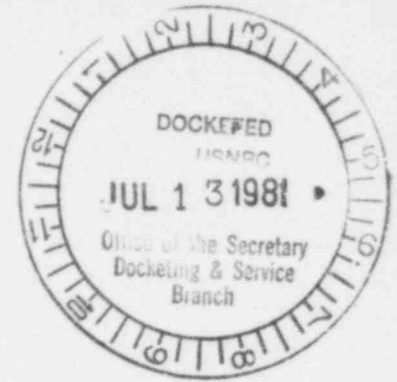




UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission



In the Matter of)

ALABAMA POWER COMPANY)
(Joseph M. Farley Nuclear)
Plant, Units 1 and 2)

Docket Nos. 50-348A
50-364A

ANSWER OF THE DEPARTMENT OF JUSTICE OPPOSING
APPLICANT'S "MOTION FOR EXTENSION OF TIME LIMIT
FOR FILING APPLICATION FOR STAY OF APPEAL BOARD
DECISION" AND APPLICANT'S "MOTION FOR EXTENSION
OF TIME FOR FILING PETITION FOR REVIEWS OF APPEAL
BOARD ANTITRUST DECISION."

Pursuant to 10 C.F.R. § 2.730(c) the United States Department of Justice ("Department") submits this answer to the above referenced motions of the Applicant requesting extensions of time in which to petition for a stay of a decision of the Atomic Safety and Licensing Board ("Appeal Board"), issued June 30, 1981, ("ALAB-646") and to petition the Commission for review of ALAB-646. For the reasons set for below the Department urges the Commission to deny both motions.

Stays of decisions of the Appeal Board are covered by 10 C.F.R. § 2.788. That Section provides that an application for a stay must be filed within ten (10) days after service of the original decision, and may be no longer than ten (10) pages, exclusive of affidavits. The section also contains very

DS08
50/1

specific instructions regarding the contents of an application for a stay. This procedure is designed to simplify the process and to ensure that important issues are brought to the Commission's attention quickly and easily. Since applications for extensions of time tend to frustrate those goals, such applications should not be granted unless there has been a strong showing of good cause for requesting the extension and some showing of the underlying determinations required for granting a stay: (1) Whether the moving party has made a strong showing that it is likely to prevail on the merits; (2) Whether the party will be irreparably injured unless a stay is granted; (3) Whether the granting of a stay would harm other parties; and (4) Where the public interest lies. The reasons set forth in the instant motions do not justify the granting of an extension of time. Applicant first points to the length of the decision and the size of the record below. While this might be important in preparing a petition for review, the applicant need only look at the five pages of license conditions attached to ALAB-646 to determine whether it should seek a stay. Applicant next points to the absence of key executive officers who must be consulted before a proper decision can be made. Applicant, however, has failed to identify these allegedly key officers and gives no explanation as to why it has not had sufficient time to contact these key officers to conduct the necessary consultation. Applicant's

third point, that it needs more time for "proper consideration of the above-described matters," is simply a conclusory statement, derived of any reasons, and provides no basis for granting an extension of time. Finally, Applicant hints in its fourth point that if it had more time it might not file for a stay at all, or it may request a stay of only certain issues. This is similar to arguments that Applicant has advanced at various stages of this proceeding when it requested permission to submit seriatum filings of testimony and exhibits and pre- and post-hearing briefs. Experience has shown, however, that the Applicant has not used the additional time to narrow the number of issues it wishes to bring to the Commission's attention.

Granting the motion would be tantamount to granting a petition for a stay. Since the Applicant has made only a superficial showing of a need for more time, grounded on convenience to its counsel and employees, it falls far short of establishing "good cause" within the meaning of § 2.711, which deals with requests for extensions of time, and is completely void of the underlying requirements of § 2.788, which deals with the granting of petitions for stays. Accordingly, the Department urges the Commission to deny the Applicant's motion for a ten (10) day extension in which to file for a stay. If the Commission does not deny the motion it should refer it to

the Appeal Board for consideration since the motion was lodged with the Commission by mistake. 1/

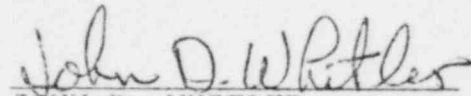
The arguments made in Applicant's motion for an extension of time in which to petition the Commission for review are similar to those made in its motion for an extension of time in which to seek a stay. Applicant points to the length of the decision and the size of the record, and asserts that more time is necessary in order to select the proper issues. 10 C.F.R. § 2.786(b) requires that the petition be no more than ten (10) pages and also sets forth very specific instructions regarding the contents of the petition. As with a petition for a stay, this procedure is designed to simplify the process and get issues before the Commission quickly and easily. Extensions of time in view of the page limit and specificity of the petition, are an unnecessary circumvention of this procedure. Applicant also points to the absence of direction from past rulings by the Commission or reviewing courts which forces the Applicant to "speculate" on the issues "considered sufficiently important by the Commission to warrant further review." Page 4 of Applicant's Motion. This reasoning is faulty since the Applicant should seek a review of those issues it views to be important rather than speculating on what the Commission may want to review. Indeed, there are provisions in the rules for

1/ Applicant's counsel acknowledged the error by letter of June 10, 1981, but did not amend its filings to put the issue properly before the Appeal Board.

the Commission to review Appeal Board decisions on its own motion. 10 C.F.R. § 2.786(a). Finally, Applicant's fourth point is equally unpersuasive. Applicant suggests that granting its requested extension would also give the Commission more time to consider the decision. Again there are specific rules covering extensions of time for the Commission to issue decisions on matters that it is reviewing. 10 C.F.R. § 2.772(e) and (f), and § 2.786(b)(5).

For the reasons set forth above the Department respectfully urges the Commission to deny both of Applicant's motions seeking extensions of time.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "John D. Whitler", is written over a horizontal line.

JOHN D. WHITLER

Attorney

Antitrust Division

July 13, 1981
Washington, D.C.

CERTIFICATE OF SERVICE

I hereby certify that copies of the attached Answer have been served on the following by hand delivery to these indicated by asterisk and by United States Mail, postage prepaid, to the remainder this 13th day of July, 1981.


John D. Whitler

Secretary
Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Appeal Board Panel
Nuclear Regulatory Commission
Washington, D.C. 20555

Michael C. Farrar, Chairman
Atomic Safety and Licensing
Appeal Board
Nuclear Regulatory Commission
Washington, D.C. 20555

Richard S. Salzman, Esq.
Atomic Safety and Licensing
Appeal Board
Nuclear Regulatory Commission
Washington, D.C. 20555

*Mr. Chase Stephens, Supervisor
Docketing and Service Section
Office of the Secretary of the
Commission
Nuclear Regulatory Commission
Washington, D.C. 20555

Reuben Goldberg, Esq.
Goldberg, Fieldman & Letham, P.C.
1700 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Joseph Rutberg, Esq.
Benjamin H. Volger, Esq.
Michael B. Blume, Esq.
Antitrust Counsel Nuclear
Regulatory Staff
Nuclear Regulatory Commission
Washington, D.C. 20555

S. Eason Balch, Esq.
Robert A. Buettner, Esq.
Balch, Bingham, Baker,
Hawthorn, Williams & Ward
600 North 18th Street
Birmingham, Alabama 35203

Terence H. Benbow, Esq.
Theodore M. Weitz, Esq.
David J. Long, Esq.
Winthrop, Stimson, Putnam
& Roberts
40 Wall Street
New York, New York 10005

*Martin G. Malsch, Esq.
Majorie S. Nordlinger, Esq.
Office of General Counsel
Nuclear Regulatory Commission
Washington, D.C. 20555

*Bennet Boskey, Esq.
D. Biard MacGuineas, Esq.
Volpe, Boskey and Lyons
918 16th Street, N.W.
Washington, D.C. 20006

David C. Hjelmfelt, Esq.
1967 Sandalwood
Ft. Collins, Colorado 80526

*Bruce W. Churchill, Esq.
Shaw, Pittman, Potts & Trowbridge
1800 "M" Street, N.W.
Washington, D.C. 20036