



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

March 31, 1978

MEMORANDUM FOR: Chairman Hendrie
Commissioner Gilinsky
Commissioner Kennedy
Commissioner Bradford

FROM: *JK* James L. Kelley
Acting General Counsel

SUBJECT: TV POLICY -- MIDLAND HEARING

The Licensing Board has requested guidance from the Commission regarding television coverage of portions of the Midland proceeding which may involve discussions of the past culpable conduct of individuals.

On January 27, 1978, the Commission issued a General Statement of Policy declaring that on a 6 month trial basis, the Commission will permit the use of television and still cameras during proceedings before the Atomic Safety and Licensing Board Panel and the Atomic Safety and Licensing Appeal Boards. This change in Commission policy was based in part upon an Administrative Conference Recommendation that audiovisual coverage of administrative proceedings be permitted under certain circumstances. The Conference recommended, however, that camera coverage be excluded in adjudicatory proceedings "involving the rights or status of individuals in which individual past culpable conduct and other aspects of personal life is a primary subject of adjudication and the person in question objects to coverage."

The Commission in adopting its policy statement did not focus on the exceptions recommended by the Administrative Conference and the Commission did not include any such exceptions.

In the Midland proceeding a prehearing conference has been scheduled for April 20-21. One issue on the agenda to be considered flows from the Appeal Board order in ALAB-458 directing the Licensing Board to "fully air" the issue whetne

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Consumers Power Company attempted to prevent full disclosure of facts relating to Dow Chemical's intentions regarding Dow's contract to buy processed steam from Consumers Power. At this pre-hearing conference this issue will be discussed and may involve charges reflecting on the conduct of a number of individuals allegedly involved in these events. Such charges could reflect on the reputations of individuals before any evidence is introduced.

It is the present intention of the Licensing Board to conduct the entire pre-hearing conference in open session. Consistent with the January 27 Policy Statement coverage by the broadcast media will not be restricted. The Office of the Atomic Safety and Licensing Board Panel, however, wished to inform the Commission that in this case permitting television coverage could result in dissemination of information involving alleged past culpable conduct of individuals. It believes the Commission should set forth its position on this aspect of camera coverage.

The Office of the General Counsel recognizes that this pre-hearing conference may be analogous to a grand jury proceeding where charges in the form of a proposed indictment are being considered. In the prehearing conference there will be little, if any, opportunity to explore the merits of the matter or to put on evidence to give a balanced picture. A 30 minute television broadcast could widely, and perhaps unfairly disseminate information regarding alleged culpable conduct of a given individual. However, we believe that the parties involved have the opportunity to protect any privacy interests. Parties are free to file a motion with the Licensing Board requesting that portions of the hearing pertaining to the Dow-Consumers relationship be conducted in camera (closed to both the public and the press). If none of the participants chooses to file such a motion we find no basis for the Commission to exclude audiovisual coverage. If a participant files such a motion the Board will hear from all parties before making a decision whether the public and media should be excluded from the proceeding.

It can be argued that there may be circumstances where the Commission might prefer only the print media to cover a proceeding because some believe it presents a more balanced view of administrative proceedings, but the Commission in adopting its January 27 policy statement appears to have taken the position that there should not be discrimination

between the various media forms. OGC finds no basis for discriminating between the print and audiovisual media in this proceeding. Therefore, we are recommending that consistent with the Commission's January 27 statement no additional restrictions be placed on television coverage of the Midland proceeding.

Nonetheless, the generic issue of whether audiovisual coverage of portions of proceedings that involve alleged past culpable conduct of individuals should be treated in some fashion different from other adjudicatory matters is an issue that should be specifically addressed at the end of the trial period before the Commission issues a final policy statement on audiovisual coverage of its proceedings.

Recommendation: Unless the Commission expresses a contrary intention, OPA will issue a press release as scheduled on April 10 stating that a prehearing conference will be held on April 20-21. No restrictions on audiovisual media coverage will be mentioned in that press release. 1/

Coordination: OPA, ASLBP and OPE have no objection to this recommendation.

cc: J. Yore, ASLBP
L. Gossick, EDO
H. Shapar, ELD
K. Pedersen, OPE
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SECY (2)

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If the Commission disagrees with this recommendation, it will need to issue a statement modifying its January 27 policy statement.