

'82 SEP -1 A11:10

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
MISSISSIPPI POWER & LIGHT	)	Docket Nos. 50-416
COMPANY, <u>et al.</u>	)	50-417
	)	
(Grand Gulf Nuclear Station,	)	
Units 1 and 2)	)	

SUPPLEMENT TO APPLICANT'S ANSWER TO  
STATE OF LOUISIANA "PETITION TO PARTICIPATE  
AS AN INTERESTED STATE IN FACILITY OPERATING  
LICENSE PROCEEDING AND TO REOPEN SUCH PROCEEDINGS"

On August 19, 1982, Mississippi Power & Light Company, et al. ("Applicant") filed its answer opposing the petition by the State of Louisiana ("petitioner") requesting a hearing and seeking leave to intervene in the captioned proceeding. Consistent with the obligation of a party to provide the Atomic Safety and Licensing Board ("Licensing Board" or "Board") with recently available legal authorities pertinent to matters before it, Applicant hereby submits the following additional authorities in support of its opposition to the petition.

In Boston Edison Company (Pilgrim Nuclear Power Station), CLI-82-16, 16 NRC \_\_\_\_\_ (July 30, 1980), the Commission considered a petition filed by the Commonwealth of Massachusetts seeking to intervene in a proceeding for modification of the Pilgrim operating license. Finding that

the concerns expressed by the Commonwealth did not entitle it to either a formal hearing as a matter of right or a discretionary hearing, the Commission denied the request and stated that any further relief should be sought pursuant to 10 C.F.R. §2.206. Implicit in this holding is the finding by the Commission that the NRC rules regarding entitlement to a hearing are not to be applied more liberally with respect to a State than any other potential intervenor. Also, the Commission again recognized that potential concerns alleged as a basis for a hearing where none would otherwise be held may ordinarily be addressed by the Staff under 10 C.F.R. §2.206.

As regards petitioner's substantive concerns in the instant case, a decision by the Licensing Board in the Perry proceeding <sup>1/</sup> is very instructive. Petitioner in that case argued that the decision by the United States Court of Appeals in Natural Resources Defense Council v. NRC, No. 74-1586 (D.C. Cir., April 27, 1982), was a basis for reconsideration of a contention entitled "Safe Disposal/Storage of Radioactive Materials." The Licensing Board again denied this contention, stating as follows:

[T]he U.S. Court of Appeals has stayed its mandate pending final resolution of the petition for rehearing en banc in that case. Hence, Table S3 continues to be in effect, as it may continue to be

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1/ Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 & 2), Docket Nos. 50-440-OL and 50-441-OL, "Memorandum and Order" (July 12, 1982).

until the NRDC case is finally resolved. Until that mandate is issued, the rules of the Commission remain in effect and this Board continues to be bound by them. As a result, the Court of Appeals' decision does not as yet provide a ground for resubmission of this contention. 2/

Accordingly, the waste disposal contentions raised by petitioner in challenging Table S-3 may not be considered in a hearing as requested but rather are appropriate for generic consideration in rulemaking or other policy guidance from the Commission.

Respectfully submitted,

*Troy B. Conner, Jr. / RMR*

Troy B. Conner, Jr.  
Mark J. Wetterhahn  
Robert M. Rader

Counsel for the Applicant

August 31, 1982

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2/ Perry, supra at 11. While the Court of Appeals has since denied the request for rehearing en banc, Applicant's counsel is advised by the Court of Appeals that the mandate has not yet issued. Applicant is also advised that the Solicitor General has not yet made a formal decision as to whether a writ of certiorari will be sought from the Supreme Court.

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Supplement to Applicant's Answer to State of Louisiana 'Petition to Participate as an Interested State in Facility Operating License Proceeding and to Reopen Such Proceeding'" dated August 31, 1982 and "Notice of Appearance" for Robert B. McGehee, dated August 20, 1982, in the captioned proceeding have been served upon the following by deposit in the United States mail this 31st day of August, 1982:

James A. Laurenson, Chairman  
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Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

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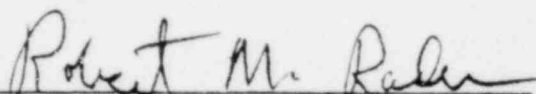
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