

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



POOR ORIGINAL

In the matter of)	
)	
DUKE POWER COMPANY)	-Docket Nos. STN 50-488
)	STN 50-489
(Perkins Nuclear Station,)	STN 50-490
Units 1, 2 and 3))	

APPLICANT'S OPPOSITION TO INTERVENORS'
MOTION TO REOPEN THE RECORD AND TO POSTPONE
THE ISSUANCE OF A DECISION ON GENERIC
SAFETY ISSUE CONSIDERATIONS

On April 3, 1979 Intervenor filed their "Motion to Reopen the Record and to Postpone the Issuance of a Decision on Generic Safety Issue Considerations". This Motion serves as the twelfth time Intervenor have sought to delay this proceeding. Pursuant to 10 CFR, §2.730(c), Applicant makes the following response.

The law respecting motions to reopen is clearly defined. See Kansas Gas and Electric Company, et al. (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 NRC 320, 338 (1978) wherein it is stated:

"As is well settled, the proponent of a motion to reopen the record has a heavy burden. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-359, 4 NRC 619, 620 (1976). The motion must be both timely presented and addressed to a significant safety or environmental issue. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523 (1973); id., ALAB-167, 6 AEC 1151-52 (1973); Georgia Power Co. (Alvin W. Vogtle Nuclear Plant, Units 1 and 2), ALAB-291, 2 NRC 404, 409 (1975). Beyond that, it must be established that 'a different result would have been reached initially had [the material submitted in support of the motion] been considered.' Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-227, 8 AEC 416, 418 (1974)."

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See also Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-359, 4 NRC 619, 620-21 (1976), wherein the Appeal Board stated:

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"Insofar as the petition for reconsideration is addressed to the Catawba proceeding, the petition is denied. After a decision has been rendered, a dissatisfied litigant who seeks to persuade us-- or any tribunal for that matter--to reopen a record and reconsider 'because some new circumstance has arisen, some new trend has been observed or some new fact discovered,' has a difficult burden to bear. The reasons for this were cogently given by Mr. Justice Jackson more than thirty years ago in ICC v. Jersey City, 332 U.S. 503, 514 (1944):

One of the grounds of resistance to administrative orders throughout federal experience with the administrative process has been the claims of private litigants to be entitled to rehearings to bring the record up to date and meanwhile to stall the enforcement of the administrative order. Administrative consideration of evidence--particularly where the evidence is taken by an examiner, his report submitted to the parties, and a hearing held on their exceptions to it--always creates a gap between the time the record is closed and the time the administrative decision is promulgated. This is especially true if the issues are difficult, the evidence intricate, and the consideration of the case deliberate and careful. If upon the coming down of the order litigants might demand rehearings as a matter of law because some new circumstance has arisen, some new trend has been observed, or some new fact discovered, there would be little hope that the administrative process could ever be consummated in an order that would not be subject to reopening.

Accord, United States v. ICC, 396 U.S. 491, 521 (1970); Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-227, 8 AEC 416, 418 fn. 4 (1974).

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Applicant submits, as will be discussed below, that Intervenor's have failed to satisfy pertinent Commission requirements.

Intervenor's Motion seeks the reopening of the proceeding for an indefinite period and a postponement of Board action on generic safety issues until such time as there has been a "full investigation of the Three Mile Island accident". Applicant maintains that the Three Mile Island (TMI) accident was not such an event as to bring licensing to a standstill such as is being sought by Intervenor's. Applicant advances several reasons for its position. First, the Commission has been actively investigating the implication of TMI on Babcock and Wilcox (B&W) operating plants and those under construction. To date, the Commission has not sought to suspend the licenses of any of the above described activities. In discussions with the Commission, the Staff stated that the public health and safety was not threatened by continued operation of B&W reactors. See Public Meeting, Staff Briefing on Generic Implications In Three Mile Incident, April 4, 1979, Tr.6. In discussions with the Commission the ACRS also stated that operation of B&W reactors would not endanger the public health and safety. See Joint Meeting of Nuclear Regulatory Commission and Advisory Committee on Reactor Safeguards, April 5, 1979, Tr. 24-27, 32.^{1/} Second, Perkins will not be operational until the mid-1980's. It is presumed that well before that time the Commission will have completed its investigation and implemented

^{1/} Applicant is aware of the disclaimer appearing in front of the cited documents; however, Applicant is strongly of the view that the cited references are pertinent to the instant matter.

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whatever corrective action it determines to be necessary. Clearly, Perkins will be in a position to accommodate such recommendations before it goes operational. In this regard, the operating license forum will provide an opportunity to air such issues. See Pacific Gas & Electric Company (Diablo Canyon Nuclear Power Plant, Unit No. 2), ALAB-254, 8 AEC 1184, 1193 (1975).^{2/} Third, in a prior incident, i.e., Browns Ferry,^{2/} an accident scenario was involved. The Commission did not call for a moratorium of licensing in that instance, but rather undertook a systematic review of the incident on a generic basis and thereafter, implemented the result of its investigation upon the industry.

Intervenors have raised six specific matters which they allege serve as a basis to reopen the record. Applicant maintains that an examination of these matters fails to demonstrate, as required by applicable law, that a different result would have been reached if the issues sought to be raised were indeed considered by the Board. Applicant's specific comments to each of the points raised by Intervenors are as follows:^{3/}

1. Contrary to Intervenors' assertions, Perkins' Steam Supply System was not designed and manufactured by B&W

^{2/} Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1, 2 and 3), Docket Nos. 50-259, 50-260, 50-296.

^{3/} As the burden rests with intervenors, see Catawba, supra, Applicant has chosen this method as the most expeditious way of responding.

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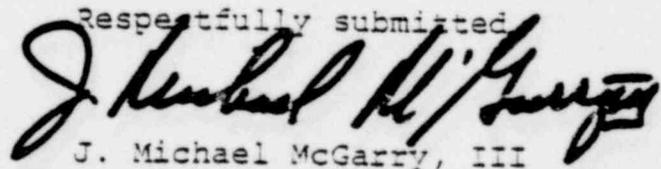
but rather by Combustion Engineering; the steam generator is a U-tube type rather than the "Once-Thru" design used at TMI; the pressurizer, its associated piping and valves are different for Perkins. Many other components and systems are of different design including the Auxiliary Feedwater System and the Reactor Vessel.

2. Formal actions concerning highly technical processes should not be based upon newspaper accounts as suggested by Intervenors. See Illinois Power Company (Clinton Power Station, Units 1 and 2), LBP-75-59, 2 NRC 579, 587-88 (1975). This is especially the case when such accounts are inaccurate. No pipes were ruptured in the TMI accident; there was a rupture disc which ruptured because it was designed to do so. One valve appears to have malfunctioned, and this type of valve (Power Operated Relief Valve) is not used in the Perkins design.
3. Despite Intervenors' allegations, the systems and components of Perkins as described in Item 1 above are significantly different from TMI.
4. The generic safety issues cited by the Intervenors, for the most part, do not apply to the TMI incident.

- (a) There were reported small steam generator leaks, but these did not contribute significantly to the incident;
 - (b) The TMI incident was not an Anticipated Transient Without Scram;
 - (c) The steam generator and reactor coolant pump supports did not contribute to the TMI incident;
 - (d) There was no pipe rupture involved in the TMI incident.
 - (e) There was no break in the Main Steam Line inside or outside of containment during the TMI incident.
 - (f) There was no overpressurization of the Primary System. The pressure was not high enough to lift the Code Safety Valves on the pressurizer.
5. Intervenors' assertion concerning the "bubble of hydrogen" is incorrect. The hydrogen bubble did not form as a direct result of the failure of a water system.
6. Relying upon the above five matters, Intervenors assert that significant unresolved issues remain. For the reasons stated above, Applicant maintains that Intervenors have failed to raise matters which support this allegation.

On the basis of the above, Applicant submits that Intervenors have not satisfied the burden that has been placed upon them and accordingly, respectfully requests that Intervenors' Motion be denied.

Respectfully submitted,



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April 18, 1979

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Opposition to Intervenor's Motion to Reopen the Record and To Postpone The Issuance of A Decision on Generic Safety Issue Considerations", dated April 18, 1979 in the above captioned matter have been served upon the following by deposit in the United States mail this 18th day of April, 1979.

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