

NRC PUBLIC DOCUMENT ROOM

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



In the Matter of)
)
SOUTH CAROLINA ELECTRIC &) Docket No. 50-395
GAS COMPANY, et al.)
)
(Virgil C. Summer Nuclear)
Station))

APPLICANT'S RESPONSE TO MEMORANDUM AND ORDER
DENYING MOTION FOR DISMISSAL OF INTERVENOR

On October 2, 1978, the Atomic Safety and Licensing Board ("Board") issued a Memorandum and Order Denying Motion for Dismissal of Intervenor herein. The Board stated it would consider whether it is desirable in this proceeding to take testimony in two phases, with the first phase being for affirmative cases and the second, after a recess, being held to hear rebuttal testimony. The Board conceives that written testimony would be required to be filed far enough in advance of each phase to enable preparation for cross examination. The Board asked for the views of the parties as to the practicality of this approach. The Board's Memorandum and Order also permitted the Applicant to propose sanctions or other relief short of dismissal of intervenor.

7810310017

Applicant believes it is premature to attempt to consider particular hearing procedures or sanctions of the intervenor at this time. The entire matter, or at least several of the present contentions, may become moot on the basis of the Board's rulings on the Applicant's motion for summary disposition.

The Board noted in its Memorandum and Order that "[t]he applicant is now free to move, with supporting arguments, that individual contentions be dismissed or for other relief short of dismissing the entire intervention." The original date for the submission of motions for summary disposition could not be met because of intervenor's failure to cooperate in discovery. Applicant expects to file a motion for summary disposition in approximately one month.

Applicant supports the Staff Motion for Summary Disposition relating to Contentions A6 and A7 filed on October 3, 1978. In its own motion for summary disposition, further bases for dismissal will be presented.

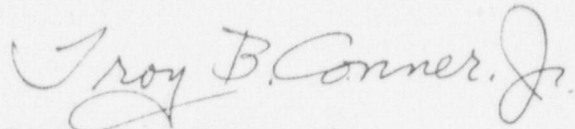
With respect to sanctions short of dismissal, only one seems appropriate prior to the Board's ruling on the motions for summary disposition. Because of the intervenor's failure to meet deadlines in the past, it is suggested that the Board order Mr. Bursey to respond to the Applicant's motion for summary disposition within 20 days after service, as provided in 10 C.F.R. §2.749(a). With the notice provided by this

pleading, this would provide the intervenor at least 50 days notice before he must meet this obligation.

In our view it would be appropriate to deal with the presentation of evidence in chief and further appropriate relief after the Board's ruling has established the further scope of any evidentiary hearing.

Respectfully submitted,

CONNER, MOORE & CORBER

A handwritten signature in cursive script that reads "Troy B. Conner, Jr.".

Troy B. Conner, Jr.

A handwritten signature in cursive script that reads "Mark J. Wetterhahn".

Mark J. Wetterhahn
Counsel for the Applicant

October 18, 1978

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
SOUTH CAROLINA ELECTRIC &) Docket No. 50-395
GAS COMPANY, et al.)
)
(Virgil C. Summer Nuclear)
Station))

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Objections to Intervenor's Interrogatories to Applicant and Motion for a Protective Order," dated October 2, 1978, in the captioned matter, have been served upon the following by deposit in the United States mail this 2nd day of October, 1978:

Ivan W. Smith, Esq.
Chairman, Atomic Safety and
Licensing Board
U. S. Nuclear Regulatory
Commission
Washington, D. C. 20555

Dr. Frank F. Hooper
Member, University of
Michigan
Camp Filibert Roth
Iron River, Michigan 49335

Mr. Gustave A. Linenberger
Member, Atomic Safety and
Licensing Board Panel
U. S. Nuclear Regulatory
Commission
Washington, D. C. 20555

Chairman, Atomic Safety and
Licensing Appeal Board Panel
U. S. Nuclear Regulatory
Commission
Washington, D. C. 20555

Chairman, Atomic Safety and
Licensing Board Panel
U. S. Nuclear Regulatory
Commission
Washington, D. C. 20555

George Fischer, Esq.
Vice President and General
Counsel
South Carolina Electric & Gas
Company
Post Office Box 764
Columbia, South Carolina 29202

Steven C. Goldberg, Esq.
Office of the Executive Legal
Director
U. S. Nuclear Regulatory
Commission
Washington, D. C. 20555

Mr. Brett Allen Bursey
Route 1, Box 93-C
Little Mountain, South Carolina
29075

Mr. Chase R. Stephens
Docketing and Service Section
Office of the Secretary
U. S. Nuclear Regulatory
Commission
Washington, D. C. 20555

Richard P. Wilson, Esq.
Assistant Attorney General
S.C. Attorney General's Office
P. O. Box 11549
Columbia, S.C. 29211


Mark J. Wetterhahn