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PETITION RULE PRM-2-7(44FR8043)

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April 18, 1979

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Attn: Docketing and Service Branch

Re: Wells Eddleman's Petition for Rulemaking
to amend 10 C.F.R. § 2.714 (Docket No.
PRM-2-7)

Gentlemen:

On behalf of Carolina Power & Light Company ("CP&L"), we are pleased to submit comments on the above referenced petition for rulemaking (the "Petition"). For the reasons set forth in this letter, we respectfully request that the Petition be denied.

Less than one year ago § 2.714 was amended in the interest of clarifying the requirements in regard to late filings of petitions to intervene. 43 Fed. Reg. 17798 (April 26, 1978). This amendment to § 2.714, in effect, codified the Commission's decision in Nuclear Fuel Services, Inc., (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273 (1975), which makes clear that "good cause" for the untimely filing is one factor to be balanced along with others in determining whether a late filing will be admitted. 43 Fed. Reg. at 17799; Duke Power Company (Perkins Nuclear Station, Units 1, 2 and 3) ALAB-431, 6 NRC 460, 462 (1977). The policy rationale behind the amended rules adopted by the Commission in § 2.714 reflects a



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balancing of the interest of parties who may wish to participate in a proceeding and "the obligations of administrative agencies to conduct their functions with efficiency and economy." See 10 C.F.R. Part 2, Appendix A. Fairness to all parties requires that late petitioners have a substantial burden in justifying their tardiness. Mr. Eddleman has not provided justification for overturning the balance struck by the Commission in adopting § 2.714, as amended.

Recent decisions of the Atomic Safety and Licensing Board (the "Board") and Atomic Safety and Licensing Appeal Board (the "Appeal Board") provide cogent reasons why this Petition should be denied. The same Mr. Eddleman filed a late petition to intervene on behalf of himself and the Kudzu Alliance in the construction permit proceeding for CP&L's Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4.^{1/} Mr. Eddleman explained the tardiness of his petition (seventeen months) by reporting that the Kudzu Alliance did not exist, and he was not a resident of the relevant area, on the date of the notice of the proceeding. The Board did not find Mr. Eddleman's explanation for lateness as good cause for accepting a late petition under the standards of 10 C.F.R. § 2.714(a)(1) and denied his petition, noting:^{2/}

Under Mr. Eddleman's theory, there could never be finality to this administrative proceeding because the proceeding would always be subject to additional litigation as even more new residents move into the area or new organizations are formed in the future. This, of course, would be

^{1/} Docket Nos. 50-400 - 50-403. Mr. Eddleman also filed a "Petition for Remanded or Reopened Hearings and Petition to Suspend Construction Pending Resolution of New Evidence, Verification of Facts, and Updating All Estimates with the Most Current Data and with Sensitivity Analysis for Ranges of Errors, and Petition for Order on Further Opportunity for Intervention and Full Publicity" (January 17, 1979), which is pending before the Commission. Mr. Eddleman would hope to accomplish by rule what he also attempted to accomplish by petition in the Shearon Harris adjudicatory proceeding and by the above-mentioned petition to the Commission. In the second part of the Petition, Mr. Eddleman removes any doubt as to his purpose in attempting to change § 2.714 by requesting that the rule apply retroactively (at least to him) and that he be afforded the "right to a rehearing based on this proposed rule if and when it is made part of 10 C.F.R. 2."

^{2/} LBP-79-____, 9 NRC ____ (January 10, 1979) (Slip opinion at 4).

SHAW, PITTMAN, POTTS & TROWBRIDGE

incompatible with administrative due process. The Applicant and the public are entitled to a timely conclusion to this proceeding.

The Appeal Board denied Mr. Eddleman's appeal and affirmed the decision of the Board, observing:^{3/}

If newly acquired standing (or organizational existence) were sufficient of itself to justify permitting belated intervention, the necessary consequence would be that the parties to the proceeding would never be determined with certainty until the final curtain fell. Assuredly, no adjudicatory process could be conducted in an orderly and expeditious manner if subjected to such a handicap.

The proposed amendment to § 2.714 is simply unworkable. It is not clear who, if anyone, would not be able to meet the "good cause" test suggested in the Petition. The proposed amendment would render the "good cause" test meaningless and

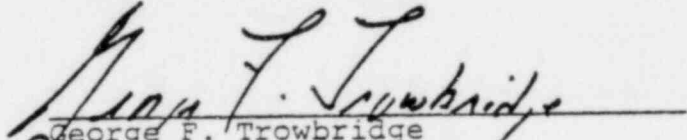
^{3/} ALAB-526, 9 NRC ____ (March 23, 1979) (Slip opinion at 4). The Commission declined to review the decision of the Appeal Board. Letter from Secretary, NRC, to Wells Eddleman dated March 20, 1979. In fact, Mr. Eddleman participated in the remanded hearing in the Shearon Harris construction permit proceeding, which was held on February 27 through March 2, and March 6 through March 8, 1979, by submitting several written limited appearance statements and making an oral limited appearance statement on behalf of himself and the Kudzu Alliance pursuant to 10 C.F.R. § 2.715(a). The Board also permitted Mr. Eddleman to sit at counsel table and serve as an advisor to Intervenor and the Attorney General of the State of North Carolina. Thus, the issue with respect to his participation in the remanded hearing is moot. See ALAB-53, 9 NRC ____ (March 23, 1979).

SHAW, PITTMAN, POTTS & TROWBRIDGE

destroy the balance struck by the present regulations between the rights of interested parties and the obligation of administrative agencies to conduct their functions with efficiency and economy. The Petition should thereby be rejected.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE


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& Light Company