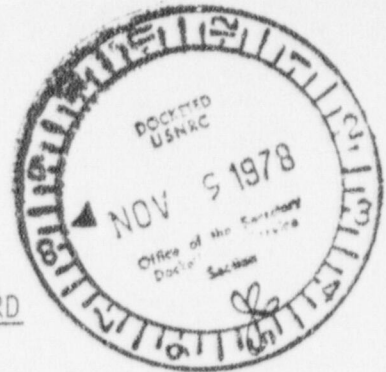


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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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. )

Docket Nos. STN 50-556  
STN 50-557

(Black Fox Station, Units 1 and 2) )

ORDER

On October 13, 1978, Applicants filed a Motion To Dismiss Lawrence Burrell As A Party To These Proceedings. On October 26 and November 2, 1978 respectively Intervenor, Lawrence Burrell, and the Staff filed Responses.

In the instant Motion, Applicants request that the Board dismiss Mr. Burrell as a party and dismiss his Contentions 65<sup>1/</sup>(ATWS) and 66 (Sabotage) because he failed to offer the testimony of Dr. Richard Webb upon these two Contentions, which was the basis for Mr. Burrell's admission as a party.

To the extent dismissal of Contention 66 is requested, the instant Motion is denied as having been mooted. Apparently all parties have

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<sup>1/</sup> Applicants refer to the ATWS Contention as Contention 67 while Mr. Burrell and the Staff refer to it as Contention 65. We are unaware of the reason for the difference in numbering, but, absent clarification from the parties and for the purposes of this Order, we will refer to Contention 65.

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forgotten that our Order Ruling On Motions For Summary Disposition dated September 8, 1978, slip op. at 58, 8 NRC \_\_\_\_\_, dismissed Contention 66 and stated that we would hear evidence on Board Question 66-1. With regard to Board Question 66-1, Applicants did not call a witness, the Staff presented the testimony of Mr. Pasedag (fol. Tr. 6189), and counsel for the Intervenors withdrew the offer of Mr. Hubbard's prefiled testimony at Tr. 6227. In any event, the right to object to Mr. Hubbard's testimony upon either Contention 66 or Board Question 66-1 expired on October 4, 1978. Our unpublished Order of August 28, 1978, directed, among other things, that, on or before October 4, 1978, the parties should submit, in summary form, objections to the qualifications of witnesses and any objections to the testimony of any witness in whole or in part. In their Objections To Prefiled Testimony filed on October 4th, while objecting to Mr. Hubbard's prefiled testimony on the grounds of irrelevancy, immateriality and of incompetency to draw legal conclusions, Applicants did not object on the ground that Mr. Hubbard's testimony upon either Contention 66 or Board Question 66-1 had been improperly offered in lieu of Dr. Webb's testimony. Having failed to timely object, Applicants cannot be heard now to seek the dismissal of Contention 66 (or of Board Question 66-1, if that be the thrust of their Motion).

To the extent dismissal of Contention 65 is requested, the instant Motion is denied because it conflicts with Applicants' earlier, binding

submission. In their Objections To Prefiled Testimony filed on October 4, 1978, Applicants specifically stated "No objections" to the testimony of Gregory C. Minor regarding Contention 65.<sup>2/</sup>

Finally, we deny the balance of the Motion which requests the dismissal of Mr. Burrell as a party. Applicants argue that this Board's Third Prehearing Conference Order (LBP-77-17, 5 NRC 657 (1977)) and, more particularly, the Appeal Board's affirming decision (ALAB-397, 5 NRC 1143 (1977)) reflect that discretionary intervention was allowed solely because Mr. Burrell had represented that he would call upon Dr. Richard Webb to testify as an expert witness and because Dr. Webb's testimony on these two contentions might be of assistance in developing the record thereon. Applicants urge that since no testimony was filed by Dr. Webb on either of the two contentions and since no reason has been advanced for this failure, the very basis of Mr. Burrell's participation has not been satisfied and he has lost his standing for further participation in this proceeding. However, in the first place, our Order and the Decision of the Appeal Board, supra, reflect that Mr. Burrell had also been granted discretionary intervention because his two contentions had not been raised by earlier admitted intervenors and because it appeared that said contentions were worthy of exploration. Second, we are unaware of and Applicants do not

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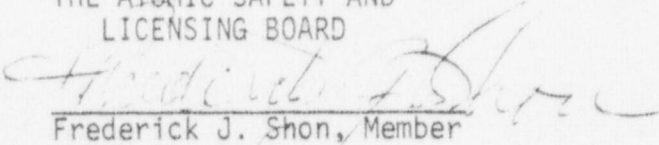
<sup>2/</sup> The Staff's Response, while basically opposing the instant Motion, does state that the Staff believes that one part of the Applicants' Motion is meritorious - viz. that that portion of the ATWS Contention dealing with "credible class 9 accidents" should be dismissed because Mr. Minor's prefiled testimony does not address that subject. We disagree. Mr. Minor's testimony does address very large accidents and, in particular, alleges that certain accident sequences analyzed in NUREG-0460 would result in "core melt and/or subsequent containment failure".

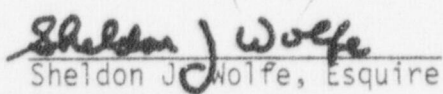
cite any case wherein it has been held that a party may not, upon timely notice, substitute expert witnesses. Pursuant to our unpublished Order of August 28, 1978, the written testimonies of Messrs. Hubbard and Minor were prefiled on September 25, 1978.<sup>3/</sup> As discussed above, Applicants did not object to this substitution in their Objections To Prefiled Testimony filed on October 4, 1978. Finally, the factual circumstances in the cases cited by the Applicants which led to the dismissal, forfeiture or default of intervening parties are completely divorced from the circumstances in the instant proceeding. While Mr. Burrell has been unable to attend the proceedings because of illness, we are advised that at all times pertinent herein he has been represented by counsel, that, due to financial constraints, he engaged Messrs. Hubbard and Minor as expert witnesses, and that he intends to fully participate in this proceeding. (See Intervenor's Response To Applicants' Motion To Dismiss and Mr. Burrell's affidavit appended thereto).

Dr. Purdom concurs but was unavailable to sign the instant Order.

IT IS SO ORDERED.

THE ATOMIC SAFETY AND  
LICENSING BOARD

  
Frederick J. Shon, Member

  
Sheldon J. Wolfe, Esquire  
Chairman

Dated at Bethesda, Maryland  
this 8th day of November, 1978.

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<sup>3/</sup> Counsel for Mr. Burrell, who also represent Citizens Action For Safe Energy (CASE), advised that the said testimonies had been prepared upon Mr. Burrell's instructions but had been erroneously submitted under the CASE designation (Burrell Response, p. 7).