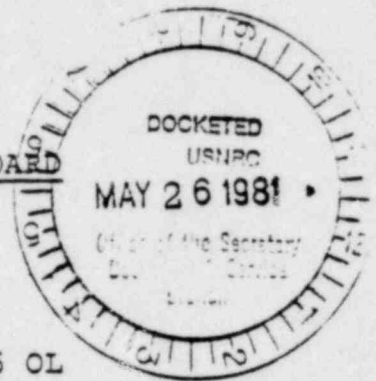


May 22, 1981

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of:

SOUTH CAROLINA ELECTRIC AND)
GAS COMPANY, et al.)

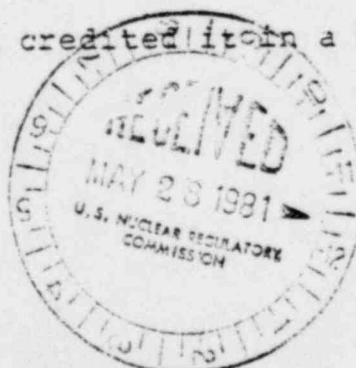
(Virgil C. Summer Nuclear)
Station, Unit 1))

Docket No. 50-395 OL

APPLICANTS' ANSWER TO
FAIRFIELD UNITED ACTION'S
MOTION FOR CONTINUANCE

I. Introduction

On April 30, 1981, the Atomic Safety and Licensing Board issued a Partial Order admitting Fairfield United Action ("FUA") as an extremely late intervenor in the above-designated licensing proceeding. Despite FUA's repeated and unequivocal assurances in its pleadings and during the Prehearing Conference that it would not seek to delay these proceedings, FUA now files a Motion for Continuance of the evidentiary hearings less than two weeks after being admitted as an intervenor. The instant motion should have been taken as casting considerable doubt upon FUA's earlier representations and upon the Board's assessment that admitting FUA would occasion little delay. FUA had shown no legitimate basis for obtaining a continuance in this proceeding and the motion should have been denied outright, but the Board credited it on a May 18, 1981 order.



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That order required that our response to FUA's motion for a continuance in the rate case before the South Carolina Public Service Commission ^{1/}be attached to this Answer and, unless SCE&G joined in FUA's request in the rate case, required SCE&G to detail its role in scheduling the rate case to begin July 23, 1981. SCE&G's response in the rate case (Attachment A^{2/}), satisfies the terms of the May 18, 1981 order. FUA's motion should be denied.

II. Discussion

In FUA's Petition to Intervene, dated March 23, 1981, FUA asserted that, since many of the issues presented in its contentions had been previously raised by other parties, "the full and thorough litigation of these issues by [FUA] will not delay the proceeding any more than if fully litigated by other participants, but for the default of the existing Intervenor." FUA's Petition to Intervene at 6. With regard to the remaining issues, FUA maintained that "the amount by which . . . the proceedings are delayed will be insignificant" Id. Finally, FUA represented in its Petition to Intervene that it "is prepared to cooperate with the Applicant, the Staff, and the Licensing Board in the adoption of measures designed to expedite the proceedings and minimize delay." Id. at 7.

^{1/}The Commission is the state rate regulating body and is not to be confused with the South Carolina Public Service Authority, the state-owned electric utility which is a co-owner/co-applicant here.

^{2/}In both Attachments A and B we have provided telecopied copies of signed copies and also, for legibility, retyped copies. If better signed copies are desired, we will provide them.

FUA made similar, oral representations to the Licensing Board during the Prehearing Conference held on April 7 and 8, 1981, in Columbia, South Carolina. For example, Mr. Robert Guild, then appearing specially for FUA, stated that:

[T]his party [FUA] is committed to exercising due diligence and to working with the Board and the parties to see that the contribution to the record is maximized for this Board and the concomitant delay that flows from its role is minimized. And this is a sincere and serious commitment. (Tr. at 536.)

In his statement supporting FUA's Petition to Intervene, Mr. Guild continued:

That said, we add in the suggestion that we will cause all kinds of undue delay and costs to this Applicant in that we are somehow willfull and designing in coming in at this point to accomplish that end, and they are tied together. Let's examine the second because I essentially have to deny the first and say, prove it or show us something if that is your view of our motives, (Tr. at 558).

In its pleadings and during the course of the prehearing conference, FUA seemed intent upon convincing this Board that its intervention would not delay the proceedings. Applicants maintain that the instant Motion for Continuance is contrary to the substance and spirit of FUA's earlier representations. In any event, SCE&G has responded to FUA's request in the rate case by supporting a reasonable continuance. SCE&G cannot control whether the South Carolina Public Service Commission will grant the request, and should not be prejudiced in this proceeding if it does not. We therefore discuss the authorities which deal with the situation which would then be presented.

FUA justifies its Motion for Continuance on the basis that the concurrent scheduling of the second session of evidentiary hearings before the Licensing Board and rate proceedings before the South Carolina Public Service Commission would "prejudice the interests" of FUA. Motion for Continuance at 4. This proceeding was scheduled first and is of paramount importance. FUA did not apprise the South Carolina Commission of the schedule here when it asked for as early a hearing as possible. (See Attachment B). The Appeal Board has recognized that intervenor groups participating in a number of proceedings have obligations to meet the established schedules for each. In Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-566, 10 NRC 527 (1979), the Appeal Board stated as follows:

True, [the representative of the intervenors] claims to be now involved in other licensing proceedings which also require his attention. But any individual undertaking to play an active role in several proceedings which are moving forward simultaneously is apt to find it necessary from time to time to expend extra effort to meet the prescribed schedules in each case.

The NRC indicated that situations like the instant one should not require delay in its Statement of Policy on Conduct of Licensing Proceedings, issued on May 20, 1981:

While a board should endeavor to conduct the proceeding in a manner that takes account of the special circumstances faced by any participant, the fact that a party may have personal or other obligations or possess fewer resources than others to devote to the proceeding does not relieve that party of its hearing obligations. (CLI-81-8, at 3).

It should be pointed out that Dr. John C. Ruoff, the Authorized Representative of FUA who signed the Motion for Continuance, made a commitment consistent with these obligations. During the Prehearing Conference, Dr. Ruoff stated:

Might I say in a prefatory manner on this and on each of the contentions as we go through them that we're certainly willing to work to minimize delays. I'm willing to make the personal commitment of time and resources to be sure that things are done and that they are done in a timely fashion. (Tr. at 473).

Applicants submit that FUA should be held to that commitment.

The fact that a simultaneous proceeding at the state level is ongoing provides no basis for delaying the evidentiary hearings. That principle has been recognized by the Appeal Board in Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3) ALAB-171, 7 AEC 37, 39 (1974) and Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 748 (1977).

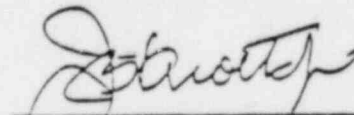
We will not dignify with a detailed response FUA's baseless implication that SCE&G may have arranged the rate hearings so as to prejudice FUA. Such response is not required by the Board order of May 18, 1981, since SCE&G has joined in the request by asking for a reasonable continuance. (Attachment A). But we cannot simply leave unanswered FUA's unwarranted implications which reflect on both SCE&G and the South Carolina Public Service Commission. The implications are not only untrue, they defy reason. The Public Service Commission sets its own schedules. SCE&G witnesses common to the two proceedings are put to extra effort in preparing for and being present at two proceedings,

but they are expected to, and do, shoulder that burden as a matter of course. Until FUA was admitted, the July 13-24, 1981 session of the NRC proceedings was simply a possibility that probably would not be needed, since the existing parties were agreed in their estimate of a two-week hearing. Finally, Dr. Ruoff, on April 21, 1981, after being apprised of the schedule in this NRC proceeding through the answers of Applicants and the NRC Staff to FUA's petition and through discussion at the April 7-8, 1981 Prehearing Conference, requested the South Carolina Commission to set a hearing at their "earliest possible opportunity," with no mention of the schedule of the NRC proceedings. (See Attachment B, p. 2).

III. Conclusion

FUA has shown no substantial basis for altering the current scheduling of the evidentiary hearings in the above-designated matter. For all of the foregoing reasons, FUA's Motion for Continuance should be denied irrespective of what action may be taken by the South Carolina Commission.

Respectfully submitted,



Joseph B. Knotts, Jr.
Dale E. Hollar

Counsel for Applicants

Of Counsel:

Randolph Mahan, Esq.
South Carolina Electric
and Gas Company

Dated: May 22, 1981