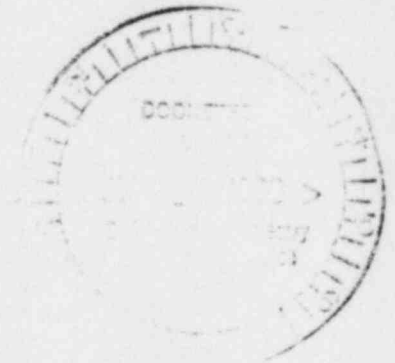


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

THE ATOMIC SAFETY AND LICENSING BOARD

Elizabeth S. Bowers, Chairman
Dr. Walter H. Jordan
Dr. Donald P. de Sylva



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

ORDER RELATIVE TO
PETITION OF DAVID SPRINGER
(June 17, 1980)

On April 15, 1980, Mr. David Springer filed a petition to intervene addressed to the Licensing Board. Mr. Springer alleged that inadequate consideration had been given to locating Perkins on Lake Norman with once-through cooling and requested his admission as an Intervenor and a reopening of the record on alternate sites. Petitioner supplemented the petition on May 12, 1980. (A supporting Affidavit was submitted May 22, 1980.) On May 5, 1980, the NRC Staff argued that the Licensing Board no longer has jurisdiction since it issued a Partial Initial Decision on February 22, 1980 on alternate sites. It is the Staff's view that since the Licensing Board no longer has jurisdiction, the proper forum is the Atomic Safety and Licensing Appeal Board. The Staff also took the position that there is no justification for the out-of-time filing and there is no merit to the Petitioner's

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allegations that the Staff misled the Licensing Board on the position of the State of North Carolina on use of once-through cooling.

The Applicant's response of May 9, 1980, did not address the question of the Licensing Board's jurisdiction but stated that there was no attempt to justify the extreme tardiness and the substance does not warrant affirmative relief. The Applicant also stated the petitions does not meet the stringent standards for reopening the record. On May 9, 1980, counsel for Intervenors supported the petition and also stated that the additional intervention would not cause delay since the Applicant had substantially postponed the need for Perkins.

On May 7, 1980, the Appeal Board issued a Memorandum and Order (ALAB-591) on the question of jurisdiction raised by the Staff. The Appeal Board deferred ruling on the question of the jurisdiction after determining that the Licensing Board has the duty to first determine the bounds of its own jurisdiction.^{1/}

There is no question that the Licensing Board is still an existing Board. It has not ruled on generic safety issues and has deferred, at the request of the Staff, ruling on a motion to reopen the record relative to TMI issues. Under 10 CFR §2.717,

^{1/}We deferred issuing this order until the extended time for the Commission review of ALAB-591 expired on June 12, 1980.

the Licensing Board's "jurisdiction in each proceeding will terminate upon the expiration of the period within which the Commission may direct that the record be certified to it for final decision, or when the Commission renders a final decision,...". That has not yet occurred in this proceeding.

We are aware of only one other proceeding where the parties differed as to whether the Licensing Board or the Appeal Board had jurisdiction over a matter. In the Catawba proceeding, the Licensing Board issued a Partial Initial Decision authorizing a Limited Work Authorization (LWA).^{2/} The LWA was issued by the Director of Regulation on May 16, 1974. A "Motion to Stay" was filed on August 6 apparently addressed to the Appeal Board (by its affidavit of service). The Applicant's response was addressed to the Licensing Board but the Staff's response was addressed to the Appeal Board. The Catawba Licensing Board determined it had jurisdiction to rule on the motion and that determination was not criticized on review.

The Licensing Board has determined that it is appropriate for it to exercise its jurisdiction to consider the petition of David Springer. However, we will not proceed to rule on the merits

^{2/} Cf. Duke Power Company (Catawba Nuclear Station, Units 1 and 2), LBP-74-84, 8AEC890, 892 (1974).

of the petition until the Appeal Board has ruled on the question of jurisdiction.

The parties have responded to the petition filed by Mr. Springer on April 15, 1980, but only the Applicant has responded to the Affidavit filed on May 22, 1980 (as supplemented on May 23, 1980). The Staff has not yet responded and should do so regardless of the jurisdiction question.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

Elizabeth S. Bowers
Elizabeth S. Bowers, Chairman

Dated at Bethesda, Maryland
this 17th day of June 1980.