

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges

Herbert Grossman, Chairman
Gustave A. Linenberger
Frank F. Hooper



In the Matter of)

SOUTH CAROLINA ELECTRIC &)
GAS COMPANY, et al.)

(Virgil C. Summer Nuclear Station,)
Unit 1))

Docket No. 50-395-0L

April 28, 1982

MEMORANDUM AND ORDER
(Denying Intervenor's New Contention
Concerning Operating Procedures)

MEMORANDUM

The evidentiary record was closed on January 20, 1982. On February 6, 1982, Intervenor Bursey received in the mail a copy of a Board Notification (BN-82-7), dated January 28, 1982. The Board Notification reported on a trip to the Summer plant by N. S. Madeiros, Jr., then of the NRC's Human Factors Branch, Office of the Nuclear Regulatory Research. The trip report contained highly critical comments about alleged deficiencies in operating and emergency procedures. Much of the criticism was directed towards the

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written procedures supplied to the control room operators. Because of the alleged deficiencies, the report caused Intervenor to question the commitment of Applicants' management to the safety of the plant.

On February 24, 1982, Intervenor Bursey filed a motion for admission of a new contention which, in effect, was a motion to reopen the record for the late admission of a proposed new contention. This proposed new contention alleged that the Applicants and NRC Staff cannot provide reasonable assurance that the Summer plant can be operated without endangering the health and safety of the public. It also alleged that the emergency operating procedures do not meet the Commission's post-TMI requirements in NUREG-0737. 1/ Applicants and Staff oppose Intervenor's motion.

We deny the motion.

Because Intervenor raises a new contention, he must satisfy the five-factor test set out in 10 C.F.R. § 2.714(a)(1). However, since he attempts to have the record reopened, Intervenor must satisfy even more

1/ The proposed new contention states:

The Applicant and the NRC Staff cannot provide reasonable assurance that the Summer plant can be operated without endangering the health and safety of the public because the normal and emergency operating procedures are so badly done that they invite operator error, SCE&G's management has shown that it does not follow up well enough to ensure that procedures are correct and that they are followed, and SCE&G management has demonstrated through its operating procedures that it places economic concerns before safety. The emergency operating procedures do not meet the Commission's post-TMI requirements in NUREG-0737. Relying upon changes early in the plant's life, as the Staff would do, provides no reasonable assurance of the health and safety of the public in that the TMI accident clearly proved that bad operating procedures under normal and emergency operating conditions could cause a severe accident early in plant life.

stringent standards before we reach the five-factor test. The Appeal Board has listed a number of standards that should be applied in determining whether a record should be reopened. The motion must be timely; it must be addressed to a significant safety or environmental issue; it must establish that a different result would be reached by considering the material submitted in support of the motion; and there must be an unresolved issue of fact that would have an effect upon the outcome of the licensing proceeding. Kansas Gas and Electric Company (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 NRC 320, 338 (1978); Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC 775, 804 (1979); Vermont Yankee Nuclear Corporation (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523 (1973); Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-227, 8 AEC 416, 418 (1974).

We do not question the timeliness of intervenor's motion. His proposed new contention relates primarily to the matters brought to his attention by the Board Notification, and was filed shortly thereafter. However, intervenor fails to meet the other standards which relate to the significance of the new contention within the context of this operating license proceeding. To be sure, each of the alleged deficiencies with regard to Applicants' operating procedures contained in the Madeiros report would have some significance to the safety of the plant if it actually exists and were to go uncorrected. But Intervenor

has not alleged, nor do we see any support for such an allegation, that there is any danger that the alleged deficiencies will go uncorrected. The affidavits submitted by Staff and Applicants establish that the shortcomings to Applicants' operating procedures are being routinely handled by Staff, and Applicants have committed themselves to upgrade and correct the operating procedures in accordance with Staff's suggestions. In the face of this established procedure for identifying the deficiencies and correcting them, their mere existence loses its significance in the context of this operating license proceeding. Were the Board to take this issue and determine that the alleged deficiencies actually exist, we could do no more than order that they be corrected and that the corrections be monitored by Staff--a procedure that is already in effect without Board intervention.

If we were to reopen the record every time that Staff discovered a safety defect and reported it to us, we could never bring this proceeding to completion. See ICC v Jersey City, 322 U.S. 503, 514 (1944). We see no correlative benefit for further delay here, since Board involvement is unnecessary to assure the public health and safety.

In view of Intervenor's not having satisfied the standards for reopening the proceeding, we need not consider whether he has satisfied the five-factor test for filing late contentions.

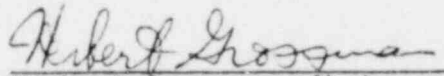
ORDER

For all of the foregoing reasons and based upon a consideration of the entire record in this matter, it is, this 28th day of April, 1982

ORDERED

That the motion of Intervenor Bursey for admission of new contention filed on February 24, 1982 is denied.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Herbert Grossman, Chairman
ADMINISTRATIVE JUDGE