

NRC PUBLIC DOCUMENT ROOM
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD ^{1/}

In the Matter of)
)
DUKE POWER COMPANY)
)
(Amendment to Materials)
License SNM-1773 for Oconee)
Nuclear Station Spent Fuel)
Transportation and Storage at)
McGuire Nuclear Station))

Docket No. 70-2623



APPLICANT'S OPPOSITION TO NATURAL RESOURCES
DEFENSE COUNCIL'S REQUEST FOR AN EXTENSION
OF TIME TO FILE AN APPEAL

On January 29, 1979, Natural Resources Defense Council (NRDC) filed a Request For Extension Of Time to File An Appeal. Applicant opposes such request for the reasons set forth below.

The procedural maneuvering by NRDC giving rise to the subject request warrants a somewhat detailed description. On January 9, 1979 the Atomic Safety and Licensing Board designated to rule on petitions for leave to intervene (Petitions Board) ^{2/} issued its Supplemental Order denying intervenor

^{1/} Petitioner Natural Resources Defense Council's instant request reflects that such was filed with the "Nuclear Regulatory Commission". It is unclear whether this motion was filed with the Licensing Board, the Appeal Board, or indeed, the Commission itself. Applicant is of the view that the subject matter of Petitioner's request is not before the Licensing Board, but rather, the Appeal Board or the Commission. Inasmuch as Applicant understands that the Commission is in the process of delegating authority to the Appeal Board to entertain this request and any appeals that may follow, Applicant has chosen to respond in such forum. In the event Applicant is mistaken, it has filed a copy of its opposition with both the Licensing Board and the Commission.

^{2/} See 43 Fed. Reg. 13197 (1978).

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status to NRDC. Therein, the Petitions Board informed NRDC that, pursuant to 10 CFR Section 2.714a, it had 10 days within which to note an appeal and file a supporting brief. On January 16, 1979, rather than noting its appeal, NRDC moved the Licensing Board for an extension of time to file objections to the Supplemental Order. At the same time, NRDC requested the Appeal Board to grant it an extension of time within which to request an extension of time to file an appeal in the event the Licensing Board denied its request for an extension of time to file objections. Applicant opposed both motions as being contrary to the Commission's rules. Applicant maintained that the objection procedure provided by 10 CFR Section 2.751a applied to rulings made by an Atomic Safety and Licensing Board designated to conduct the hearing that may be held on the subject application (Hearing Board)^{3/} and not to rulings of a Petitions Board, such as the subject Supplemental Order. On January 18, 1979 the Licensing Board, prior to the receipt of Applicant's opposition, granted NRDC's request for an extension of time within which it could file its objection. On January 26, 1979 Applicant filed its above-referenced opposition. Thereafter, on January 29, 1979, NRDC filed the instant request seeking an extension of time to take an appeal and file a supporting brief, such to run 21 days from the Licensing Board's ruling on its objections, or 10 days from the Commonwealth Edison's^{4/} Licensing

^{3/} See 43 Fed. Reg. 52303 (1978).

^{4/} NRDC avers that issues similar to those raised by the contemplated appeal have been raised by it in proceedings before a Licensing Board involving Commonwealth Edison.

Board's ruling on intervention, whichever is later. On February 2, 1979, the Licensing Board denied NRDC's objection on the procedural grounds advanced by the Applicant. In addition, the Licensing Board chose to reach the merits of the Objection and denied them. The Licensing Board went on to inform NRDC that it would have 10 days within which to file an appeal and supporting brief.

It is in the light of the above procedural history, that the several reasons advanced by NRDC as grounds for its request must be assessed. NRDC maintains that 10 days does not provide a sufficient period of time within which to file an appeal and supporting brief. NRDC's appeal and supporting brief were originally due 10 days after the Licensing Board's Supplemental Order, to wit, January 24, 1979.^{5/} See 10 CFR Section 2.714a. That NRDC, guided by experienced counsel, improperly chose to file objections pursuant to 10 CFR Section 2.751a should not inure to its benefit so as to provide it with additional time within which to file its appeal. This point takes on added significance when one examines the October 24, 1978 prehearing conference transcript wherein NRDC's counsel strenuously objected to any Petitions Board action which would go beyond the ambit of 10 CFR Section 2.714. See Tr. 76 wherein NRDC maintained that the Petitions Board was not established

^{5/} That such was the case has been clearly demonstrated by the action of NRDC's companion Petitioner, Davidson Chaper of North Carolina Public Interest Research Group (Davidson). Davidson was also denied intervenor status by the Licensing Board's January 9 Supplemental Order. On January 22, 1979, Davidson filed its appeal and supporting brief.

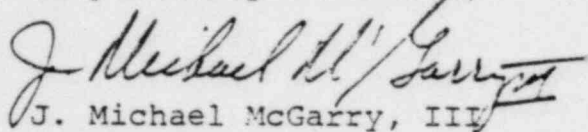
pursuant to 10 CFR Section 2.751a, but rather derived its authority from Section 2.714 and could not perform functions elaborated under section 2.751a. Applicant would also note that the subject matter of NRDC's anticipated appeal has been thoroughly briefed before the Licensing Board by NRDC, the NRC Staff, and the Applicant. In addition, in light of the present Licensing Board's February 2nd ruling, NRDC has been extended to February 19, 1979 within which to file its appeal and supporting brief. This latest Board action has provided NRDC with almost an additional month's time within which to prepare its appeal and supporting brief. Accordingly, no extension should be granted.

NRDC also suggests that this Appeal Board await the determination by the Licensing Board in Commonwealth Edison cases, Docket No. 50-237/249/254/265. Applicant is cognizant that the issue raised by NRDC in the McGuire proceeding has also been raised in the Commonwealth Edison proceeding; however, to await the Licensing Board's decision in the Commonwealth Edison's case is unnecessary inasmuch as the matter is properly before this Appeal Board and inasmuch as prompt consideration of this matter is required. Intervenor status has been extended to several parties in the instant McGuire proceeding. Discovery is being conducted. While a hearing date is yet to be set, it is anticipated that such is likely to commence early this spring. If NRDC's anticipated appeal is not timely reached, any subsequent action by either this Appeal Board, the Commission,

or indeed, the Courts could impair the hearing process so as to necessitate an extension of the discovery period and/or supplemental hearings, both of which would delay the timely resolution of Applicant's application.

For the above stated reasons, Applicant respectfully requests that NRDC's request for an extension of time to file its appeal be denied and that NRDC be required to file its appeal and supporting brief immediately, and in no event later than February 19, 1979.

Respectfully submitted,


J. Michael McGarry, III

Of counsel:

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February 7, 1979

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Opposition to Natural Resources Defense Council's Request for an Extension of Time to File an Appeal", dated February 7, 1979 in the captioned matter, have been served upon the following by deposit in the United States mail this 7th day of February.

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*/ Consistant with footnote 1 of Applicant's instant Opposi-
tion, Applicant is serving three copies of the instant
pleading with the Atomic Safety and Licensing Appeal Board.

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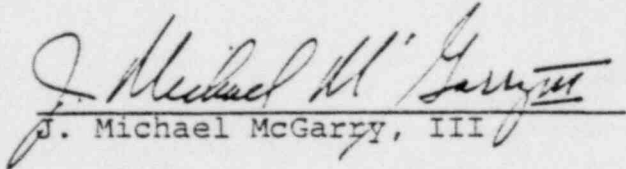
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