of course be limited to the single Petitioner who has expressed a

^{1/} The Commission's regulations do not require that a notice of opportunity to request a hearing be published for matters involving a materials license. Such notice may be published, as in this case, as a discretionary action where there is an indication of public interest in the licensing matter.

continuing interest in this proceeding, assuming he is able to advance at least one proper contention.^{2/}

C. Consolidation of Proceedings

GE has requested that the two license renewal proceedings not be consolidated pursuant to 10 CFR § 2.716. GE argues, in support of its request, that the circumstances surrounding the two license renewal applications are entirely different, with differing review schedules and activities surrounding the two proceedings. Petitioner Turk, in his January 5, 1983 letter, argues for consolidation, asserting his belief that activities between the two licenses are related, that there are common geologic and seismic issues, and that there was a common Federal Register notice.

The Staff agrees with GE that it would be inappropriate to consolidate these two proceedings. As stated in the original Notice of Hearing, the two license renewal proceedings are separate, but could be subject to consolidation if a Board determined that it were appropriate to do so. 42 FR 46427 (Sept. 15, 1977). The Staff agrees that it would be inappropriate to consolidate the two proceedings in the circumstances now presented. Under 10 CFR § 2.716, the Board should consolidate proceedings only "if it is found that such action will be conducive to the proper dispatch of its business and to the ends of justice and will be conducted in accordance with the other provisions of the subpart."

^{2/} In the event that any new petitions for leave to intervene were filed, they would be reviewed against the standard set forth in 10 CFR § 2.714 regarding late-filed petitions.

As explained by GE, there are very different review schedules presented by the two license renewal applications. The GETR license renewal application is not being pursued by GE, nor is it being reviewed by the Staff at this time. The SNM-960 application, on the other hand, is being actively pursued by GE, and is being reviewed by the Staff at this time.

Similarly, whereas GE does not have a need for the operation of GETR at this time, and the Order to Show Cause and Initial Decision relating thereto currently precludes GETR from starting up until extensive modifications have been completed, GE does intend to continue its operations under its SNM-960 license, although admittedly at a reduced rate of activity from that originally contemplated in the existing license.

In their original Petition, Petitioners argued that seismic issues were common to both the GETR and the SNM-960 renewals. Petition at 10-12, 20. The Staff notes that it raised this same concern before the Board prior to the initiation of the Show Cause proceeding. The Staff was informed by the Board, however, that it would not be a burden to consider the seismic issues separately in the various proceedings. January 5, 1981 Prehearing Conference at Tr. 146. Moreover, the Staff submits that the approaches used regarding seismic analysis in the SNM-960 review, as compared with the GETR review, are quite different, and that it is not at all efficient to consider the two matters together at this time. The Staff also notes that issues regarding the proper seismic and geologic bases to assign to the Vallecitos site were considered and resolved by the Board in the Show Cause proceeding. Although Petitioners may be afforded the opportunity to examine these matters to

some extent in a proceeding relating to renewal of the SNM-960 license, if it is determined to be relevant by the Board, the possibility of such a limited inquiry should not in and of itself dictate that the two separate renewal proceedings be consolidated.

Regarding Mr. Turk's suggestion that consolidation is preferred because of his assertion that activities between GETR and SNM-960 are related, the Staff notes that the scope of activities under either license being considered as part of the renewal proceedings is fixed by the applications for renewal, not by the extent to which activities under the two licenses are related. If, for example, GETR activities in the future were to result in the need to expand the licensed activities under SNM-960, then such a proposal would be the subject of a separate license amendment proceeding. This hypothetical occurrence would not be an appropriate issue in either of the instant renewal proceedings, however.

Accordingly, the Staff would oppose a consolidation of the two license renewal application proceedings.^{3/}

^{3/} The Board's Orders of November 12 and 19, 1982 did not request the parties to address the proposed contentions filed in the two licensing proceedings. The GE response of October 21, 1982, however, did characterize the proposed contentions as they were submitted by the joint Petitioners in 1977. Petitioner Turk's January 5, 1983 letter, at page 4, makes reference to "my contentions above," but does not enumerate what his specific proposed contentions are. The Staff cannot agree that there are any contentions contained in that letter which are sufficiently specific or relevant to the issues in the renewal proceedings. At this time, the Staff's position is that Petitioner Turk's filing establishes that he has satisfied the "standing" and requirements of 10 C.F.R. § 2.714. However, he has not satisfied the "one good contention" requirement. Pursuant to 10 CFR § 2.714(b), Petitioner is permitted to modify or specify his proposed contentions until 15 days prior to the holding of a special prehearing conference. The Staff recommends that the Board establish a schedule providing for the filing of Petitioner's list of contentions and basis therefor, an opportunity for the other parties to respond to the proposed contentions and then a conference between the Board, Petitioner and Parties to consider the various filings.

IV. CONCLUSION

In summary, for the reasons set forth above, the Staff urges the Board to: 1) rule that consolidation of the two license renewal proceedings is not appropriate; 2) defer consideration of the GETR license renewal proceeding as proposed by GE; and 3) continue to preside over the SNM-960 renewal proceeding.

Respectfully submitted,

Daniel T. Swanson

Daniel T. Swanson
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 17th day of January, 1983

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| |) | 70-754-SNMR |
| (Vallecitos Nuclear Center) |) | (ASLBP No. 83-481-01 OLR) |

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO BOARD'S ORDER OF NOVEMBER 12, 1982" 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 17th day of January, 1983.

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