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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of )  
DUKE POWER COMPANY )  
(Perkins Nuclear Station, )  
Units 1, 2 and 3 )

Docket Nos. STN 50-488  
STN 50-489  
STN 50-490

APPLICANT'S OPPOSITION TO INTERVENORS'  
MOTION TO DISMISS PROCEEDINGS OR IN  
THE ALTERNATIVE TO STAY ACTION

On July 10, 1979, Intervenor moved to dismiss these proceedings or, in the alternative, to stay the proceedings indefinitely. Applicant responds pursuant to 10 C.F.R. §2.730(c).

ARGUMENT

I. The Proceeding Should Not Be Dismissed.

Intervenor's motion is based upon an assertion that Applicant is not committed to building Perkins. Attached hereto and made a part hereof is the affidavit of Warren H. Owen, Senior Vice President, Engineering and Construction, Duke Power Company. This affidavit clearly demonstrates that the units are needed, that Applicant is committed to building Perkins and that it intends to bring the first unit into commercial operation in the 1991-1993 timeframe. 1/ So postured,

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1/ Deferral of Perkins until the 1991-1993 timeframe should not serve as a basis for dismissing the proceeding. The lead-time necessary for obtaining appropriate authorizations, and constructing base-load generating (Footnote continued on next page)

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Applicant submits there is no basis for dismissal of these proceedings.

Furthermore, there is no authority for Intervenor's suggestion that the Board dismiss the Perkins application. The application was filed over five years ago. Applicant has actively, and thoroughly, pursued a construction permit at every stage of the lengthy proceeding. Partial Initial Decisions have been issued on all aspects of the application save generic safety and alternative sites; with respect to those issues, the record has been closed and supplemental findings of fact and conclusions of law have been submitted. The issues are now ripe for decision. 2/

In these circumstances, dismissal of the instant proceeding is unwarranted; further, it would be the harshest possible action. Dismissal would render the efforts thus far expended by Applicants, Intervenor, the Commission's Staff, and the Board itself for naught. The public interest would better be served by proceeding as discussed below.

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(Footnote 1 continued)

facilities is long, and uncertainty regarding whether a project will be authorized permeates the regulatory process. This point has been recognized by the Appeal Board. See Duke Power Company (Catawba Nuclear Station, Units 1 & 2), ALAB-355, 4 NRC 397 (1974).

- 2/ Applicant is cognizant of the Board's July 9, 1979 Order deferring its rulings on Intervenor's motion to reopen the record and defer issuance of a decision on generic safety considerations, "until an NRC position on TMI technical information has been determined."

II. The Board Should Proceed To A Decision  
On The Remaining Issues.

In the alternative, Intervenor request that the proceeding be indefinitely deferred. In Douglas Point, 3/ the the Appeal Board squarely rejected the proposition that the Licensing Board must postpone hearings or decision where an applicant indicates a delay in plans for construction:

[We are] most reluctant to ascribe to either Congress or the Commission the unarticulated purpose of requiring, as a matter of law, the deferral of all evidentiary hearings if it should turn out that the applicant will not require the sought permit or license for several more years. Rather, the absence of any rigid scheduling criteria established by statute or regulation suggests that adjudicatory boards were to decide for themselves in such circumstances when hearings should be held on specific issues.

1 N.R.C. at 547. In Douglas Point, the Licensing Board had indefinitely postponed hearings when notified that the applicant had delayed its construction plans. The Appeal Board, however, emphasized that nothing in the Atomic Energy Act, the National Environmental Policy Act, or the Commission's regulations specified that hearings were to be held at any particular time. Id. at 544. Moreover, the Board singled out the very issues that remain for decision in this case as appropriate for early decision. With respect to safety, the Board found that "the licensing board's inquiry is directed to whether the

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3/ Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 & 2), ALAB-277, 1 NRC 539 (1975).

proposed reactor satisfies certain absolute standards prescribed by the Commission." Id. at 545. Whether a given reactor meets the objective safety standards can be determined in a straightforward manner. The Board noted that safety standards may change, or additional evidence be presented on the issue, but commented, "[O]ur experience teaches that there is a very low risk of a massive discrediting of safety findings \* \* \* by reason of developments materializing in the relatively short span of two or three years." Id. at 546.

With regard to siting alternatives, the Board found that prompt consideration would affirmatively serve the public interest:

[I]t should be borne in mind that an early hearing might determine, on evidence unlikely to become stale, that local geological or weather conditions make the proposed site unacceptable. \* \* \* [W]asteful expenditures of both time and money would be obviated by alerting the applicant promptly to the need to find a better location for its plant. The resultant benefit to the public (not just to the applicant) is manifest.

Id. at 546; see also id. at 546-547.

The relevance of the Board's decision in Douglas Point is clear. Safety and siting issues are least likely to be overtaken by events. For example, the evidence adduced, and the Board's findings, as to alternative sites in this case will remain sound for the foreseeable future.

While Douglas Point is relevant with respect to the Board's prompt consideration of the remaining issues in this proceeding, it is also instructive regarding the posture of the instant proceeding. In Douglas Point, the applicant announced its postponement before hearings even commenced. Here, in contrast, the record has been closed and Partial Initial Decisions issued on all but two remaining issues. The record is complete and reflects the most up-to-date evidence; in fact, the record was left open for one year so that the State of North Carolina could complete and submit studies on water use and Applicant's need for power, was reopened to receive evidence regarding releases of radon-222 associated with the uranium fuel cycle, and reopened again, first, to redevelop the Staff's alternative site analysis and, later, to include additional evidence on generic safety issues. We submit that the present posture of this case calls for the issuance of decisions on the outstanding matters.

In an attempt to overcome the above case law, Intervenor's cite the Vogtle case. 4/ Applicant maintains that Vogtle is not applicable hereto inasmuch as the issue before the Appeal Board was predicated upon whether or not applicant therein was going to abandon the project. The attached affidavit of Warren H. Owen makes clear that Applicant herein has no such intention.

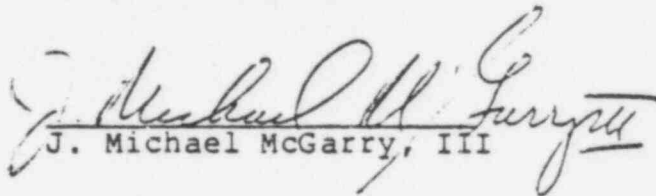
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4/ Georgia Power Co. (Alvin W. Vogtle Nuclear Plant, Units 1 and 2), ALAB-276, 1 N.R.C. 533 (1975).

CONCLUSION

Intervenors' motion should be denied, and the Board should proceed to a decision on the remaining issues in this docket. 5/

Respectfully submitted,

  
J. Michael McGarry, III

Of Counsel:

William L. Porter, Esq.  
Associate General Counsel  
Duke Power Company

July 25, 1979

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5/ While the Board has deferred ruling on generic safety issues (see n. 2, supra), the matter of alternate siting is ripe for decision. Accordingly, Applicant respectfully requests that the Board issue a Partial Initial Decision in this regard. Applicant would note that on July 24, 1979 it consented to the Staff's request for a 60-day extension of time within which to respond to Intervenors' instant motion. This consent should not be viewed as detracting from Applicant's position or its request for an issuance of an alternate site decision forthwith. Rather, the consent was given in light of the Board's ruling that it would defer issuance of a decision on generic safety issues until the Staff review of TMI Unit 2 was completed. Applicant has been informed that the completion of such review will exceed the 60 days requested by the Staff and thus, it is Applicant's position that the additional 60 days that the Staff has requested will not impair the timely resolution of the remaining issue(s) in this proceeding. In the event the Staff's response to the motion raises additional issues, Applicant could request an opportunity to respond thereto. Applicant has contacted Staff counsel on this latter point, and Staff counsel concurs that in the event Staff's response raises additional issues, Applicant should be afforded an opportunity to respond.



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DUKE POWER COMPANY	)	Docket Nos. STN 50-488
	)	50-489
(Perkins Nuclear Station,	)	50-590
Units 1, 2 and 3)	)	

AFFIDAVIT OF W. H. OWEN

W. H. Owen, Senior Vice President, Engineering and Construction, Duke Power Company, having first been duly sworn, hereby states as follows:

On June 15, 1979, my testimony was filed with the North Carolina Utilities Commission (NCUC) in Docket No. E-100 Sub 35. The purpose of this testimony was to discuss Duke's long-range construction schedules and plans, including the need for flexibility to accommodate changing demands, expanding regulatory restraints and increasing lead times for all types of generating capacity. In that testimony I indicated that no final commitments have been made for generation beyond the planned 1989 in-service date for Cherokee Unit 2, although the Company's load forecast indicates that additional generating capacity will be required. My Exhibit 1 to that testimony reflected the operation of Perkins 1 or Cherokee 3 in the Summer of 1991, Cherokee 3 or Perkins 1 in the Summer of 1993, and Perkins 2 in 1995. I am informed that the intervenors in the Perkins proceedings (STN 50-488, 50-489 & 50-490) "moved to dismiss

the Perkins proceedings based on recent decisions by Duke to postpone indefinitely the construction of Perkins Units 1, 2 and 3." This interpretation by the intervenors is incorrect.

Our interest in building Perkins has not changed. My testimony described the firm commitments already scheduled through 1989. Our current load forecast clearly identifies the need for additional generating capacity after 1989 and the NCUC Public Staff confirms this need. Duke continues to believe that nuclear power generation is superior to currently available alternatives and that the Perkins units remain an important and viable option for the post-1989 period. Duke has already made a definite financial commitment to Perkins considering site acquisition, site hearings, licensing, and engineering efforts to date. Duke has already performed much work and expects to perform the necessary work to meet the planned commercial date for Perkins 1. Definite economic advantages accrue by building Perkins since Perkins is part of a six unit standardized approach.

Naturally if the load for Duke does not develop, or if financial constraints or political and regulatory activities preclude construction of Perkins, then Duke would not construct Perkins. However, the Duke forecast shows Perkins 1 to be operational as early as 1991 and as late as 1993. The North Carolina Utilities Commission Public Staff, in its report of June 1979, reflects Perkins 1 operational in the Summer of 1990,



Cherokee 3 in the Summer of 1992, Perkins 2 in the Summer of 1993, and Perkins 3 in the Summer of 1994. The North Carolina Utilities Commission's Order of December 1978 reflects Perkins 1 in the Summer of 1989, Cherokee 3 in the Summer of 1990, and Perkins 2 in the Summer of 1992.

The application for a construction permit has been pending for five years. Orderly business decisions require that Duke be assured of a construction permit. Duke's willingness to build Perkins has not changed.

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W. H. Owen

Subscribed and sworn to before me  
this \_\_th day of July, 1979

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Notary Public

My Commission expires: \_\_\_\_\_

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Opposition to Intervenor's Motion to Dismiss Proceedings or in the Alternative to Stay Action", dated July 25, 1979, and the Affidavit of Warren H. Owen, 1/, in the above captioned matter have been served upon the following by deposit in the United States Mail this 25th day of July.

Elizabeth S. Bowers  
Chairman, Atomic Safety  
and Licensing Board  
U. S. Nuclear Regulatory  
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Dr. Donald P. deSylva  
Associate Professor of  
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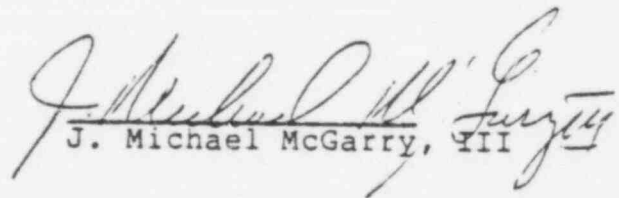
1/ Due to logistical problems, we are attaching hereto an unsigned copy of the Affidavit of Warren H. Owen. We will be sending the original, signed affidavit within a few days.

Mary Apperson Davis  
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Mockeville, North Carolina  
27028

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Licensing Board Panel  
U. S. Nuclear Regulatory  
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Chairman, Atomic Safety and  
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J. Michael McGarry, III