

Hdqtrs. PDR



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

IN THE MATTER OF)	
)	DOCKET NOS. STN 50-556
PUBLIC SERVICE COMPANY OF)	STN 50-557
OKLAHOMA, ASSOCIATED ELECTRIC)	
COOPERATIVE, INC. and WESTERN)	
FARMERS ELECTRIC COOPERATIVE,)	
INC.,)	
)	
(Black Fox Station, Units 1)	
and 2))	

INTERVENORS' MOTION TO RECONSIDER MEMORANDUM AND ORDER OF
NOVEMBER 2, 1978

Intervenors request that the Atomic Safety and Licensing Appeal Board reconsider its order of November 2, 1978, denying Intervenors' Application for a Stay of the Limited Work Authorization.

1. Intervenors understand the ruling to be that the failure to demonstrate grounds for a stay under the categories of 10 CFR §2.788 was the basis for the ruling.

2. Intervenors also understand the Board's statements on page 6 concerning "second chances" and the purpose of this Motion is not to disregard that advice.

3. Next, Intervenors are, and were, cognizant of the four categories. However, as stated below, Intervenors believe that the basis for the application does not require that these categories be discussed because of a clear statutory prohibition forbidding issuance of the LWA under

the facts.

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4. Section 401(a)(1) [33 U.S.C.S. §1341(a)(1)] specifically forbids issuance of an LWA in the absence of certification. There is no provision for "equity", i.e., irreparable injury and harm to other parties. Congress has specified where the public interest lies. Therefore, categories (2), (3), and (4), Memorandum and Order, page 4, just do not apply and consequently were not discussed in Intervenors' Motion for Stay.

5. (a) Category (1) does not specifically apply. In other words, the question is not whether Intervenors are "likely to prevail". The statute is clear and concise. The facts are simple: There has been no state certification and there has not been a waiver.¹

(b) The question is whether the LWA may issue in light of the law forbidding issuance. The resolution of this question, and the granting of the requested stay, just do not fit into the type of grounds envisioned by 10 CFR §2.788. This is the reason for the lack of discussion of the categories and the reason why Intervenors request reconsideration.

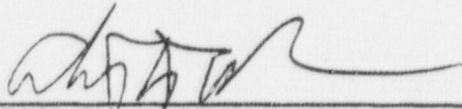
6. In summary, Intervenors' position is that, when a statute specifically forbids an act, questions of harm, irreparable injury and public interest have already been decided by the Congress. In such instances it is necessary to demonstrate only that the forbidden act has occurred and

¹
Intervenors invite the Board's attention to their Motion for Stay and Brief for the detailed argument.

to request appropriate relief. This the Intervenors have done.

Therefore, Intervenors request that this Motion to Reconsider be granted and that, upon reconsideration, the Motion to Stay be granted.

Dated this 7th day of November, 1978.



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing instrument was mailed, postage prepaid, to the following this 7th day of November, 1978.

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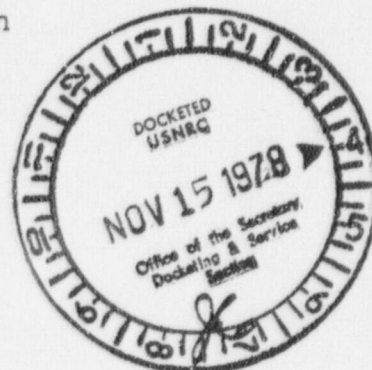
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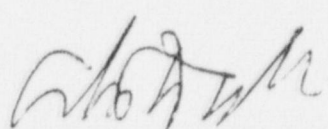
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