

08/14/80

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )

APPLICATION OF WESTINGHOUSE ELECTRIC )  
CORPORATION FOR A SPECIAL NUCLEAR )  
MATERIAL LICENSE FOR THE ALABAMA )  
NUCLEAR FUEL FABRICATION PLANT (ANFFP) )  
TO BE LOCATED NEAR PRATTVILLE, ALABAMA )

Docket No. 70-2909

NRC STAFF'S RESPONSE TO MOTIONS FOR  
AN EXTENSION OF TIME  
IN WHICH TO FILE VALID CONTENTIONS  
FILED BY PETITIONERS DAVID L. ALLRED AND  
SAFE ENERGY ALLIANCE OF CENTRAL ALABAMA, INC.

INTRODUCTION

On July 22, 1980, the Atomic Safety and Licensing Board ("Licensing Board") issued an Order in which it scheduled a special prehearing conference in connection with this proceeding, to be held in Montgomery, Alabama on August 21, 1980.<sup>1/</sup> Pursuant to 10 CFR §2.714(b), the Licensing Board required that supplements to petitions for leave to intervene, containing the Petitioners' contentions and bases in support thereof, be filed not later than 15 days prior to the date of the special prehearing conference. In accordance with the Licensing Board's Order, supplements to the petitions for leave to

<sup>1/</sup> The Licensing Board established the date for the holding of the special prehearing conference in accordance with the agreement of the parties and the petitioners for leave to intervene in their telephone conference call of July 17, 1980.

intervene, containing the Petitioners' contentions and bases in support thereof, were required to be submitted not later than August 6, 1980.

On July 30, 1980, Petitioner Safe Energy Alliance of Central Alabama, Inc. ("SEACA") filed its "Motion for An Extension of Time In Which to File Valid Contentions" ("SEACA Motion"), in which it requested an additional 60 days to file its contentions.<sup>2/</sup> For the reasons set forth more fully below, the NRC Staff ("Staff") does not object to the granting of SEACA's request for an extension of time in which to file its contentions; however, the Staff recommends that any such extension be for a period of not longer than thirty (30) days, and that the special prehearing conference which has been scheduled by the Licensing Board for August 21, 1980 be postponed until at least 15 days after the date upon which SEACA's additional contentions must be filed.

On August 5, 1980, Petitioner David L. Allred filed his "Motion for An Extension of Time In Which to File Valid Contentions" ("Allred Motion"), in which he requested an extension of time of 90 days to file his

<sup>2/</sup> On August 5, 1980, SEACA filed its "Proposed Valid Contentions," in which it set forth 22 contentions it seeks to raise in this proceeding. By telephone conversation with Julian McPhillips, Esq., Counsel for SEACA, on August 8, 1980, the Staff was advised that SEACA still has not received the views of some of the scientists with whom it has been in contact. Mr. McPhillips has authorized us to state that SEACA presently intends to file additional contentions when it has received the views of these consultants. Mr. McPhillips has authorized us to state, also, that he is ready to attend the scheduled special prehearing conference with respect to those contentions which he has filed at this time, but that he does not oppose a postponement of that conference.

contentions.<sup>3/</sup> For the reasons set forth more fully below, the NRC Staff believes that the Allred Motion fails to set forth good cause sufficient to warrant an extension of time in which to file contentions. However, inasmuch as an extension has been sought also by SEACA, the other petitioner for leave to intervene herein, the Staff does not object to the granting of Petitioner Allred's request for an extension of time in which to file his contentions, for a period equal to any extension period which may be granted to Petitioner SEACA. Similarly, the Staff recommends that the special prehearing conference which has been scheduled for August 21, 1980 be postponed until at least 15 days after the date upon which Mr. Allred's contentions must be filed.

#### DISCUSSION

Motions for extensions of time in licensing proceedings are governed by the provisions of 10 CFR § 2.711. That rule provides as follows:

[W]henever an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may for good cause be extended or shortened by... the presiding officer."

In the following discussion, the Motions filed by SEACA and Mr. Allred are discussed seriatim, in light of this regulatory standard.

<sup>3/</sup> On August 5, 1980, Petitioner Allred filed his "Proposed Valid Contentions," in which he set forth 4 proposed contentions. By telephone conversation with Mr. Allred on August 12, 1980, Mr. Allred authorized us to state herein that he presently intends to file additional contentions and that he will require an extension of time in order to do so. In addition, Mr. Allred authorized us to state that he may be unavailable to attend the special prehearing conference on August 21, 1980 and that he would support a rescheduling of that conference for a later date.

A. The SEACA Motion for An Extension of Time

In its Motion, SEACA has identified "several scientists" who are providing assistance to SEACA in the form of "information, analyses, and reports" which SEACA asserts "would be essential in framing valid contentions," and which have not yet been received by SEACA (SEACA Motion, at 1, Para. 2). In the view of the NRC Staff, SEACA's Motion sets forth good cause to warrant an extension of time in which to file its contentions. SEACA should be allowed to have the benefit of those consultants' views before being required to file its contentions in this proceeding.<sup>4/</sup>

As to the length of the requested extension of time, the Staff believes that SEACA has failed to demonstrate sufficient cause to warrant the granting of

<sup>4/</sup> SEACA also alleges that an extension of time is necessary in order to allow SEACA (a) to obtain answers to the interrogatories it previously served upon Applicant Westinghouse Electric Corporation ("Applicant"), and (b) to review the Staff's Environmental Impact Statement ("EIS") (SEACA Motion, at 1). The Staff is of the view that these other two grounds fail to state good cause sufficient to warrant the granting of an extension of time. As SEACA is aware, the Applicant is under no duty at this time to furnish answers to SEACA's interrogatories, and even if the Applicant does answer some or all of those interrogatories, we have no way of knowing whether those answers will satisfy SEACA or will assist SEACA in framing its contentions. In any event, there is no requirement that a petitioner be afforded discovery to assist in the framing of contentions at the petition stage. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-107, 6 AEC 188, 192, aff'd, CLI-73-12, 6 AEC 241 (1973). Further, the EIS referred to by SEACA is not scheduled to be published, even in draft form, until approximately January 1981--several months after the close of the extension period which SEACA has requested. In our view, SEACA should file its contentions prior to receiving the EIS, and in the event that SEACA should desire to amend its contentions following its receipt of the EIS, it should then demonstrate good cause for its late filing pursuant to 10 CFR §2.714(a)(1)(i).

a 60-day extension. SEACA's initial petition for leave to intervene in this proceeding was filed on April 7, 1980,<sup>5/</sup> and SEACA already has had over four months in which to prepare and file its contentions. Although SEACA has not indicated when it expects to receive the views of its consultants, neither has it stated that those views will be unavailable until the expiration of the requested 60-day period. In our view, SEACA should be required to file its contentions without causing such a lengthy delay of this licensing proceeding. Accordingly, we see no reason why SEACA should not be required to obtain the views of its consultants immediately, and to file its contentions within a 30-day extension period. Such a period should provide sufficient time for SEACA to meet with its consultants and finalize its contentions while, at the same time, it will comply with the Commission's policy that proceedings should be conducted expeditiously (10 CFR Part 2, Appendix A (Preamble)).

In the event that an extension of time is granted, the Staff recommends that the special prehearing conference now scheduled to be held on August 21, 1980 be postponed until 15 days after SEACA is required to file its contentions in order to avoid the holding of an unnecessary and duplicative prehearing conference. In view of the fact that SEACA presently believes that it will soon be filing additional contentions without regard to matters

<sup>5/</sup> "Petition for Leave to Intervene and Request for a Hearing", filed by Safe Energy Alliance, Central Alabama on April 7, 1980.

which may be learned during discovery, an additional prehearing conference would appear to be necessary before discovery may be commenced in an orderly fashion. We believe that no benefit will result from the holding of the prehearing conference at this time, and that it will duplicate matters which would of necessity be required to be considered at a subsequent conference. Accordingly, we urge that the presently scheduled prehearing conference be postponed until after SEACA is required to file its presently anticipated additional contentions.

B. The Allred Motion for An Extension of Time

In his Motion, Mr. Allred states that he requires an extension of time of 90 days in which to file valid contentions because he is awaiting receipt of a response from the Staff to his letter request for "a statement as to conflicts of interest related to the preparation of the Environmental Impact Statement for the proposed facility" (Allred Motion, at 1, para. 1).

In our view, Mr. Allred--who is an experienced attorney--has failed to state sufficient grounds in support of his request for a 90-day extension. First, Mr. Allred has already filed a contention concerning an alleged conflict of interest in the preparation of the EIS (Contention IV, Allred Proposed Valid Contentions, at 2). Secondly, as Mr. Allred, himself, states in his Motion (p. 1, para. 3), Counsel for the Staff has advised Mr. Allred that a response to his letter request is being prepared and will be issued shortly. In the event that the Staff's response to Mr. Allred's letter discloses new information not previously available to him, Mr. Allred may then move to amend

his contentions upon a demonstration of good cause. 10 CFR §2.714(a)(1)(i). For these reasons, we believe that Mr. Allred has failed to demonstrate sufficient grounds for an extension of time of any length, and certainly he has not demonstrated grounds which would warrant an extension of time of 90 days. However, since we support SEACA's request for an extension of time, albeit for a lesser period, the Staff has no objection to a similar extension being granted to Mr. Allred.

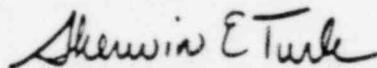
#### CONCLUSION

For the foregoing reasons, the NRC Staff respectfully submits (a) that Petitioner SEACA has demonstrated good cause sufficient to warrant the granting of an extension of time in which to file its contentions, and (b) that Petitioner Allred has failed to demonstrate good cause sufficient to warrant the granting of an extension of time in which to file his contentions. The Staff does not object, however, to the granting of an extension of time both to SEACA and to Mr. Allred, in view of what we believe to be legitimate grounds stated in the SEACA Motion. The Staff urges that any extension which is granted by the Licensing Board be no longer than 30 days in duration.

In the event that an extension of time is granted, the Staff recommends that the special prehearing conference presently scheduled to be held on August 21, 1980 be postponed until at least 15 days after the date upon which the Petitioners' contentions must be filed. As indicated supra at notes 2 and 3, Petitioners SEACA and Allred both intend to file additional contentions,

and for this reason they have sought the presently requested extension of time. Petitioner Allred supports a postponement of the presently scheduled prehearing conference; Petitioner SEACA is prepared to attend the prehearing conference at this time, but would not oppose a postponement of that conference. By telephone conversation of August 12, 1980, Counsel for Applicant advised the Staff that the Applicant opposes a postponement of the special prehearing conference. In the event that an extension of time is granted for the filing of contentions, the Staff believes that a postponement of the special prehearing conference would serve the interests of all the parties, in that it would promote a more orderly licensing proceeding and would eliminate the convening of an unnecessary and duplicative prehearing conference.

Respectfully submitted,



Sherwin E. Turk  
Counsel for NKC Staff

Dated at Bethesda, Maryland  
this 14th day of August, 1980

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO MOTIONS FOR AN EXTENSION OF TIME IN WHICH TO FILE VALID CONTENTIONS FILED BY PETITIONERS DAVID L. ALLRED AND SAFE ENERGY ALLIANCE OF CENTRAL ALABAMA, INC." 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 14th day of August, 1980:

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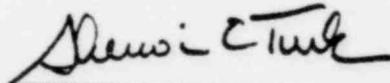
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