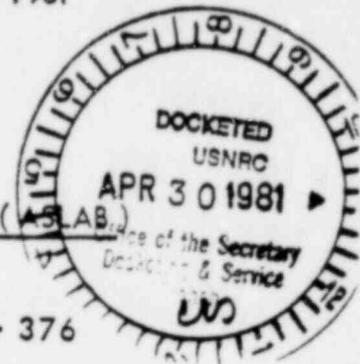


25 April, 1981

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD (ASLAB)



In the Matter of
PUERTO RICO ELECTRIC
POWER AUTHORITY (PREPA)
Applicant

GONZALO FERNOS, PRO SE, ET AL.
Intervenors

DOCKET NO. 50 - 376

Proposed North Coast
Nuclear Plant (Unit 1)
Islote Ward, Arecibo, Puerto Rico

.....

INTERVENORS' RESPONSE TO APPLICANT'S MOTION OF APRIL 17, 1981

TO THE HONORABLE APPEAL BOARD :

• COMES NOW the undersigned Intervenor, Pro Se, and on behalf of Members of Citizens for the Conservation of Natural Resources, Inc. (CCNR), hereinafter referred to collectively as Intervenor, and respectfully states, alleges and prays :

• On April 17, 1981, Applicant filed a motion entitled : " Authority's Response To Intervenor's Petition For A Temporary Stay And Extension of Time." The motion was obviously filed seven days after the Appeal Board had granted the relief sought in Intervenor's Petition of April 6, 1981, referred to above. Since the Appeal Board resolved Intervenor's Petition on April 10, 1981, Applicant's belated Response of April 17, 1981, perforce needs to be treated as an ex post facto motion requesting the Appeal Board to retrospectively annul its ORDER of April 10, 1981, granting Intervenor an extension of time until May 15, 1981, to file an appeal of Licensing Board's ORDER of February 18, 1981, under 10 CFR § 2.762.

WHY APPLICANT'S MOTION OF APRIL 17, 1981 SHOULD BE DENIED OUTRIGHT

ARGUMENTATION :

• As usual, Applicant's Motion is devoid of valid supporting arguments. Applicant's allegations are just empty rhetoric -- sheer nonsense. Let us examine the facts :

• 1.- Firstly, the granting or denial of a stay to the Licensing Board's ORDER of February 18, 1981, is of no consequence whatsoever to either party. The Appeal Board must have been fully aware of the irrelevancy of staying an order granting the dismissal of the application without prejudice as it has ignored ruling on such request by Intervenors. A stay is inconsequential because to grant or deny it would not change a bit the undisputable fact that Applicant has given up its plans to build a nuclear plant at Arecibo, Puerto Rico or elsewhere on the Island, and all it seeks now is to keep its options open for a very remote and most improbable future consideration. * Further, by Applicant's own admission, "the decision [the granting of Applicant's request for withdrawal of the application] did not authorize the Authority to commit any action which it could not have otherwise committed, and thus there is 'nothing for the Appeal Board to stay'." (See top of p. 4 of Applicant's Motion of April 17, 1981.)

Therefore, the only issue in discussion at this instance is whether the granting of an extension of time to file an appeal was appropriate or not. The Appeal Board believes it was since it granted the extension of time requested. Intervenors, naturally, agree and further consider Applicant's untimely opposition, which is obviously moot, an attempt to undermine the Appeal Board's confidence on its own rulings.

• 2.- Secondly, Applicant's allegation that Intervenors' period to file an appeal has expired is also devoid of merit. The filing of exceptions to the decision to be appealed within 10 days, as any other act which a party has a right to do, may for good cause be extended as provided in 10 CFR § 2.711(a). Also, the Petition For Reconsideration expressly spells out in its prayer that the undersigned Intervenor wishes "to preserve his right to appeal..." (See p.5, last sentence of Petition for Reconsideration of March 3, 1981). Further, Licensing Board's ORDER of March 26, 1981, denying the reconsideration is devoid of any mention that the Appeal Board lacks jurisdiction

* Applicant's current plans for next electricity generating units comprise only building 3-300 megawatt coal-fired power plants for which it has already awarded the design contract.

to consider intervenors' appeal because, as Applicant alleges, the 10 day period to file it has expired. If the Licensing Board had believed that the period to file an appeal had expired, it was obliged under 10 CFR § 2.718(a) to state so in its order. The fact that the Licensing Board remained silent on this issue is in and of itself proof that intervenors' right to appeal had not expired. Nonetheless, even the Supreme Court of the United States and the U.S. Court of Appeals are very lenient in granting extensions of time for good cause. The undersigned Intervenor has been granted two extensions of time (almost 2 months each) by the Supreme Court of the United States in case No. 79-444, Petition For Rehearing. The U.S. Court of Appeals for the First Circuit which tends to be conservative, granted the undersigned Intervenor over 6 extensions of time totaling more than 14 months in case No. 77-1331. Yet in Applicant's shortsighted view, an administrative judge or panel like the Appeal Board has no discretionary power to grant extensions of time to a party to do a statutorily permissible act. Let the Appeal Board take notice that in the instant case there may be forthcoming more requests for extension of time to file the appeal. That is so, because Applicant is currently undergoing an investigation by the Department of Justice of Puerto Rico for alleged corruption at all levels within the Agency. The results of such an investigation would be requested by intervenors, through Court if deemed necessary. The Department of Justice's findings are obviously crucial for the Appeal Board's determination whether the granting of Applicant's dismissal of its application should be with prejudice. In the event of adverse findings which corroborate corruption in Applicant's operations from top to bottom, such lack of moral integrity would be in and of itself sufficient cause to warrant a dismissal of the application with prejudice. The reverse would be tantamount to leaving the door open for future sales of plutonium for warfare activities to an unfriendly nation such as Cuba. Even though there might be a house cleaning after the investigation, who can guarantee that corruption will not recur at any level of Applicant's operations?

● 3.- Finally, intervenors address Applicant's contention that intervenors' allegation " that this case entails a dismissal of a second application which compels dismissal with prejudice " is

raised for the first time on appeal. Applicant is dead wrong. The ill-fated Aguirre Nuclear Plant under docket No. 50-376, has been brought into discussion throughout the 6 year intervention period at one time or another. It is granted that the legal implication of a second dismissal was not raised before ; however, this case has not yet reached the U.S. Court of Appeals where new arguments will be precluded. It still is in the same administrative forum where procedures are not as rigid as supposedly are to be in a court of justice. Even more, nowhere in Title 10 of the Code of Federal Regulations is it stated or inferred that new legal issues about already raised facts cannot be raised in appeal before the same administrative forum. Further, 10 CFR § 2.786(a) explicitly confers the Commission's power to sua sponte review a decision below. That means that when the Appeal Board performs "the review functions which otherwise have been exercised and performed by the Commission" under 10 CFR § 2.785(a), like with the instant case, the Appeal Board has the power to raise or accept legal issues on known facts raised below, but which were not previously raised from a legal standpoint.

● WHEREFORE, Intervenors respectfully pray the Appeal Board to dismiss Applicant's Motion of April 17, 1981, for lack of merit.

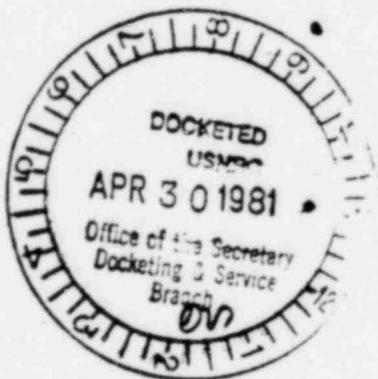
● In San Juan, Puerto Rico, this 25th day of April, 1981.



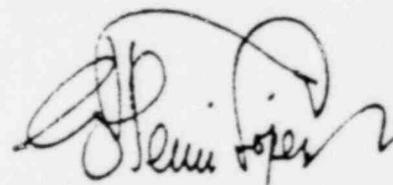
Gonzalo Fernós, Pro Se, and
representing Members of CCNR.
503 Barbé Street
Santurce, Puerto Rico 00912
Tels. (809) 727-0087 / 727-2287

CERTIFICATE OF SERVICE BY MAIL

• I HEREBY CERTIFY : That on this same date copy of the above motion entitled : "Intervenors' Response To Applicant's Motion of April 17, 1981" has been served by First Class or Air Mail upon the following : Samuel J. Chilk, Esq., Secretary of the Commission ; Alan S. Rosenthal, Esq., Chairman, ASLAB ; Dr. John H. Buck, Member, ASLAB ; Sheldon J. Wolfe, Esq., Chairman, ASLB ; Dr. Richard F. Cole, Member, ASLB ; Mr. Gustave A. Linenberger, Member, ASLB ; Henry J. McGurren, Esq., Counsel for NRC Staff ; two copies to Docketing and Service Section (All the above bearing same address as follows : U.S. Nuclear Regulatory Commission, Washington, D.C. 20555) ; Maurice Axelrad, Esq., Lowenstein, Newman, Reis, Axelrad & Toll, 1025 Connecticut Avenue, N.W., Washington, D.C. 20036 ; José F. Irizarry, Esq., General Counsel, PREPA, GPO Box 4267, San Juan, Puerto Rico 00936 ; Eng. Alberto Bruno Vega, Executive Director, PREPA, GPO Box 4267, San Juan, Puerto Rico 00936 ; and Dr. Tomás Morales-Cardona, School of Medicine, University of Puerto Rico, GPO Box 5067, San Juan, Puerto Rico 00936.



FOR INTERVENORS :


Gonzalo Fernós