

initial decision authorizing a construction permit for the Shearon Harris facility on January 23, 1978. 7 NRC 92. That decision was affirmed by the Atomic Safety and Licensing Appeal Board on August 30, 1978. 8 NRC 234. The matter is pending before the Commission. This Board is without authority to reopen the record of this proceeding for the full hearing demanded by the petitioner. Therefore, with respect to all issues except the remanded issue, the petition is denied for want of jurisdiction.^{1/}

However, in his Contention 11, Mr. Eddleman raises the issue of Applicant's management capabilities as demonstrated by its operational experience. Letter of November 7. This is within the scope of the Commission's remand and we have jurisdiction to consider the petition with respect to that issue.

^{1/} Even though this Board does not have the authority to conduct the hearing requested by Mr. Eddleman, we reviewed his correspondence to determine whether a basis exists for alerting the Commission to extraordinary circumstances warranting a new hearing. We find no such basis. The NRC regulatory staff is aware of Mr. Eddleman's assertions. We see no reason why the matter should not be handled in the normal post-licensing manner.

The petition is very late. A Notice of hearing and opportunity to intervene was published on September 29, 1972. 37 Fed. Reg. 30344. Because of the long delay in the proceeding, the Board on June 23, 1977, issued a second notice notifying the public concerning procedures for late intervention. 42 Fed. Reg. 31844. Subsequently, pursuant to another notice of hearing (42 Fed. Reg. 44615, September 7, 1977) a public hearing was conducted in Raleigh, North Carolina in September and October 1977. Evidence on the issue of management capacity was received at the public hearing. There was no request to intervene from Mr. Eddleman or the Kudzu Alliance until the petition presently under consideration was filed.^{2/}

In explaining the lateness of his petition, Mr. Eddleman reports that the Kudzu Alliance did not exist, and he was not a resident of the relevant area on June 23, 1977, the date of the second intervention notice.^{3/} The

^{2/} Mr. Speights, a member of the Kudzu Alliance, having failed in an effort to intervene, was provided an opportunity to make a limited appearance statement.

^{3/} Letter of November 27, p.3.

Board does not regard this reason as good cause for accepting a late petition under the standards of 10 CFR §2.714(a)(1). 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 incompatible with administrative due process.^{4/} The Applicant and the public are entitled to a timely conclusion to this proceeding.

The Board has also considered the four other factors to be balanced under §2.714(a)(1).^{5/} Mr. Eddleman addresses

4/ See The Cleveland Electric Illuminating Company, et al. (Perry Nuclear Power Plant, Units 1 and 2) ALAB-443, 6 NRC 741, 750 (1977) and the cases cited therein.

5/ 10 CFR §2.714(a)(1) Non-timely filings will not be entertained absent a determination by the Commission, the presiding officer or the atomic safety and licensing board designated to rule on the petition and/or request, that the petition and/or request should be granted based upon a balancing of the following factors in addition to those set out in paragraph (d) of this section:

- (i) Good cause, if any, for failure to file on time.
- (ii) The availability of other means whereby the petitioner's interest will be protected.
- (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (iv) The extent to which the petitioner's interest will be represented by existing parties.
- (v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

these factors as if he is entitled to a new hearing on all issues to be considered in a construction permit proceeding. Consequently his arguments do not provide much guidance. Letter of November 29, p.4 et seq.

There are no other means by which the petitioners' interests in the remanded issue will be protected. This factor weighs somewhat in favor of granting the petition but not enough to outweigh all of the other reasons why the petition should be denied.

We have carefully examined the petitioning papers to determine whether the petitioner's participation may reasonably be expected to assist in developing a sound record. Mr. Eddleman makes only passing reference to the remanded issue, and we can see no indication that he has information or ideas which will make a significant contribution to the record. As noted above he seems to be greatly occupied with matters that do not even concern the Nuclear Regulatory Commission.

Other parties will be representing the petitioners' interest in the remanded issue. Both the Attorney General of North Carolina and counsel for the consolidated intervenors have indicated that they expect to participate in the hearing on remand. Moreover, the remanded issue is one raised by the Board itself, and we intend to actively participate in the development of the record.

If the petitioners were permitted to intervene, their participation would not broaden the issues simply because the Board would not permit the issues to be broadened. Therefore this factor weighs slightly in favor of permitting intervention, but not enough to tip the balance in petitioners' favor.

The Staff has already filed its proposed evidence on the remanded issue. The Applicant, Attorney General and Intervenors are expected to file their proposed evidence on January 16, 1979. If the petitioners were permitted to intervene, it would either cause a delay in the proceeding while they prepare their case, or, if no delay were permitted, their ability to assist in developing a sound record, if any, would be diminished. Either way, admitting the petitioners on the eve of the evidentiary hearing would add nothing to the orderly and timely disposition of the issues on remand.

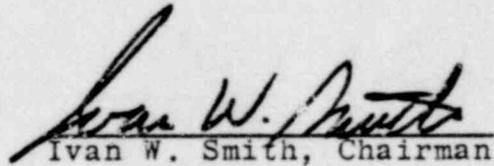
The petition to intervene is denied. However, considering petitioners' manifested strong interest in the subject matter of this proceeding the Board will provide a special opportunity for Mr. Eddleman or another representative of the Kudzu Alliance to make a limited appearance

at the evidentiary hearings pursuant to 10 CFR §2.715.
Mr. Bright did not participate in this consideration.

Pursuant to the provision of 10 CFR §2.714a this
order may be appealed within ten (10) days after service.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Ivan W. Smith, Chairman

Dated at Bethesda, Maryland

this 10th day of January, 1979.