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November 22, 1978

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U.S. Nuclear Regulatory  
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Washington, D.C. 20555

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Re: In the Matter of 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) )

Gentlemen:

Applicants are filing this letter in lieu of a response in opposition to Intervenor's motion for reconsideration of ALAB-505.<sup>1/</sup> As explained below, Applicants do not believe a response to Intervenor's motion<sup>2/</sup> is either warranted or required.

In ALAB-505, the Intervenor's request for a stay of the LWA for the Black Fox Station was denied because Intervenor failed to address the factors set forth in 10 CFR § 2.788(e)(2), (3) and (4). In their motion for reconsideration, Intervenor now contend that these factors need not be addressed when as in the case at bar the LWA was issued in contravention of existing federal law. Although Intervenor reiterate their arguments concerning the issue

<sup>1/</sup> Memorandum and Order, dated November 2, 1978 (ALAB-505).

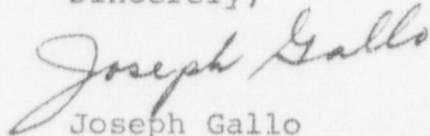
<sup>2/</sup> See "Intervenor's Motion To Reconsider Memorandum and Order of November 2, 1978," dated November 7, 1978.

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on appeal, i.e., whether the Licensing Board erred in finding a waiver of the section 401 certification requirement, the notion that three of the Petroleum Jobbers<sup>3/</sup> factors may be disregarded in the circumstances of this case is advanced without the support of case citation or legal analysis. A response is therefore not warranted.

Despite the foregoing deficiency, Applicants would have briefed the question<sup>4/</sup> in the absence of Appeal Board guidance to the contrary. The Appeal Board has previously stated that responses by other parties to motions for reconsideration are only necessary when requested by the Appeal Board, and indeed, the absence of such a request indicates a strong presumption that the motion will be denied.<sup>5/</sup> We are mindful that some might construe recent Appeal Board decisions to represent a departure from the Maine Yankee guidance;<sup>6/</sup> but we believe the better view to be that the Maine Yankee guidance remains inviolate until expressly overruled. If the Appeal Board's view is otherwise, Applicants request the grant of a reasonable time to brief the merits of the issues raised by Intervenors' motion.

Sincerely,



Joseph Gallo  
One of the Attorneys  
for the Applicants

JG/kar  
cc: Service List

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- 3/ Virginia Petroleum Jobbers Association v. Federal Power Commission, 259 F.2d 921 (D.C. Cir. 1958).
- 4/ In Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-437, 6 NRC 630 (1977), the Appeal Board has indicated a question remains as to whether in the absence of substantial equity in the movant's favor on the other three factors, a stay can be granted solely on the basis of a strong showing on the merits. (6 NRC 630, 632 at fn. 4).
- 5/ Maine Yankee Power Co. (Maine Yankee Atomic Power Station), ALAB-166, 6 AEC 1148, 1150 at fn. 7 (1973).
- 6/ Public Service Company of New Hampshire et al. (Seabrook Station, Units 1 and 2), ALAB-356, 4 NRC 525, 540-41 (1976) and ALAB-366, 5 NRC 39, 44 at fn. 4 (1977).