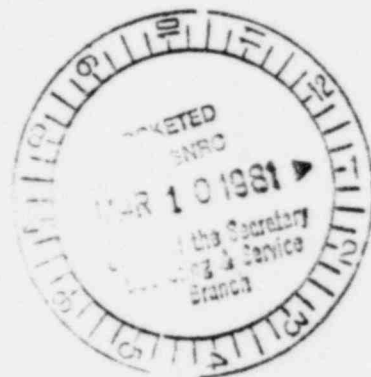


UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Atomic Safety and Licensing Board

Before Administrative Judges:  
Herbert Grossman, Chairman  
Gustave A. Linenberger, Member  
Frank F. Hooper, Member



SERVED MAR 10 1981

In the Matter of

SOUTH CAROLINA ELECTRIC AND GAS COMPANY  
SOUTH CAROLINA PUBLIC SERVICE AUTHORITY

(Virgil C. Summer Nuclear Station,  
Unit 1)

Docket No. 50-395 0L

March 9, 1981



MEMORANDUM AND ORDER  
(Summarizing Conference Calls and Denying  
Intervenor's Request to Reinstate Affirmative Case)

MEMORANDUM

Pursuant to Applicants' request dated February 10, 1981 a conference call was scheduled for February 20, 1981 to discuss further scheduling in the proceeding. A call was initiated with all parties and Board members present, but the Board was informed that the parties had not yet reached agreement and would prefer a postponement of the call to February 27, 1981 to permit further consultation between the parties. It was agreed by all to hold that conference call at 2:00 p.m. on that date.

Prior to the rescheduled date for the conference call, Intervenor Brett Burse filed a document dated February 23, 1981 petitioning the Board to set aside the bar to his presenting an affirmative case and accept his list of

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witnesses included in the document. The bar to his presenting an affirmative case was imposed automatically upon his failure to submit a list of witnesses, meaningful summaries of their testimony and a list of exhibits, by January 31, 1981, as ordered by the Board at the November 25, 1980 prehearing conference (Tr. 288-297) and reaffirmed in the Board's Order of December 20, 1980 (pp. 2-3). By document dated February 26, 1981 and hand-delivered to the Board on that date, Applicants opposed lifting the bar to Intervenor's affirmative case and requested that the Board take up this matter during the conference call scheduled for the next day.

At 2:00 p.m. on February 27, 1981, a conference call was placed to all of the persons who had participated in the conference call of February 20, 1981, as had been agreed by all those participants. Representatives of Applicants, Staff and the State of South Carolina, and each of the Board members were present to accept the call. Unfortunately, we were informed by the operator that Mr. Bursey was in conference and unavailable to receive the call. Nevertheless, since no further word had been left as to when Mr. Bursey would be available, the conference call proceeded.

The Board was informed that the parties, including Mr. Bursey, had consulted with each other with regard to further scheduling and had determined that a hearing beginning on June 22, 1981 and continuing to completion on or about July 2, 1981 would be mutually acceptable to the parties. The parties present further informed the Board that they had kept the remainder of July open for hearing if the June 22nd commencement was not agreeable to the Board.

The Board tentatively agreed to set the commencement of hearings for June 22, 1981 on the expectation that Judge Linenberger would be able to resolve a conflict in scheduling with another matter, to be further considered by the Board when Judge Linenberger returns to the office on March 9, 1981. The Board also tentatively set April 7, 1981 as the date for the final prehearing conference.

After being informed by Staff counsel that Staff agreed with Applicant's opposition to Mr. Bursey's February 23, 1981 request to lift the bar to his affirmative case and accept his list of witnesses, the Board was requested to, and did, issue its ruling on that matter. The Board denied the request, indicating that it would not consider Intervenor as having established good cause for removing the bar to his affirmative case in the absence of his submitting a meaningful summary of prospective testimony that would inform the other parties of the nature of his case. However, the Board indicated that the denial of Intervenor's request was without prejudice to his submitting a further request to lift the bar which would include a comprehensive summary of prospective testimony. The Board indicated that, in the event that a future request were made, the Board would rule on each prospective witness separately, giving great weight to the factors of comprehensiveness of summary (to fully inform the other parties of the nature of Intervenor's case) and timeliness of submittal (to afford the other parties sufficient time to discover Intervenor's case and prepare their own).

The Board requested Staff attorney Steven Goldberg, Esquire, to notify Intervenor Brett Bursey of the substance of the matters discussed and rulings made during the conference call. The Board asked whether any of the parties had objection to Mr. Goldberg's further informing Mr. Bursey that Mr. Bursey, if he desired, might also call the Chairman to be informed directly by the Board of the substance of the conference call. None objected. Mr. Goldberg agreed to convey the information to Mr. Bursey, and the conference call was concluded.

Approximately one hour after the conclusion of the conference call, the Chairman received a call from Intervenor Brett Bursey. Mr. Bursey apologized for not having been in his office to receive the scheduled conference call. He indicated that he had been engaged in televised activities at that moment in another part of town. The Chairman repeated to Mr. Bursey the substance of the conference call, as set forth above. Mr. Bursey indicated his availability for the final prehearing conference on April 7, 1981 and for a hearing beginning on June 22, 1981 and continuing through July.

Upon Judge Linenberger's return to his office on March 9, 1981, the Board has confirmed the availability of all Board members for an April 7, 1981 final prehearing conference (for which a Notice is being issued simultaneously with this Order) and a June 22, 1981 commencement date for the hearing. Nevertheless, because of the possibility of unavailability of hearing space, delay in issuance of final Staff documents or unforeseen difficulties, the parties are requested to reserve, to the extent possible, additional hearing time in July of 1981, until we near the time for hearing.

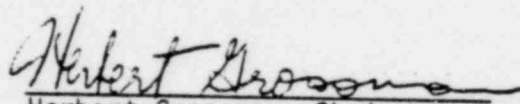
ORDER

For all of the foregoing reasons and based upon a consideration of the entire record in this matter, it is, this 9th day of March, 1981

ORDERED

That the request of Intervenor Brett Bursey, dated February 23, 1981 to lift the bar against his affirmative case is denied, without prejudice to his filing later motions containing summaries of testimony that are more responsive to the Board's requirements.

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD

  
Herbert Grossman, Chairman  
ADMINISTRATIVE JUDGE