



THE POINT FARM  
ROUTE 4  
MOCKSVILLE, NORTH CAROLINA 27028

May 19, 1981

Charles A. Barth, Esq.  
Counsel for NRC Staff  
Washington, D. C.

*Barth/Tyuk  
Olmstead  
EE*

Re: Perkins: Stn 50-488  
50-489  
50-490

Dear Mr. Barth:

Thank you for yours of the 13th inst.

Am not now and never have been  
counsel for Intervenor.

If it is not already of record,  
in view of ALB-355 (footnote 26), it would be  
more appropriate for Staff to furnish the Board  
and Appeal Panel with a copy of the enclosed  
Memo to the Attorney General of North Carolina  
dated March 28, 1977.

Obviously non-compliance with  
the conditions of Resolution 76-41 without the  
concurrence of the originator, The Environmental  
Management Commission probable vitiates it.

We suggest the difference between  
cooling towers being "appropriate" rather than  
"necessary" is of enormous substantive rather than  
proceedural significance.

Encl:  
cc: Memo of March  
28, 1977 of N. C..  
Attorney General

Sincerely,

G

8106080046



State of North Carolina

Department of Justice

RUFUS L. EDMISTEN  
ATTORNEY GENERAL

P. O. Box 629  
HALLIGR  
27602

March 28, 1977

MEMORANDUM

TO: Everette Knight - Director

FROM: William A. Raney, Jr. <sup>off</sup> - Special Deputy Attorney General

RE: Utilities Commission Action on EMC Resolution 76-41

I appeared before the North Carolina Utilities Commission on February 17, to request that the Utilities Commission include the conditions of EMC Resolution 76-41 in any Certificate of Convenience and Necessity issued to Duke Power Company for the Perkins Nuclear Station. The Commission granted the motion to take judicial notice of the EMC Resolution and I made my argument concerning the motion.

On March 4, 1977, the Utilities Commission issued an order Granting a Certificate of Convenience and Necessity for the Perkins plant. The pertinent portions of the Order were given to the EMC at its March meeting.

The order includes, without any material change, conditions one, two, and three as found in the EMC Resolution. Condition number four was changed to provide that review of the conditions would be made by the EMC and the Utilities Commission and that modification would be made by the Utilities Commission and not the EMC. This change was made to be consistent with the statutory authority to modify the Certificate.

Condition five was changed to provide that monitoring acceptable to the Utilities Commission in consultation with the Director, DSI would be required. The EMC resolution was stated solely in terms of approval by the Director, DSI. This change is consistent with statutory authority.

Condition six in the EMC resolution requested that the Utilities Commission find that conditions four and five were necessary to the construction and operation of Perkins before granting a

Everette Knight

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March 28, 1971

a Certificate of Convenience and Necessity. Finding C. on page 6 of the Order states "that the proposed cooling facilities at the Perkins Nuclear Station are, considering the public convenience and necessity, the most appropriate.

The EMC Resolution requested that the Director report to the EMC if the Utilities Commission failed to include all of the conditions set forth in the Resolution. I have forwarded a copy of this memo to Bill Puette so that it can be sent to the EMC members if you so desire.

WAR/v

cc: Bill Puette

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

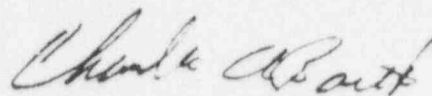
Docket Nos. STN 50-488  
STN 50-489  
STN 50-490

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Federal Energy Regulatory Commission  
Room F611  
885 North Capitol, N.E.  
Washington, D.C. 20426

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

\*Atomic Safety and Licensing  
Appeal Board Panel  
U.S. Nuclear Regulatory Commission  
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\*Docketing and Service Section  
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