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March 10, 1981



Ms. C. Jean Bishop, Secretary
Atomic Safety and Licensing Appeal Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555



Re: Perkins Nuclear Station
Units 1, 2 & 3
Docket Nos. STN 50-488, 50-489 & 50-490

Dear Ms. Bishop:

On February 25, 1981, you requested that Duke Power Company advise the Board of the present status of the Perkins facility. You desired a reply no later than March 10 so that the other parties could be advised and a decision regarding oral argument, which is scheduled for April 1, 1981, could be made.

The Perkins facilities are at the present time unscheduled, although the need for additional generation capabilities in the 1990's is evident. The Company is committed to continuing construction programs as soon as sufficient funds can be reasonably obtained. In no way did the decision of the Duke Board of Directors to delay completion of Cherokee Nuclear Station Units 1 and 2, cancel the Perkins Station. Rather, the Cherokee delay has been necessitated by Duke's inability to finance construction on a reasonable basis due to continued rapid inflation, high interest rates, inadequate earnings, and the depressed value of Duke's stock compared to its book value.

In your letter you request the reasons why the Perkins appeal should be heard at this time in view of Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-277, 1 NRC 539 (1975). In Douglas Point the Appeal Board was faced with deciding if evidentiary hearings should proceed notwithstanding the Applicant's postponement of construction and operation for several years. Prehearing activities

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Ms. C. Jean Bishop
March 10, 1981
Page 2

were in progress when the Applicant's postponement was made; evidentiary hearings had not yet begun.^{1/} Nevertheless, the Board agreed with the Applicant that there were good reasons to proceed with evidentiary hearings on site-related issues.

The instant appeal also involves site-related issues (viz., alternate sites); indeed, such are the sole subject of this appellate review. However, it should be noted that the Perkins appeal arises from a different procedural background which provides additional justifications for proceeding. This is not the beginning of a new application as is Douglas Point; rather, it is a continuation of a proceeding wherein evidentiary hearings have been held since 1975. Thus, the Appeal Board is not required to decide now if evidentiary hearings involving immense commitments of time and financial resources by all parties are to be held. Rather, the hearing to be held by the Appeal Board on April 1, 1981 is an appeal of an issue which has been exhaustively considered in two evidentiary hearings and thoroughly briefed. It does not have the same impact on litigants that evidentiary hearings would have. Yet, Douglas Point found that these types of hearings should proceed. Clearly, if evidentiary hearings were determined to be appropriate, there is even greater reason to hear an appeal which has already been briefed by the parties.

In the Licensing Board's Partial Initial Decision of October 27, 1978, the Board made a conclusion of law that "the review of the application by the Staff has been adequate except for generic safety issues and alternate sites." (p. 86, paragraph 155). Alternate sites and generic safety issues were considered in subsequent hearings held on January 29 through February 2, 1979. A further Partial Initial Decision was rendered on February 22, 1980. The decision addressed alternate sites only.^{2/} Generic safety issues remain before the Licensing Board.

When viewed in light of the Perkins situation, Douglas Point is directly applicable. Not only is the site-related nature of the issue similar, the criteria expressed in

^{1/} The Douglas Point SER and FES were not yet published. The Perkins SER and FES were issued in March, 1977 and October, 1975.

^{2/} There are also two outstanding motions before the Licensing Board concerning Three Mile Island and the schedule adjustment of the Applicant's need for the Perkins units.

Ms. C. Jean Bishop
March 10, 1981
Page 3

Douglas Point have been met in Perkins. They have, in fact, been exceeded.

There is a high degree that the findings will retain their validity. The passage of time will not alter meteorology, seismology, geology and all the other criteria which are included in site suitability and alternative sites. These are essentially fixed. Further, it is in the best interest of the public and the litigants to have these issues resolved inasmuch as consideration of alternatives is the linchpin of NEPA. It is also evident that none of the parties will be prejudiced by the Board's hearing and determining these issues now. We are cognizant that there exists a possibility of issues being reopened in the future because of changing circumstances. However, the likelihood of the physical aspects of the Perkins site materially changing over the next few years is remote.

It should also be noted that consideration of the appeal of the alternate site issue will not precipitate the issuance of the license. The appeal will settle a very important issue for all parties; however, outstanding matters still remain before the Licensing Board.

For all of the above reasons, it is proper that the Appeal Board proceed with the oral argument regarding alternate site issues as previously scheduled. There has been no action taken by the Applicant requiring the Appeal Board doing otherwise.

Very truly yours,

William L. Porter

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Ms. C. Jean Bishop
March 10, 1981
Page 4

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