UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
	)	
DUKE POWER COMPANY, ET AL.	)	Docket Nos. 50-413
	)	50-414
(Catawba Nuclear Station, Units 1 and 2)	)	

NRC STAFF BRIEF ON APPLICATION OF SECTION 2.714 TIMELINESS FACTORS TO LATE CONTENTIONS BASED ON NEW INFORMATION IN PREVIOUSLY "INSTITUTIONALLY UNAVAILABLE" LICENSING DOCUMENTS

George E. Johnson
Counsel for NRC Staff

January 24, 1983

DESIGNATED ORIGINAL

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I. INTRODUCTION AND BACKGROUND

The Atomic Safety and Licensing Appeal Board ("Appeal Board") decision in ALAB-687 addressed the problem often faced by Atomic Safety and Licensing Boards ("Licensing Boards") where certain licensing-related documents -- such as an environmental impact statement or an emergency plan -- are unavailable at the time established for filing contentions in a particular licensing proceeding. The Catawba Licensing Board, faced with unspecific contentions which depended upon information which might later appear in the Staff's environmental impact statement or the Applicant-submitted off-site emergency plans, admitted such contentions conditionally, subject to those contentions being made more specific promptly after the pertinent document became available. LBP-82-16, 15 NRC 566, 574 (1982). In addition, with respect to late-filed revised or new contentions founded upon the subsequently available documents, the Licensing Board determined that it would not apply the criteria in 10 CFR Section 2.714(a)(1)(i)-(v) governing the admission of late contentions.

Id. at 574-575. Upon referral of these issues by the Licensing Board, the Appeal Board held that "a licensing board is not authorized to admit conditionally, for any reason, a contention that falls short of meeting the specifity requirements" of 10 CFR Section 2.714. ALAB-687, slip op. at 11 (August 19, 1982). The Appeal Board also ruled, however, that "a contention cannot be rejected as untimely if it (1) is wholly dependent upon the content of a particular [licensing] document; (2) could not therefore be advanced with any degree of specificity (if at all) in advance of the public availability of that document; and (3) is tendered with the requisite degree of promptness once the document comes into existence and is accessible for public examination." Id. at 16. With respect to the particular requirements of Section 2.714(a)(1), the Appeal Board held that where "the non-existence or public unavailability of relevant documents made it impossible for a sufficiently specific contention to have been asserted at an earlier date, that factor must be deemed controlling; it is not amenable to being overridden by other factors such as that relating to the broadening of the issues." Id. at 17. To rule otherwise, the Appeal Board concluded, would contravene the hearing rights provided by Section 189a. of the Atomic Energy Act of 1954, as amended. Id., at 17-18.

By Order of December 23, 1982, the Commission determined to review sua sponte two aspects of the Appeal Board's decision in ALAB-687 and invited the parties in the captioned proceeding to address the following questions:

1. Does Section 189a. of the Atomic Energy Act of 1954, as amended, require an Atomic Safety and Licensing Board to give controlling weight to the good cause factor in 10 CFR

2.714(a)(1)(i) in determining whether to admit a late-filed contention that could not be filed in a timely manner because the "institutional unavailability" of licensing-related documents precluded the timely formulation of that contention with the requisite specificity?

2. Is there "good cause" for filing a late contention when the reason given for late filing is the previous "institutional unavailability" of an agency document, e.g. the FES, but the information relied on was available early enough to provide the basis for a timely filed contention, e.g. in an applicant's environmental report?

As discussed below, the Staff answers Issue No. 1 in the affirmative and Issue No. 2 in the negative.

II. NRC STAFF POSITION

A. Issue No. 1

Section 189a. of the Atomic Energy Act Requires That Controlling Weight Be Given to the Good Cause Factor in Section 2.714(a)(1) Where the Institutional Unavailability of Licensing-Related Documents Wholly Precludes the Timely Formulation of a Contention with the Requisite Specificity

1. Section 189a. Permits the Imposition of Reasonable Conditions and Procedures for Intervention

As far back as 1973, the Appeal Board ruled that while Section 189a. provides that:

> "In any proceeding under this Act for the granting * * * of any license * * * the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding * * *

42 U.S.C. 2239(a), "neither Section 189a. nor any other provision of the Act decrees the form or content of the 'request'." Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2),

ALAB-107, 6 AEC 188, 191, aff'd, CLI-73-12, 6 AEC 241, aff'd sub nom., BPI v. AEC, 502 F.2d 424 (D.C. Cir. 1974). Moreover, the Appeal Board concluded that the very broad rulemaking authority granted to the Commission to "prescribe such regulations or orders as it may deem necessary" (Section 161i. of the Act), and to "make, promulgate, issue, rescind, and amend such rules and regulations as may be necessary to carry out" the statutory purposes (Section 161p.) was ample evidence that Congress had left to the Commission the determination as to the form in which a petitioner was to request a hearing. Id. The Appeal Board further observed that such discretion was in keeping with the widely recognized view of the courts that an administrative agency such as the Commission must be given wide latitude in the fashioning of procedural rules governing the conduct of its proceedings. Id. The Court of Appeals agreed with this rationale in affirming the Commission order in BPI v. AEC, supra.

While BPI v. AEC involved the validity, under Section 189a., of the requirement that intervention petitions plead reasonably specific contentions, the rationale supporting the decision applies equally to prescribing conditions for intervention and the timeliness of contentions. In fact, the Court of Appeals there relied, in part, on Easton Utilities Commission v. AEC, 424 F.2d 847, 851 (D.C. Cir. 1970), a decision upholding the validity of the Commission's rule governing the timeliness of petitions for intervention. As noted by the court in BPI v. AEC, the court in Easton had ruled:

> We find nothing whatsoever in the record which in any way challenges the reasonableness, the necessity for, or the propriety of [Section 2.714].

Easton Utilities Commission v. AEC, supra, at 851.

Section 2.714 of the Commission's Rules of Practice at that time provided in pertinent part that:

> A petition for leave to intervene which is not timely filed will be dismissed unless the petitioner shows good cause for failure to file it on time.

While the regulation itself has since been amended, the court's holding regarding the Commission's authority to make reasonable regulations governing timeliness is clearly unaffected by any change.1/

Thus, while the Court of Appeals has not had occasion to address specifically Section 2.714, as subsequently amended, the authority of the Commission under Section 189a. of the Act to make regulations governing participation in its proceedings has been clearly sanctioned by the courts where such regulations have been determined to be reasonable in their application.

2. The Commission's Intent in Amending Section 2.714(a)(1) was to Assure Reasoned Consideration of Untimely Petitions and the Provision is a Reasonable Exercise of the Commission's Rulemaking Authority

On April 26, 1978, the Commission published a final rule clarifying the procedural showing required to permit the late filing of contentions. 43 Fed. Reg. 17798. Section 2.714(b) was amended to permit additional

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1/ The Court of Appeals for the District of Columbia Circuit recently affirmed the Appeal Board's denial of an untimely intervention petition, upon application of the five factors in Section 2.714(a)(1). South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 886 (1981), aff'd per curiam, sub nom. Fairfield United Action v. Nuclear Regulatory Commission, 679 F.2d 261 (D.C. Cir. 1982). However, under Local Rule 8(f) of the District of Columbia Circuit such decision may not be cited as precedent.

time to file contentions "based upon a balancing of the factors in paragraph (a)(1) of this section [2.714]." Id. The five separate factors contained in Section 2.714(a)(1) to be balanced are:

(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.

In the accompanying Statement of Considerations, the Commission stated its intention that "late filed contentions . . . will be considered for admission under the clarified criteria set forth in [Section 2.714](a)(1)." Id.

The Commission also explained in adopting these amendments that it was codifying the Commission decision in In the Matter of Nuclear Fuel Services, Inc., and New York State Atomic and Space Development Authority (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273 (1975) "which makes clear that the reason for the untimely filing is one factor to be balanced along with the others in determining whether a late filing will be admitted." Id. While the Commission regulation and accompanying explanation set forth specifically the information to be considered in determining whether to admit a late-filed contention, it is, nonetheless, instructive to consider the Commission's decision in West Valley Reprocessing Plant, on review of ALAB-263, 1 NRC 208 (1975), in seeking to obtain a fuller understanding of the Commission's intent in promulgating this regulation. There, the Appeal Board had affirmed the denial of a

late petition of Erie County to intervene. The Appeal Board, with the Chairman dissenting, held, inter alia, that "as we read Section 2.714(a), the four factors are not to be considered at all where, as here, no good reason has been advanced for the tardiness of the petition." Id. at 215. In his dissent, the Board Chairman disagreed with the majority's reading of the regulation that "enforcement of time limits invariably takes precedence over all other considerations", and performed a detailed examination of the other factors, coming to the conclusion that, notwithstanding the lack of an adequate reason for lateness, a balancing favored admission of the late petitioner. Id. at 219-224.

The Commission thereafter reviewed and reversed the Appeal Board ruling, stating:

> we do not construe Section 2.714(a) as automatically barring inquiry into the purposes which may be served, or hindered, by accepting an untimely petition where, as here, the petitioner has not shown good cause for tardiness.

West Valley Reprocessing Plant, supra, CLI-75-4, 1 NRC at 275.

The Commission explained:

> we stress that favorable findings on some or even all of the other factors in the rule need not in a given case outweigh the effect of inexcusable tardiness. Conversely, a showing of good cause for a late filing may nevertheless result in a denial of intervention where assessment of the other factors weighs against the petitioner.

Id.

Despite the Commission's statement that a petition could, under the regulation, be denied despite a showing of good cause, the context of the decision strongly suggests that the primary concern of the Commission was that Licensing Boards not automatically bar intervention without first weighing the purposes which might be "served, or hindered, by accepting an untimely petition." Id. While there is no mention of Section 189a.

in either West Valley Reprocessing Plant or the Commission's Statement of Considerations, the Commission appears to have had in mind, as stated by the Appeal Board, that "[o]f necessity, the Commission intended that [such] balancing [was] to be performed in obedience to the proviso in Section 189a. of the Atomic Energy Act that, in proceedings of this type, it 'shall grant a hearing upon the request of any person whose interest may be affected by the proceeding.'" ALAB-687, slip op. at 16.

Over the nearly five years since the Commission's amendments to Section 2.714(b) and 2.714(a)(1), Licensing Boards and the Appeal Board have applied the five factor test to both late-filed petitions and late-filed contentions. However, rarely has a Licensing Board applied the five factor test to override a finding of good cause. One such case was Cincinnati Gas and Electric Company, et al. (William H. Zimmer Nuclear Station, LBP-80-24, 12 NRC 231, 239 (1980), where a late-filed financial qualifications contention was rejected despite the presence of good cause, based upon a finding that the intervenor made no showing that he would make a significant contribution to the record. We have identified no instance in which a Licensing Board has rejected a significant safety issue raised in a late-filed contention where good cause was shown.

Nevertheless, the possibility that Section 2.714 might result in the rejection of a late-filed contention which could not have been previously filed due to the "institutional unavailability" of licensing-related documents, has not been directly considered by the Commission, either in West Valley Reprocessing Plant, the Statement of Considerations on the 1978 amendments to Section 2.714, or in previous applications of the regulations.

3. Where the "Institutional Unavailability" of Licensing Documents Precluded an Intervenor, Through No Fault of His Own, From Timely Formulating Adequately Specific Contentions on Issues that Will Affect His Interest and Which Are Germane to the Proceeding, an Application of the Five Factors for Late Filing Which Would Preclude the Admission of the Late Contention Is Unreasonable

In ALAB-687, the Appeal Board approved the Licensing Board's prospective ruling that it would not apply the five factors in Section 2.714(a)(1) to bar an untimely contention where the intervenor was precluded by the absence of a pertinent "essential" licensing document (such as the DES, SER, or emergency plan) from timely filing an adequately specific contention. ALAB-687, slip op. at 11. See LBP-82-16, 15 NRC 566, 574-5 (1982); LBP-82-50, 15 NRC 1746, 1752 (1982). Specifically, the Appeal Board held:

> Where . . . the nonexistence or public unavailability of relevant documents made it impossible for a sufficiently specific contention to have been asserted at an earlier date, that factor must be deemed controlling; it is not amenable to being overridden by other factors such as that relating to the broadening of the issues. As scarcely requires further extended discussion, any different result would countenance placing the petitioner in a classic "catch-22" situation -- which, once again, the statute forbids and our regulations cannot be thought to have authorized.

Id. at 17-18 (footnotes omitted). Although not referring to "good cause" by name, the Appeal Board clearly implies that the impossibility of asserting a sufficiently specific contention because of the non-existence or public unavailability of a limited class of licensing documents is good cause, which is "controlling" and "not amenable to being overridden."

The Appeal Board provided the following rationale for its holding:

> We perceive no conflict between this conclusion and the Commission's direction in Section 2.714(b) that there be a balancing of the five Section 2.714(a) factors. Of necessity, the Commission intended that balancing to be performed in obedience to the proviso in Section 189a. of the Atomic Energy Act that, in proceedings of this type, it "shall grant a hearing upon the request of any person whose

> interest may be affected by the proceeding." True enough, the statutory mandate "does not confer the automatic right of intervention upon anyone"; rather, the Commission may condition the exercise of that right upon the meeting of reasonable procedural requirements. BPI v. AEC, supra, 502 F.2d at 428. But no procedural requirement can lawfully operate to preclude from the very outset a hearing on an issue both within the scope of the petitioner's interest and germane to the outcome of the proceeding. If it had that effect, the requirement would not merely be patently unreasonable but, as well, would render nugatory Section 189a. hearing rights.

ALAB-687, slip op. at 16-17.

The Staff agrees that in the narrow circumstances addressed by the Appeal Board -- i.e., where the institutional unavailability of essential licensing documents absolutely precludes an intervenor, through no fault of his own, from timely formulating adequately specific contentions on issues that will affect his interest and which are germane to the outcome of proceeding -- an application of the five factors for late filing which would preclude the admission of the late contention is unreasonable, and in those limited and rare circumstances the good cause factor should be controlling.

The Appeal Board rationale implicitly recognizes that the requirement to consider and weigh the factors other than good cause, particularly the fifth factor, Section 2.714(a)(1)(v), relating to broadening the proceeding, could be applied by a Licensing Board to deny admission to a late-filed contention which could not possibly have been raised earlier. Both the Licensing Board and the Appeal Board below believed that such a reading could not have been intended by the Commission, and we agree.[2/] As noted above, the Commission's concern in

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2/ A special circumstance would seem to exist where, as the Appeal Board noted, "an essential element of the license application or the Staff's prehearing review" is lacking. ALAB-687, supra, slip op. at 11. As the Licensing Board observed, "[the contentions'] 'lateness' is entirely beyond the control of the sponsoring intervenor." LBP-82-16, supra, 15 NRC at 575.

West Valley Reprocessing Plant was to assure that the regulation did not operate to deny admission where good cause was lacking, in circumstances in which there were other compelling reasons for admission. While the Commission there allowed that a finding of good cause could be overridden, neither the decision in West Valley Reprocessing Plant, supra, 1 NRC at 275, nor the Commission's subsequent rulemaking incorporating the West Valley Reprocessing Plant rule specifically addressed the circumstances of the instant case. 43 Fed. Reg. 17788.3/ Thus for the Commission to apply Section 2.714 so as to require the giving of controlling weight to the good cause factor where it was impossible for a sufficiently specific contention to be timely formulated due to the institutional unavailability of essential licensing documents is merely to apply the rule to achieve a reasonable result -- a result consistent with the Commission's intent in amending the rule. It is in this sense that the Appeal Board stated that "[w]e perceive no conflict between this conclusion and the Commission's direction in Section 2.714(b) that there be a balancing of the five Section 2.714(a) factors." ALAB-687, slip op. at 16.

The requirement that controlling weight be given to the good cause factor only in cases where the late contention not only is "wholly dependent" upon the content of an essential licensing document, but also is not susceptible of being advanced prior to the document's availability, id.,

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3/ We do not view the Commission's reference in the Statement of Considerations to the fact that "contentions are frequently expanded or amended because of new information which comes to light after petitioners have been admitted, such as information in the Commission Staff's safety evalution or environmental impact statements" (emphasis added), as addressing the admission of new contentions which, for the reasons hereto discussed, could not possibly have been raised earlier. Id.

provides interpretative guidance for application of Section 2.714(a)(1) to Licensing Boards so that in those limited circumstances, an unreasonable result will not be reached.

4. As a Practical Matter, Application of the Ruling in ALAB-687 Should Not Lead to Substantially Different Results than a Proper Balancing of All Five Late Filing Factors

While the Staff believes that the four factors other than good cause may not be applied to reject as untimely an adequately specific late-filed contention the timely formulation of which was precluded by the unavailability of essential licensing review documents and which is promptly filed after such documents become available, the Staff also believes that the same result would be reached in the vast majority of cases, upon proper balancing of each of the five factors. As the Appeal Board recently stated, "While we recognize that 'good cause', or its absence, is but one of five factors to be considered and not necessarily decisive, it nevertheless is one of the dominant criteria." Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 1), ALAB-707, slip op. at 8 (December 21, 1982). Moreover, as the Licensing Board in Zimmer observed:

> The availability of new information appearing in previously unavailable documents has long been recognized as a valid reason for accepting new contentions or for admitting new intervenors. Indiana and Michigan Electric Company (Donald C. Cook Nuclear Plant, Units 1 and 2), CLI-72-25, 5 AEC 13, 14 (1972)) . . .

Zimmer, LBP-80-14, 11 NRC 570, at 574 (1980). And in fact, the Commission appears to have considered this factor generally dispositive:

> Unless special circumstances dictate otherwise in specific circumstances, new information appearing in previously unavailable documents would generally constitute good cause for amendment, assuming of course that the request to amend is expeditiously presented and is otherwise proper. Such determinations rest in the discretion of the Licensing Board.

Cook, supra, 5 AEC at 14;[4/] See also Wisconsin Electric Power Company (Koshkonong Nuclear Plant, Units 1 and 2), CLI-74-45, 8 AEC 928, 929 (1974).

Thus, the application of Section 2.714 articulated in ALAB-687 does not represent a radical departure from past Commission practice. The Staff has not identified any reported case in which a late-filed health and safety contention was rejected as untimely where good cause was shown. Indeed, the ruling which was the subject of ALAB-687 was one that resulted not in the rejection of a late-filed contention, but rather a prospective declaration as to the Licensing Board's treatment of future late-filed contentions where adequately specific contentions could not be pleaded because of the unavailability of pertinent licensing documents. Thus, while articulating a prospective standard, ALAB-687 should, as a practical matter, lead to substantially the same results as would a balancing of the five factors of Section 2.714(a)(1).[5/]

4/ 10 CFR Section 2.714 at that time directed that the good cause determination be made "with particular reference to the [other four] factors . . ." 37 Fed. Reg. 15132 (July 28, 1972).

5/ In answering Issue No. 1 in the affirmative, the Staff has interpreted the Commission's question as assuming that there was no information otherwise available to the public in any form, prior to the availability of the previously "institutionally unavailable" licensing document, upon which the late-filed contention could have been timely formulated in an adequately specific manner. As we note below, if it were assumed that the information relied upon in a late contention were in fact previously available, in whatever form, the Staff position on Issue No. 1 would be in the negative.

B. Issue No. 2

Good Cause is Lacking Where the Information Relied Upon for the Late Contention Was Available Early Enough to Provide the Basis for a Timely Contention, Despite the Institutional Unavailability of an Agency Document

In addressing Issue No. 1, we assumed that an intervenor was precluded from formulating in a timely manner a sufficiently specific contention because of the institutional unavailability of an essential licensing document. In such circumstances, we have argued that the good cause provided by the impossibility of timely formulation due to the unavailable document is necessarily controlling. Issue No. 2, however, presents very different circumstances. We are told to assume that the information relied upon in the late-filed contention was previously available. In such circumstances the information appearing in the licensing document is neither "new" information so as to bring it within the long-standing policy of the Commission that "new information in previously unavailable documents would generally constitute good cause [for amending a petition to intervene]"[6/] nor "wholly dependent" thereon.

This is true whether the previously unavailable document involved is a Staff environmental impact statement or safety evaluation report, or an Applicant's emergency plan. The Appeal Board, in ALAB-687, slip op. at 13, noted that "an intervention petitioner has an ironclad obligation to examine the publicly available documentary material pertaining to the facility in question with sufficient care to enable it to uncover any information that could serve as the foundation for a specific contention." Thus, the petitioner is deemed to have knowledge of the information in the

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6/ Cook, CLI-72-25, supra, 5 AEC at 14.

Applicant's FSAR and ER. Where the information relied upon in a late-filed contention appeared in such documents, the unavailability of licensing documents is not an excuse for not filing a contention based on concerns arising from such information. The later appearance of that information in a licensing document does not render the information "new" and does not provide good cause for a late-filed contention which relied on those facts. If it were otherwise, the "ironclad obligation" of an intervenor to uncover information in publicly available documentary material, referred to by the Appeal Board in ALAB-687, would have no meaning.

A different result should not be reached simply because the late-filed contention asserts in addition to facts previously available in Applicant's FSAR or ER, that the evaluation of that information by the Staff in the SER or EIS is inadequate. This is particularly true with regard to safety issues where the Applicant carries the burden of proof and the adequacy of Staff's evaluation of the Applicant's Final Safety Analysis Report (FSAR) is not the ultimate issue for decision. 10 CFR Sections 50.33, 50.34, 50.40. Proper safety contentions will, therefore, address whether the Applicant's licensing submission satisfies its obligations under the regulations.

The situation is somewhat different with respect to environmental issues, where the ultimate burden is upon the Staff to perform a cost-benefit analysis which considers and balances the environmental and other impacts of the proposed action, 10 CFR Sections 51.23, 51.24, 51.25, 51.26, and contentions may properly be framed as a challenge to the adequacy of the Staff evaluation. In this connection the Appeal Board noted that an intervenor must have "the opportunity to examine the

[environmental impact] statement or [emergency] plan," without which it is not possible for a petitioner even to determine whether there is warrant for a contention on the subject -- i.e., whether the impact statement or emergency plan is open to a claim of insufficiency on some colorable ground." (Footnote omitted.) ALAB-687, slip op. at 14.

However, where the facts relied upon in a late contention on the environmental statement (or the emergency plan, for that matter) were readily available prior to the time established for filing contentions, it is not true that a reasonably specific contention on the subject could not have been raised. For example, if the contention claims that insufficient weight was given to the environmental cost of a particular plant effluent, there is no reason why such a contention, based on facts contained in the environmental report, could not have been timely filed. While it is true that prior to the issuance of the draft environmental statement a petitioner would not know what was contained therein, where the facts on which the late contention relies were presented in the environmental report, there is no reason why the environmental concerns contained in the contention could not have been raised contemporaneously with the availability of the environmental report, and then litigated to encompass their treatment given in the environmental impact statement. There is in such circumstances no warrant for delay in raising any legitimate environmental concerns until the Staff's treatment of those facts becomes available.

While a licensing board may decide that some information may not be available prior to the DES, ordinarily much of the environmental information contained in the DES is derived from information contained in the

Applicant's environmental report. A similar situation obtains which respect to the Staff SER and the Applicant's safety analysis report, as periodically supplemented.7/ Where all the facts relied upon in a late contention were in fact previously available in the Applicant's environmental report or safety analysis report, or otherwise, good cause for lateness is not supplied simply because the same information also appears in a previously "institutionally unavailable" licensing document.

III. CONCLUSION

Based on the foregoing, the Staff believes Issue No. 1 should be answered in the affirmative and Issue No. 2 should be answered in the negative.

Respectfully submitted,

George E. Johnson
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 24th day of January, 1983

7/ The Applicant's submission of an off-site emergency plan may be distinguished from these Staff documents insofar as the information on how various off-site response agencies plan to deal with radiological emergencies will in most cases not have been previously addressed in documents available to the public. As a result, the assumption in Issue No. 2, that the facts relied upon in the late contention were available earlier, is unlikely to operate in the case of local off-site emergency response plans.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF BRIEF ON APPLICATION OF SECTION 2.714 TIMELINESS FACTORS TO LATE CONTENTIONS BASED ON NEW INFORMATION IN PREVIOUSLY 'INSTITUTIONALLY UNAVAILABLE' LICENSING DOCUMENTS" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, this 24th day of January, 1983:

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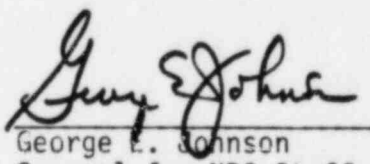

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