

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)

SOUTH CAROLINA ELECTRIC &)
GAS COMPANY)

(Virgil C. Summer Nuclear)
Station))

Docket No. 50-395



APPLICANT'S MOTION TO SCHEDULE A HEARING
DATE OF JANUARY 22, 1980

Introduction

South Carolina Electric & Gas Company ("Applicant") moves the Atomic Safety and Licensing Board ("Board") to set a hearing date of January 22, 1980, for the pending issues in this proceeding ^{1/} in order to dispose of these remaining issues

1/ No hearing would be required, of course, if the Board grants the Applicant's Motion for Dismissal of Intervenor Brett Bursey and Intervenor's Contentions, served on November 29, 1979. In addition to the authorities cited at page 8, footnote 11 of that motion, we received the Licensing Board decision in Georgia Power Co. (Edwin I. Hatch Nuclear Plant, Units 1 and 2), Docket Nos. 50-321 and 50-366, Order Dismissing Proceeding (November 16, 1979). While it happened to involve an instance of the voluntary withdrawal of the intervenor, the Board stated the legal principles generally applicable:

The withdrawal of the only petitioner removes both the need and the occasion for evidentiary hearings in this proceeding. There are no longer any matters which the parties wish to resolve in this proceeding and, consequently, there is no issue to be heard by the Board.

Dismissal of this proceeding is consistent with the Commission's requirements which do not contemplate a hearing on an application for an operating license, or an amendment thereto, in the absence of any matters in controversy or any requests for hearing by interested persons, 10 C.F.R. §2.104, 2.105, 2.714, 50.58(b), and 50.91, and is consistent with the general powers of

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(Footnote 1/ continued on next page)

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promptly and efficiently. The relief sought is based upon this Board's Memorandum and Order, dated August 6, 1979, directing the parties to advise the Board as to any recommendations or plans to proceed with a deliberate and timely consideration of the issues.

Background and Argument

In its Memorandum and Order of August 6, 1979, the Board noted that "[o]rdinarily, the time for the hearing would not be set until the Staff's safety review has been completed." In addition to the possibility of motions for summary disposition on some issues, however, the Board asked the parties "to consider the possibility of identifying issues that can be heard before the Staff's Final Environmental Statement or Safety Evaluation Report as the case may be." The Board then directed each party to report to the Board within 30 days of "any recommendations or plans it has to proceed with a deliberate and timely consideration of issues amenable to early disposition."

By memorandum dated September 6, 1979, the Staff responded that it did not believe that the last remaining environmental contention, A-10 (Health Effects), is amenable to summary disposition, and that the Staff was not yet in a position to state

1/ (Continued)

the presiding officer in 10 C.F.R. §2.718. Moreover, dismissal of a proceeding pursuant to agreement of the parties is consistent with the general policy of administrative law favoring harmonious settlement of contested issues, and with the provisions of 10 C.F.R. §2.759, which specifically encourages the fair and reasonable settlement of NRC licensing proceedings.

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whether the safety contentions, except for A-9 (Quality Control), is amenable to summary disposition at this time. By memorandum dated September 11, 1979, the Applicant also responded to the Board's order, expressing the belief that "the Staff has exalted form above substance in stating that it may not present its case until its Safety Evaluation Report (SER) has been issued." The Applicant suggested that a hearing date of November 13, 1979 could be set for the safety issues in Contentions A-2 (Financial Qualifications/Decommissioning Costs), A-4 (Seismicity) and A-9 (Quality Control).^{2/} The Applicant also noted that the issue of health effects (Contention A-10) was well understood, having been adjudicated

^{2/} As to Contention A-3 (Anticipated Transients Without Scram), the Applicant noted that during the approximately seven years the ATWS review has been pending, many operating licenses have been issued by the Commission. Since the Applicant is committed to adopt the Commission's ATWS "fix," there is no need to forestall a hearing until the Staff completes its safety review.

In Northern States Power Co. (Monticello Nuclear Generating Station, Unit 1), Docket No. 50-263 Order Dismissing Proceeding (October 25, 1979) (copy attached), the Licensing Board dealt with ATWS in authorizing continued operation. Based on the responses from the Staff and Licensee, the Board concluded that the Licensee had committed itself to implement Staff recommendations in the areas of emergency procedures and operating training in order to reduce the ATWS risk until the Commission issues an ATWS rule binding on all licensees. The same resolution should be made for Summer.

in a number of hearings, and urged that the Staff present its position on the issues as soon as possible.

With regard to issue A-8 (Emergency Planning), we believe that developments in the last three months will now enable this matter to be resolved in January with a bit more concentrated effort by the parties. The Applicant has continued to follow the various NRC documentation of the basic changes which may be required, particularly the proposed rule approved by the Commissioners on December 5, 1979 and issued by the Secretary on December 13, 1979. The review teams for the Commission have now completed reviews of many facilities and have given the basic questions to the applicants. Most of the latter are now in the process of providing replies. While a review team has not yet visited Sumner, in our view, the learning curve has now reached the point where the parties can present their positions on the capability of Sumner to meet any necessary basic new requirements. South Carolina has a State emergency plan already approved by the Federal Government, except for additional new requirements.

Pursuant to the Board's earlier directive to state plans or recommendations for a deliberate and timely consideration of the issues, the Applicant believes that the resolution of the issues could best be accomplished by means of a prompt evidentiary hearing rather than summary disposition. We suggest the hearing

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be scheduled to commence January 22, 1980 or shortly thereafter, with testimony to be filed at least ten days in advance or as the Board directs.

The Applicant's basic position on the safety issues is already a matter of record in its FSAR. It should not matter to the Staff whether its evidence is proffered by way of affidavits or prehearing testimony. Further, if the Board sets a hearing date for January 22, 1980, Mr. Bursey would also be required to present any testimony in advance. Mr. Bursey's unwillingness or inability to make known his witnesses and their anticipated testimony known to the Applicant by way of discovery requests and orders has been an obstacle to the prompt and orderly disposition of the pending issues up to this point.

At a minimum, the Board should set a firm, early hearing date for contentions or in the alternative for as many of the pending contentions as possible and grant Applicant leave to file motions for summary disposition on the remaining contentions. As noted in Applicant's earlier responses, it exalts form over substance to say that none of the remaining safety contentions (except Contention A-9) may be decided at an evidentiary hearing or by summary disposition until the formal completion of the Staff's safety review.^{4/}

^{4/} Alternatively, if the Board should determine that Contention A-9 may not proceed to a hearing prior to the filing of the Staff's Final Environmental Statement, 10 C.F.R. §51.52, the Applicant seeks an exemption from the Commission on the FES requirement in order to avoid delay in the hearing.

Respectfully submitted,
CONNER, MOORE & CORBER

Troy B. Conner, Jr.
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Counsel for the Applicant

December 17, 1979

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Docket No. 50-388



CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Motion to Schedule a Hearing Date of January 22, 1979," dated December 17, 1979, in the captioned matter, have been served upon the following by deposit in the United States mail this 17th day of December, 1979:

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