



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

South Carolina Electric &
Gas Company, et al.

(Virgil C. Summer Nuclear
Station, Unit 1)

Docket No. 50-395-OL

9/1/81

APPLICANTS' OBJECTION TO
INTERVENOR'S MOTION FOR TIME EXTENSION

On August 26, 1981, Intervenor Brett Bursey filed by mail a motion for extension of time to submit (1) his reply brief regarding the proffered testimony of Dr. Kaku and (2) his response to Applicants' proposed findings of fact and conclusions of law.

Mr. Bursey recites that Applicants have indicated to him no objection to such time extension barring the Staff seeking additional time. Mr. Randolph Mahan of Applicant South Carolina Electric and Gas Company actually discussed these matters with Mr. Bursey, and he advises us that Mr. Bursey has misunderstood what Mr. Mahan advised him.

As to the matter of a reply brief on our and the Staff's initial briefs regarding Dr. Kaku's testimony, our position was and is that the August 21st date for submitting such reply has already passed. Obviously, Mr. Bursey was or should have been fully aware of his inability to meet the deadline considerably prior to that date. Under these circumstances, it was Mr. Bursey's

obligation to seek extension of time before the original deadline expired not after it had already passed. Mr. Bursey should not be permitted an extension of time in the absence of a showing of good cause for his failure to transmit the instant motion at a date prior to August 21. See Louisiana Power & Light Company (Waterford Steam Electric Station, Unit 3), ALAB-117, 6 AEC 261, 261-262 (1973); Maine Yankee Atomic Power Company (Maine Yankee Atomic Power Station), ALAB-144, 6 AEC 628, 629 (1973); Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-423, 6 NRC 115, 125 (1977); Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-568, 10 NRC 554, 555 (1979). See also 2 MOORE'S FEDERAL PRACTICE ¶ 6.08 (2d ed. 1980) and cases cited therein interpreting Rule 6(b) of the Federal Rules of Civil Procedure which governs enlargement of time for the filing of papers in the federal courts.

To allow the extension now would allow Mr. Bursey an advantage not contemplated in the original schedule, as well as further postpone the day when we are advised finally whether Dr. Kaku will be permitted to testify and on what matters. It will also depart from the simultaneous filing of replies contemplated in the previously agreed schedule. For these reasons, we cannot consent to the requested extension of time.

Applicants only mentioned the date of the Staff's proposed findings with regard to an extension of time for filing Mr. Bursey's proposed findings. Contrary to what Mr. Bursey indicates in his

motion, and as we mentioned in the conference call on August 31st, Applicants reserved their position on the extension of time until we were advised whether the Staff would seek a corresponding extension of time to enable it to comment on Mr. Bursey's proposed findings. The Staff counsel advised that they would want the opportunity to take into account Mr. Bursey's findings in their proposed findings. Although the Staff would not indicate a precise schedule, presumably they would want ten days, the interval provided by the regulations. Applicants' reply to both Mr. Bursey and the Staff obviously would date from Staff's reply. Given the tentatively affirmed resumption of hearings on September 27th, obviously the effect of the September 8th date requested by Mr. Bursey would be to put the Staff's proposed findings at September 18th and the Applicants' reply findings at the end of the week of hearings on September 25th. Under the circumstances, we obviously cannot agree to an extension until September 8th.

The only reason given by Mr. Bursey for either requested extension of time is that the time available is inadequate for response. Mr. Bursey elaborated on this during the conference call on August 31, 1981 only to the extent of indicating that he was sending materials to Dr. Kaku and others by mail after receiving them by mail. If Mr. Bursey wanted hand delivery of documents or direct mailing to persons helping him, he should have requested this in advance, not after the time for filing had already expired.

For all the foregoing reasons, we object to both requests for extensions of time. If the Board is nonetheless inclined to exercise its discretion to allow an extension of the date for proposed findings, then we would respectfully request that it allow Staff and Applicants to be heard on a date for proposed findings and reply findings, respectively, taking into account the overall schedule of the proceeding and the present schedule for hearings.

Respectfully submitted,

Joseph B. Knotts, Jr.

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Date: September 1, 1981

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NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

SOUTH CAROLINA ELECTRIC &
GAS COMPANY and

SOUTH CAROLINA PUBLIC SERVICE
AUTHORITY

(Virgil C. Summer Nuclear
Station)

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Objections to Intervenor's Motion for Time Extension" in the above captioned matter, were served upon the following persons by deposit in the United States mail, first class postage prepaid this 1st day of September, 1981.

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