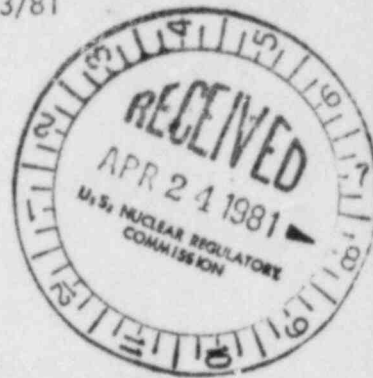


4/23/81

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION



In the Matter of
CONSUMERS POWER COMPANY
(Big Rock Point Plant)

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)
)
)

Docket No. 50-155
(Spent Fuel Pool Modification)

NRC STAFF RESPONSE TO MOTION OF
JOHN A. LEITHAUSER FOR EXTENSION OF TIME

The Staff of the Nuclear Regulatory Commission (Staff) hereby opposes the motion of Mr. John A. Leithauser for an extension of time to file his "appeal" of the decision of the Atomic Safety and Licensing Appeal Board (Appeal Board) in Consumers Power Company (Big Rock Point Plant), ALAB-636, ___NRC___, (March 31, 1981), on two grounds. These grounds are: 1) Mr. Leithauser is not a party to the proceeding entitled to file a petition for Commission review; and 2) even if Mr. Leithauser were a party to this proceeding, his motion for extension of time should not be granted since it was filed after the due date for a petition for Commission review in this proceeding.

DISCUSSION

In ALAB-636 the Appeal Board accorded Mr. Leithauser the status of a non-party participant for the purposes of this appeal. The Appeal Board specifically noted that its procedural orders referring to Mr. Leithauser as an "intervenor" did not constitute a sua sponte reversal of the

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Licensing Board's denial of his petition to intervene. ALAB-636, supra, slip op. at 14, fn. 10.^{1/} 10 C.F.R. § 2.786(b)(1) of the Commission's regulations sets forth the method for seeking Commission review of an Appeal Board's action. That regulation states that a party may seek such review within 15 days of the service of the Appeal Board decision. Since Mr. Leithauser is not a party to this proceeding there is no need to grant him an extension of time to file a petition for review of ALAB-636.

Even if Mr. Leithauser were considered a party to this proceeding, his motion should not be granted since it was received after the due date for petitions for Commission review. It is Commission practice that requests for extension of time must be received by the tribunal before whom the proceeding is pending at least one day prior to the filing date in question. See Appendix A to 10 C.F.R. Part 2, Section IX(d)(3);^{2/} Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-568, 10 NRC 554 (1979). Since Mr. Leithauser did not follow this procedure, his motion should not be entertained. His remedy would be to submit his pleading accompanied by a motion to file that pleading out of time.


1/ On March 10, 1981, Mr. Leithauser filed a motion before the Commission for official notice of his opinion of his status in this proceeding. To the Staff's knowledge there has been no Commission action on this motion as yet. In response to that motion the Staff took the position that if any clarification were necessary of Mr. Leithauser's status, the motion should be referred to the Licensing Board. The Appeal Board decision in ALAB-636 has rendered any such referral unnecessary. Mr. Leithauser's status has been clarified.

2/ Although this section specifically mentions the Appeal Board, the procedure it sets forth has been followed with respect to other tribunals.

CONCLUSION

For the reasons set forth above, Mr. Leithauser's motion for a seven day extension should be denied.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "JANICE MOORE". The signature is written in a cursive style with some capital letters.

Janice E. Moore
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 23rd day of April, 1981.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)	
CONSUMERS POWER COMPANY)	Docket No. 50-155
(Big Rock Point Plant))	(Spent Fuel Pool Modification)

CERTIFICATE OF SERVICE

I hereby certify that copies of NRC STAFF RESPONSE TO MOTION OF JOHN A. LEITHAUSER FOR EXTENSION OF TIME 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 23rd day of April, 1981.

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