



November 3, 1983

SECY-83-451

# ADJUDICATORY ISSUE

For: (NEGATIVE CONSENT)  
The Commissioners

From: James A. Fitzgerald  
Assistant General Counsel

Subject: REVIEW OF ALAB-745  
(DUKE POWER COMPANY)

Facility: Cherokee Nuclear Station, Units 1, 2  
and 3

Petitions  
For Review: None

Review  
Time Expires: November 21, 1983

Purpose: To inform the Commission of an Appeal  
Board decision which, in our opinion,

EX 5

Discussion: In 1978, the Appeal Board affirmed with one exception a series of Licensing Board decisions that authorized issuance of construction permits for the three-unit Cherokee facility. See ALAB-482, 7 NRC 979. As for the exception, the Appeal Board retained jurisdiction over the radon issue pending its resolution by the Appeal Board in other licensing proceedings. The construction permits were issued on the basis of the Licensing Board decisions.

In late-1982 and mid-1983, Duke Power Company cancelled all three units of the Cherokee facility and subsequently surrendered the construction permits to NRR. In October 1983, Duke requested

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634-3224

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


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the Appeal Board to terminate the proceeding by dismissing the appellate jurisdiction it had retained over the radon issue in ALAB-482.

In ALAB-745, the Appeal Board granted Duke's motion to terminate this proceeding. The Appeal Board chose not to vacate ALAB-482 as it addressed the original Licensing Board decisions, noting nonetheless that "ALAB-482 is without any precedential significance" because it was the product of a sua sponte review, slip op. at 3, n.3, and therefore was produced without the benefit of the input of the adversarial parties to the proceeding.

[ We believe

  
James A. Fitzgerald  
Assistant General Counsel

Attachment: ALAB-745

SECY NOTE: In the absence of instructions to the contrary, SECY will notify OGC on Monday, November 21, 1983 that the Commission, by negative consent, assents to the action proposed in this paper.

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD '83 OCT 12 P12

Administrative Judges:

Alan S. Rosenthal, Chairman  
Dr. John H. Buck

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH  
October 12, 1983  
(ALAB-745)

SERVED OCT 12 1983

\_\_\_\_\_  
In the Matter of \_\_\_\_\_  
DUKE POWER COMPANY \_\_\_\_\_  
(Cherokee Nuclear Station, \_\_\_\_\_  
Units 1, 2 and 3) \_\_\_\_\_  
\_\_\_\_\_

Docket Nos. STN-50-491  
STN-50-492  
STN-50-493

Albert V. Carr, Jr., Charlotte, North Carolina,  
and J. Michael McGarry, III, Washington, D.C.,  
for the applicant, Duke Power Company.

MEMORANDUM AND ORDER

This construction permit proceeding involves the proposed three-unit Cherokee nuclear facility. In 1978, we affirmed a series of Licensing Board decisions on all but one of the issues considered and determined in those decisions. ALAB-482, 7 NRC 979. The exception was the question of the environmental effects associated with the release of radioactive radon gas (radon-222) to the atmosphere as a result of the mining and milling of uranium for reactor fuel. We retained jurisdiction over that generic question to await its resolution by us in other pending licensing proceedings. Id. at 980-81.

Last November, in the context of the three consolidated proceedings in which it was contested, we announced our ultimate determination on the radon issue. See Philadelphia

Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-701, 16 NRC 1517 (1982). On May 27, 1983, the Commission entered an order indefinitely deferring the disposition of a petition filed with it for review of ALAB-701. CLI-83-14, 17 NRC \_\_\_\_\_. As a consequence of that action, we continued to retain jurisdiction over the radon issue in the proceeding at bar (and a number of other proceedings as well).

We are now advised by the Duke Power Company that all three units of the Cherokee facility have been cancelled and that, accordingly, the previously issued construction permit for each unit was recently surrendered to the Director of the NRC Office of Nuclear Reactor Regulation.<sup>1</sup> In light of this development, Duke requests that we terminate the appellate jurisdiction that had been retained in ALAB-482.

The sought relief is plainly warranted in the circumstances and therefore is granted.<sup>2</sup> Public Service Co.

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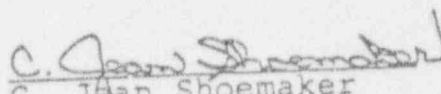
<sup>1</sup> The permits had been issued on the strength of the Licensing Board decisions, the effectiveness of which had not been stayed pending the outcome of appellate review.

<sup>2</sup> Units 2 and 3 were cancelled in early November 1982 and we were so informed in writing the following month. The determination to cancel Unit 1 was made on April 29, 1983. See September 21, 1983 letter from L.C. Dail to Harold R. Denton, attached to Duke's October 4, 1983 motion currently before us. That being so, we fail to understand why Duke waited so long to file the motion. It served no one's interest to have our docket unnecessarily encumbered with a proceeding involving a conclusively abandoned facility.

of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-723, 17  
NRC 555 (1983).<sup>3</sup>

It is so ORDERED.<sup>4</sup>

FOR THE APPEAL BOARD

  
C. Jean Shoemaker  
Secretary to the  
Appeal Board

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<sup>3</sup> In conformity with the course followed in Black Fox, we are not vacating ALAB-482 in its entirety. But it should be noted that, having been rendered on a sua sponte review of the Licensing Board decisions before us, ALAB-482 is without any precedential significance. Cf. 7 NRC at 981 fn.4.

<sup>4</sup> In taking this action, we of course do not pass upon the matter of what measures, if any, the applicant might now be legally required to take in order to ameliorate the environmental impact of the construction activities conducted on the Cherokee site prior to cancellation of the proposed units. At this juncture, that matter is within the exclusive province of the NRC staff; as above noted, our retained jurisdiction was restricted to the radon issue. In the event that the staff and Duke find themselves in disagreement on the redress question, the remedies available to the staff will be those that would have been at its disposal had the cancellation of all three Cherokee units followed, rather than preceded, the termination of the retained jurisdiction over the radon issue.