

July 17, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

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Before the Atomic Safety and Licensing Board

In the Matter of)
)
KANSAS GAS AND ELECTRIC COMPANY, et al.) Docket No. STN-50-482 O L
(Wolf Creek Generating Station,)
Unit No. 1))

APPLICANTS' MOTION FOR CLARIFICATION
OF INITIAL DECISION

I. INTRODUCTION

On July 2, 1984, the Atomic Safety and Licensing Board issued its Initial Decision in the operating license hearing for Wolf Creek Generating Station, Unit No. 1. Applicants hereby move the Licensing Board for clarification of (i) that part of its Order which would require the satisfaction of two conditions relating to offsite emergency planning prior to issuance of an operating license (as contrasted with authority for operation at greater than 5% of rated power), (ii) the scope of Condition 1 of the Order (which requires the procurement by Coffey County of letters of agreement with hospitals in surrounding counties for the acceptance of evacuated patients from Coffey County Hospital and Golden Age Lodge Nursing Home), and (iii) the Licensing Board's description (in its Opinion and Findings of Fact) of the

means for notification of the portion of Redmond Reservoir which is under the jurisdiction of the United States Fish and Wildlife Service ("USFWS").

Counsel for Applicants have contacted counsel for the other parties to this proceeding (intervenors, the NRC Staff and FEMA) and have been authorized to state that the other parties concur in this motion.

II. ARGUMENT

A. Time For Satisfaction of License Conditions

The Licensing Board's Order, at page 110 of the Initial Decision, specifies that two conditions related to the offsite emergency plans must be "met prior to issuance of an operating license." Since fuel cannot be loaded, and low power testing cannot be accomplished, prior to the issuance of an operating license, the effect of the condition, interpreted literally, is to prevent fuel loading and low power testing prior to satisfaction of the specified conditions. This consequence is contrary to customary Commission practice pursuant to a relatively recent amendment of the Commission's regulations at 10 C.F.R. § 50.47(d).¹

1/ Applicants acknowledge the licensing board's decision in similar circumstances in Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), Docket No. 50-382-OL, "Memorandum and Order (Re Applicant's Motion for Reconsideration or Clarification)" (December 14, 1982). However, customary NRC practice is to issue operating licenses which "[p]ending Commission approval" are "restricted to power levels not to exceed five percent of full power,"

(Continued on next page)

Section 50.47(d), added effective as of July 13, 1982,
47 Fed. Reg. 30232 (July 13, 1982), specifies that:

... no NRC or FEMA review, findings, or determinations concerning the state of offsite emergency preparedness or the adequacy of and capability to implement State and local offsite emergency plans are required prior to issuance of an operating license authorizing only fuel loading and/or low power operations (up to 5% of the rated power).

(Emphasis supplied).

Both of the conditions imposed by the Order relate exclusively to offsite emergency planning. Accordingly, Applicants request that the first sentence of the Licensing Board's Order be modified to read (with the proposed change indicated by underscoring):

WHEREFORE, IT IS ORDERED, in accordance with 10 C.F.R. § 2.760a and 10 C.F.R. § 50.57, that the Director of Nuclear Reactor Regulation is authorized to issue to the Applicants, upon making requisite findings with respect to matters not embraced in this Initial Decision, a license authorizing the operation of the Wolf Creek Generating Station, Unit No. 1, provided that the following conditions are met prior to authorization of operations of greater than 5% of the rated power.

(Footnote continued)

even in the absence of a motion filed pursuant to 10 C.F.R. § 50.57(c). See, e.g., Facility Operating License No. NPF-22, issued to Pennsylvania Power & Light Co., and Allegheny Electric Cooperative, Inc., for Susquehanna Steam Electric Station, Unit 2 (Docket No. 50-388) (March 23, 1984). In any event, Applicants' concerns would be satisfied with explanatory language similar to that of the licensing board in Waterford, supra.

B. Letters of Agreement With Host Health Care Facilities

The first of the two license conditions imposed by the July 2, 1984 Initial Decision provides:

Letters of agreement shall be signed by Coffey County with hospitals in surrounding counties providing for the acceptance of patients from the Coffey County Hospital and the Golden Age Lodge Nursing Home in the event of an emergency evacuation occasioned by an accident at the Wolf Creek plant. These executed letters of agreement shall be submitted to the NRC Staff and shall be included in the Coffey County Plan.

(Emphasis supplied). However, as the Licensing Board recognized in paragraph 50 of its Findings of Fact (at page 74 of its Initial Decision), at least one area nursing home has agreed to accept nursing home patients from Coffey County in an evacuation. Accordingly, Applicants request that the language of the first license condition be modified to substitute the word "health care facilities" for "hospitals," to give local authorities maximum flexibility in allocation and utilization of health care resources in emergency preparedness.²

2/ Applicants note that the proposed modification would necessitate conforming changes to the Initial Decision at page 25.

C. USFWS Notification of Portion of Redmond Reservoir

As the Licensing Board recognized in paragraph 24 of its Findings of Fact (at pages 63 to 64 of the Initial Decision), three sirens will cover all areas of Redmond Reservoir within the plume EPZ, "except for a small portion of land to the extreme west of the recreation area, under the jurisdiction of the U.S. Fish and Wildlife Service." However, the Licensing Board continued, "The Fish and Wildlife Service will use its siren equipped vehicles to cover its jurisdictional area * * *."

As Applicants noted in their proposed findings, USFWS will rely on siren vehicles to warn only that small area within its jurisdiction not already covered by sirens. See "Applicants' Proposed Findings of Fact, Conclusions of Law, and Brief In The Form Of A Proposed Initial Decision," at 29, 148 (Para. 170), 151 (Para. 174). Applicants therefore request that the Initial Decision be modified to reflect the plan for USFWS siren vehicle notification of only that small portion of Redmond Reservoir not within siren range.³

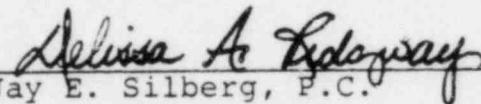
3/ The proposed modification would necessitate changes to the Initial Decision at pages 17 and 64.

III. CONCLUSION

For the foregoing reasons, Applicants request that the Licensing Board clarify (i) its Order to reflect that the two conditions imposed must be satisfied prior to operation above 5% power, (ii) its Order to permit local authorities to secure written agreements with both hospitals and nursing homes in surrounding counties for the acceptance of evacuees from both Coffey County Hospital and Golden Age Lodge nursing home, and (iii) its discussion of the notification of the public at Redmond Reservoir to reflect reliance on USFWS siren vehicles to notify only that small portion of USFWS territory within the EPZ which is not within acoustical siren range.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE



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Dated: July 17, 1984

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Unit No. 1))

CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing "Applicants' Motion for Clarification of Initial Decision" were served by deposit in the United States Mail, first class, postage prepaid, this 17th day of July, 1984, to all those on the attached Service List.

Delissa A. Ridgway
Delissa A. Ridgway

DATED: July 17, 1984

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