

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

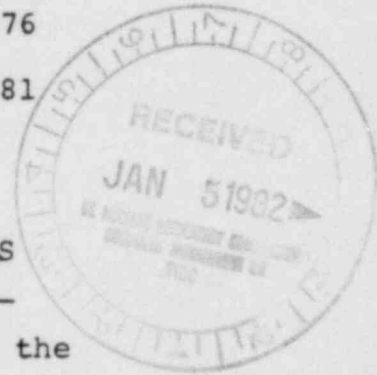
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Before the Nuclear Regulatory Commission

In the Matter of)
)
PUERTO RICO ELECTRIC POWER)
AUTHORITY) Docket No. 50-376
)
(North Coast Nuclear Plant,) December 29, 1981
Unit 1))

OFFICE OF SECRETARY
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AUTHORITY'S RESPONSE IN OPPOSITION TO
INTERVENORS' PETITION FOR A STAY OF APPEAL BOARD'S
DECISION OF DECEMBER 7, 1981

On February 18, 1981, the Licensing Board in the above-captioned proceeding issued a Memorandum and Order which dismissed without prejudice the application of Puerto Rico Electric Power Authority (Authority) for a construction permit for the North Coast Nuclear Plant, Unit 1. This order was affirmed by a decision of the Appeal Board in ALAB-662, dated December 7, 1981. Gonzalo Fernos and Citizens for the Conservation of Natural Resources, Inc. (Intervenors) have now filed with the Nuclear Regulatory Commission a "Petition for a Stay of Appeal Board's Decision of Dec. 7, 1981" (Petition), dated December 18, 1981.^{1/} The Authority hereby submits its response in opposition to the Petition.

1/ On April 6, 1981, the Intervenors filed an application for a stay of the Licensing Board's February 18, 1981, decision. The Appeal Board "implicitly denied a stay." See ALAB-648, 14 NRC 34, 35 (1981).

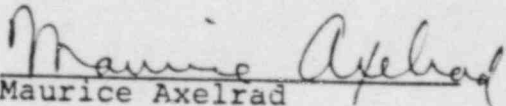
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The Petition is patently without merit, and it may be denied for any one of several reasons. First, contrary to the requirements of 10 CFR § 2.788(f), the Intervenors could have sought, but did not seek, a stay of ALAB-662 from the Appeal Board. This constitutes a ground for automatic denial of the Petition. Second, the Intervenors have not addressed whether a stay is warranted upon a consideration of the four factors in 10 CFR § 2.788(e).^{2/} This defect alone is a sufficient ground for rejecting the request for a stay. Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-412, 5 NRC 1415, 1416-17 (1977). In particular, the Intervenors have not alleged that they will suffer irreparable injury as a result of a denial of a stay of the Appeal Board's decision. Finally, the decision did not authorize the Authority to commit any action which it could not have otherwise committed, and thus there is "nothing for [the Commission] to stay." See Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 and 2), ALAB-481, 7 NRC 807, 808 (1978).

^{2/} Those factors are: 1) whether the moving party has made a strong showing that it is likely to prevail on the merits; 2) whether the party will be irreparably injured unless a stay is granted; 3) whether the granting of a stay would harm other parties; and 4) where the public interest lies.

In short, the Petition is procedurally defective and the Intervenors have provided no basis for a stay. Consequently, the request for a stay of ALAB-662 should be denied.

Respectfully submitted,


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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE NUCLEAR REGULATORY COMMISSION

In the Matter of)
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PUERTO RICO ELECTRIC POWER)
AUTHORITY) Docket No. 50-376
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North Coast Nuclear Plant,)
(Unit 1)) December 29, 1981

CERTIFICATE OF SERVICE

I hereby certify that copies of the Authority's Response in Opposition to Intervenors' Petition for a Stay of Appeal Board's Decision of December 7, 1981, were served on the following by deposit in the United States mail, first class and postage prepaid, this 29th day of December, 1981.

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Attention: Docketing and
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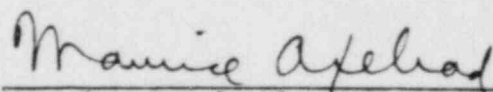
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