

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	1
II. STATEMENT OF THE CASE.....	1
III. ISSUE PRESENTED ON APPEAL.....	5
IV. ARGUMENT.....	5
A. The Five Factors of 10 CFR § 2.714(a) Must Each be Weighed In Determining Whether To Grant an Untimely Petition to Intervene.....	5
B. The Licensing Board did not Abuse its Discretion in Ruling that the Five Factors of 10 CFR § 2.714(a) Weighed Against Granting Louisiana's Untimely Petition to Intervene.....	8
1. Good cause for failure to file on time.....	8
2. Availability of other means.....	11
3. Development of a sound record.....	12
4. Representation of interest by existing parties.....	13
5. Delay and broadening of issues.....	13
6. Overall balancing of the five factors of 10 CFR § 2.714(a).....	15
V. CONCLUSION.....	16

TABLE OF AUTHORITIES

	<u>Page</u>
<u>I. JUDICIAL DECISIONS</u>	
<u>Natural Resources Defense Council v. United States Nuclear Regulatory Commission, Civil Action No. 74-1586 (April 27, 1982)</u>	<u>passim</u>
<u>II. NRC DECISIONS</u>	
<u>A. Commission Decisions</u>	
<u>Nuclear Fuel Services, Inc., et al. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273 (1975)</u>	6, 8
<u>B. Atomic Safety and Licensing Appeal Board Decisions</u>	
<u>Detroit Edison Co. (Greenwood Energy Center, Unit 2 and 3), ALAB-476, 7 NRC 759 (1978)</u>	12, 14
<u>Duke Power Co. (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-615, 12 NRC 350 (1980)</u>	6
<u>Florida Power and Light Co. (St. Lucie Nuclear Power Plant, Unit No. 2), ALAB-420, 6 NRC 8 (1977), affirmed, CLI-78-12, 7 NRC 939 (1978)</u>	6, 7
<u>Houston Lighting and Power Co. (Allens Creek Nuclear Station, Unit 1), ALAB-671, 15 NRC 508 (1982)</u>	10
<u>Houston Lighting and Power Co. (Allens Creek Nuclear Station, Unit 1), ALAB-582, 11 NRC 239 (1980)</u>	12
<u>Metropolitan Edison Co., et al. (Three Mile Island Nuclear Station, Unit 2), ALAB-384, 5 NRC 612 (1977)</u>	6, 9
<u>Puget Sound Power and Light Co., et al. (Skagit Nuclear Power Project, Units 1 and 2), ALAB-523, 9 NRC 58 (1979)</u>	6
<u>Puget Sound Power and Light Co., et al. (Skagit Nuclear Power Project, Units 1 and 2), ALAB-559, 10 NRC 162 (1979)</u>	6
<u>South Carolina Electric and Gas Co., et al. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881 (1981)</u>	11, 12, 13

C. Atomic Safety and Licensing Board Decisions

Cincinnati Gas and Electric Co., et al. (William H. Zimmer Nuclear Station), LBP-80-14, 11 NRC 570, <u>appeal dismissed</u> , ALAB-595, 11 NRC 860 (1980).....	8, 9
Florida Power and Light Co. (Turkey Point Nuclear Generating Station, Units 3 and 4), LBP-79-21, 10 NRC 183 (1979).....	7
South Carolina Electric and Gas Co., et al. (Virgil C. Summer Nuclear Station, Unit 1), LBP-81-11, 13 NRC 420 (1981).....	11
South Carolina Electric and Gas Co. et al. (Virgil C. Summer Nuclear Station, Unit 1), LBP-78-6, 7 NRC 209 (1978).....	6, 7, 14

III. NRC REGULATIONS

10 CFR § 2.714.....	<u>passim</u>
10 CFR § 51.20(e).....	3

IV. MISCELLANEOUS

Fed. R. App. P. Rule 41(b).....	3
43 Fed. Reg. 32903 (July 28, 1978).....	1
43 Fed. Reg. 45362 (August 12, 1979).....	9
46 Fed. Reg. 47906 (September 30, 1981).....	2
47 Fed. Reg. 26953 (June 22, 1982).....	2
47 Fed. Reg. 50591 (November 8, 1982).....	10, 15, 16

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL 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))	

NRC STAFF BRIEF IN OPPOSITION TO THE
STATE OF LOUISIANA'S APPEAL OF THE
DENIAL OF INTERVENTION

I. INTRODUCTION

On November 4, 1982, the State of Louisiana filed an appeal of the Licensing Board's October 20, 1982 "Memorandum and Order Denying State of Louisiana's Petition for Intervention." For the reasons set forth below, Louisiana's appeal should be dismissed and the decision of the Licensing Board affirmed.

II. STATEMENT OF THE CASE

More than four years ago, the application for an operating license for the Grand Gulf Nuclear Station was docketed and a regulatory proceeding on consideration of the issuance of an operating license for the facility was initiated. On July 28, 1978, a notice of proposed action and of opportunity for hearing in the matter was published in the Federal Register (43 Fed. Reg. 32903-04). The notice provided an opportunity for any person whose interest might be affected by the proceeding on the operating license to file a petition no later than August 28, 1978 pursuant to 10 CFR § 2.714. No timely petition was filed.

After due consideration and careful review of the operating license application, the Director of Nuclear Reactor Regulation issued on June 16, 1982 a facility operating license restricted to 5% of rated power to Mississippi Power and Light Company, Middle South Energy, Inc., and South Mississippi Electric Power Association ("Applicants") for the Grand Gulf Nuclear Station, Unit 1. 47 Fed. Reg. 26953 (June 22, 1982). The matter of full power authorization is currently pending before the Commission pursuant to the Commission's "Statement of Policy on Issuance of Uncontested Fuel Loading and Low Power Testing Operating Licenses" (46 Fed. Reg. 47906, September 30, 1981) wherein the Commission retains to itself the decision on issuance of a full power operating license in uncontested cases.

On July 21, 1982, the State of Louisiana filed a petition to intervene.^{1/} The petition did not set forth any specific contentions but expressed concern that, without Louisiana's intervention, adequate consideration will not be given to the environmental impact of fuel cycle activities. The petition cited specifically the April 27, 1982 decision of the United States Court of Appeals for the District of Columbia Circuit

^{1/} "Petition to Participate as an Interested State in Facility Operating License Proceedings and to Reopen Such Proceedings to Precipitate Commission Rulings Consistent With Recent Court of Appeals Decision and to Request the Nuclear Regulatory Commission to Cease Issuing Licenses Consistent with the Court of Appeal Decision." Despite the reference to participation as an interested state in the title of the petition, the first paragraph of the petition requests leave to intervene pursuant to 10 CFR § 2.714(a)(1), and Louisiana confirms the nature of its petition in "Petitioner's Brief in Support of its Petition to Participate in Facility Operating Licensing Proceedings," dated October 11, 1982. The Licensing Board construed the petition as one for leave to intervene as a party; Louisiana does not disagree with this construction in its brief on appeal.

in Natural Resources Defense Council v. United States Nuclear Regulatory Commission, (Civil Action No. 74-1586) ("NRDC")^{2/} as the basis for the state's concerns.

Both the NRC Staff^{3/} and the Applicant^{4/} filed briefs opposing Louisiana's petition on the grounds that it did not satisfy the requirements of 10 CFR § 2.714(a) for late-filed petitions. Applicant raised a separate argument questioning the jurisdiction of the Licensing Board to rule on the petition where a low power license had already been issued for Grand Gulf.

At the direction of the Licensing Board, Louisiana filed a brief addressing the five factors of 10 CFR § 2.714(a).^{5/} As to good cause for the untimely petition, Louisiana relied on the issuance of the decision in NRDC. Louisiana then argued that no other means were available to protect its interests, that it had, or had the means to obtain, expertise

^{2/} In that case, the Court of Appeals declared invalid the NRC's fuel cycle rule (10 CFR § 51.20(e) (1981)) which establishes a set of values, denominated Table S-3, to be used in determining the environmental impact of the uranium fuel cycle for individual nuclear power reactors under licensing consideration. On September 1, 1982, the Court of Appeals stayed its mandate pending the filing of application for review of the decision by the Supreme Court. A petition for writ of certiorari was filed on behalf of the NRC on September 27, 1982. Under Rule 41(b) of the Rules of Appellate Procedure, the stay of mandate will continue until disposition by the Supreme Court. After the Licensing Board issued its decision in this case, the Commission issued a Statement of Policy on the effect of the NRDC decision on power reactor licensing. 47 Fed. Reg. 50591 (November 8, 1982). As discussed in note 17, infra, that policy statement affirms the effectiveness of the fuel cycle rule at issue in NRDC and stands squarely in the way of any attempt by Louisiana to litigate issues barred by the fuel cycle rule.

^{3/} NRC Staff Opposition to Untimely Petition to Intervene of State of Louisiana, dated August 10, 1982.

^{4/} Applicant's Answer to State of Louisiana's "Petition to Participate as an Interested State in Facility Operating License Proceedings and to Reopen Such Proceedings," dated August 19, 1982.

^{5/} Petitioner's Brief in Support of its Petition to Participate in Facility Operating Licensing Proceedings, dated October 11, 1982.

to assist in the development of a sound record, and that no other parties existed to represent its interests. Finally, Louisiana suggested that 10 CFR § 2.714(a)(iv) and (v) might not be applicable where no hearing would exist absent the granting of the late petition and argued that the public interest would be served by granting its petition.

The Licensing Board evaluated each of the factors enumerated in 10 CFR § 2.714(a) and found the balance to weigh against granting Louisiana's petition:

[T]he Board finds that Louisiana failed to establish good cause for its late-filing, offered no showing of its ability to make a substantial contribution to the record, and sought to expand the issues and delay the proceeding. These factors were found to outweigh the factors that no other means were available to protect Louisiana's interests and that no other party would represent that interest.

Memorandum and Order, at 1-2. Most significantly, the Licensing Board held that "the controversy surrounding Table S-3 and the environmental effects of the uranium fuel cycle have been well known" and that the NRDC decision "does not contain 'new information' and is insufficient to establish good cause for an untimely petition to intervene." Id. at 10-11.^{6/}

On appeal, Louisiana asserts that, contrary to the Licensing Board's determination, the NRDC decision of the Court of Appeals does provide good cause for Louisiana's untimely petition. Louisiana also renews its arguments on the other four factors and concludes that it has met the balancing test required by 10 CFR § 2.714(a).

^{6/} The Licensing Board also rejected Applicant's argument that it lacked jurisdiction to rule on the petition to intervene. Memorandum and Order, at 5-8.

III. ISSUE PRESENTED ON APPEAL

The issue presented on appeal is:

Whether the Licensing Board abused its discretion in ruling that the five factors of 10 CFR § 2.714(a) weighed against granting the untimely petition to intervene of the State of Louisiana.

IV. ARGUMENT

The Licensing Board applied the appropriate legal standards and did not abuse its discretion in reaching the conclusion that the untimely petition of the State of Louisiana should not be granted. Louisiana failed to carry its burden of demonstrating that the five factors, which are applicable in this case, favor its admission. The Appeal Board should, therefore, affirm the decision below.

A. The Five Factors of 10 CFR §2.714(a) Must Each Be Weighed In Determining Whether to Grant an Untimely Petition to Intervene

The requirements of the Commission's regulations (10 CFR § 2.714(a)) concerning late-filed intervention petitions are clear: "Nontimely filings will not be entertained absent a determination by the Commission, the presiding officer or the atomic safety and licensing board designated to rule on the petition and/or request, that the petition and/or request should be granted based upon 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.

The burden is on the tardy petitioner to demonstrate that a balancing of these five factors favors admission.^{7/} Where, as here, the deadline is missed by several years, that burden is "enormously heavy."^{8/} The pivotal factor is that of good cause. Failure to show good cause for the lateness of the petition increases a petitioner's burden on the remaining factors.^{9/} A strong showing of good cause will attenuate (though not excuse) the demonstration necessary on the other four factors.^{10/} Even where good cause is shown, however, the remaining factors may outweigh that factor and cause the dismissal of a late-filed petition.

West Valley, supra, 1 NRC at 275.

Louisiana raises a question concerning the applicability of factors four and five where no hearing would be held if petitioner's request for hearing is not granted. A licensing board decision^{11/} is the only authority cited for this proposition. The Staff submits that the plain language of 10 CFR § 2.714(a) requires that each of the five factors contained therein be evaluated in all cases. Although the question

^{7/} Nuclear Fuel Services, Inc., et al. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 275 (1975); Duke Power Co. (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-615, 12 NRC 350, 352 (1980).

^{8/} Puget Sound Power and Light Co., et al. (Skagit Nuclear Power Project, Units 1 and 2), ALAB-559, 10 NRC 162, 172 (1979).

^{9/} West Valley, supra, 1 NRC at 275; Duke Power Co. (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-431, 6 NRC 460, 462 (1977); Metropolitan Edison Co., et al. (Three Mile Island Nuclear Station, Unit 2), ALAB-384, 5 NRC 612, 615 (1977).

^{10/} Puget Sound Power and Light Co., et al. (Skagit Nuclear Power Project, Units 1 and 2), ALAB-523, 9 NRC 58, 63 (1979); Florida Power and Light Co. (St. Lucie Nuclear Power Plant, Unit No. 2), ALAB-420, 6 NRC 8, 22 (1977), affirmed, CLI-78-12, 7 NRC 939 (1978); Three Mile Island, supra, 5 NRC at 616.

^{11/} South Carolina Electric and Gas Co., et al. (Virgil C. Summer Nuclear Station, Unit 1), LBP-78-6, 7 NRC 209, 213 (1978).

appears not to have been addressed directly by any appeal board decision,^{12/} a licensing board in Florida Power and Light Co. (Turkey Point Nuclear Generating Station, Units 3 and 4), LBP-79-21, 10 NRC 183, 195 (1979) analyzed several other licensing board decisions addressing this question (including Summer, supra, 7 NRC 209) and concluded as follows:

"We are not told [by 10 CFR § 2.714(a)] to consider only applicable factors; we are instructed to consider them all. We believe that the Commission intended that all of the five factors should be balanced in every case involving an untimely petition."

10 NRC at 195. While the Licensing Board in this case did not address the legal question Louisiana raises, all of the factors of 10 CFR § 2.714(a) were evaluated and weighed in the balance and properly so. 10 CFR § 2.714 is clear on its face that the requirements for intervention, including the requirements for untimely intervention, are applicable to a proceeding, and in particular, to a proceeding noticed, as here, pursuant to 10 CFR § 2.105, irrespective of whether the "proceeding" ultimately includes a hearing. See 10 CFR § 2.714 (a)(1).^{13/} Section 2.714 simply cannot be read to be limited in any way in its applicability only to those "proceedings" in which a hearing is actually held. Louisiana's argument that factors four and five for late intervention are inapplicable because no hearing otherwise exists should be rejected.

^{12/} In St. Lucie, supra, ALAB-420, 6 NRC at 23 the Appeal Board affirmed a licensing board decision granting a late-filed petition to intervene and request for an antitrust hearing where a hearing would not otherwise have been held. The licensing board had held that factors two, three and part of five were inapplicable. The Appeal Board found no abuse of discretion in the licensing board's granting the untimely petition, noting without extensive discussion the failure to apply these factors.

^{13/} In 10 CFR § 2.4, the regulations distinguish "contested proceedings" from other types of proceedings. It is clear from this section and 10 CFR § 2.714(a) that a "proceeding" exists whether or not a given licensing action is the subject of adjudication.

- B. The Licensing Board did not Abuse its Discretion in Ruling that the Five Factors of 10 CFR § 2.714(a) Weighed Against Granting Louisiana's Untimely Petition to Intervene

Appellate review of a licensing board's application of the five-factor balancing test of 10 CFR § 2.714(a) is governed by the "abuse of discretion" standard.^{14/} Licensing boards are given broad discretion in the circumstances of individual cases. West Valley, supra, 1 NRC at 275. An analysis of the Licensing Board's application of each of the five factors of 10 CFR § 2.714(a) in this case demonstrates convincingly that there was no abuse of discretion here.

1. Good cause for failure to file on time

The sole reason cited by Louisiana as good cause for its failure to file a timely petition is the Court of Appeals decision in NRDC. Louisiana argued that it "acted with all due speed" upon learning of the decision and studying it.^{15/}

Underlying Louisiana's argument is the principle that a change in regulatory requirements may constitute good cause for late intervention. See, e.g., Cincinnati Gas and Electric Co., et al. (William H. Zimmer Nuclear Station), LBP-80-14, 11 NRC 570, 573, appeal dismissed, ALAB-595, 11 NRC 860 (1980). It is Louisiana's burden, however, to demonstrate that it

^{14/} Nuclear Fuel Services, Inc., et al. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 275 (1975); South Carolina Electric and Gas Co., et al. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 885 (1981).

^{15/} Louisiana does not explain why it took nearly three months (from April 27 to July 21, 1982) from issuance of NRDC to the filing of the petition at issue here. Further, as the Licensing Board observed, Louisiana has been well aware of the controversy surrounding Table S-3 from its participation in the River Bend licensing proceeding. Memorandum and Order, at 10.

could not have raised the issues now presented for litigation in a timely manner. If, prior to NRDC, the door was open to assertion and litigation of the issues now proffered by Louisiana then no good cause is provided by that decision.^{16/} That is apparently the case for at least some of the issues raised by Louisiana. Louisiana has failed to offer any reason why the "aspects" it raises in its petition could not have been raised some four years ago when notice of the proceeding was published. The Staff cited at least one example in its brief to the Licensing Board of an "aspect" of the fuel cycle rule (health effects of projected releases, socioeconomic impacts and possible cumulative impacts) which may have been litigable despite the Table S-3 rule. See "Licensing and Regulatory Policy and Procedures for Environmental Protection; Uranium Fuel Cycle Impacts From Spent Fuel Reprocessing and Radioactive Waste Management (44 Fed. Reg. 45362, 45371, August 12, 1979). Louisiana's vague assertions that it was precluded from litigating "the environmental effects of the uranium fuel cycle" prior to NRDC are not sufficient to carry its burden.^{17/}

16/ See Metropolitan Edison Co., et al. (Three Mile Island Nuclear Station, Unit 2), ALAB-384, 5 NRC 612, 615-20 (1977) for a case in which a tardy petitioner failed to demonstrate that the contentions it sought to litigate on the basis of two federal appellate decisions could not have been raised in a timely manner.

17/ Louisiana has not submitted specific contentions to supplement its petition to intervene. While the regulations do not make mandatory the inclusion of contentions with a late-filed petition (see Zimmer, supra, ALAB-595, 11 NRC at 865 n. 14), the submission of contentions would have assisted the parties and the Licensing Board below in focusing on Louisiana's specific concerns and could possibly have assisted Louisiana in attempting to demonstrate that these specific contentions could not have been heard prior to NRDC. On the other hand, such specification could show that there was no new issue to support the late petition. See Three Mile Island, supra, ALAB-384, 5 NRC at 615-20.

The Licensing Board correctly held that the controversy surrounding Table S-3 and the environmental effects of the uranium fuel cycle have been well known, especially to Louisiana, for some time. Memorandum and Order, at 10. Louisiana has no excuse for its failure to have specified in precisely what manner NRDC constitutes new information and it has failed to show that NRDC provides good cause for its late petition.^{18/}

The Licensing Board did not abuse its discretion in finding that Louisiana had failed to provide good cause for its failure to file a timely petition to intervene. Moreover, NRDC cannot be considered "new information" to support the granting of a late-filed petition because it has at present no legal effect on the fuel cycle rule and because the Commission has directed its licensing and appeal boards to continue to apply the existing rule.

^{18/} After the Licensing Board issued its decision denying Louisiana's petition, the Commission issued a Statement of Policy on the effect of NRDC on power reactor licensing. 47 Fed. Reg. 50591 (November 8, 1982). The Commission has directed its Licensing and Appeal Boards to continue to rely on the existing Table S-3 rule until further order from the Commission. Further, the Commission stated its continued belief "that the record of the final S-3 rulemaking contains adequate information on waste disposal uncertainties to support continued use of the fuel cycle rule." Statement of Policy, dated November 1, 1982, at 10. The Commission's Statement of Policy now stands squarely in the way of any attempt by Louisiana to litigate contentions raising issues heretofore barred by the fuel cycle rule. An analogous situation was faced by the Appeal Board in Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-671, 15 NRC 508 (1982). In that case, after the Licensing Board had denied a late-filed petition, the Commission promulgated a new rule which prevented litigation of the sole issue (financial qualifications) proffered by the late petitioner. The Appeal Board nevertheless decided the appeal, affirming the licensing board while acknowledging that the petition "seemingly has now been stripped of all practical significance." *Id.* at 510. The fact that the sole issue raised by the petition was no longer cognizable in the proceeding was cited as an independent ground for affirming denial of the petition. *Id.* at 514. The same is true here. To the extent that Louisiana seeks to litigate issues previously proscribed by the fuel cycle rule and the Commission's Statement of Consideration of August 12, 1979, that proscription remains by virtue of the continuing stay of mandate and the Commission's Statement of Policy of November 1, 1982. This is an independent ground for affirming the Licensing Board's denial of the petition.

2. Availability of other means

The Staff conceded, and the Licensing Board agreed, that there may be no means other than participation in a proceeding on the Grand Gulf licensing which would afford the same degree of protection for the State of Louisiana's interest with respect to the Grand Gulf facility. The Board held, however, on the basis of South Carolina Electric and Gas Co. (Virgil C. Sumner Nuclear Station, Unit 1), ALAB-642, 13 NRC 881 (1981), that this factor "although resolved in favor of Louisiana, is entitled to less weight than other factors enumerated in § 2.714(a)." Memorandum and Order, at 12. Louisiana argues on appeal that Sumner, supra, should be "confined to the narrow circumstances of that case" because it involved inexcusable lateness, a material expansion of issues and a marginal showing on that petitioner's ability to make a substantive contribution to the record.

The Licensing Board's application of Sumner on the "availability" factor in this case was correct. The circumstances on which Louisiana attempts to distinguish this proceeding are precisely the same as those which the Licensing Board has found to attend here. Further, there not only is no indication in the Appeal Board's Sumner decision that the principle enunciated was not a construction of the regulations which has general applicability, but, to the contrary, the Sumner licensing board stated:

As is ordinarily the case, this proceeding represents the best forum to consider the admissible contentions and petitioner is best qualified to represent its own interests. For that reason, these factors almost always weigh in petitioner's favor but are given relatively lesser weight than the other factors.

13 NRC at 427. The Appeal Board cited this language with approval.

13 NRC at 895.

There was no abuse of discretion in the Licensing Board's decision to weigh this factor in favor of Louisiana while affording it relatively less weight than other factors in 10 CFR § 2.714(a), in accordance with applicable Appeal Board guidance in Summer, supra.

3. Development of a sound record

The Licensing Board weighed this factor against Louisiana, finding that Louisiana had "not indicated that it would do anything other than express its views" and had made only "vague and insufficient" assertions about its ability to obtain expert testimony on relevant issues. Memorandum and Order, at 12. Louisiana reiterates this same vague assertion on appeal, adding only that it "has contacted a representative of the Union of Concerned Scientists" and feels certain that it can obtain relevant expertise "from this or other similar organizations." Petitioner's Appeal, at 11.

Putting aside the question of the propriety of Louisiana's attempt to supplement the record on appeal,^{19/} there has still been no showing by Louisiana that it will contribute to the development of a sound record if a proceeding is initiated at its request. Where a petitioner relies on its ability to assist in developing the record, a "bill of particulars" is required; vague assertions regarding petitioner's ability or resources are insufficient to permit an informed judgment regarding petitioner's likely contribution.^{20/} Louisiana has made no attempt at

^{19/} The Appeal Board takes the case on the record below; one cannot supplement the record on appeal. Houston Lighting and Power Co. (Allens Creek Nuclear Station, Unit 1), ALAB-582, 11 NRC 239, 242 (1980).

^{20/} See Detroit Edison Co. (Greenwood Energy Center, Units 2 and 3), ALAB-476, 7 NRC 759, 764 (1978); Summer, supra, ALAB-642, 13 NRC at 894.

any time to provide such a particularized statement of its ability to assist in the development of a sound record.

There was no abuse of discretion in the Licensing Board's decision to weigh this factor against Louisiana.

4. Representation of interest by existing parties

As with the second factor, the Licensing Board found that this factor favored Louisiana but was entitled to less weight than other factors in 10 CFR § 2.714(a) under Summer, supra. Louisiana argues that Summer is distinguishable and suggests that, in any event, this factor is inapplicable where there would be no proceeding if the tardy petition is denied.

For the reasons presented earlier in discussing the "availability" factor, the Summer precedent is on all fours with this case and states a principle of general applicability. As also discussed earlier, this factor must be considered even where no hearing would otherwise be held if the petition is denied. The Licensing Board did apply it, and correctly. It held that "since there is no contested proceeding at the present time, there are no 'existing parties' who might adequately represent Louisiana's interest." Memorandum and Order, at 13.

There was no abuse of discretion in the Licensing Board's decision to weigh this factor in favor of Louisiana while affording it relatively less weight than other factors in 10 CFR § 2.714(a), in accordance with applicable Appeal Board guidance in Summer, supra.

5. Delay and broadening of issues

The Licensing Board found it indisputable that Louisiana's late petition, if granted, would broaden the issues and delay the proceeding in light of the facts that: (1) the petition was almost four years

late; (2) Louisiana seeks to commence an adjudicatory licensing proceeding rather than join one already in progress; and (3) a low power operating license has already been issued to Applicant. Accordingly, this factor was weighed against Louisiana.

Louisiana argues that this factor is inapplicable because, if the petition is not granted, there will be no issues to broaden nor a proceeding to delay. Alternatively, Louisiana points to a report that the date for commercial operation of Grand Gulf has been delayed to September, 1983 and suggests that no delay will result from granting it intervention.

The applicability of this fifth factor in the circumstances of this case has already been discussed. To the extent that the licensing board decision in Summer cited by Louisiana is more than dictum, it is incorrect. Common sense dictates that the introduction of the issues which Louisiana apparently seeks to litigate is unquestionably a broadening of those which now exist -- none. Further, granting the petition cannot but delay the issuance of an operating license to Applicant, even taking into account the seven month delay cited by petitioner's appeal brief. As the Appeal Board has noted, "[m]anifestly, the later the petition, the greater the potential that the petitioner's participation will drag out the proceeding." Greenwood Energy Center, supra, 7 NRC at 762. Louisiana's petition is almost four years late and comes as the Commission is considering issuance of a full power license. The initiation of an adjudicatory proceeding at this late juncture would clearly delay the completion of the licensing action for Grand Gulf.

The Commission has directed in its November 1, 1982 Statement of Policy that "Licensing and Appeal Boards [should] proceed in

continued reliance on the Final S-3 rule until further order from the Commission, provided that any license authorizations or other discussions issued in reliance on the rule are conditioned on the final outcome of the judicial proceedings." 47 Fed. Reg. 50591, 50593. There is accordingly nothing for Louisiana to litigate at present that has not always been litigable and it may be many months before the Supreme Court finally disposes of the issues raised by NRDC. Delay of this licensing is inevitable if Louisiana's petition is granted.

The Licensing Board did not abuse its discretion in ruling that the delay factor weighed against Louisiana and subsequent changes in the schedule for commercial operation of Grand Gulf do not undercut the Licensing Board's resolution of this issue.

6. Overall balancing of the five factors of 10 CFR § 2.714(a)

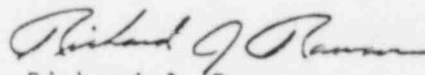
The Licensing Board held that factors one (good cause), three (contribution to the development of a record) and five (delay and broadening of issues) weighed against Louisiana. While factors two (other means to protect interest) and four (other parties to protect interest) weighed in favor of Louisiana, those factors properly were accorded less weight than the other factors. A balancing of these factors, even considering Louisiana's status as a governmental entity, was found to militate against granting the late petition. The Licensing Board's determinations on each of the factors and its overall balancing of the five factors were well-reasoned and within the broad discretion properly afforded it under the Commission's rules. No abuse of the Licensing

Board's broad discretion has been shown here.^{21/}

V. CONCLUSION

The Licensing Board applied each of the factors of 10 CFR § 2.714(a) and found that a balancing of these factors weighed against granting Louisiana's extremely late petition. This result may be reversed only if the Licensing Board has applied improper legal standards or if it has abused its discretion in evaluating the relevant factors. Louisiana has failed to demonstrate that the Licensing Board's decision should be overturned. Its appeal, accordingly, should be dismissed. Moreover, the Commission's November 1, 1982 Statement of Policy together with the continuing stay of mandate in NRDC preclude litigation of the issues which Louisiana apparently seeks to raise. This is an independent ground for affirming the denial of the petition.

Respectfully submitted,


Richard J. Rawson
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 19th day of November, 1982.

^{21/} It is not clear from Louisiana's brief on appeal whether Louisiana is seeking review of the Licensing Board's ruling that the Licensing Board was without jurisdiction to "refrain from granting any operating license to the Grand Gulf Nuclear Power Station" as requested by Louisiana. See Memorandum and Order, at 14-16. The Licensing Board correctly ruled that only the Commission may decide whether or not an applicant in an uncontested case will be granted authority for full power operation. The Staff notes further that Louisiana has not been admitted as a party and lacks standing to request any action on the part of the Licensing Board other than its own admission into a proceeding.

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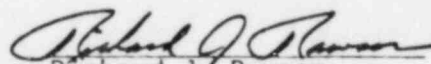
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