

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 81-2042

September Term, 19 81

Fairfield United Action, Petitioner

v.

United States Court of Appeals
for the District of Columbia Circuit

FILED APR 28 1982

Nuclear Regulatory Commission
and United States of America, Respondents

GEORGE A. FISHER
CLERK

South Carolina Electric and Gas Company,
et al., Intervenor

PETITION FOR REVIEW OF AN ORDER OF THE NUCLEAR REGULATORY COMMISSION

Before: ROBB and EDWARDS, Circuit Judges; and JAMES F. GORDON,* United States
Senior District Judge for the Western District of Kentucky

O R D E R

This cause came on to be heard on a review of the final decision of the Nuclear Regulatory Commission (hereinafter, NRC) denying the Petitioner's late petition to intervene in the operating license proceeding for the Virgil Summer Nuclear Station, Unit 1, currently pending before the Atomic Safety and Licensing Board (hereinafter, Licensing Board) of the NRC. The court has fully considered the briefs and oral arguments presented by the parties. There is no need for an opinion. See, D.C. Cir. R. 13(c).

This court's review of the NRC decision is limited to a determination of whether the NRC abused its discretion in denying Petitioner's petition to intervene. We conclude that the NRC did not abuse its discretion. Under NRC regulations, whether nontimely petitions should be entertained depends on a balancing of the following factors:

- "(i) Good cause, if any, for failure to file on time;
 - (ii) The availability of other means whereby the Petitioner's interest will be protected;
 - (iii) The extent to which the Petitioner's participation may reasonably be expected to assist in developing a sound record;
 - (iv) The extent to which the Petitioner's interest will be represented by existing parties;
 - (v) The extent to which the Petitioner's participation will broaden the issues or delay the proceeding."
- CFR 2.714(a).

costs must be filed within 14 days after entry of judgment. The Court looks with disfavor upon motions to file bills of costs out of time.

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The Licensing Board concluded from its consideration of the above factors, that Petitioner should be permitted to intervene. The NRC's Appeals Board, however, found that the Licensing Board had misconstrued and improperly applied the relevant factors, and, accordingly, had abused its discretion in allowing Petitioner's intervention. Our review of the record convinces us that the Appeals Board was fully justified in its reversal of the Licensing Board.

The Petitioner filed its motion to intervene four years after the deadline for filing such petitions and less than three months before the date of the licensing hearing in which it desired to participate. The record establishes that Petitioner failed to file a petition to intervene until this late date because it was relying on another intervenor to protect its interest. Obviously, such reliance does not constitute "good cause for failure to file on time". Further, as the Appeals Board observed, Petitioner's intervention at this time would significantly broaden and perhaps delay the license proceedings to the substantial prejudice of those already parties. In light of the absence of justification for Petitioner's delay and the prejudice that intervention at this time would cause, the NRC did not abuse its discretion in denying Petitioner's petition to intervene.

For the foregoing reasons, it is ORDERED AND ADJUDGED by this Court that the final decision of the Nuclear Regulatory Commission denying Petitioner's petition to intervene in the operating license proceeding for the Virgil Summer Nuclear Station, Unit 1 is affirmed.

Per Curiam
For the Court

George A. Fisher
George A. Fisher
Clerk

*Sitting by designation pursuant to 28 U.S.C. §294(d).