

ORIGINAL

OFFICIAL TRANSCRIPT OF PROCEEDINGS

Agency: Nuclear Regulatory Commission  
Atomic Safety and Licensing Board

Title: Kenneth G. Pierce  
(License No. OP-30277-02)

Docket No. 55-30662-EA and IA-94-007

LOCATION: Bethesda, Maryland

DATE: Tuesday, June 7, 1994

PAGES: 1 - 15

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of : Docket No. 55-30662-EA  
KENNETH G. PIERCE : IA-94-007  
(License No. OP-30277-02) :  
- - - - -x

Nuclear Regulatory Commission  
4350 East-West Highway  
East-West Towers  
4th Floor  
Bethesda, Maryland  
Tuesday, June 7, 1994

The above-entitled telephone conference, commenced  
at 10:35 a.m.

BEFORE ADMINISTRATIVE JUDGES:

- PETER B. BLOCH, Chairman
- RICHARD F. COLE
- FREDERICH J. SHON

1 APPEARANCES: [via telephone.]

2 Pro Se:

3 KENNETH G. PIERCE

4 21013 South Sarver Drive

5 Shorewood, IL 60436

6 On behalf of the Nuclear Regulatory Commission:

7 COLLEEN P. WOODHEAD, ESQ.

8 SHERWIN E. TURK, ESQ.

9 U.S. Nuclear Regulatory Commission

10 Office of General Counsel

11 Washington, DC 20555

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## P R O C E E D I N G S

1  
2 JUDGE BLOCH: This is Judge Bloch. I am presiding  
3 in the case of Kenneth G. Pierce, Docket No. 55-30662-EA.  
4 It is also known as IA-94-007. With me this morning are  
5 Judge Cole and Judge Shon. The reporter has been informed  
6 of the names of the parties who are participating in this  
7 call, two lawyers for the staff plus Mr. Pierce. So we  
8 don't need to call the roll.

9 I announced before we began that the principal  
10 matters of concern to the Board today have to do with  
11 scheduling.

12 The first matter has to do with scheduling a more  
13 complete answer for Mr. Pierce since his answer appears to  
14 be incomplete in terms of the regulations. We will have a  
15 discussion of whether it is incomplete and perhaps set a  
16 time for that.

17 After that, we will see how much we can get  
18 through about the discovery needs of the parties and  
19 scheduling discovery.

20 Then, if possible, we will also schedule the  
21 hearing date in this case.

22 First, I would like to have a discussion of the  
23 need for a more complete answer.

24 Mr. Pierce, we understand you are not represented  
25 by a lawyer in this proceeding. I urge that any time you

1 are confused by anything that happens that you please ask  
2 the Board Chairman to clarify it for you. We don't want  
3 anything to happen that unduly disadvantages you because you  
4 don't have legal representation.

5 MR. PIERCE: Okay. Who is the Chairman of the  
6 Board?

7 JUDGE BLOCH: Me, Peter Bloch.

8 We would like to know whether you are planning to  
9 file a more complete answer and what time would be a good  
10 time for you to be able to do that.

11 MR. PIERCE: I didn't know I had to. I talked to  
12 Mr. Gray. I don't recall his first name. He said all I had  
13 to do was write a letter requesting a hearing.

14 JUDGE BLOCH: I understand that. I read the  
15 order, which seemed to require a detailed affidavit in  
16 response to the allegations, but I would like to have the  
17 staff comment on what they believe the obligations are.

18 MR. PIERCE: That's why I called Mr. Gray. He  
19 told me that if I wanted to specifically answer any charges  
20 that it would require an affidavit, but he said it wasn't  
21 necessary, because if there was going to be a hearing, that  
22 would all take place in the hearing, so all I had to do was  
23 write a letter. I had the same question. That's why I  
24 called Mr. Gray.

25 JUDGE BLOCH: I haven't said you have done

1 anything wrong. I don't believe you have, but I want the  
2 staff lawyers to be able to comment on what they think the  
3 obligations are right now so that we can proceed.

4 MS. WOODHEAD: This is Colleen Woodhead. Section  
5 of the order states that the request for hearing should be  
6 accompanied by an answer to the allegations in the order. I  
7 believe that his answer really was due on May 21, which  
8 would have been 30 days from the date of the order.  
9 However, I believe he understands now that an answer is due.

10 JUDGE BLOCH: Would you comment on why it is that  
11 even though this is a violation with serious consequences  
12 that the regulations require a detailed answer?

13 MS. WOODHEAD: Why the regulations require an  
14 answer?

15 JUDGE BLOCH: The difference between a criminal  
16 case and a civil case so that Mr. Pierce might understand.  
17 He is facing serious charges. I think in his position I  
18 might be wondering why I have to make such detailed answers  
19 when in a criminal case you can just sit mute.

20 MS. WOODHEAD: Because it is a civil case, persons  
21 against whom orders are issued have the opportunity to  
22 answer before the order is final unless they decide not to  
23 answer, in which case the order is deemed to be final.  
24 Therefore the agency has the opportunity to take into  
25 consideration the person's answer to the allegations in the

1 order and can consider them in the event that there is some  
2 circumstance that they had not considered previously.

3 JUDGE BLOCH: I would like to add that my  
4 understanding is that the agency really works on a  
5 disclosure basis and the people who operate pursuant to our  
6 rules are expected to disclose what is happening. We want  
7 this case to be tried on a disclosed basis, not a surprise  
8 basis.

9 Mr. Pierce, how do you feel now that there has  
10 been some explanation about when it might be fair to require  
11 you to respond as stated in the order to the allegations  
12 against you?

13 MR. PIERCE: That's fine. Like I say, I called to  
14 try to get some clarification on exactly how I was supposed  
15 to respond and Mr. Gray indicated that all I had to do was  
16 write a letter, as I did, requesting a hearing.

17 JUDGE BLOCH: What would be a fair day for you to  
18 finish this response?

19 MR. PIERCE: I have a question for you. What  
20 exactly are the charges, if you will, against me? They are  
21 not exactly itemized in the order.

22 JUDGE BLOCH: I thought they were.

23 MR. PIERCE: It kind of rambles on and talks a  
24 little bit but doesn't really itemize number one, number  
25 two.



1 JUDGE BLOCH: You've got to answer each paragraph  
2 for each fact that is stated. It starts on page 22-693 in  
3 the federal record. Do you have that?

4 MR. PIERCE: No, I don't.

5 JUDGE BLOCH: Do you have a mimeographed form or a  
6 Xeroxed form of this order?

7 MR. PIERCE: Yes, I do.

8 JUDGE BLOCH: I think the specific charges you  
9 have to start responding to appear to begin with the  
10 statement "Dresden Technical Specification 6.2.8.1 stated."

11 Ms. Woodhead, am I correct that that is really the  
12 first factual allegation to respond to?

13 MR. PIERCE: I see where you are.

14 JUDGE BLOCH: No, it doesn't. It starts before  
15 that.

16 MR. PIERCE: Yes. I had set out three allegations  
17 in several paragraphs preceding that. It's repetitive.

18 JUDGE BLOCH: So it starts at the beginning of  
19 Roman II.

20 MR. PIERCE: Yes.

21 JUDGE BLOCH: For example, the first sentence says  
22 that there was an incident that occurred on September 18  
23 when Unit 2 was operating at 75 percent power. On that  
24 sentence, Mr. Pierce, if you agree that the incident that is  
25 of concern was on that date and that Unit 2 was at 75

1 percent power, you can say that you have got no problem with  
2 that. If you have some reason to have a problem with it,  
3 you think it's a different date, or there was no incident at  
4 all, you would state that in your response.

5 MR. PIERCE: Okay.

6 JUDGE BLOCH: So you have to look at whatever the  
7 factual statements in each sentence are and say "I agree,"  
8 "I disagree for the following reasons," or "I don't know and  
9 here are the reasons that I have no knowledge of that," if  
10 there are reasons for that. It's a specific thing as to  
11 whether you know or you don't know and why. A point by  
12 point response.

13 With that understood, when would be a good time?  
14 You have a need to respond thoroughly and I suspect you  
15 would also like this disposed of quickly. The time that you  
16 decide would be best for you is probably the best time for  
17 the Board.

18 MR. PIERCE: Without having anything itemized and  
19 to try to go through ten pages of what are repetitive -- I  
20 don't know. It will probably take me a couple of weeks at  
21 least to go through this and respond to every sentence if  
22 that's what I'm required to do.

23 JUDGE BLOCH: Here is a possibility. We could set  
24 a couple of weeks for the time, but since the trial will  
25 come faster the faster you do it, I would set a couple of

1 weeks. The hearing will proceed at the time you actually  
2 send it in. So it's to your advantage to get it in faster  
3 than that.

4 MR. PIERCE: Okay. That sounds good to me.

5 JUDGE BLOCH: A couple of weeks from today would  
6 be the 20th.

7 MR. PIERCE: Who do I have to mail this to? Do I  
8 have to make four copies of it again?

9 JUDGE BLOCH: Ms. Woodhead, would you like to  
10 advise him on the service requirements?

11 MR. PIERCE: Yes. I did speak with Mr. Pierce  
12 about this in a telephone call on June 2. I had filed a  
13 notice of appearance with an attached certificate. It has  
14 the appropriate style and docket numbers at the top of the  
15 two documents which Mr. Pierce can follow. It has the  
16 proper persons on the certificate of service. I would like  
17 to ask Mr. Pierce if he has received my notice of appearance  
18 yet.

19 MR. PIERCE: Yes, I did. I have to send a copy to  
20 each of the people on that?

21 MS. WOODHEAD: That's correct. Then you would  
22 include me in place of you on the certificate.

23 JUDGE BLOCH: That is the first matter.

24 The next matter is a little complicated, because  
25 without the answer, the staff may have difficulty knowing

1 what kind of case you are going to pursue. I would like to  
2 know to the extent possible if the parties can estimate how  
3 much discovery they are going to need.

4 Discovery, Mr. Pierce, consists of calling  
5 witnesses before a trial and questioning them. That is one  
6 form of discovery. So that you can find out what their  
7 answers are likely to be before the trial date.

8 Another thing is interrogatories where you could  
9 ask questions.

10 A third thing is document requests. You can  
11 obtain documents from the staff, or at least request them  
12 and find out whether or not they are available to you under  
13 the rules of the agency.

14 MR. PIERCE: Ms. Woodhead mentioned the  
15 possibility of getting me a copy of the whole report. I  
16 don't even have one.

17 JUDGE BLOCH: So you are going to get a copy of  
18 the whole OI report.

19 How quickly can he get that, Ms. Woodhead?

20 MS. WOODHEAD: I can have it to me in about four  
21 days. It's about four inches of exhibits and it has to be  
22 redacted for Privacy Act information. I can have it in my  
23 office in about four days. This is what the Office of  
24 Investigations told me.

25 MR. PIERCE: Does that include interviews with the

1 people involved? I don't even know what's in it.

2 MS. WOODHEAD: This is many, many interviews.  
3 Yes, it's interviews by Edison from the Office of  
4 Investigations and also many other documents such as the  
5 computer printouts and things like that.

6 MR. PIERCE: I definitely would like to see that.  
7 I've never seen anything like that.

8 JUDGE BLOCH: Before you send in your point by  
9 point response I would like you to examine that document too  
10 to make sure that nothing in it refreshes your memory so  
11 that your answers would change.

12 MR. PIERCE: That sounds like a good idea, but she  
13 said it was four inches thick. I can't even guesstimate how  
14 long it would take me to read that. I'm sure it would be  
15 interesting reading for me and I wouldn't let it just lay  
16 around or anything, but I really don't know.

17 JUDGE BLOCH: If Ms. Woodhead gets it in four  
18 days, you certainly should have it in seven days. So you  
19 will have started writing your answers. I wouldn't suggest  
20 that you don't necessarily have to read the whole document.  
21 You should look through it to see whether it has anything to  
22 say to you about the answers you are making. If you need  
23 more time, you will call Colleen Woodhead and ask her for  
24 whatever time you need. If she agrees, then she'll  
25 communicate to me the agreement about the additional time.

1 MR. PIERCE: That sounds reasonable to me.

2 JUDGE BLOCH: If she doesn't agree, then I'll have  
3 to decide how much additional time you have.

4 MR. PIERCE: That sounds good. I have her number.  
5 She gave it to me last week.

6 JUDGE BLOCH: I'm beginning to feel that it's  
7 premature to discuss discovery before that document is  
8 available to Mr. Pierce. Is the staff planning to rely  
9 entirely on the investigative work that has been done  
10 before, or does it think it is going to need additional  
11 discovery of its own?

12 MS. WOODHEAD: The staff doesn't need discovery.  
13 We intend to rely on the investigation by the Office of  
14 Investigations.

15 JUDGE BLOCH: You said something. I think you  
16 said the staff doesn't need discovery, but it was unclear.  
17 Is that what you said?

18 MS. WOODHEAD: At this point in time we intend to  
19 rely only on the documents contained with the Office of  
20 Investigations' report and exhibits as well as the  
21 transcript of the enforcement conference held in Region III  
22 on November 17, 1993.

23 JUDGE BLOCH: Will that also be made available to  
24 Mr. Pierce?

25 MS. WOODHEAD: I can make that available, yes.

1 It's in the Public Document Room.

2 JUDGE BLOCH: Let's make that available too. What  
3 I am hearing is that there could be a change in your  
4 decision about discovery but it probably would depend on  
5 something new that you learn from Mr. Pierce's response or  
6 what he does in discovery.

7 MS. WOODHEAD: That's correct.

8 JUDGE BLOCH: Mr. Pierce, I am not going to ask  
9 you about your discovery needs right now. What I am going  
10 to do is wait for the two weeks to see whether you request  
11 an extension of time. We will schedule another status  
12 conference at the appropriate time later so that we will be  
13 able to get more of a hand on pressing this case through to  
14 a conclusion.

15 MR. PIERCE: Okay. Do you have any idea how long  
16 it would take to reach a conclusion?

17 JUDGE BLOCH: It depends on the discovery you are  
18 going to need. As you read those documents you have certain  
19 rights, one of which is to call witnesses who you think have  
20 key information against you and ask them questions that  
21 would help you to know the full force of their testimony.  
22 You wouldn't have to do any of that and you wouldn't have to  
23 ask the staff any questions. You could just decide you'll  
24 go to trial and do all the questioning at the trial. You  
25 just come up with a witness list and you just go right to

1 trial and question the witnesses at the trial.

2 MR. PIERCE: Okay.

3 JUDGE BLOCH: But you have the opportunity if you  
4 want it to pursue these discovery needs so you will have  
5 less surprises coming at the trial.

6 Ms. Woodhead, any comments?

7 MS. WOODHEAD: No, not at this time. Perhaps I  
8 can talk to Mr. Pierce later and explain what our hearing  
9 procedures are.

10 JUDGE BLOCH: I guess it would help if he were  
11 mailed the discovery rules.

12 MS. WOODHEAD: I provided part 2. I actually sent  
13 him the paper-bound copy of Part 0 to 50 in 10 CFR. So he  
14 has those in hand.

15 JUDGE BLOCH: You might just point out to him  
16 specifically the pages on which the different kinds of  
17 discovery are described.

18 MS. WOODHEAD: All right.

19 JUDGE BLOCH: Mr. Pierce, you will have to think  
20 for yourself whether you want to go through that process or  
21 hurry up with the trial and do all your questioning and  
22 information at the trial. Whatever you need you should  
23 decide to ask for.

24 MR. PIERCE: Okay.

25 JUDGE BLOCH: Do you have any further questions



1 that we can resolve while we are still on the phone and on  
2 the record?

3 MR. PIERCE: I don't believe so. I definitely  
4 want a copy of the entire report so that I can review it,  
5 and apparently that is going to happen. I may have  
6 questions after that, but right now I don't think so.

7 JUDGE BLOCH: So the only thing I've done in terms  
8 of an order is that I required that by June 20 you will file  
9 your answer and that if before that time, after looking at  
10 the Office of Investigation report, you think you will need  
11 more time, you will request it from Ms. Woodhead. If there  
12 is a deadlock about whether an extension of time is to be  
13 granted, I will decided between you and Ms. Woodhead what  
14 the time should be.

15 MR. PIERCE: Sounds great.

16 JUDGE BLOCH: Thank you.

17 The hearing is adjourned. I want to thank you  
18 both for participating.

19 [Whereupon at 10:52 a.m. the telephone conference  
20 was adjourned.]

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REPORTER'S CERTIFICATE

This is to certify that the attached proceedings  
before the United States Nuclear Regulatory  
Commission  
in the matter of:

NAME OF PROCEEDING: Kenneth G. Pierce

DOCKET NUMBER: 55-30662-EA

PLACE OF PROCEEDING: Bethesda, MD

were held as herein appears, and that this is the  
original transcript thereof for the file of the  
United States Nuclear Regulatory Commission taken  
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*Michael Paulus*  
\_\_\_\_\_  
Official Reporter  
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