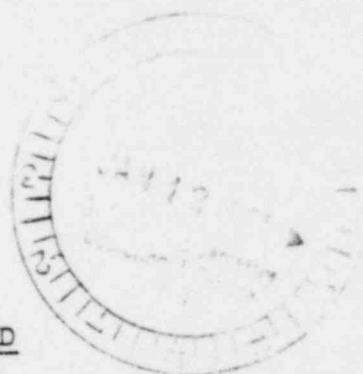


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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of :  
WESTINGHOUSE ELECTRIC CORPORATION : Docket No. 70-2909  
(Alabama Nuclear Fuel Fabrication :  
Plant Special Nuclear Material :  
License) :

RESPONSE OF WESTINGHOUSE ELECTRIC CORPORATION TO  
SUPPLEMENT AND SECOND SUPPLEMENT TO PETITION FOR  
LEAVE TO INTERVENE OF CATHALYNN DONELSON

Westinghouse Electric Corporation ("Westinghouse") files this Response to the supplemental filings by Cathalynn Donelson ("Donelson") to her initial untimely Petition for Leave to Intervene ("Initial Petition"), which are captioned Supplement to Petition for Leave to Intervene of Cathalynn Donelson and for Substitution of Named Intervenors ("First Supplement") and Second Supplement to Petition of Cathalynn Donelson for Leave to Intervene ("Second Supplement"). Westinghouse filed its Answer<sup>1</sup> to the Initial Petition opposing Donelson's intervention on November 24, 1980.

The NRC Rules of Practice (10 C.F.R. Part 2) do not provide for the filing of supplements to petitions for leave

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<sup>1</sup>Answer of Westinghouse Electric Corporation to Petition for Leave to Intervene of Cathalynn Donelson.

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to intervene and Donelson should have sought Board permission for the submission of the First Supplement. Although Westinghouse is not required to respond to that unauthorized supplemental filing, it is filing this Response to inform the Atomic Safety and Licensing Board (the "Board") of its continuing opposition to the untimely intervention petition of Donelson.

The First Supplement, filed on December 6, 1980, constitutes essentially a reply to the Answer of Westinghouse to the Initial Petition. As was the case in her Initial Petition, the attempt by Donelson in the First Supplement to establish good cause for her late intervention wholly fails. Donelson asserts that she has not been "lulled into inaction" by the activities of either SEACA or David L. Allred ("Allred"). Donelson maintains that she has not assumed that another would protect her interests. Donelson's arguments in this regard, however, are contravened by her actions. As is described in the Westinghouse Answer, Donelson clearly and unequivocally designated SEACA and its attorney, Julian McPhillips, as the party and attorney respectively, to represent her interests in this proceeding. While Donelson may have been active in assisting Allred in the preparation of his pending intervention petition, it is certainly apparent that she voluntarily chose to allow Allred to present alone the matters she now tardily claims to be

her interests. Thus, the gist of Donelson's argument on good cause for late filing still remains a claim that she was relying on the intervention of Allred to advance her interests. As is discussed in the Westinghouse Answer, such reliance does not constitute a valid excuse or good cause under applicable decisions of the Appeal Board.

Donelson also addresses serially in the First Supplement the other criteria under 10 C.F.R. § 2.714(a)(1), an omission in her Initial Petition. Donelson still does not, however, meet her heavy burden of showing that the other four factors to be examined when considering an untimely petition for intervention weigh in her favor, let alone outweigh the lack of good cause. As noted by the Commission in In re Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), 1 NRC 273, 275, CLI 75-4 (1975): "The burden of justifying intervention on the basis of the other factors in the rule [§ 2.714(a)] is considerably greater where the latecomer has no good excuse."

To take but one example of Donelson's failure to carry her heavy burden: she claims that on the issue of whether her participation will assist in developing a sound record she has "discussed" the proposed facility with many scientists and "expects" to have their expert knowledge at her disposal during the licensing process. Such vague assertions and speculation about potential future employment of experts fail to provide the Board with any meaningful

basis on which to determine whether her participation will assist in developing a sound record. Donelson has not identified the scientists, nor described the specific nature of her discussion with them. Moreover, she has not explained how her having an undescribed discussion with a scientist equates with her contributing to the development of the record in this proceeding.

The Second Supplement was filed on December 20, 1980. The Second Supplement consists exclusively of a listing of those Allred contentions that Donelson would withdraw were she to be granted intervenor status. In accordance with the Board Order of December 11, 1980, no response to the contentions filed by Allred are due from Westinghouse until thirty (30) days after the Board's ruling on the request by Donelson to substitute for Allred. Thus, no answer by Westinghouse to the Second Supplement would be appropriate at this time. Westinghouse notes, however, that the contentions which Donelson seeks to continue to pursue would, if allowed, substantially broaden the issues beyond those which are sought to be litigated by SEACA, and appear primarily to consist of assertions, without specificity or indication of basis, that Westinghouse has not complied with the regulations of the NRC.

For the reasons stated above, Westinghouse respectfully requests this Board to deny the intervention petition of Donelson and so much of the substitution motion as would

permit Donelson to substitute for Allred as a party.

Respectfully submitted,

Barton Glorway

John R. Keurick  
Eckert, Seamans, Cherin & Mellott

Donald R. Marucci / JRK  
Law Department  
Westinghouse Electric Corporation

Dated: January 5, 1981

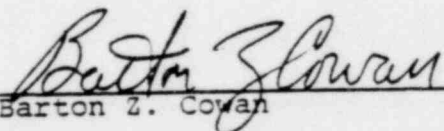
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CERTIFICATE OF SERVICE

I hereby certify that copies of the "Response of Westinghouse Electric Corporation to Supplement and Second Supplement to Petition for Leave to Intervene of Cathalynn Donelson" were served upon the persons listed on Attachment 1 to this Certificate of Service by deposit in the United States Mail (First Class), postage prepaid, this 5th day of January, 1981.

  
Barton Z. Cowan

Counsel for  
Westinghouse Electric Corporation

ATTACHMENT 1

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Washington, D. C. 20555

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