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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
COMMONWEALTH EDISON COMPANY)	Docket Nos. 50-456
(Braidwood Nuclear Power Station,)	50-457
Units 1 and 2))	

NRC STAFF RESPONSE TO THE LICENSING BOARD ORDER
OF OCTOBER 1, 1982

I. INTRODUCTION

By Order of October 1, 1982, the Licensing Board directed all parties to this operating license proceeding to file complete status reports concerning the Braidwood Nuclear Power Station, Units 1 and 2. In response to that Order, the Staff hereby files the following status report.

II. DISCUSSION

A. STATUS OF THE PROCEEDING

On December 15, 1978, the Nuclear Regulatory Commission (Commission) published in the Federal Register a notice of opportunity for hearing concerning the issuance of operating licenses in the above-captioned matter.^{1/} The notice provided that any person whose interest may be affected might file a petition for leave to intervene no later than January 15, 1979.

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1/ 43 Fed. Reg. 58659 (1978).

Two timely petitions for leave to intervene signed by (1) Bridget Little Rorem individually and on behalf of the Bailly Alliance-Illinois and four individuals,^{2/} and (2) Bob E. Neiner individually and as President of Bob Neiner Farms, Inc. and five individuals,^{3/} were received by the Staff. On January 19, 1979, the Staff received the petition of Marty Westerman, dated January 10, 1979. Answers to each of these petitions for leave to intervene were filed by the Staff on January 29, 1979. Commonwealth Edison Company (Applicant) also filed an answer to the various petitions for leave to intervene on January 29, 1979.

On March 22, 1979, the Licensing Board issued an Order which rejected Marty Westerman's petition for leave to intervene because of its failure to demonstrate petitioner's standing to intervene as a party.^{4/} The Board also determined that the petitions of Bridget Little Rorem, et al. and Bob Neiner Farms, Inc., et al. indicate that these petitioners have sufficiently demonstrated standing to intervene as parties.^{5/}

On April 18, 1979, the Applicant filed a motion requesting the Licensing Board to schedule the special prehearing conference authorized by 10 C.F.R. § 2.751(a). The Staff filed a response to Applicant's motion

^{2/} Ralph Rorem, Jr., Phillips Zediker, Carolē Zediker and Diane Frothingham.

^{3/} Eleanor M. Neiner, Pat Neiner, Lorraine Creek, Leo Walsh and Alta Walsh.

^{4/} Commonwealth Edison Company (Braidwood Nuclear Power Station, Units 1 and 2), Order, slip op. at 3 (March 22, 1979).

^{5/} Id. at 2.

on May 4, 1979 which supported Applicant's request for scheduling a special prehearing conference. In accordance with 10 C.F.R. § 2.721, the Acting Chairman of the Atomic Safety and Licensing Board Panel issued a notice on June 7, 1979 announcing the reconstitution of the Licensing Board in this proceeding. By motion of the same date, the Applicant requested the Licensing Board to establish a schedule for the filing of final contentions.

On June 8, 1979, the Licensing Board issued a notice of special prehearing conference setting forth a schedule for holding the conference in Joliet, Illinois, on July 26, 1979. In an Order dated July 5, 1979, the Board rescheduled the special prehearing conference for August 23, 1979.

Pursuant to 10 C.F.R. § 2.741(b) and in accordance with the Licensing Board's Order of March 22, 1979, Bridget Little Rorem, et al.^{6/} and Bob Neiner Farms, Inc. et al. both filed amended petitions for leave to intervene on August 7, 1979. The Applicant filed an answer to the amended petition of Bridget Little Rorem, et al. on August 10, 1979, which supported the substitution of Appleaseed for the Bailly Alliance-Illinois and agreed that the contentions in the Rorem petition should be admitted as issues in controversy.

^{6/} In its amended petition, Bridget Little Rorem, et al. requested that Appleaseed, an organization in the Braidwood area, be substituted for Bailly Alliance-Illinois as a party to the intervention.

On August 20, 1979, the Staff filed an answer to the amended petition of Bridget Little Rorem, et al. which interposed no objection to the substitution of Appleseed for Bailly Alliance-Illinois and agreed that the contentions in the Rorem petition of August 7, 1979 should be admitted as issues in controversy in the Braidwood proceeding. The Staff also filed on August 20, 1979 an answer to the amended petition of Bob Neiner Farms, Inc., et al., wherein the Staff explained that petitioners had included in their petition the bases for one or more contentions which should be admitted as issues. On August 22, 1979, the Applicant filed an answer to the amended and supplemental contentions of Bob Neiner Farms, Inc., et al., which asserts that certain contentions should be admitted, dismissed or consolidated.

On August 23, 1979, the Licensing Board held a special prehearing conference in Joliet, Illinois, to consider intervention petitions and contentions. During this special prehearing conference, the Board ruled that the following contentions would be admitted: (1) Bridget Little Rorem, et al. contentions 1 and 2 as set forth in its amended petition dated August 7, 1979 (Tr. at 10); (2) Bob Neiner Farms, Inc., et al. contentions 1 (Tr. at 25, 26), 3(a), (b), (c) (Tr. at 31), 5, 6, 7, (Tr. at 37-38), 10 and 11 (Tr. at 40). With respect to Bob Neiner Farms, Inc., et al. contentions 4 and 9, the Board deferred ruling on these contentions until the parties submitted additional information within 3 weeks from the date of the special prehearing conference. (Tr. at 36-37, 40). The Board deferred consideration of Bob Neiner Farms, Inc., et al. contention 8 (Tr. at 39) and ruled that Bob Neiner Farms, Inc., et al. contention 2 would be stricken (Tr. at 28, 29). Furthermore, the Board granted the request of Bridget Little Rorem, et al. to substitute the organization Appleseed for Bailly Alliance-Illinois (Tr. at 14). Aside

from hearing several limited appearance statements, the Licensing Board accepted, as a stipulation of the parties, a six-page document entitled "Stipulation of the Parties Regarding the Scheduling and Conduct of Hearings" while reserving its right to make changes (Tr. at 64).

Pursuant to the request of the Board at the special prehearing conference held on August 23, 1979, the Staff submitted additional information on September 12, 1979, concerning Bob Neiner Farms, Inc., et al. contention 4 and provided additional views for Bob Neiner Farms, Inc., et al. contention 9. Bob Neiner Farms, Inc., et al. also filed supplemental information on the same date regarding its contention 4 and withdrew contention 9. On September 14, 1979, the Applicant filed a supplemental brief on Bob Neiner Farms, Inc., et al. contention 4 as requested by the Board during the special prehearing conference.

The Licensing Board has not issued a special prehearing conference order.

B. STAFF'S LICENSING SCHEDULE

The present schedule^{7/} for the issuance of Staff documents in this proceeding is as follows:

Draft Environmental Statement - January 1984

Final Environmental Statement - June 1984

Safety Evaluation Report - December 1983

Supplement to Safety Evaluation Report - May 1984

^{7/} Regulatory Licensing Status Summary Report, NUREG-0580, Vol. II, No. 9 at 2-2 (September 1982); NRC Monthly Status Report to Congress attached to letter to the Honorable Tom Bevill from Nunzio J. Palladino, dated September 30, 1982.

Currently, the Applicant is projecting the latest construction completion date to be April 30, 1987 for Braidwood Unit 1 and April 30, 1988 for Braidwood Unit 2; although, it considers the April 30, 1985 and April 30, 1986 fuel load dates for these units to be attainable.^{8/}

C. SCHEDULE FOR PREHEARING AND HEARING MATTERS

At this early stage in the proceeding, the Staff would note that it is quite difficult to project a schedule with accuracy. However, the Staff submits that the following considerations are appropriate in developing a schedule.

Discovery should open upon issuance of the Board's Special Prehearing Conference Order on all contentions admitted by the Board^{9/} and close 90 days after issuance of that Order.

For good cause shown, discovery may be reopened based on new information contained in the FES. Discovery related to the FES should close on all environmental issues 20 days

^{8/} Letter from L.O. DelGeorge, Director of Nuclear Licensing, Commonwealth Edison Company to Harold R. Denton, Director, Office of Nuclear Reactor Regulation, U.S.N.R.C., dated September 30, 1982. This letter requested an amendment of the Braidwood Station Construction Permits (CPR-132, CPR-133) to revise the "latest completion date" for Braidwood Units 1 and 2.

^{9/} Under Appendix A, Section IV, 10 C.F.R. Part 2 and § 2.740(b)(1) discovery may proceed after issuance of the Board's Special Prehearing Conference Order.

after the mailing of the FES and responses to discovery on environmental issues initiated after the FES is issued should be 20 days after discovery is initiated.^{10/}

For good cause shown, discovery may be reopened based on new information contained in the SER. Discovery related to the SER should close on all safety issues 20 days after the mailing of the SER and responses to discovery on safety issues initiated after the SER are due 20 days after discovery is initiated.^{11/}

Prehearing Conference should be held within 60 days after discovery has been completed.^{12/}

Motions for summary disposition on environmental issues may be filed not later than 30 days following the mailing

^{10/} Under 10 C.F.R. § 2.740(b)(1), discovery is to be completed prior to the beginning of the prehearing conference held pursuant to 10 C.F.R. § 2.752, except upon good cause shown.

^{11/} Id.

^{12/} See 10 C.F.R. § 2.752. Footnote 1 to this section states that, as used in § 2.752, discovery does not include production of the ACRS report, the safety evaluation prepared by the Staff or any detailed statement on environmental considerations.

of the FES and responses should be filed 20 days after the filing of such motions.^{13/}

Motions for summary disposition on safety issues may be filed not later than 30 days following the mailing of the SER and responses should be filed 20 days after the filing of such motions.^{14/}

Written testimony regarding environmental and safety issues should be filed 15 days before the start of the hearing.^{15/}

Hearings commence in October 1984 and run continuously until completed.^{16/}

^{13/} Under 10 C.F.R. § 2.749, motions for summary disposition are to be filed within such time as may be fixed by the ASLB. However, the Staff's proposal to have such motions filed before the hearing begins is based on the recognition that 10 C.F.R. § 2.749 authorizes a Board to dismiss summarily motions filed shortly before the hearing commences or during the hearing if substantial resources are required to be diverted from the hearing in order to respond adequately to the motion. Answers to such motions are to be served within 20 days after service of the motion. A supplemental response may be filed by the party opposing the motion within 10 days after the service of answers.

^{14/} Id.

^{15/} See 10 C.F.R. § 2.743(b).

^{16/} NUREG-0580, Vol. II, No. 9 at 2-2 (September 1982); NRC Monthly Status Report to Congress (September 30, 1982).

Applicant's proposed findings should be filed within 30 days of the close of the record; Intervenors proposed findings should be filed within 40 days of the close of the record; and the NRC Staff's proposed findings should be filed within 50 days of the close of the record. Applicant may reply within 5 days following the filing of the last-filed proposed findings.^{17/}

ASLB issues initial decision on issues in controversy in March, 1985.^{18/}

Parties may file brief comments with the Commission concerning the immediate effectiveness issue, within 10 days after the Board's decision.^{19/}

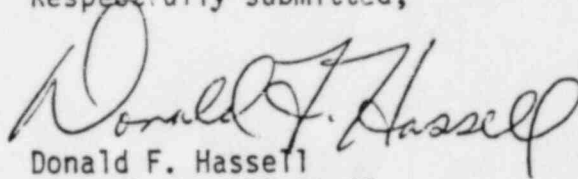
^{17/} See 10 C.F.R. § 2.754.

^{18/} NUREG-0580, Vol. II, No. 9 at 2-2 (September 1982); NRC Monthly Status Report to Congress (September 30, 1982).

^{19/} See 10 C.F.R. § 2.764(f)(2).

Commission issues decision in April, 1985.^{20/}

Respectfully submitted,



Donald F. Hassell
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 20th day of October, 1982

^{20/} Id. The Licensing Board's initial decision will be considered stayed pending the Commission's review and decision. See NUREG-0580, Vol. 9 at 2-2 (September 1982); NRC Monthly Status Report to Congress (September 30, 1982).

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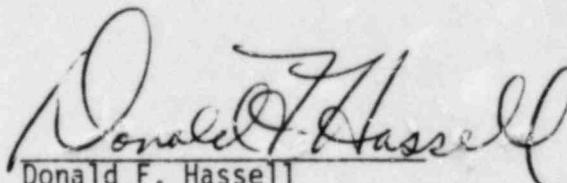
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NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the captioned matter. In accordance with § 2.713(b), 10 C.F.R. Part 2, the following information is provided:

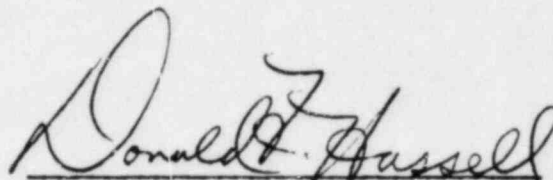
Name	- Donald F. Hassell
Address	- Office of the Executive Legal Director U.S. Nuclear Regulatory Commission Washington, D.C. 20555
Telephone Number	- Area Code (301) 492-7543
Admissions	- Supreme Court of the United States of America; - U.S. District Court for the Western District of Pennsylvania; - Supreme Court of Pennsylvania
Name of Party	- NRC Staff


Donald F. Hassell
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 20th day of October, 1982

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

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555*

A handwritten signature in cursive script that reads "Donald F. Hassell". The signature is written in black ink and is positioned above a horizontal line.

Donald F. Hassell
Counsel for NRC Staff