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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC LICENSING AND SAFETY APPEAL BOARD

In the Matter of the Application of)
Public Service Company of Oklahoma)
Associated Electric Cooperative, Inc.) Docket Nos. STN 50-556
and) STN 50-557
Western Farmers Electric Cooperative)
(Black Fox Station, Units 1 and 2))

MOTION TO DISMISS

Public Service Company of Oklahoma, Associated Electric Corporation, Inc. and Western Farmers Electric Cooperative ("Applicants") hereby move the Atomic Safety and Licensing Appeal Board to enter an order dismissing the remaining environmental issue pending before it in the Black Fox Station Licensing proceeding. In support of the Motion, Applicants state:

1. On December 7, 1979, the Atomic Safety and Licensing Appeal Board affirmed, in part, the initial decision of the Atomic Safety and Licensing Board in the Black Fox Station docket.^{1/} The initial decision decided the environmental phase of the licensing proceeding and sanctioned a limited work authorization ("LWA") for pre-construction activities at the Black Fox Station Nuclear Plant.^{2/} As part

^{1/} ALAB-573, 10 NRC 775 (1979).

^{2/} LBP-78-26, 8 NRC 102, modified, LBP-78-28, NRC 281 (1978).

of its decision in ALAB-573, the Appeal Board retained jurisdiction to review further one aspect of the initial decision, namely, the effect, if any, of emissions attributable to the mining and milling of uranium for use as fuel in the Black Fox Station (and other) nuclear power reactors (the "radon issue") on the environmental cost-benefit balance required to be performed for the Black Fox Station nuclear plant.^{3/} This matter remains pending for the Appeal Board's consideration.

2. On February 16, 1982, Applicants announced their decision to cancel the Black Fox Station nuclear project. In light of that decision, on April 6, 1982,^{4/} and again on January 23, 1983,^{5/} Applicants' moved the Atomic Safety and Licensing Board, pursuant to 10 C.F.R. §2.107(a), to enter an order terminating the Black Fox Station proceeding and permitting Applicants to withdraw, without prejudice,

^{3/} 10 NRC at 807. The Appeal Board had deferred review of this matter pending the completion of separate proceedings. See, Philadelphia Electric Co., et al., (Peach Bottom Station, Units 2 and 3), ALAB-480, 7 NRC 796 (1978); ALAB-562, 10 NRC (1979).

^{4/} Applicants' April 6, 1982 Motion was denied by the Licensing Board, without prejudice, on June 18, 1982.

^{5/} Applicants filed their January 23, 1983 Motion based on the November 26, 1982 publically announced decision to construct the Inola Station, a coal-fired electric power-generating station, to be built at the site of the cancelled Black Fox Station nuclear project. See Further affidavit of John B. West, Black Fox Station project manager, with accompanying attachments, dated January 14, 1983. Exhibit 4, as submitted with Applicants' January 23, 1983 Motion.

their application for construction permits. These motions were supported by the NRC Staff^{6/} and were not objected to by Intervenor or by the State of Oklahoma, as an interested state.^{7/} On March 7, 1983, the Licensing Board granted, subject to certain conditions, Applicants' Motion to terminate and withdraw its application for construction permits.^{8/}

3. The Licensing Board's March 7 Order vacated the Partial Initial Decision, LBP-78-26, 8 NRC 102 (1978), authorizing issuance of the LWA for Black Fox Station, Units 1 and 2. Order at 3. The Order also authorized the Director of Nuclear Reactor Regulation to revoke the outstanding Black Fox Station LWA, as amended, and to cause to be published in the Federal Register a notice of withdrawal of the application for construction permits.

4. The March 7, 1983 Order effectively terminated, without prejudice, all Licensing Board proceedings in the Black Fox Station construction permit docket, thereby rendering resolution of the radon issue moot. Therefore, in

^{6/} Reply of NRC Staff, dated June 2, 1982, and February 7, 1983.

^{7/} State of Oklahoma's Response to Applicants' Motion for Termination of Proceeding and Withdrawal of Application, dated February 25, 1983. Intervenor did not file a response to either motion.

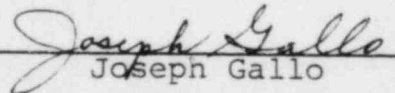
^{8/} Licensing Board Memorandum and Order (Granting, Without Prejudice, But Subject to Conditions, Applicants' Motion to Terminate and to Withdraw), dated March 7, 1983 (hereinafter "Order").

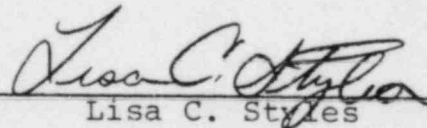
order to close out the Black Fox Station licensing proceeding in its entirety, Applicants request that the Appeal Board vacate its jurisdiction over the radon issue and dismiss the instant proceeding.

5. Counsel for the NRC Staff has no objection to the grant of Applicants' motion. Counsel for Intervenor and the Attorney General for the State of Oklahoma also do not object to the grant of the motion.

For good cause shown, Applicants' motion should be granted.

Respectfully submitted,


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Dated: April 7, 1983

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CERTIFICATE OF SERVICE

I hereby certify that copies of MOTION TO DISMISS in the above-captioned proceeding were served upon the persons shown below by deposit in the United States mail, first-class postage prepaid, this 4th day of January, 1983.

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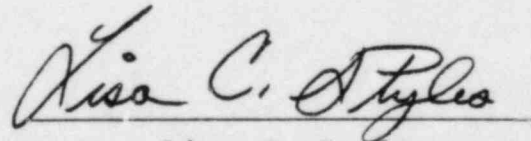
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