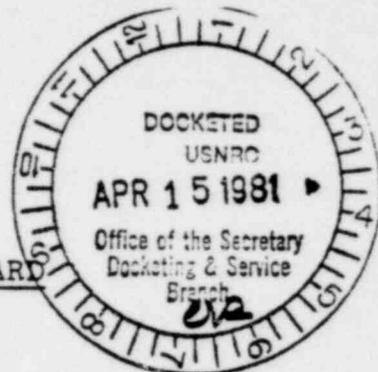


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD



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

4/13/81

APPLICANT'S OPPOSITION TO INTERVENORS'
MOTION TO REOPEN THE RECORD AND
REMAND FOR FURTHER PROCEEDINGS

On April 1, 1981, immediately prior to the commencement of oral argument regarding alternative site issues, Intervenor served on Applicant, by hand, its Motion to Reopen the Record and Remand for Further Proceedings. This Atomic Safety and Licensing Appeal Board noted at the outset of the oral argument that it would expect the Staff and Applicant to respond within the time provided by the Rules of Practice. Oral Argument Tr. 4-5. Pursuant thereto and 10 CFR § 2.730, Applicant makes the following response in opposition to the motion.

The standards governing reopening of hearing records are clearly set forth in Kansas Gas & Electric Company (Wolf Creek Generating Station, Unit No. 1) ALAB-462, 7 NRC 320, 338 (1978):

As is well settled, the proponent of a motion to reopen the record has a heavy burden. Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-359, 4 NRC 619, 620 (1976). The motion must be both timely presented and addressed to a significant safety or environmental issue. 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); Georgia Power Company (Alvin W. Vogtle Nuclear Plant, Units 1 and 2), ALAB-291, 2 NRC 404, 409 (1975). Beyond that,

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it must be established that "a different result would have been reached initially had it [the material submitted in support of the motion] been considered." Northern Indiana Public Service Company (Bailly Generating Station, Nuclear-1), ALAB-227, 8 AEC 416, 418 (1974).

With respect to motions to reopen which are 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." Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 2), ALAB-486, 8 NRC 9, 21 (1978) referencing Vermont Yankee Nuclear Power Corporation, ALAB-138, 6 AEC 520, 523 (1973); Id., ALAB-167, 6 AEC 1151-52 (1973). In short, for Intervenor to be successful, its Motion must show that (1) the issue is timely raised, or that good cause exists for an untimely filing, (2) that the issue is significant and, if it has not been timely raised without good cause, is of such gravity that the public interest demands its further exploration in a reopened hearing, and (3) based on the material submitted in support of its Motion that a different result would have been reached had such material been considered.

With respect to timeliness, as the Appeal Board noted (Oral Argument Tr. 4) Intervenor's Motion comes late. Further, there has been absolutely no showing of good cause except a statement to the effect that "Intervenor has just discovered" the alleged discrepancy in the location of the Lake Norman "E" site. Intervenor has made no attempt to demonstrate why this

matter could not have been raised at the time of the reopened proceeding regarding alternate sites in 1978. Applicant submits that Intervenors cannot make such a showing. As set forth in the attached Affidavit of D. B. Blackmon, representatives of Intervenors attended the 1978 Staff site visit of the subject Lake Norman "E" site. Testimony of Intervenors' witnesses reflect that they also visited the Lake Norman "E" site after the preparation of their testimony, i.e., early 1979. (Tr. 3444, 3514-6). If, as suggested by Intervenors, Intervenors' witnesses visited a Lake Norman "E" site different from that visited by the Staff and Intervenors' representatives, such would have been apparent at the time of the presentation of evidence at the January-February 1979 evidentiary hearings.^{1/} No allegation to this effect was made at that time. So postured, it cannot be said that Intervenors have satisfied the first reopening criterion.

With respect to the second reopening criterion, Applicant cannot maintain that, if correct, Intervenors' allegation would be insignificant. Thus, it is necessary to turn to the third reopening criterion, to-wit, whether the material submitted in support of the Motion would lead to a different result. The essence of Intervenors' brief Motion and supporting material is

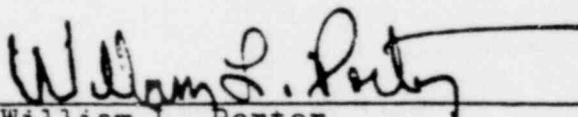
^{1/} One of the Intervenors' representatives who visited the Lake Norman "E" site with the Staff was Mr. David Springer. The record reflects that Mr. Springer assisted Mr. William Pfefferkorn in representing Intervenors at the evidentiary hearings. (Tr. 2823).

that Applicant has not properly identified the Lake Norman "E" site in this proceeding; that Applicant showed the Staff the wrong Lake Norman "E" site, thereby calling into question the Staff review of alternate sites; that Intervenors' witnesses, relying upon other material, visited the real Lake Norman "E" site; and that the material presented by Intervenors reflects the Lake Norman "E" site to be in various locations. As set forth in the attached Affidavit of D. B. Blackmon, Intervenors' position is simply incorrect. Mr. Blackmon states that the Lake Norman "E" site has always been at the location visited by the NRC Staff and Intervenors' representatives. The record shows the Lake Norman "E" site at a specified location. See Summary Report, Duke Power Company, Phase 1 Siting Study, January 1978, Staff Exhibit 10. The three extra-record documents attached to the Intervenors' Motion all show the Lake Norman "E" site to be at the same location as reflected in Staff Exhibit 10. Affidavit of D. B. Blackmon. In sum, there is no basis to Intervenors' allegations to the contrary and likewise no compliance with either the second or third reopening criterion.

On the basis of the above, Applicant respectfully requests that Intervenors' Motion to Reopen the Record and Remand for Further Proceedings be denied.

Dated: April 13, 1981

Respectfully submitted,



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