

October 26, 1982



SECY-82-440

ADJUDICATORY ISSUE
(Affirmation)

For: The Commission

From: Martin G. Malsch *MG*
Deputy General Counsel

Albert P. Kenneke *APK* ⁵⁰⁻³⁹⁵ *MACPETE*
Assistant Director for Technical Review, OPE

Subject: IMMEDIATE EFFECTIVENESS DECISION REGARDING
LICENSING BOARD'S DECISIONS IN SUMMER
OPERATING LICENSE PROCEEDING

Discussion:

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CONTACTS:
Rick Levi, OGC
4-3224
Jim Milhoan, OPE
4-3295

92-11180565 *LA*

Information in this record was deleted
in accordance with the Freedom of Information
Act, exemptions 5
FOIA 92-436

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Both staff and applicants responded to intervenor's motion on September 10, 1982. Staff and applicants contended that even if the allegations are true, they do not present a significant safety concern. On September 24, 1982, the Board, finding that intervenor had not established the safety significance of the alleged violations, denied the request for a stay. The Board did not rule then on the motion to reopen, however, instead giving intervenor until October 18, 1982 to reply to staff and applicants' filings.

On October 7, 1982 intervenor, submitting an affidavit by a structural engineer, moved the Board to reconsider the denial of his stay motion. On October 12, 1982 the Board found the material to be "'conclusory' and lacking in substance" and denied the stay motion. On October 22, 1982 the Board denied intervenor's motion to reopen because intervenor failed to demonstrate the existence of a genuine issue of safety significance. A copy of the October 22, 1982 Memorandum and Order is attached.

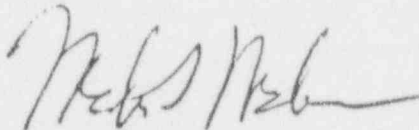
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Recommendation:


 Martin G. Malsch
 Deputy General Counsel


 Albert P. Kenneke
 Assistant Director for
 Technical Review, OPE

Attachments:

- (1) Proposed Order
- (2) Board's October 22, 1982
 Memorandum and Order

Commissioners' comments should be provided directly to the Office of the Secretary ASAP.

Commission Staff Office comments, if any, should be submitted to the Commissioners ASAP, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

The Commission is presently scheduled to discuss and possibly vote on a full power license for Summer on November 8, 1982. If this Order is to be affirmed prior to that meeting it should be done on Thursday, November 4, 1982.

DISTRIBUTION:
 Commissioners
 OGC
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Attachment 1

Attachment 2

release

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

In the Matter of)	
)	
SOUTH CAROLINA ELECTRIC AND GAS COMPANY, <u>et al.</u>)	Docket No. 50-395 0L
)	
(Virgil C. Summer Nuclear Station, Unit 1))	October 22, 1982

MEMORANDUM AND ORDER

(Denying Intervenor's Motion to Reopen on Cadwelding)

In a series of telephonic notifications and written submissions, beginning on August 6, 1982, Intervenor Bursey moved to reopen the proceeding and stay this Board's Initial Decision of August 4, 1982, which authorized the issuance of the Summer operating license. He based his motions on allegations of a former cadwelder on the Summer project that some of the cadwelding of vertical reinforcing bars in the containment shell was improperly done.

Licensee and Staff appeared to verify some of the alleged practices but claimed that their extent was exaggerated and that they have no safety significance to the facility. Their responses to Intervenor's allegations were amply supported by documentation and affidavits of qualified experts.

Based upon only the affidavit of the former cadwelder and Intervenor's own filings, Intervenor's motion for stay could not meet the four-factor test of 10 CFR § 2.788(e), and the Board denied the stay. Memorandum and Order of September 24, 1982, LBP-82-84, ___ NRC ___. Intervenor was given until October 18, 1982, to reply to Staff's and Licensees' responses to his motion to reopen the record.

On October 7, 1982, Intervenor moved to reconsider the Board's denial of its motion for stay. In support of his motion for reconsideration, he submitted an affidavit of an apparently qualified structural engineer with a background also in soil mechanics, geology, civil engineering and law. The affidavit contained approximately two pages of "findings" based upon " cursory and partial reviews" of the material submitted by the parties concerning the allegedly defective cadwelding.

During a conference call held on October 8, 1982, the Board denied the motion to reconsider the denial of stay. See Memorandum (Confirming Order Denying Intervenor's Motion to Reconsider Denial of Stay), October 12, 1982. The Board agreed with Licensees' and Staff's characterization of the engineer's affidavit as "conclusory" and lacking in substance. We indicated further during the conference call that the affidavit would be insufficient to support Intervenor's motion to reopen but, because we had not yet reached the October 18, 1982 deadline, we would permit Intervenor to further supplement the affidavit with more support for the conclusions.

The October 18, 1982 deadline has now passed. No further affidavit substantiating the safety significance of the cadwelding allegations has been submitted.

The proponent of a motion to reopen the record bears a heavy burden. Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 338 (1978)). To justifying the granting of a motion to reopen, the moving papers must be strong enough, in light of any opposing filings, to avoid summary disposition. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523 (1973). On the basis of the affidavits submitted by the respective parties, Intervenor has not carried the burden of demonstrating the existence of a genuine issue of safety significance. Although his expert's affidavit of October 7, 1982 alludes to possible safety deficiencies, it does not purport to substantiate them. Had these affidavits been filed in support of cross-motions for summary disposition on an admitted contention involving the cadwelding, the Board would have to grant summary disposition to Licensees and Staff and dismiss the contention.

Moreover, apparently because of a dispute concerning the payment of his fees, Intervenor's expert has now withdrawn from the proceeding and wishes to abrogate his October 7, 1982 affidavit. On October 12, 1982 he telephoned the Licensing Board's offices and indicated his desire to speak to the Board chairman in order to disavow the affidavit. The Board chairman informed him through the chairman's secretary that it would be improper to discuss the matter ex parte and that any attempt to

disavow the affidavit should be submitted in writing and served on the parties. On October 14, 1982 the expert served and filed his further affidavit expressing his desire to rescind his October 7, 1982 engineering report.

Intervenor has followed with his own affidavit (received by the Board on October 20, 1982), offering his explanation of the dispute with his expert, admitting his failure to retain experts to support his position and renewing his request for the Board to retain its own independent consultants. As we pointed out in our Memorandum and Order of September 24, 1982, LBP-82-84, ___ NRC ___ (slip. op. at 5), if Intervenor cannot present his case, the proper method to institute a proceeding by which the NRC would conduct its own investigation is to request action under 10 CFR § 2.206. It is not the Board's function to assist intervenors in preparing their cases and searching for their expert witnesses.

Although Intervenor has failed to sustain his burden of demonstrating the existence of a genuine issue of safety significance, the Board cannot be oblivious to the interest of the general public in the cadwelding allegations, some of which were conceded by Licensees and Staff. While we cannot authorize a public hearing in this forum on the basis of Intervenor's submissions in support of his motion to reopen the proceeding, the legitimate concerns of the public with regard to the safety of the Summer facility would not be satisfied by our simply dismissing Intervenor's motion. In the conference call of October 8, 1982, NRC Staff indicated that it had completed its investigation of the

former cadwelder's allegations and was compiling its investigative report. Certainly, the public is entitled to be assured that the investigation was complete and that Staff's conclusions were justified. The report should be made public. Any perceived deficiencies could then become the basis for a request for action under 10 CFR § 2.206.

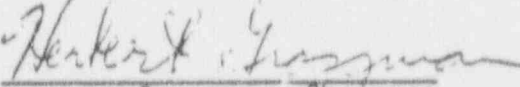
ORDER

For all of the foregoing reasons and based upon a consideration of the entire record in this matter, it is, this 22nd day of October, 1982

ORDERED

- (1) That Intervenor's motion to reopen proceeding is denied; and
- (2) That Staff place a copy of its investigative report on the former cadwelder's allegations in the local public document room in South Carolina, and serve copies on those listed on the service list.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Herbert Grossman, Chairman
Administrative Judge