UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

6 Aug 80

BRIEF OF DAVID SPRINGER
IN SUPPORT OF HIS PETITION
OF APRIL 15, 1980

G

I N D E X

C I T A T I O N S

CASES:

NRC PROCEEDINGS:

FEDERAL REGULATIONS:

I S S U E S

1. Does NRC Action Resulting in Irreversible and Irretrievable Commitment of Resources Require an Even Handed Hard Look at Alternatives?

2. What is Remedy for Staff Failure to Take an Even Handed Hard Look at Alternatives that May Avoid an Irreversible and Irretrievable Commitment of Resources?

3. Should Petitioner Be Permitted to Intervene?

B A C K G R O U N D

In May , 1974, Applicant filed for a Perkins Station. Their cooling problem as stated by Applicant and adopted by Staff was:

> Duke maintains that the construction and operation of base-load thermal generating facilities on an existing or newly built lake, using the lake for a cooling water condenser, is the most practical and economic method, and is environmentally acceptable. However, communications received from the Environmental Protection Agency, Region IV, in reference to Duke's request for guidance in the selection of acceptable cooling water systems for future site selection, indicated that if Duke were to select lake sites, off-stream cooling, probably by cooling towers, would also have to be provided. No assurance was given as to whether or when lake cooling could be approved without off-stream cooling. Therefore, it appeared highly unlikely that any one of the Schemes 3, 4, and 5, utilizing

> lake cooling for waste head dissipation could receive the necessary regulatory approvals, in the time frame that would insure availability of additional generating capacity to meet Duke's project load commitments.

(Footnote No. 9, Pages 8 and 9, Applicant's Brief of August 10, 1977, and ER Section 9.1.5). Applicant intends to use Lake Norman for additional thermal once-through cooled units but did not wish to waste a site suitable for once-through cooling on a cooling tower only plant. 1/

In 1976, Appalachian v. Train, 545 F.2d 1351 (1976) at 1368, the Court found EPA has indicated cooling lakes as the "best technology available" as provided in the Clean Water Act, 333 U.S.C.A. 1326(b). 2/ New regulations in 1978 provided that EPA must consider irreversible commitment of resources such as waste of water, energy, escalation of electric rates,

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1. See Exhibit C of Petitioner's Affidavit of May 22, 1980.

2. "Despite EPA's restrictions upon the use of cooling lakes, the agency's own Development Document specifically identifies such lakes as a form of closed-cycle cooling. It states:

> The techonological basis for best available technology economically achievable, and new source performance standards consist of closed-cycle evaporative cooling towers and cooling ponds, lakes and canals. [Development Document at 2.]

Moreover, the document lists cooling lakes as one of the available technologies for achieving waste heat removal in closed or recirculated cooling systems. As is there noted, such lakes "are similar in principle to open, once-through systems but are closed inasmuch as no significant thermal discharge occurs beyond the confines of the lake." Development Document at 496.

So we see that EPA has itself recognized that cooling lakes represent an achievable method of closed-cycle cooling. In addition, the agency has deemed them to be the best practicable technology for existing generating units presently employing such lakes." Appalachian v. Train at 1368

and overbuilding [3] even though (it is believed) a 316(a) demonstration may show violation of thermal standards. In 1979 the State of North Carolina also provided for a like waiver by the North Carolina Environmental Management Commission. This process of relaxing standards and forcing EPA approval of existing cooling lakes continues to be hard pressed by Applicant and other major utility companies.[4] A definitive answer can reasonably be expected within ten years.

In 1979 Perkins was taken off Applicant's schedule. Applicant now has scheduled ahead of Perkins 7,200.00 Mw of production.[5] Applicant's peak from March 31, 1979, to March 31, 1980, increased by only 44 Mw to 9892 as compared to their 1975 projection of 13,119[6].

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3. 43 Federal Register 44846 - No. 190 of September 29, 1978, and Paragraph 1, Pages 1, 2 and 3 of Petitioner's Affidavit of May 22, 1980.

4. Petitioner has not developed the details of precisely where this process is but these are well known to Applicant.

5. McGuire (2360 Mw in two 1180 units); Catawba (2290 Mw in two 1145 units); Cherokee (2560 Mw in two 1280 units); a third cherokee unit is not scheduled but may be scheduled ahead of Perkins No. 1. Applicant has laid off, we are informed, 1000 plus Cherokee workers and has or will delay scheduls for Cherokee No. 1 to come on line. If the third Cherokee unit were scheduled ahead of Perkins No. 1, Applicant would have 8,480 Mw before Perkins No. 1 needs to go on line.

6. "In 1975 Applicant's forecast was as follows:

> 106. During the past year, Applicant has twice lowered its forecast of peak power demand. (Numbers in parentheses are the percent change over the previous year calculated by the Board.)

(Continued)

The decision as to what type cooling to be used needs to be made approximately 48 months prior to the time a unit goes on line.[7] It now appears almost a certainty that Applicant can "receive the necessary regulatory approvals in the time frame that would assure availability of additional generating capacity to meet Duke's projected loan commitments.

On February 22, 1980, the Board issued a Partial Initial Decision holding there was no cooling tower only site that was obviously superior to the Yadkin River site. Alternative sites that could avoid irretrievable commitment of resources were not considered based substantially on Staff's incorrect representation as to the position of the State of North Carolina and Staff's failure to advise the Board that both the State and EPA has power to waive their standards based upon

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6. (Continued)

Year	Applicant's Original Forecast	Applicant's Aug. 20, 1974, Forecast	Applicant's Dec. 23, 1974, Forecase
1975	9,889	9,272	8,633
1976	10,724(8.4)	10,046(8.4)	9,721(12.6)
1977	11,602(8.2)	10,860(8.0)	10,512 (8.1)
1978	12,526(8.0)	11,714(7.9)	11,341 (7.9)
1979	13,500(7.8)	12,610(7.6)	12,209 (7.7)
1980	14,524(7.6)	13,551(7.4)	13,119 (7.5)
1981		14,538(7.3)	14,073 (7.3)
1982		15,575(7.1)	15,074 (7.1)"

[Catawba, LBP - 75-34, 1 NRC 626 at 656.] If Applicant's amount of growth continues at the same amount, 44 Mw per year, it will be approximately 164 years before the first unit of Perkins needs to go on line. If this amount of growth were to increase 5 fold it would be about 33 years. It would appear there is ample time for EPA's thermal standards for cooling lakes to be settled.

7. Indian Point No. 2, 5 NRC 1452 (1977 at page 1456, N. 6 and Exhibit D of Petitioner's Affidavit of May 22, 1980).

balancing the cost of irretrievable committing of resources against benefits obtained by the standards.[8/]

A R G U M E N T

A. THE SUBSTANTIVE ISSUES:

1. Sworn Facts Not Denied Under Oath Must be Taken as True.

California Title Ins. Co. v. Consolidated Piedmont Cable Co., 49 P. 1, 117 C. 237.

Neither Staff nor Applicant has denied the truth of the specific facts or questioned documents in Petitioner's Affidavits of May 22, 1980, and May 3, 1977. These facts establish, among other things:

(a) The public interest in the irreversible and irretrievable commitment of resources by a cooling tower only site,

(b) That Staff misrepresented the position of the State; and,

(c) Staff did not advise the Board of the authority of both the State and Federal Government to waive thermal standards based on, among other things, avoiding the irreversable and irretrievable commitment of resources.

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8. A cooling tower only site makes an irreversible and irretrievable commitment of resources. A cooling tower/once-through cooling site gives the probability of avoiding this commitment. In the present case the issue of the premissibility of using existing cooling lakes for once-through cooling will surely be settled 48 months before the first Perkins unit may be scheduled.

2. Staff Has a Non-Deligable Duty to Give an "Even Handed Hard Look" at NEPA Requirements.

In Sterling Case CLI-80-23, 11 NRC ___ (may 29, 1980), the Commission said:

> In Seabrook the Commission stated that the standard in no way effected the Staff's obligation to perform the requisite NEPA analysis of alternate sites. Staff was instructed that its preliminary analysis of alternate sites must be "thorough and even handed." Thus, no interpretation of the Standard should effect Staff's obligation to take a "hard look" at alternatives . . . .

See also Seabrook, ALAB 471, 7 NRC 477 (1978).

3. NRC Action Resulting in Irreversible and Irretrievable Commitment of Resources Requires an "Even Handed Hard Look at Alternatives.

These alternatives must be fully discussed irrespective of whether or not a certification or license from the appropriate authorities has been obtained. This includes a certification obtained pursuant to Sec. 401 of the Federal Water Pollution Control Act. 10 CFR 51.20(a), (b) and (c). See NUREG -0099 - Reg. Guide 4.2, Rev. 2, Chapter 9, esp. 9.2.

Staff's only grounds for avoiding a "hard look" at alternatives with cooling tower/once-through capabilities would be a conclusive finding that at no time and under no conditions would once-through cooling at Lake Norman be permitable. Obviously, the State and Federal Governments' authority to waive thermal standards makes this assertion by Staff impossible. It would be difficult to contend Staff's failure to disclose the waiver alternatives meets the "even handed" test.[9/]

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9. See pages 3, 4, 5, and 6 of Petitioner's Affidavit of May 22, 1980, which Staff has not seen fit to deny under oath.

B. THE PROCEDURAL ISSUES:

1. The Board Has Almost Plenary Power to Reconsider Its February 22, 1980, Decision or to Re-Open the Record on its Own Motion.

Petitioner's request to the Board may be viewed in part as a Limited Appearance and the Board may choose in its own discretion the remedy for Staff's failure, for whatever reason perceived by Board, to take an even handed hard look at alternatives to the irreversible and irretrievable commitment of resources resulting from the selection of the Yadkin River cooling tower only site.

2. Petitioner Is Not a Party of Record and Does Not Have Any Attorney of Record. The High Rock Lake Association of Which He Was President is Not a Party of Record. He is Not a Member of the Yadkin River Committee, Intervenor.

Petitioner has not appeared as an attorney. Petitioner's standing is best illustrated in the Record on page 2,970, Lines 11 through 18 as follows:

> Mrs. Bowers: ... Before you actually start with your witnesses, are there any other preliminary matters?
>
> Mr. Springer: Yes, Mrs. Bowers. May I comment on the State's position regarding --
>
> Mr. Barth: Mrs. Bowers, I object. Mr. Springer has no standing in this matter. He has filed a petition to intervene which has been denied. It's been to the Appeals Board once. He has no standing. He is a stranger. . . .
>
> Mrs. Bowers: . . . . Counsel can represent you in this . . . ."

Staff's assertion in its Brief of May 5, 1980, Page 1, is somewhat in conflict with this prior position.

3. Petitioner Filed His Original Petition to Intervene Very Shortly After Appalachian v. Train Was Mandated i.e. Became Final and Immediately After Enumeration of the National Energy Policy.

And prior filing would have been premature.

4. Petitioner Filed His Present Petition Very Shortly After Obtaining the Document Confirming That Staff Has Not Made the Official Position of the State a Part of the Record for Consolidation by the Board.

Any other filing would be premature.

5. Petitioner is Far Removed From Any Records in This Proceeding and Relies Upon Periodically Checking a Poorly Maintained Depository Requiring a Twenty-Five Mile Drive.

The Board has in the past disposed of Petitioner's contentions on procedural rather than substantive grounds. All of Petitioners efforts raise the question of whether any citizen can meaningfully cope with the impersonal Staff who are in charge of the questions and then supply the answers. Petitioner suggests this as, not a sinister plot on the part of the Staff, but rather a critical problem of government that is the basis of the public's disenchantment and distrust of "Washington". Hopefully Board will address substance rather than procedure and open the door for persons other than Staff to meaningfully ask questions to which full and competent answers must be considered by the Board in arriving at a decision.

6. The Basic Substantive Reason for Petitioner Being Denied Intervenor Status is His Failure to File After Notice Was First Published in the Federal Register.

To deny citizen participation because they do not respond within a few days after the publication of a notice in the Federal Register is substantively unfair and unreasonable.

How many citizens religiously read the Federal Reporter or in fact would have the time to? A citizen's first notice is usually after substantial Federal action has commenced. The provisions for exceptions are narrow and have been narrowly applied (after short perusal of both mine and others of ALABA). For instance, in this case until the Appalachian case became final and was bulwarked by the National Energy Policy any attempted intervention was marginal and premature. Yet much was made of timeliness. Timeliness is, in almost all cases non-functional to the sound substantive result for which we all strive. A like analysis is applicable to this present attempt to intervene. Until Petitioner knew what Staff had done on receipt of notice of the State's position, any action was premature.

Narrow interpretations of exceptions only make it more possible for the impersonal Staff (and it is a pervasive national disease, "bureaucratitis") to answer the questions it itself asks and often these answers were not in the public interest.

Petitioner believes that his participation in this proceeding has been both responsible and constructive. Petitioner's present request to intervene is, of course, within the sound discretion of the Board. We would hope that the Board, who can exercise the plenary power of the Commission, will base its decision on the assistance Petitioner may render in the Board's taking an even handed hard look at alternate

sites that may avoid an irreversible and irretrievable commitment of national resources.

Respectfully submitted,

David Springer
The Point Farm
Mocksville, North Carolina 27028
Telephone: (919) 998-8235

CERTIFICATE OF SERVICE

I hereby certify that copies of Brief of David Springer in Support of His Petition of April 15, 1980, in the above-captioned matter have been served on the following by deposit in the United States Mail this the 6th day of August, 1980.

Elizabeth S. Bowers, Esq.
Chairman, Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Donald P. deSylva
Associate Professor of Marine Science
Rosenstiel School of Marine and Atmospheric Science
University of Miami
Miami, Florida 33149

Dr. Walter H. Jordan
881 West Outer Drive
Oak Ridge, Tennessee 37830

Chairman, Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

Charles A. Barth, Esq.
Counsel for NRC Regulatory Staff
Office of the Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

William A. Raney, Jr., Esq.
Special Deputy Attorney General
State of North Carolina
Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602

William L. Porter, Esq.
Associate General Counsel
Duke Power Company
Post Office Box 2178
Charlotte, North Carolina 28242

Mr. Chase R. Stephens
Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. J. Michael McGarry, III
Debevoise and Liberman
1200 Seventeenth Street, N.W.
Washington, D.C. 20036

DAVID SPRINGER
The Point Farm
Mocksville, North Carolina 27028
Telephone: (919) 998-8235