UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	Docket No. 50-70-OLR
GENERAL ELECTRIC COMPANY	)	70-754-SNMR
	)	ASLBP No. 83-481-01-OLR
Vallecitos Nuclear Center - General Electric Test Reactor; Operating License No. TR-1, Special Nuclear Materials License No. SNM-960	)	

PETITIONER/INTERVENOR JACK TURK'S RESPONSE TO NRC STAFF'S RESPONSE OF JANUARY 17, 1983 AND GENERAL ELECTRIC'S RESPONSE OF JANUARY 24, 1983

I. INTRODUCTION

On December 20, 1982 and January 5, 1983 I submitted timely responses to the Atomic Safety and Licensing Board (Board) Memoranda and Orders of November 12 and 19, 1982, which requested my views on three procedural requests by the General Electric Company (GE), submitted on November 5 and 23, 1982, regarding their applications for renewal of the referenced licenses. On January 17, 1983 the NRC Staff submitted its timely response to the Board's Memoranda and Orders. Further, on January 27, 1983 I received a copy of a spontaneous "General Electric's Response to NRC Staff's Response of January 17, 1983," dated January 24, 1983. In light of the foregoing, I feel compelled to respond, to state certain matters of fact and to consider certain matters of law.

II. A CRUCIAL WORD

While I greatly respect and find very helpful the Code of Federal Regulations, I respectfully submit that an error has occurred in the written text, as follows: 10 CFR 2.105(a) should read, "If a hearing is not required by the Act or this chapter, and if the Commission has not found that a hearing is required

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in the public interest,. . .". I have inserted the word "required". I invite the Board's consideration of the following: Why would the Commission cause to be published in the Federal Register a notice of proposed action, which very notice (my emphasis) may initiate the hearing procedure (10 CFR 2.105(d)(1),(2)) when it has "not found that a hearing is in the public interest"? 10 CFR 2.105(a) without "required". Why would the Commission cause to be published in the Federal Register a notice of proposed action with respect to an application for "which the Commission determines [that] an opportunity for a public hearing should be afforded" (10 CFR 2.105(a)(6)) when the Commission "has not found that a hearing is in the public interest"? 10 CFR 2.105(a) without "required". Obviously the Commission does not wish to simultaneously assume such antinomical postures.

I submit to the Board that we may be instructed toward a reasonable solution to this dilemma by the words of 10 CFR 2.104(a), where we find the conditions under which the Commission causes the hearing procedure to ensue, in response to an application, listed as follows:

(a) by a requirement of the Act,

(b) by a requirement of this chapter (see e.g. 2.10(a)(2)),

(c) when "the Commission finds that a hearing is required in the public interest," (my emphasis).

When none of (a), (b), or (c) above apply with respect to an application, such application is (d) withdrawn, (e) denied, (f) issued or (g), for certain applications (10 CFR 2.105(a)(1)-(8)), noticed by a proposed action, which notice may initiate the hearing procedure. Clearly, only (a), (b), (c), and (g) above can result in a hearing. See 15 NRC 232, CLI-82-2 at 232, Rules of Practice: Notice of Hearing. Thus, for these certain applications 10 CFR 2.105 is the null of 10 CFR 2.104. That is, if, for one of these certain applications, we wish 10 CFR 2.105 to obtain, we can see that the negative of each condition at 2.104(a) must

obtain, and, n.b., including the word "required". In other words, 10 CFR 2.104(a) and 10 CFR 2.105(a) with "required" are complementary, the former establishing the necessity of Commission action with respect to the hearing procedure; the latter establishing the sufficiency of the same action. I submit that 10 CFR 2.105(a) with "required" is now lucid, unambiguous and instructive at this instant, and that 10 CFR, Chapter 1 should be so revised at its next printing, to better serve all.

III. COMMENTS ON RESPONSES

On September 15, 1977, the Commission caused to be published in the Federal Register a notice that it was considering the applications for the referenced renewals, giving opportunity for any person whose interest may be affected to file a petition for leave to intervene and request a hearing. Clearly and properly, the Commission acted under 10 CFR 2.105(a) at (1), (2) and/or (6). The Board's Memorandum and Order of October 21, 1982 documents subsequent events, including the submittal of a petition to intervene and request for hearing, responses by the NRC Staff and GE, establishment of a Board on October 21, 1977 to review the petition and the verbal grant of the petition at a prehearing conference on March 16, 1978.

In its responses of November 5 and 23, 1982 and January 24, 1983, GE has repeatedly contended the applicability of the Commission's decision to deny the petition of the City of West Chicago, Illinois, dated October 28, 1981, for a formal adjudicatory hearing on a materials license amendment, requested by the Kerr-McGee Corporation on March 25, 1981, granted on September 28, 1981. See 15 NRC 232, CLI-82-2. Without prejudicing any future proceedings in that matter (the City having requested relief from the Commission's order before the Seventh Circuit United States Court of Appeals and noting the precedential value (the

Commission's decision being the first of its kind) of the Order being diminished pending review (8208300310)), I believe it fruitful to thoroughly examine its applicability to the referenced renewals.

GE Counsel contends that in 15 NRC 232, "The Commission held that neither NRC regulation nor the Atomic Energy Act require a formal, trial-type hearing for all (my emphasis) Commission Licensing Proceedings." GE Response at 7. However, NRC regulations do require formal trial-type proceedings for those proceedings specifically noticed under 10 CFR 2.105(a), under which the referenced renewals were noticed. 10 CFR 2.700 describes proceedings under this notice as of an adjucative nature. See 15 NRC 232 at 246, see 5 USC 551 at definitions.

GE Counsel contends that "In the case of materials licenses, the Commission has latitude (my emphasis) to use informal procedures," citing 15 NRC at 244-56. However, in clear contrast to the method used in the Kerr-McGee matter, where it chose to inform the City by placing it on the mailing list and causing no formal notices of Kerr-McGee's licensing amendment requests to be published elsewhere, the Commission, at the referenced renewals, caused to have 10 CFR 2.105 notices published in the Federal Register, inviting the submittal of petitions to intervene and requests for public hearings, and received such, in a timely fashion, again unlike Kerr-McGee. 15 NRC Supra at 239; 241, Footnote 8; 256, Footnote 29.

To further illuminate the distinctions between the Kerr-McGee matter and the referenced renewals, I invite the Board's review of the Commission's statement that "Section 2.105 requires that the Commission issue a notice of proposed action - . . . - only with respect to an application for a facility license,. . .,an application to amend such licenses where significant hazards considerations are involved, or an application for 'any other license or amendment as to which the Commission determines that an opportunity for public

hearing should be afforded.' 10 CFR 2.105(a)[(6)]. The Kerr-McGee Amendment does not fall into any of these categories." (my emphasis) 15 NRC at 245. Clearly, since the notice for the referenced renewals was issued pursuant to 10 CFR 2.105(a), it follows that the conclusions reached in the Kerr-McGee matter would not apply to the referenced renewal proceedings.

Finally, GE Counsel in the January 24, 1983 letter states, "Moreover, a notice of proposed action may be issued if a hearing is not required by the Act and 'If the Commission has not found that a hearing is in the public interest.' ((GE Counsel) Emphasis added.) 10 CFR 2.105(a)." Notwithstanding a hearing not being required, 10 CFR 2.105 invites the submittal of a request for hearing. Lastly, the underlined statement here clearly illustrates the confusion created for lack of a crucial word, which I have discussed above.

IV. CONCLUSIONS

I request that: 1) the Board deny the GE contention that the Kerr-McGee matter (15 NRC 232, CLI-82-2) is relevant to the referenced renewals for the reasons above; 2) the Board inform me of its opinion and action regarding my request to modify 10 CFR 2.105(a); and 3) the Board continue to preside over the renewal proceedings, for due process considerations.

Respectfully submitted,

Jack Turk

Jack Turk
In Pro Per

Dated: February 2, 1983

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been served on the following by deposit in the United States mail, first class, this date.

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DATED: February 3, 1983

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