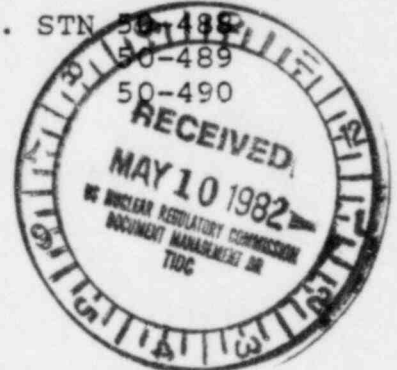


UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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  
50-489  
50-490



MOTION FOR LEAVE TO FILE REPLY  
TO INTERVENORS' APRIL 29 RESPONSE  
TO MOTION TO WITHDRAW

Duke Power Company (Duke) requests that it be granted leave to file a reply to Intervenor's (Mary Apperson Davis, et al.) April 29, 1982 Response to Duke's motion to withdraw without prejudice its application for construction permits for the Perkins Nuclear Station. Although the Commission's rules do not authorize replies to answers as of right, the rules do contemplate that leave to file a reply may be granted upon motion. See 10 CFR § 2.730(c); Detroit Edison Co. (Enrico Fermi Atomic Plant, Unit 2), ALAB-469, 7 NRC 470, 471 (1978).<sup>\*/</sup> The need to reply results from the fact that factual and legal arguments made by Intervenor's April 29 Response could not have been anticipated by Duke. Thus, as shown below, there is good cause for authorizing a reply in this case. In support of this motion, Duke states as follows:

1. On March 2, 1982 Duke filed a motion to withdraw without prejudice its application for the Perkins Station.

<sup>\*/</sup> Duke's April 19 motion to withdraw (at p. 1, n. 1) anticipated the possibility that such a reply would be necessary.

On March 11 Intervenor's filed a "Response to Motion to Withdraw". In fact, that March 11 pleading was a counter-motion. Intervenor's sought dismissal of Duke's application with prejudice and payment of their attorneys fees and costs by Duke. On March 19 Duke requested leave to answer Intervenor's counter-motion.

In response to these matters, the Licensing Board issued an order on April 1 that required the pleadings concerning the withdrawal of the Perkins application to be refiled. The Licensing Board also directed Duke to take into account in its new motion to withdraw the relief sought by Intervenor's counter-motion.

2. Although Intervenor's March 11 counter-motion sought affirmative relief from the Licensing Board, Intervenor's made no attempt to justify or support their claims. Nevertheless, in resubmitting its motion to withdraw, Duke followed the Licensing Board's directive and addressed Intervenor's arguments insofar as possible.

Intervenor's April 29 Response goes well beyond the arguments hinted at in their previous pleading. Indeed, Intervenor's now make factual and legal arguments that were nowhere to be seen in their earlier pleading. For example, in an attempt to show their contribution to this proceeding, Intervenor's March 11 pleading (at p. 1) made the bald faced claim that "peak load pricing and other suggestions by the Intervenor's in this matter such as the hiring of an

economist have been carried out". The March 11 pleading did not say another word on this subject. But now, in a strained effort to correct that omission, Intervenor's April 29 Response (at pp. 3-5) quotes at length from proceedings during 1976 and 1977 before the Licensing Board and the North Carolina Utilities Commission.

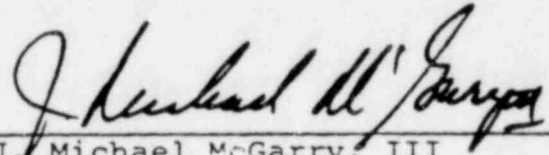
Duke also believes that it is necessary to respond to Intervenor's claim that they were responsible for a change in the level of Yadkin River withdrawals proposed by Duke in connection with the operation of the Perkins Station (April 29 Response, pp. 5-6). This argument is not even hinted at in Intervenor's March 11 pleading.

In addition, Intervenor's accuse Duke of bad faith in seeking withdrawal of the Perkins application (Response, pp. 11-12). Intervenor's also offer a host of legal arguments -- albeit invalid ones -- to support their claim for attorneys fees (Response, pp. 12-20). Once again, these are arguments that Intervenor's did not present in their previous pleading.

3. In truth, Intervenor's attempt to justify their position is without merit. However, Duke must be given an opportunity to confront Intervenor's arguments. For that reason, Duke requests that it be granted leave to reply to Intervenor's April 29 Response. Duke suggests that May 28, 1982 be fixed as the date for filing that reply.

Accordingly, Duke Power Company respectfully requests that it be granted leave to reply to Intervenor's April 29 Response to Duke's motion to withdraw.

Respectfully submitted



J. Michael McGarry, III  
Scott M. DuBoff  
DEBEVOISE & LIBERMAN  
1200 Seventeenth Street, N.W.  
(202) 857-9833

William L. Porter  
Albert V. Carr, Jr.  
Ellen T. Ruff  
DUKE POWER COMPANY  
P. O. Box 33189  
Charlotte, North Carolina 28242  
(704) 373-2570

Attorneys for Duke Power Company, et al.

May 6, 1982

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD MAY -7 11:26  
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In the Matter of )  
DUKE POWER COMPANY ) Docket Nos. STN 50-488  
(Perkins Nuclear Station, ) 50-489  
Units 1, 2 and 3) 50-490

CERTIFICATE OF SERVICE

I hereby certify that copies of Duke Power Company's  
"Motion for Leave to File Reply to Intervenor's April 29  
Response to Motion to Withdraw", dated May 6, 1982, have been  
served upon the following by deposit in the United States mail  
this 6th day of May, 1982.

Alan S. Rosenthal, Esq.  
Chairman  
Atomic Safety and Licensing  
Appeal Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Dr. Donald P. deSylva  
Associate Professor of Marine  
Science  
Rosenstiel School of Marine  
and Atmospheric Science  
University of Miami  
Miami, Florida 33149

Dr. John H. Buck  
Atomic Safety and Licensing  
Appeal Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

William G. Pfefferkorn, Esq.  
Pfefferkorn and Cooley, P.A.  
P. O. Box 43  
Winston-Salem, North Carolina 27102

Thomas S. Moore  
Atomic Safety and Licensing  
Appeal Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Sherwin E. Turk, Esq.  
Counsel for NRC Regulatory Staff  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Ivan W. Smith  
Chairman  
Atomic Safety and Licensing  
Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Charles A. Barth, Esq.  
Counsel for NRC Regulatory Staff  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Dr. Walter H. Jordan  
881 West Outer Drive  
Oak Ridge, Tennessee 37830

William A. Raney, Jr., Esq.  
Special Deputy Attorney General  
State of North Carolina  
Department of Justice  
P. O. Box 629  
Raleigh, North Carolina 27602

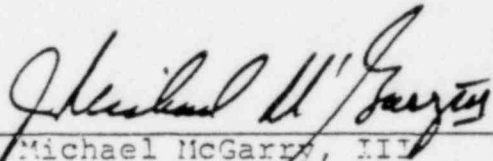
Mary Apperson Davis  
Route 4  
Box 261  
Mocksville, North Carolina 27028

William L. Porter, Esq.  
Albert V. Carr, Jr., Esq.  
Duke Power Company  
P. O. Box 33189  
Charlotte, North Carolina 28242

Quentin Lawson, Esq.  
Federal Energy Regulatory  
Commission  
Room 8611  
825 N. Capitol Street, N.E.  
Washington, D.C. 20426

Scott Stucky  
Docketing and Service Station  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Chairman  
Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

  
J. Michael McGarry, III