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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD '90 OCT 29 P1:47

Before Administrative Judges:

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Morton B. Margulies, Chairman
Dr. A. Dixon Callihan
Dr. Jerry R. Kline

SERVED OCT 29 1990

In the Matter of)	Docket No. 30-12319-CivP
TULSA GAMMA RAY, INC.)	ASLBP No. 90-618-03-CivP
(Material License No.)	October 29, 1990
35-17178-01, EA No. 89-223))	

PREHEARING CONFERENCE MEMORANDUM AND ORDER

On October 16, 1990, a telephonic prehearing conference was held in the captioned proceeding. Its purpose was to identify and simplify the issues; establish a schedule for further actions in the proceeding to include discovery, the identification of witnesses and the setting of the time for hearing; and consider any other matters that may aid in the orderly disposition of the proceeding. NRC staff counsel, Susan L. Uttal, and Peter C. Moss, president of licensee, Tulsa Gamma Ray, Inc. (TGR), represented the respective parties.

On the matter of identification of the issues, staff's position was that the licensee had admitted to the violations in its response to the Notice of Violation and that the only issue was whether the amount of the penalty imposed was appropriate. Staff would have the Board consider whether a monetary penalty

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should have been assessed and whether the amount of the penalty is proper considering mitigating circumstances. In determining whether a monetary penalty should have been assessed, a matter for review would include whether it was correct to collectively classify the Severity Level IV and V violations as a single Severity Level III violation under the Commission's Enforcement Policy.

The "Order Imposing Civil Monetary Penalty," dated June 6, 1990, (55 Fed. Reg. 24949-24952, June 19, 1990), which granted licensee the right to a hearing and defined the scope of the hearing, was predicated on licensee having admitted nine violations of Severity Level IV or V. The Order stated "the issue to be considered at such hearing shall be whether, on the basis of the violations admitted by the licensee, consisting of the violations set forth in the Notice of Violation as modified by the withdrawal of Violation 3, this Order should be sustained."

In inquiring of licensee on the issues in the proceeding, it was indicated to the Board that it had not admitted to the alleged violations.

The Board did not have available to it licensee's February 22, 1990 Answer to the Notice of Violation where the admissions to violations were stated to be contained and upon which admissions the Order specifying the scope of this proceeding was premised.

We interrupted the prehearing conference to ascertain whether the licensee's Answer contained the admission of violations the Order relied upon and if absent, to obtain the views of the parties on its effect on this proceeding.

The February 22, 1990 Answer has since been furnished to the Board. We have reviewed it and are satisfied that there is no reason to question that the violations were admitted as set forth in the Order defining the jurisdiction of this proceeding.

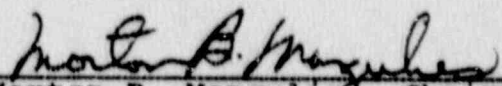
The Board has the limited jurisdiction defined by the Order dated June 6, 1990. There proved to be no sound reason for questioning the validity of that Order. The Order limits the scope of the proceeding to whether the amount of the penalty imposed was proper under the Commission's Enforcement Policy, i.e., whether it was correct to collectively classify the Severity Level IV and V violations as a Severity Level III violation and impose a monetary penalty, and whether the amount of the penalty was correctly arrived at taking into account the factors in the Enforcement Policy, including mitigating circumstances.

The proceeding does not extend to the issue of whether the Severity Level IV and V violations were committed. Should the licensee now have second thoughts on whether the violations should have been admitted, any proposed withdrawal of those admissions is not a matter to be raised and considered in this proceeding because it is beyond its scope.

No further inquiry need be made of the parties prior to resuming the prehearing conference. The briefs referred to during the prehearing conference are no longer necessary. The resumed prehearing conference will be held by telephone on November 7, 1990, at 10:00 a.m. eastern time and 9:00 a.m. central time.

It is so ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Morton B. Margulies, Chairman
ADMINISTRATIVE LAW JUDGE

Bethesda, Maryland
October 29, 1990

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

TULSA GAMMA RAY, INC.

Docket No. (e) 30-12319-CIVP

(Materials License No. 35-17178-01
EA 89-223)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LR PREHEARING CONFERENCE M&O have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Atomic Safety and Licensing Appeal
Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Law Judge
Morton B. Marquies, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

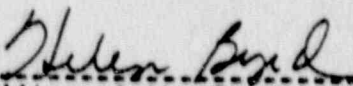
Administrative Judge
Jerry R. Kline
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

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President
Tulsa Gamma Ray, Inc.
1127 South Lewis Avenue
Tulsa, OK 74104

Dated at Rockville, Md. this
29 day of October 1990



Office of the Secretary of the Commission