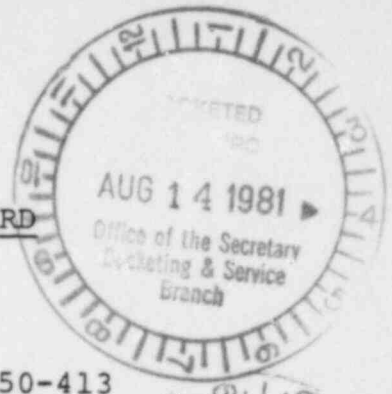
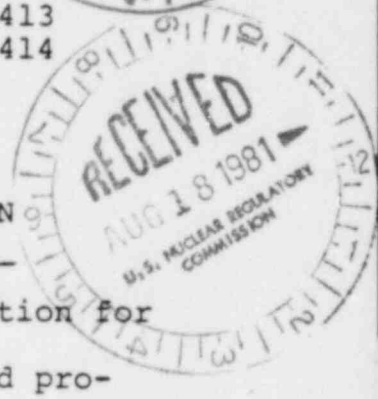
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



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



APPLICANTS' 1/ RESPONSE IN OPPOSITION TO PETITION TO INTERVENE OF SAFE ENERGY ALLIANCE

On June 25, 1981, a "Notice of Receipt of Application for Facility Operating License..." concerning the captioned proceeding was published in the Federal Register. (46 Fed. Reg. 32974). In response to such Notice, the Safe Energy Alliance ("SEA") in a letter addressed to the Nuclear Regulatory Commission requested leave to intervene. 2/ Pursuant to 10 CFR §2.714(c) Applicants make the following response to the Petition.

Applicants oppose SEA's request to intervene on the grounds that SEA has failed to demonstrate the requisite interest to be permitted to intervene as a matter of right and has failed to show that it will make a contribution to the proceeding so as to justify intervention as a matter of discretion. On

---

1/ "Applicants" refers to Duke Power Company, North Carolina Municipal Power Agency Number 1, North Carolina Electric Membership Corporation and Saluda River Electric Cooperative, Inc.

2/ SEA's letter, though dated July 23, 1981, has not been served on Applicants as required by the Commission's rules (10 CFR §2.701) and the Federal Register Notice. Rather, Applicants obtained a copy of the letter from the NRC on August 6, 1981.

D503
S
1/1

May 26, 1978, the Nuclear Regulatory Commission amended its Rules of Practice to facilitate public participation in its license application review and hearing process. 43 Fed. Reg. 17798 (April 26, 1978). With particular reference to the standard by which petitions to intervene would be judged, the Commission stated:

> The petition shall set forth with particularity the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene, with particular reference to the factors in paragraph (d) of this section, and the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene. 10 CFR §2.714(a)(2).

In Applicants view, SEA has failed to demonstrate that it has an interest in this proceeding. An organization may establish standing through the interests of its members, but to do so it must identify specifically the name and address of at least one affected member who wishes to be represented by the organization. See Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-37, 8 NRC 575, 583 (1978) and authorities cited therein; Houston Lighting and Power Company, et al. (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 444 (1979) and authorities cited therein. Moreover, where an organization is represented by one of its members, that member must demonstrate authorization by that organization to represent it. Fermi, LBP-78-37, supra at 583. SEA attaches to its

letter only one affidavit, that of a Donald Joseph Tate, a resident of Charlotte, who authorizes SEA to represent his interests in the proceeding. The Tate affidavit, however, fails to identify the affiant as a member of SEA, so that there is no showing a member of the group might be affected by the proceeding. Moreover, the letter seeking intervention on behalf of SEA is signed by a Donald R. Belk, who styles himself as the "representative." However, there is no showing either that Mr. Belk is a member of the organization or that he is authorized to represent the organization, so that the letter is insufficient on those grounds as well.

While the above argument might be viewed as technical in nature, prior experience with this petitioner on this precise point underscores the need to draw the Board's attention to the matter. In Duke Power Company (amendment to Materials License SNM-1773-Transportation of Spent Fuel From Oconee Nuclear Station for Storage at McGuire Nuclear Station), Docket No. 70-2623, the identical representative of SEA, Mr. Belk, was either unwilling or unable to furnish the Licensing Board with the necessary proof that he was authorized to represent SEA in the proceeding. Consequently, the Licensing Board dismissed SEA as a party to the proceeding. Id., Order Dismissing Safe Energy Alliance As A Party Intervenor, April 12, 1979.

As a final point with regard to intervention, Applicants

would note that SEA has sought intervenor status so that "the public should be informed." As stated in Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), LBP-77-11, 5 NRC 481, 483-84 (1977) citing Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), ALAB-333, 3 NRC 804, 806, fn.6 (1976), "[t]here simply is no provision in the Commission's regulations for parties to act as private attorneys general." Manifestly, there has not been, nor can there be, any demonstration here that SEA is authorized to represent the general public. See Sierra Club v. Morton, 405 U.S. 727 (1972); Nuclear Engineering Co., Inc. (Sheffield Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737 (1978); Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420 (1976). Indeed, Congress has vested the function of representing the general public in the NRC Staff and the Commission itself through the Atomic Energy Act.

On the basis of the above, Applicants maintain that SEA is not entitled to intervention as a matter of right.

Though the letter fails to establish that SEA is entitled to intervene as a matter of right, the Board may permit it to intervene as a matter of discretion so long as it is satisfied that SEA might make "a valuable contribution" to the decisionmaking process. Fermi, LBP-78-37, supra at 584.

SEA fails here as well. It concedes, in paragraph 2 of its letter, that it can make no contribution to developing the record in this proceeding, stating:

> The Safe Energy Alliance is a group of citizens concerned about the safety of nuclear power. We claim no scientific expertise, but believe the public should be informed as fully as possible on certain issues pertaining to this hearing. (emphasis added).

Moreover, the concerns listed by SEA are substantially similar to those raised by other petitioners. Indeed, the Charlotte-Mecklenburg Environmental Coalition's Petition to Intervene and Request for Hearing, specifically contends that it represents the interests of SEA in this proceeding. Accordingly, discretionary intervention is not warranted.

In sum, SEA's letter request seeking intervenor status should be denied.

Respectfully submitted,

/s/ J. Michael McGarry, III

DEBEVOISE & LIBERMAN
1200 Seventeenth Street, N.W.
Washington, D.C. 20036

William L. Porter
Albert V. Carr, Jr.
DUKE POWER COMPANY
P.O. Box 33189
Charlotte, North Carolina 28242

Attorneys for Duke Power Company

August 14, 1981