

02/07/83

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

PUBLIC SERVICE COMPANY OF OKLAHOMA,
ASSOCIATED ELECTRIC COOPERATIVE, INC.

AND

WESTERN FARMERS ELECTRIC COOPERATIVE,
INC.

(Black Fox Station, Units 1 and 2)

Docket Nos. STN 50-556
STN 50-557

NRC STAFF RESPONSE TO APPLICANT'S MOTION
FOR TERMINATION OF PROCEEDING AND WITHDRAWAL OF APPLICATION

I. INTRODUCTION

On January 23, 1983, Public Service Company of Oklahoma, Associated Electric Cooperative, Inc. and Western Farmers Electric Cooperative (Applicants) filed a Motion for Termination of Proceeding and Withdrawal of Application in the captioned docket. As discussed below, the NRC Staff urges that the Board grant the Applicants' Motion for Termination of the Proceeding and Withdrawal of its Application subject to the imposition of a number of conditions.

II. BACKGROUND

On June 18, 1982, the Board denied without prejudice a motion requesting that this proceeding be terminated and that Applicants be allowed to withdraw their application. As a follow-up matter to this denial the Board issued an Order dated January 7, 1983 requesting that the Applicants advise the Board on or before January 21, 1983, whether a

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decision had been made with respect to the use of the Black Fox site for alternative power generation projects.^{1/} The Order required status reports from the Applicants every thirty days if no decision had been made. However, if a decision had been made, the Applicants were to advise the Board of the "fate of every facility and other improvement made at the site under the Limited Work Authorization (LWA) as amended."^{2/} If a determination had been made not to construct alternative projects at the site, the Applicants were to "commit themselves in detail to remove the construction buildings and facilities, to back-fill the excavations, and to redress the site as nearly as possible to its pristine condition."^{3/}

On November 26, 1982, Public Service Company of Oklahoma (PSO) announced plans for the construction of the Inola Station, a coal-fired electric power generating station, to be built at the site of the cancelled Black Fox Station nuclear project.^{4/} Planning for the design of the Inola Station layout and site facilities is expected to begin during 1984.^{5/} In its response to the Board's Order, dated January 23,

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- ^{1/} By Order dated January 24, 1983 the Board granted the Applicants' motion for leave to file two days out of time.
- ^{2/} The Limited Work Authorization was issued on July 26, 1978 (43 Fed. Reg. 3397 (August 2, 1978)) and subsequently amended on September 6, 1978, November 30, 1978, and July 24, 1979.
- ^{3/} Atomic Safety and Licensing Board Order, January 7, 1983
- ^{4/} Affidavit of John B. West, Ph.D., Black Fox Station, Units 1 and 2, January 14, 1983.
- ^{5/} Id. at paragraphs 3-4.

1983, Applicants committed to (1) dismantle unnecessary Black Fox site improvements which will not be utilized and to return disturbed site areas to conditions consistent with the site development and environmental requirements of a coal-fired electric power-generating station, (2) complete the soil stabilization program approved by the NRC Staff^{6/} and maintain the site so as not to adversely impact the surrounding offsite environment.^{7/}

III. DISCUSSION

Pursuant to 10 C.F.R. §2.107(a) an application may be withdrawn subject to the imposition of appropriate conditions, including terms and conditions dealing with site restoration.^{8/} In support of its motion to terminate and withdraw its application, the Applicants have proposed a soil stabilization plan whose implementation the NRC Staff concluded would adequately stabilize the soil.^{9/} With respect to implementation of the plan, the Applicants developed a schedule which calls for the completion of all phases of the one year plan in September 1983.^{10/}

^{6/} Letter from Thomas M. Novak, Assistant Director for Licensing, Division of Licensing, USNRC to John B. West, Black Fox Station Nuclear Project, Sept. 4, 1982.

^{7/} West affidavit at paragraph 5

^{8/} Toledo Edison Company (Davis-Besse Nuclear Power Station, Units 2 and 3), ALAB-622, 12 NRC 667 (1980); ALAB-652, 14 NRC 627 (1981)

^{9/} Letter from Novak to West supra. This plan is the same as the one attached to the Applicants' January 23, 1983 Motion to Terminate.

^{10/} BFS Soil Stabilization and Erosion Control Plan, August 30, 1982.

The Staff has reviewed and approved the Applicants' proposed soil stabilization plan, as noted above. In addition, the Applicants now propose to dismantle and remove improvements that were made at the site which will not be needed in connection with its proposed future use, as suggested by the Board in its June 18, 1982 Order. The Applicants' proposal to undertake remedial action in connection with its request to terminate this proceeding and withdraw its application is analogous to the circumstances that existed in the Bailly proceeding.^{11/} Therein, the Board concluded that the applicant's "willingness to bind itself to the exact terms of the current site restoration plan and Staff's confidence in its ability to insure the implementation of the site restoration plan even in the absence of live proceeding over which the NRC has undisputed jurisdiction" was sufficient to warrant termination before actual completion of the plan. In this proceeding, as in Bailly, the Applicants' commitments, along with the Staff's continuing responsibilities to monitor completion as proposed, provide the requisite assurance that the conditions will be satisfied. Accordingly, subject to imposition of conditions which require the timely implementation of the soil stabilization plan and removal of unnecessary site improvements in a manner that will not cause any onsite or offsite detrimental environmental impacts, the Staff urges the Board to grant the Applicants' Motion.

^{11/} See Northern Indiana Public Service Company (Bailly Generating Station Nuclear, 7 LBP-82-29, 15 NRC 762 (1982)).

IV. CONCLUSION

For the reasons stated above, the Staff believes that the Licensing Board should grant the Applicants' motion to terminate this proceeding and allow Applicants to withdraw their application for a construction permit for Black Fox Station without prejudice, on condition that the Applicant (1) implement the BFS Soil Stabilization and Erosion Control Plan as proposed not later than October 1, 1983 and (2) dismantle site improvements which will not be utilized so as not to cause any onsite or offsite detrimental environmental impacts.

Upon granting the Applicants' Motion for Termination of Proceedings and Withdrawal of Application, all prior decisions authorizing the issuance of the LWA as amended should be vacated by the Board and the Director of the Office of Nuclear Reactor Regulation authorized to revoke the outstanding LWA.^{12/} See Toledo Edison Co. et al. Davis-Besse Nuclear Power Station, Units 2 and 3) ALAB-622, 14 NRC 627 (1981).

Respectfully submitted,



Elaine I. Chan
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 7th day of February, 1983

^{12/} A Limited Work Authorization for Black Fox Station was granted on July 26, 1978, Public Service Co. of Oklahoma, et al., (Black Fox Station, Units 1 and 2), LBP-78-26, 8 NRC 102, 175-177, pursuant to 10 C.F.R. §50.10(e)(1) and subsequently amended on September 6, 1978, November 30, 1978, July 24, 1979.

In order to effectuate termination of all aspects of this proceeding, we anticipate that the Applicants will request to terminate those matters pending before the Atomic Safety and Licensing Appeal Board.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO APPLICANT'S MOTION FOR TERMINATION OF PROCEEDING AND WITHDRAWAL OF APPLICATION" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, this 7th day of February 1983: —

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