UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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)	)	

NRC STAFF RESPONSE TO PETITION DATED APRIL 15, 1980 FILED BY DAVID SPRINGER

May 5, 1980

Charles A. Barth
Counsel for NRC Staff

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BACKGROUND

On February 22, 1980, the Licensing Board, after an evidentiary hearing held January 29 through February 2, 1979, in Mocksville, North Carolina, issued its Partial Initial Decision on sites alternative (hereinafter PIDSA) to the designated Perkins site. The Licensing Board concluded that there is no site obviously superior to the Perkins site which is located on the Yadkin River in North Carolina. (PIDSA Paragraph 70). By Order dated March 4, 1980, the Appeal Board tolled the time period within which exceptions to the PIDSA must be filed.

On April 15, 1980, David Springer, who appeared with William Pfefferkorn as an attorney for the Intervenors Mary Davis and the Yadkin River Association (Tr. 2823), filed a petition to intervene in his own right, as he had previously attempted to do. In the current filing addressed to the Licensing

Board, Mr. Springer seeks, in essence, (1) to intervene in this proceeding; (2) to have the Licensing Board appoint independent staff who will competently and with integrity represent the public interest; and (3) to hold a hearing on his allegations.[1/]

In support of the subject petition to intervene and reopen the record, Mr. Springer incorporates by reference his 1977 petition where he alleged that Appalachian Power Co. v. Train, 545 F.2d 1351 (4th Cir. 1976), struck down EPA water quality standards issued pursuant to the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251, thereby making once-through cooling at Lake Norman viable as a site for a nuclear generating station.[2/] That petition to intervene was denied and the denial upheld by the Appeal Board (see ALAB-431, 6 NRC 460 (1977)). In his present petition Mr. Springer adds that the Yadkin River site was approved for the Perkins plants because the Staff has "false[ly] and willfully and knowingly misrepresented . . . the position of the State of North Carolina for the purpose of avoiding consideration of other than closed cycle cooling sites," and particularly sites on Lake Norman, North Carolina [Petition, Paras. 5 and 6]. He further states that although the NRC Staff gained actual knowledge

1/ Should the Board fail to grant this relief, petitioner asks that the Chairman of the Nuclear Regulatory Commission appoint a special staff to represent the public interest.

2/ Appalachian Power Co. v. Train, 545 F.2d 1351 (1976) did strike down some of the regulations issued by EPA pursuant to the FWPCA. However, 40 C.F.R. § 423.15(L)(1) and (2) were not stricken by the Court and they are the thermal discharge limits imposed by EPA. Thus Appalachian Power did not disturb or change the thermal discharge limits imposed by EPA pursuant to the Federal Water Pollution Control Act of 1972, 33 U.S.C. 1251.

that it had wrongly represented the position of the State of North Carolina by December 1, 1979, the NRC Staff did not take adequate steps to correct the record [Petition, Para. 7]. In addition he sets out what he claims are a series of "material facts" that the NRC Staff purportedly knew or should have known and presented to the Board [Petition, Para. 8].3/

ARGUMENT

1. Jurisdiction

The petition is addressed to the Licensing Board. However, the Licensing Board no longer has jurisdiction over the issue of alternative sites, having issued its partial initial decision thereon over 10 days before the petition was filed. See 10 C.F.R. §§ 2.717(a), 2.718(j), 2.762(a), 2.771(a); Cf. Northern States Power Co. (Tyrone Energy Park, Unit 1), ALAB-464, 7 NRC 372, 374, n. 4 (1978). In this proceeding the Appeal Board has not completed its review of the Licensing Board's PIDSA and therefore the Appeal Board has plenary jurisdiction over the alternative site issue. Accordingly, it is the Staff's view that the Appeal Board is the proper forum which has jurisdiction to act upon the petition.

3/ These facts involved knowledge of State officials that the Perkins station was to consist of three generating units, the possibility of waivers of thermal discharge limitations under State and Federal law, the scheduling of the Perkins units, the Applicant's planned use of Lake Norman for other generating units, and the content of NUREGs.

The substance of the petition is a motion to reopen the record. As indicated in Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 2), ALAB-86, 5 AEC 376 (1972), the Licensing Board no longer has power to reopen the record. The Appeal Board, of course, where it has jurisdiction over a proceeding as it does in this matter and where factual disclosures reveal a need for further development of an evidentiary record, may order that the record be reopened for the taking of supplementary evidence. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B and 2B), ALAB-463, 7 NRC 341, 352 (1978).

2. Standing and Late Intervention

A motion to reopen the hearing can only be filed by a party to the proceeding. 10 C.F.R. § 2.771(a); see Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-124, 6 AEC 358, 363 (1973). However, Mr. Springer does not seek to reopen the record as an attorney for a party, but in his own right. He is not a party to this proceeding and has no standing under 10 C.F.R. 2.771(a) to move to reopen the record. His petition should be denied upon this ground alone.

Nor may the petitioner be allowed to intervene after the close of the evidentiary record so that he can apply as a party to reopen the record. In Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Unit 1 & 2), ALAB-583, 11 NRC _____ (March 12, 1980), the Governor of California, after not taking part in proceedings below, asked the Appeal Board to remand a

matter for redetermination. The Appeal Board refused and emphasized that one who was not a party below may not ask for a record to be reopened. Id., pp. 3-5. Although there the Governor of California had not previously sought to take part in the proceedings, the rule in 10 C.F.R. 2.771(a) against an application by one who is not a party is as binding here where the petitioner was previously denied intervention. See ALAB-431, 6 NRC 460. Mr. Springer cannot intervene and seek to reopen the record on his own behalf.

Further, long delay and laches in the filing of the petition until six weeks after the Licensing Board rendered its partial initial decision also prevents the grant of intervention. The latest matter mentioned in Mr. Springer's petition is the Staff's purported gain of knowledge of the purported State position on water quality requirements about December 1, 1979. See Petition Para. 7. As we later detail, this allegation is apparently based on a letter of November 28, 1979, to the NRC Staff. However, as shown on a copy of this letter we annex for the convenience of the Board, this letter was also sent to Mr. Springer at that time. His delay of over four months since his receipt of this letter, until after the Licensing Board decision, also prevents the granting of his petition to intervene. As indicated in a prior appeal in this proceeding, one who seeks to intervene late must do so promptly on the gain of knowledge premising that intervention, and cannot wait months until a matter is decided in a way that does not please him. See Duke Power Co. (Perkins Nuclear Station, Units 1, 2 & 3), ALAB-431, 6 NRC 460, 462-463

(1977); see also Project Management Corp. (Clinch River Breeder Reactor Project), ALAB-345, 4 NRC 383, 394-395 (1976).4/

3. Lack of Basis to Reopen the Record

Even where a party seeks to reopen a record, after an initial decision has been rendered, its right to do so depends on whether the matters sought to be addressed are significant, whether matters could have been presented earlier, and whether these matters might alter the result of the proceeding. As stated in Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 2), ALAB-486, 8 NRC 9, 21-22 (1978):

> We recently have had occasion to reiterate the standards for reopening a record. Kansas Gas & Electric Company (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 NRC 320, 339 (March 7, 1978). As we there stressed, the proponent of

4/ The petitioner does not even address the factors in 10 C.F.R. § 2.714(a) which must premise an application for late intervention. See Houston Lighting & Power Co. (Allens Creek Generating Station, Unit 1), ALAB-582, 11 NRC _____ (February 22, 1980). These factors are: "good cause" for the late intervention; the unavailability of other means to protect the petitioner's interests; the petitioner's ability to help develop the record; the extent to which other parties represent his interest; and the degree to which petitioner's intervention would broaden the issues or delay the proceeding. As we show in succeeding points there is no good cause to admit the petitioner as his allegations that the Staff misled the Board are unsupported and belied by the record. He was an attorney for a party urging the same course as he urges here and does not show that he could not have then protected interests he now seeks to defend or that he could develop any sounder a record than he already had an opportunity to do. He has long known of matters he seeks to raise at this time. Undoubtedly admitting Mr. Springer, if coupled with the reopening of the record, would lead to delay. Thus upon balancing the factors set out in 10 C.F.R. 2.714(a) alone, no basis exists to allow Mr. Springer's intervention on his own behalf.

> a motion to reopen bears a heavy burden. The motion normally must be timely presented and addressed to a significant issue. Moreover, if an initial decision has already been rendered on the issue, it must appear that reopening the proceeding might alter the result in some material respect. In the case of a motion which is untimely without good cause, the movant has an even greater burden; he must demonstrate not merely that the issue is significant but, as well, that the matter is of such gravity that the public interest demands its further exploration. See 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) . . . .

See also Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-422, 6 NRC 33, 64, n. 35 (1977).

Here these standards cannot be met. The petition here seeks to reopen on the ground that the Licensing Board was misled by the NRC Staff on the position of the State of North Carolina on the possible use of a site on Lake Norman with once-through cooling in lieu of the closed cycle site on the Yadkin River for the Perkins plants. See Petition, paras. 5 and 6. The issue involving use of a Lake Norman site with once-through cooling was directly considered by the Licensing Board. (Fdg. 2). The State of North Carolina gave its position, through its Assistant Attorney General, on its staff's belief of the lack of suitability of the Lake Norman site with once-through cooling, and the acceptability of the Perkins site on the Yadkin River. The Assistant Attorney General stated:

> Lake Norman has been raised before various state officials at various times to try to solicit views. I think that it was their position without exception that the state's position on the alternative-site issue is still as it was previously on the decision that was made by the North Carolina Utilities Commission in their proceedings.

> And that, simply stated, was: The proposed site for the Perkins Nuclear Generating Station is considered in the public convenience and necessity and the alternative sites available most appropriate. And that was for the full panel order Utilities Commission granting certificate of public convenience and necessity, finding of fact number four.
>
> There has been some recent question as to whether Lake Norman would be suitable as a site for once-through condenser cooling. This was the question which briefly was addressed in response to the movie, or the slides that were shown.
>
> I think it's accurate to say at this point that that issue is not officially before any state agency, and in my view cannot be put officially before any state agency without an application by someone who seeks to institute once-through condenser cooling at Lake Norman.
>
> There has been response from the staff, from the Environmental Management Commission, from the Water Quality Division of the Department of Natural Resources and Community Development, to inquiries from both the NRC staff and from the High Rock Lake Association, to the effect that in the staff's view Lake Norman is not suitable for once-through condenser cooling.
>
> So I think that that is as much of a position as the State of North Carolina can have at this time, and as much as they would have until in fact someone applies for a permit to put once-through condenser cooling on Lake Norman. And of course that has not been done. [Tr. 2956-2957].

The NRC Staff's testimony was based on a similar opinion of the cognizant State official that thermal limitation on effluents would prevent the use of once-through cooling on any inland North Carolina waters. This prefiled testimony stated [p. 8 following Tr. 3049]:

> 2. The only cooling option available to the applicant at this time is closed cycle (i.e., cooling towers). This has been confirmed by staff consultation with the State of North Carolina which assures the staff that the State will not

license once-through cooling due to its greater heat discharge into receiving State waters. 1

1. Letter from L. P. Benton, Chief, Environmental Operations Section, Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, dated October 19, 1978, addressed Charles A. Barth, Counsel for NRC Staff, U.S. Nuclear Regulatory Commission, Washington, D. C. 20555. [Testimony of Robert A. Gilbert and others following Tr. 3049, at p. 8 and References].

The letter from L. P. Benton, Chief, Environmental Operations Section, Division of Environmental Management of the North Carolina Department of Natural Resources and Community Development, upon which this testimony was based, was docketed and supplied to the Licensing Board and the parties. It stated:

> Your letter of October 11, 1978 to Mr. William A. Raney, Jr. concerning condenser cooling has been referred to me for response.
>
> You asked the view of the State of North Carolina "as to what type of condenser cooling would be acceptable for a nuclear facility of the size of Perkins to be constructed in the future and to come on line after July 1, 1983."
>
> In view of the remand of the EPA regulations concerning thermal discharges by the U.S. Court of Appeals, North Carolina has no effluent limits for thermal discharges from steam electric plants. For this reason the effluent limits for thermal discharges from such plants would be based on the maintenance of water quality standards for the receiving waters. Temperature standards for North Carolina waters are found in 15 N.C. Administrative Code 2B .0211(c) (3) (J), 2B .0211(d) (3) (H), and 2B .0211(e) (3) (F).
>
> Other than the Atlantic Ocean, I know of no body of water in North Carolina that could be used for once through cooling of a 4000 MWe facility without causing a violation of water quality standards for temperature. Therefore, it is my

> opinion that some technology other than once through cooling would be required in order for such a facility to receive a North Carolina water quality permit.[5/]

Assistant Attorney General William Raney of the State of North Carolina and the petitioner were both present when this testimony was received in evidence and made no objection to its receipt (Tr. 3032, 3049). Neither produced any evidence to dispute the validity of these representations by the NRC Staff of the position of the State of North Carolina.

Based on this evidence, the Licensing Board, in its partial initial decision of February 22, 1980 on alternative sites, made the following findings:

> 39. The Staff explained its efforts in reducing the sites under consideration from 38 to 10 (Tr. 3081-82, 3238-40, 3246); . . . . The Staff maintained that the State of North Carolina's letter on which it relied to preclude present consideration of once-through cooling was consistent with

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5/ A copy of the letter is attached hereto for the convenience of this Board.

The NRC Staff analysis did not attempt to include the infinite variations and combinations of condenser cooling which could result from an exemption granted under section 316 of the FWPCA amendments of 1972 as this would only be speculation. The Staff assumed that the Perkins units, due to come on line in the late 1980's, would be required to meet the standard of "best available technology economically achievable" as set forth in § 301(b)(2)(A) of the FWPCA amendments of 1972 as further defined by EPA in 40 C.F.R. § 423.15(2)(1 and 2), i.e., no heat discharge except cold side tower or pond blowdown.

EPA's current position (Tr. 3091, 3107, 3112).[9/] The Staff agreed with Applicant that a thermal study examining the interaction of various generating units on Lake Norman is needed before more plants are built. (Tr. 3108). . . .

9/ The North Carolina position is consistent with the oft-discussed EPA position which has been the subject of previous Perkins hearings. (Tr. 1601-04; Applicant's testimony of L. C. Dail following Tr. 275 at p. 4). Counsel for the State of North Carolina bolstered the status of the subject letter by indicating that, as the representative of the State, he could state that it was North Carolina's present view that "Lake Norman is not suitable for once-through condenser cooling." (Tr. 2957).

* * *

53. Dr. Medina [Intervenor's witness] argued that the choice of a site on the Catawba River, such as Wateree or Lake Norman "E", would be far superior to the proposed site on the Yadkin. He particularly advocated locating Perkins on Lake Norman with once-through cooling. This would greatly reduce the consumptive use of water (compared with cooling towers), would eliminate the expense of cooling towers, and would reduce the terrestrial impact since no additional reservoir (such as Carter Creek) would be needed. Whether Lake Norman is adequate for an additional large generating plant in addition to those proposed is arguable. However, it is apparent that the State of North Carolina will not license once-through cooling. (State of North Carolina, Tr. 2957; Staff testimony, p. 8 following Tr. 3049. See also footnote No. 9 following paragraph 39 of the instant decision.

See also Finding 29C. Thus, from an examination of the documents submitted by the NRC Staff and position of the State of North Carolina at the hearing, it is plain that the Licensing Board was not misled by the NRC Staff on the availability of once-through cooling cycle sites in the State of North Carolina.

Similarly, there is no showing that the NRC Staff was put on notice of a change of position of the State of North Carolina since December 1, 1979, as

alleged in paragraph 7 of the petition. This allegation is apparently based upon a letter of November 28, 1979, from the Director of the Division of Environmental Management to NRC Staff Counsel. The letter states:

> On October 11, 1978 you sent a letter to W. A. Raney, Jr., Assistant Attorney General, in which you requested the view of the State on the type of condenser cooling acceptable for a nuclear facility the size of the proposed Perkins plant. At the request of W. A. Raney, L. P. Benton responded by letter dated October 19, 1978.
>
> The North Carolina Environmental Management Commission has requested that I clarify the October 19 letter and elaborage on its contents.
>
> 1. There is no established procedure by which the State of North Carolina can establish an official position on the question which is posed other than in the context of the permit application and review process. State employees are encouraged to render advice and opinions outside of the official permit application process in order to assist potential applicants; however, such advice and opinions have no official or legal status under North Carolina law.
>
> 2. Any permit application for discharge of heated effluent would be acted upon in accordance with the temperature standards set forth in the North Carolina Administrative Code. Pertinent sections of the Code are set out in the October 19, 1978 letter.
>
> 3. G.S. 143-215.3(e) provides a mechanism for the Environmental Management Commission to grant variances from their rules and regulations.
>
> This letter should not be interpreted as being in support of or rejection of the letter of October 19, 1978. It is intended to explain the status of that letter under North Carolina law.[6/]

This letter is consistent with the position of the North Carolina Assistant Attorney General at the hearing that although the issue was not officially

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6/ A copy of this letter is attached hereto for the convenience of the Board.

before any State agency, it is the opinion of the staff of the cognizant State agency that Lake Norman is not suitable for once-through cooling (Tr. 2956-2957). No new issues are raised. No new evidence is offered.

Nor do the allegations in paragraph 8 of the Petition of matters that the NRC Staff purportedly did not bring to the attention of the Licensing Board lead to a reopening of the record. Allegations of a lack of knowledge of State officials that the power from Perkins was to be produced by three generating units is belied by the evidence that the matter was extensively litigated before the North Carolina Utilities Commission and the North Carolina Environmental Management Commission whose opinions recognize that the power was to be produced by three units (State Exh. 1 & 2; Tr. 1455-1456, see also Tr. 1448-1459). Allegations raising issues of law, whether they concern the effects of Appalachian Power Co. v. Train, 545 F.2d 1351 (4th Cir. 1976), the ability of the State or EPA to grant waivers to water quality standards, or the reach of the Clean Water Act, are issues that could have been raised before by the petitioner as an attorney in the proceeding. Similarly the issues of when a decision need be made of the methods to cool a plant[7/] or of the plans for other facilities on Lake Norman[8/] are matters that could have been explored during the hearing. None of these are new matters that could not have been presented before. They cannot premise a

7/ Petitioner alleges that decisions on how to cool a plant need only be made four years before the plant operates. This is immaterial to the issue of when a decision on the location of a plant, which could accommodate any cooling methods then required, has to be made.

8/ Plans for possible other generating facilities on Lake Norman were particularly explored at the hearings. See Fdg. 20.

motion to reopen the hearing on a late filed petition to intervene. See Vermont Yankee Nuclear Power Corp., supra, Duke Power Co. (Perkins Nuclear Station, Units 1, 2 & 3), ALAB-431, 6 NRC 460, 462; Tennessee Valley Authority, supra, 7 NRC at 348 (1978). For these reasons there is no basis to reopen the record.

4. Alleged Misrepresentation

The petition's basic allegation is that the NRC Staff misrepresented the position of the State of North Carolina at the hearings as to once-through cooling. This allegation is without citation to facts, the evidence, or to the record itself. It is not even supported by affidavit. As we have emphasized, the State of North Carolina by and through William Raney, Esq., Assistant Attorney General, was present at the January-February 1979 hearings, and present on Tuesday, January 30, 1979, when the NRC Staff testimony was received as evidence (Tr. 3049). Assistant Attorney General Raney had seen the Staff evidence and made no objection to its admission (Tr. 3032). The State in its opening remarks reflected the opinion of the staff of the State Department of Natural Resources and Community Development that Lake Norman was not a suitable site with once-through cooling (Tr. 2955-2957). Mr. Springer was present with counsel for the Intervenors when the Assistant Attorney General set forth the State's position and was present when the Staff introduced its evidence. At these hearings no allegation of misstatements by the NRC Staff witnesses was made--nor was any such allegation made in any proposed findings by the Intervenors or by any person.

Similarly, as we have shown, the letter of November 28, 1979, added nothing to the Assistant Attorney General's statement at the hearing that it was the opinion of cognizant State officials that once-through cooling could not be approved for Lake Norman, but that the State could not have an official position until application was made to use the lake for such purposes. The NRC Staff did not "knowingly, willfully and falsely" withhold any information from the Board.9/

CONCLUSION

For the above reasons the NRC Staff believes that this petition to intervene should be denied.

Respectfully submitted,

Charles A. Barth
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 5th day of May, 1980

9/ The unsupported assertion by Mr. Springer, an attorney, that the Staff committed perjury in presenting evidence to the Licensing Board, is scandalous and the NRC Staff calls to the Board's attention Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-121, 6 AEC 319 (1973), where unsupported disrespectful characterizations by an attorney were stricken.

The request that the Board and the Chairman of the NRC appoint a different Staff is frivolous when considered with the unsupported allegation of perjury by the Staff.

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AFFIDAVIT OF CHARLES A. BARTH

Charles A. Barth, being duly sworn hereby states as follows:

I am employed as a hearing counsel in the Office of the Executive Legal Director of the Nuclear Regulatory Commission. I received the attached letters dated October 19, 1978 and November 28, 1979 from the North Carolina Department of Natural Resources and Community Development in the normal course of my duties in connection with the application for the Perkins Nuclear Station by the Duke Power Company. The attached letters are true and accurate copies of the original documents received by me.

Charles A. Barth
Counsel for NRC Staff

Subscribed and sworn to before me
this 5th day of May, 1980

Notary Public

My Commission Expires: July 1, 1982.

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO PETITION DATED APRIL 15, 1980 FILED BY DAVID SPRINGER" and "AFFIDAVIT OF CHARLES A. BARTH" (with attachments) in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 5th day of May, 1980:

Alan S. Rosenthal, Esq., Chairman*
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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Washington, D.C. 20555

Charles A. Barth
Counsel for NRC Staff

ATTACHMENT TO BARTH AFFIDAVI

North Carolina Department of Natural Resources & Community Development

James B. Hunt, Jr., Governor 37 Howard N. Lee, Secretary

'78 OCT 24

USNRC-OELD

DIVISION OF ENVIRONMENTAL MANAGEMENT

Environmental Operations Section

October 19, 1978

Mr. Charles A. Barth
Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Dear Mr. Barth:

Your letter of October 11, 1978 to Mr. William A. Raney, Jr. concerning condenser cooling has been referred to me for response.

You asked the view of the State of North Carolina "as to what type of condenser cooling would be acceptable for a nuclear facility of the size of Perkins to be constructed in the future and to come on line after July 1, 1983."

In view of the remand of the EPA regulations concerning thermal discharges by the U. S. Court of Appeals, North Carolina has no effluent limits for thermal discharges from steam electric plants. For this reason the effluent limits for thermal discharges from such plants would be based on the maintenance of water quality standards for the receiving waters. Temperature standards for North Carolina waters are found in 15 N.C. Administrative Code 2B .0211(c) (3) (J), 2B .0211(d) (3) (H), and 2B .0211(e) (3) (F).

Other than the Atlantic Ocean, I know of no body of water in North Carolina that could be used for once through cooling of a 4000 MWe facility without causing a violation of water quality standards for temperature. Therefore, it is my opinion that some technology other than once through cooling would be required in order for such a facility to receive a North Carolina water quality permit.

Very truly yours,

L. P. Benton, Chief
Environmental Operations Section

Duke

P. O. Box 27687 Raleigh, North Carolina 27611

cc: Elizabeth S. Bowers
Dr. Donald P. deSylva
Dr. Walter H. Jordan
J. Michael McGarry, III, Esq.
William L. Porter, Esq.
William G. Pfefferkorn, Esq.
Mrs. Mary Davis
Atomic Safety and Licensing Board Panel
Atomic Safety and Licensing Appeal Board
Docketing and Service Station
W. A. Raney, Jr.

ATTACHMENT TO BARTH AFFIDAVIT

North Carolina Department of Natural Resources & Community Development

James B. Hunt, Jr., Governor

Howard N. Lee, Secretary

DIVISION OF ENVIRONMENTAL MANAGEMENT

USNRC-OELD

November 28, 1979

Mr. Charles Barth
Legal Counsel
Nuclear Regulatory Commission
Washington, D.C.

Re: Perkins Nuclear Station

Dear Mr. Barth:

On October 11, 1978 you sent a letter to W. A. Raney, Jr., Assistant Attorney General, in which you requested the view of the State on the type of condenser cooling acceptable for a nuclear facility the size of the proposed Perkins plant. At the request of W. A. Raney, L. P. Benton responded by letter dated October 19, 1978.

The North Carolina Environmental Management Commission has requested that I clarify the October 19 letter and elaborate on its contents.

1. There is no established procedure by which the State of North Carolina can establish an official position on the question which is posed other than in the context of the permit application and review process. State employees are encouraged to render advice and opinions outside of the official permit application process in order to assist potential applicants; however, such advice and opinions have no official or legal status under North Carolina law.

2. Any permit application for discharge of heated effluent would be acted upon in accordance with the temperature standards set forth in the North Carolina Administrative Code. Pertinent sections of the Code are set out in the October 19,1978 letter.

3. G.S. 143-215.3(e) provides a mechanism for the Environmental Management Commission to grant variances from their rules and regulations.

This letter should not be interpreted as being in support of or rejection of the letter of October 19, 1978. It is intended to explain the status of that letter under North Carolina law.

Sincerely,

Dr. Neil S. Grigg
Director

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