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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

SERVED SEP 27 1982

In the Matter of	)	
	)	
SOUTH CAROLINA ELECTRIC AND GAS COMPANY, ET AL.	)	Docket No. 50-395 OL
	)	
	)	
(Virgil C. Summer Nuclear Station, Unit 1)	)	September 24, 1982

MEMORANDUM AND ORDER

(Denying Stay and Permitting Intervenor Reply)

MEMORANDUM

On Friday, August 6, 1982, Intervenor Bursey orally notified the Board Chairman of allegations made by a former worker concerning improper cadwelding on the vertical rebars in the Summer containment. Intervenor followed on Monday, August 9, 1982, with an oral request for a stay of the Board's August 4, 1982 Supplemental Partial Initial Decision which authorized the issuance of the Summer operating license. After a series of conference calls and the submission by Intervenor of an affidavit of the former cadwelder, a written motion to reopen the record and request for a stay, the Board established a briefing schedule by which Intervenor was to submit his full presentation by August 26, 1982. Applicants and Staff were to submit their responses on or before September 10, 1982. The Board confirmed this briefing schedule in its

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memorandum dated August 17, 1982. The parties have timely responded to the Board's scheduling requirements.

Intervenor's submittals allege principally that many of the cadwelds on vertical reinforcing bars, when poorly done so that the molten joining metal ran out of the steel sleeve, were improperly patched with melted tiewire. Intervenor alleges that these improperly completed cadweld splices did not develop the required tensile strength of the reinforcing bars as required under the Summer design standards. Other allegations concerned improper scribing of the cadwelds, improper coaching on the cadwelding qualification tests, and improper quality control inspections of the completed cadwelds. Intervenor indicates that he has been unable to obtain expert testimony as to the safety significance of the alleged systematic code violations, although he had contacted a number of intervenor groups, because no one outside of the nuclear industry had qualifications with regard to faulty rebar in a containment structure. However, he requested a further opportunity to respond to Applicants' and Staff's further submittals. He also requested, if necessary, the calling of independent consultants by the Board in order for it to reach an informed decision.

Applicants' and Staff's responses appear to verify some of the alleged improper practices but claim that their extent was exaggerated and that they have no safety significance to the facility. Applicants' and Staff's responses were amply supported by documentation and affidavits of qualified experts.

Motion for Stay

Under 10 C.F.R. § 2.788(e), the Board must consider the following factors in ruling on a stay:

(1) Whether the moving party has made a strong showing that it is likely to prevail on the merits;

(2) Whetner the party will be irreparably injured unless a stay is granted;

(3) Whether the granting of a stay would harm other parties; and

(4) Where the public interest lies.

Technically, 10 C.F.R. § 2.788 applies only to requests for a stay pending the appeal of matters already ruled upon by the Board. Here, Intervenor is requesting a stay in order to reopen the proceeding to offer new evidence. However, the four factors of § 2.788(e) are those generally applied by the courts in determining stay applications, as set forth in the seminal opinion in Virginia Petroleum Jobbers Assoc. v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958).

On the basis of the documents submitted by the parties, Intervenor could not hope to satisfy the four-factor test for a stay. His contention that there have been improper practices involving safety related structures has been verified, at least in part, by Staff and Applicants. However, as Intervenor appears to admit (Intervenor's affidavit at 3) he has not been able to establish the safety significance of the alleged violations. Applicants and Staff, on the other hand, strongly deny any safety significance and have strong supporting documentation.

Consequently, Intervenor has not shown that he is likely to prevail on the merits, that he will be irreparably injured by the operation of the Summer facility, or that the public interest requires that the plant not operate. Nor has he even attempted to show that Applicants and their customers would not be substantially harmed in an economic sense by the suspension of the operations of the Summer facility.

The Board has no choice but to deny the motion for stay.

Motion to Reopen

It is well settled that the proponent of a motion to reopen the record bears a heavy burden. Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 NRC 320, 338 (1978). This is Intervenor's fourth attempt to reopen the record. The first was granted, in part, and the others denied. The standards for reopening a record and the numerous NRC cases establishing those standards were discussed in the Board's orders relating to the prior motions to reopen. We need not discuss all of those standards now. One of those standards, whether the motion addresses a significant safety or environmental issue, cannot be adequately evaluated on the current submittals. Although the submittals appear to establish safety violations, Staff's and Applicants' allegations that the safety violations have no safety significance have not been rebutted by Intervenor. If Intervenor cannot establish any safety significance to the improper practices, there is, of course, no purpose to reopening the record for a further hearing.

To justify 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). In light of the demonstrated safety violations and the time constraints necessitated by the pending motion for stay, which may have hindered Intervenor's search for qualified experts, we will permit Intervenor's further response before deciding whether his moving papers are sufficient to avoid summary disposition and whether the other tests for reopening a record are met. Intervenor is given until October 18, 1982 to reply to Staff's and Applicants' responses.

We see no reason to grant Intervenor's further request that the Board call independent consultants to assist him. 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 C.F.R. § 2.206. It is not the Board's function to assist Intervenors in preparing their cases and searching for their expert witnesses. This matter is unlike the situation involving the original seismic presentation in this proceeding where the Board had reason to suspect that the proffered evidence was inaccurate, incomplete, or otherwise unreliable.

ORDER

For all of the foregoing reasons and based upon a consideration of the entire record in this matter, it is, this 24th day of September, 1982

ORDERED

(1) That Intervenor's motion for stay is denied;

(2) That Intervenor is given until October 18, 1982 to file a reply (including necessary affidavits) to Staff's and Applicants' responses to his motion to reopen; and

(3) That Intervenor's request that the Board call independent consultants on this matter is denied.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

Herbert Grossman

Herbert Grossman, Chairman
Administrative Judge