

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Administrative Judges:

Alan S. Rosenthal, Chairman  
Dr. John H. Buck

In the Matter of )  
 )  
PUERTO RICO ELECTRIC POWER AUTHORITY )  
 )  
(North Coast Nuclear Plant, Unit 1) )

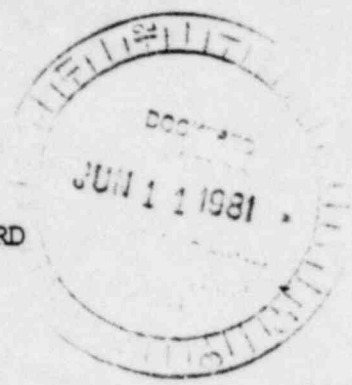
Docket No. 50-376

MEMORANDUM AND ORDER

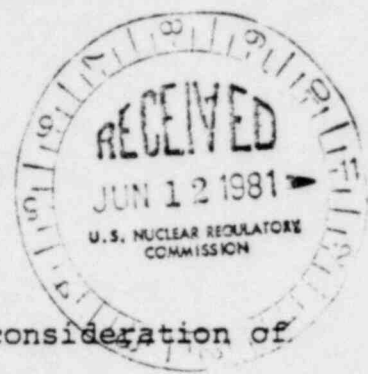
June 11, 1981

Intervenors Gonzalo Fernos, et al., seek reconsideration of this Board's June 1, 1981 order entered in connection with their pending appeal from the Licensing Board's February 18, 1981 order.<sup>1/</sup> Because of Mr. Fernos' representation that he will be absent from his residence in Puerto Rico from June 18 to July 15, we are (with the oral consent of the applicant and the NRC staff) further extending the time for the filing of intervenors' brief to and including July 31, 1981. We will expect the brief to be filed by that date.

<sup>1/</sup> On the applicant's motion, the February 18 order terminated this construction permit proceeding "without prejudice". Intervenors maintain that the termination should have been "with prejudice".



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In all other respects, reconsideration is denied. Intervenors obviously have misapprehended the effect of the ruling in our June 1 order that their appeal must be founded on the Licensing Board record. This does mean, as we stated, that the consideration and determination of the appeal cannot be affected by any disclosures during the course of the governmental investigation of applicant's operations said to be now underway in Puerto Rico. But it does not follow, as intervenors appear to believe, that those disclosures perforce would have no influence upon the outcome of any new construction permit application which this utility might file at some future time. To the contrary, should such an application be filed, it will be open to any interested person -- including the present intervenors -- to bring to the attention of the NRC staff or the Licensing Board<sup>2/</sup> any information (whether derived from the investigation in question or otherwise) which might bear adversely upon the entitlement of the applicant to receive a permit to construct a nuclear power plant.

In short, there is no reason to depart from the ruling in our June 1 order -- which rested upon the settled principle that

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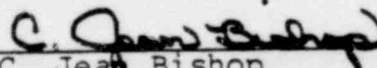
<sup>2/</sup> It goes without saying that under existing law any new construction permit application would be subject to a mandatory hearing before the Licensing Board. Section 189a. of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2239(a).

the decisions and orders of a trial-level tribunal are to be judged on appeal in the light of the record on which that tribunal acted. Although NRC appeal boards possess the inherent authority to reopen a licensing board record where there is compelling cause to do so, here such cause is manifestly lacking. As just seen, whether the present proceeding is terminated "with" or "without" prejudice, no permit will later issue to this applicant for the construction of a nuclear power facility without prior full consideration of all relevant developments -- no matter when they might have come to light.

Consequently, all statements of fact in intervenors' brief must be supported by references to the Licensing Board record. Any statements not so supported will be disregarded by this Board.<sup>3/</sup>

It is so ORDERED.

FOR THE APPEAL BOARD

  
C. Jean Bishop  
Secretary to the  
Appeal Board

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<sup>3/</sup> Intervenor's assert that they failed to receive a copy of the staff's May 29 response to their May 12 motion (which was ruled upon in the June 1 order). Because the certificate of service appended to the response reflects that a copy was mailed to intervenors, we assume that it was lost in transmission. It does not appear that intervenors were materially prejudiced inasmuch as, under the Rules of Practice, they were not entitled to file a reply to the staff.