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September 8, 1993

Mr. C. Ray Miskelley
Attorney
Office of Chief Counsel
Department of Energy
Field Office, Oak Ridge
P.O. Box 2001
Oak Ridge, TN 37831-8510

Re: Applicability of State Safety Regulations to
DOE Vehicles Managed and Operated by an
Independent Contractor in the Oak Ridge Area

Dear Mr. Miskelley:

I misunderstood that you still wanted a written reply after our telephone conversation. I apologize and I appreciate your patience. I have reviewed your correspondence to the Tennessee Public Service Commission and your correspondence with the Federal Highway Administration (FHA) to attempt to come to my final legal conclusions on this issue.

As I mentioned before this is a conclusion of the legal staff only and should a formal declaratory ruling be requested from the Commission, a different opinion could be expressed in the final order of the Commission. I might add that I feel confident the Commission Staff's legal conclusions in this matter would carry considerable weight in any such formal Commission decision making.

Questions

You have asked the following questions to be answered in this memo:

- 1) Whether TPSC safety regulations and consequently by adoption through PSC Rule 1220-2-1-.20, the Federal Motor Carrier Safety Regulations (FMCSR) apply to the operation of government-owned motor vehicles which are managed and operated by an independent contractor on Department of Energy's (DOE) behalf in Oak Ridge?
- 2) Whether these regulations apply to the operation of these motor vehicles exclusively within the municipal limits of the city of Oak Ridge?

- 3) Whether any other PSC regulations apply to the operation of DOE's motor vehicles?

Answer: No PSC regulation, safety or economic, apply to private freight vehicles confined to operations within the municipal limits of a city. PSC safety jurisdiction would apply to vehicles outside the city limits. Economic jurisdiction may also apply to the vehicles described herein operating outside of city limits.

Facts

According to your correspondence, the DOE owns several facilities (Y-12 Plant, Oak Ridge National Laboratory, and K-25 Site) which are all located within the municipal limits of Oak Ridge, TN. These facilities are connected within the city limits by public roads.

The transportation vehicles serving these facilities are all owned and licensed as government vehicles by the DOE. They are however, operated and maintained by a private (MMES) contractor, Martin Marietta Energy Systems, Inc. which also supplies drivers for the vehicles.

These vehicles exceed 10,000 lbs. and carry both hazardous and non-hazardous materials among the facilities. Approximately six trucks transport items outside of the city limits. These trucks are completely dedicated to DOE use for these facilities. The private contractor does not hold PSC or ICC authority.

Response

1. Your first question pertains to the status of the motor carrier operations of MMES as a private contractor for DOE. The question of whether these motor carrier operations are exempt as government operations pursuant to 49 C.F.R. 390.5 is a matter of interpretation of the FMSCR. In December, 1991, the Federal Highway Administration issued a formal interpretation to Mr. Doug Stancell concerning this factual scenario and legal issue and determined that MMES was a "private motor carrier of property" and was not exempt from federal motor carrier safety regulations as a government/public vehicle. I defer to and concur with this federal agency in the interpretation of federal regulations.

2. Your second question concerns whether these private motor carriers operated by MMES are subject to the FMSCR as a matter of state law for vehicles whose operations are confined to the city limits of Oak Ridge. The TPSC is authorized by T.C.A. § 65-15-113 to promulgate safety rules and regulations for all motor vehicles weighing 10,000 lbs. or more and travelling outside municipal limits. The TPSC adopted all the FMSCR as its state safety

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regulations for motor carriers travelling intrastate and interstate through Tennessee in Rule 1220-2-1-.20. The municipal limits exception in Tennessee state law is not consistent with federal law and regulation. The TPSC is in danger of losing federal funds if this inconsistency is not eliminated but until this phrase is removed from state law, it limits the safety jurisdiction of the TPSC.^{/1}

3. Your third question concerns MMES vehicles travelling outside the municipal limits of Oak Ridge to intrastate destinations. These six vehicles would be subject to state safety jurisdiction and consequently, the FMSCR, as outlined in FHA correspondence to Doug Stancell, dated December 17, 1991. MMES may also need operating authority from the PSC for those vehicles operating outside of Oak Ridge.

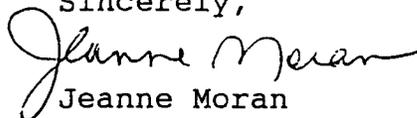
TPSC rule 1220-2-1-.38 (see rule attached) provides for a commercial zone around each city which is free from agency economic regulation. If after reviewing this rule you conclude MMES vehicles transport outside the commercial zone of Oak Ridge then you will need to apply for a contract hauler's permit from the PSC. As a matter of policy, the PSC does not have the authority to disapprove any provisions contained in contracts between motor carriers and the U.S. government. However, the carrier must have the appropriate PSC authority to transport the necessary commodities in the intrastate geographic areas covered by the contract. If you feel that you may need PSC operating authority, please contact our motor carrier division for an application form. (1-800-342-8359, Ext. 2974). You must also cease and desist operations in regulated areas until such authority is granted.

Conclusion

I am available to discuss anything in this memo further with you. Since you have only one or two vehicles which might be subject to PSC economic regulation, you may want to consider altering your operations to avoid this type of regulation.

If you have questions about pursuing a contract hauler's permit from the PSC, please do not hesitate to call me at the above-mentioned number, Ext. 3191.

Sincerely,



Jeanne Moran
Assistant General Counsel

/1 Drivers of MMES vehicles are still subject to commercial drivers license requirements where applicable since these federal regulations are incorporated both by PSC rule and as a matter of state law. T.C.A. Title 55, Chapter 50, Part 4.