

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

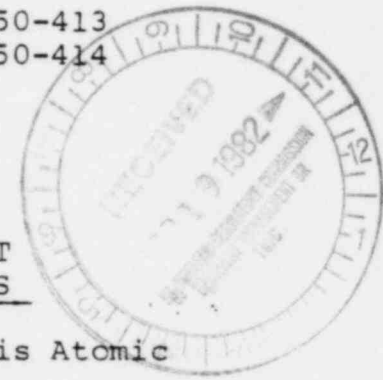
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of )  
DUKE POWER COMPANY, et al. )  
(Catawba Nuclear Station, )  
Units 1 and 2) )

Docket Nos. 50-413  
50-414



APPLICANTS' RESPONSE TO INTERVENORS' JOINT  
REQUEST FOR RECONSIDERATION OF CONTENTIONS

By Memorandum and Order of March 5, 1982, this Atomic Safety and Licensing Board ("Licensing Board") ruled on proposed contentions filed in the captioned proceeding by Carolina Environmental Study Group ("CESG") and Palmetto Alliance ("Palmetto") (hereinafter referred to collectively as "Intervenors"). Subsequently, on March 31, 1982, Intervenors moved the Licensing Board for reconsideration of its rulings that "either rejects or accepts only conditionally contentions which these Intervenors have filed for litigation in this proceeding . . . ." "Palmetto Alliance and Carolina Environmental Study Group Responses and Objections to Order Following Prehearing Conference" at p. 2 ("Intervenors' Motion"). Further, in their Motion Intervenors request that Applicants be required to supply them with copies of the application filed in this proceeding including Applicants' Environmental Report ("ER"), Final Safety Analysis Report ("FSAR") and Technical Specifications. Intervenors' Motion at p. 27. Also, in accordance with the Licensing Board's March 5, 1982 Order, Intervenor Palmetto Alliance informed the Licensing Board of its decision to "pursue its contention

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that the Applicants' security plan is inadequate reserving its right to comment on the appropriateness of further procedures." Intervenor's Motion at p. 20. Pursuant to 10 CFR §2.730(c) Duke Power Company, et al. ("Applicants") provide the following response.

To the extent that Intervenor's Motion addresses (1) the Licensing Board's conditional acceptance of contentions, (2) provisions for supplying Intervenor with documents such as Applicants' FSAR, and (3) continued pursuit of Palmetto Alliance's contention regarding security plans, Applicants' response is as set forth in their March 31, 1982 "Motion For Reconsideration Or In The Alternative For Certification," incorporated herein by reference. See also Carolina Power and Light Company, et al. (Shearon Harris Nuclear Power Plant, Units 1 and 2) Docket Nos. 50-400-OL and 50-401-OL, Order, NRC, Slip op. at 3 (April 2, 1982) wherein a Licensing Board denied a similar intervenor request for documents.

With regard to Intervenor's objections to the Licensing Board's rejection of contentions, addressed seriatim below, Applicants submit that Intervenor's have in large measure simply rehashed arguments previously advanced. These arguments are addressed in Applicants' earlier pleadings which are noted below and which are incorporated herein by reference. In those few areas where Intervenor raise new material (e.g., contentions related to serious accidents, ECCS, risk evaluation, reactor embrittlement, and liability

of new owners), Applicants maintain, as noted below, that such information does not warrant admission of previously rejected contentions.

1. Serious Accidents (Palmetto's Proposed Contentions 5, 9, and 31; and CESG's Proposed Contention 2). Intervenors object to the Licensing Board's rejection of contentions regarding serious accidents due to Intervenors' failure to provide a Catawba-specific, credible accident scenario. Intervenors "believe that a variety of plainly credible, Catawba-specific, accident scenarios are implicit in their contentions as originally filed . . . ." Intervenors' Motion at p. 5. While Intervenors list four such scenarios (i.e., offsite power failure, ATWS, fatigue failure of the reactor pressure vessel, and stud bolt failure) they also state, however, that their contentions are not to be limited only to these scenarios because an unspecified number of additional "credible" scenarios may be formed from recombination of the elements of the main four scenarios specified in their pleading. Applicants maintain that Intervenors' scenarios (1) lack the requisite basis required by Commission regulations, and (2) constitute a challenge to Commission regulations without a showing of special circumstances required by 10 CFR §2.758. Thus, Applicants submit that Intervenors are precluded from litigating such scenarios in this proceeding.

Based upon statutory mandate, compliance with the Commission's regulations provides reasonable assurance that a facility can operate without undue risk to the public health and safety. See "Applicants' Response to Contentions Filed by Palmetto Alliance" at pp. 38-39 and 48-53 (December 30, 1981) ("Applicants' Response to Palmetto's Contentions") and Applicants' Response to Contentions Filed by CESG" at pp. 42-47 (December 30, 1981) ("Applicants' Response to CESG's Contentions"). Absent a showing of special circumstances, such regulations cannot be challenged in individual licensing proceedings. 10 CFR §2.758. See Applicants' Response to CESG's Contentions at pp. 9-12. See also 47 Fed. Reg. 12941 (March 26, 1982) wherein the Commission stated that the showing of special circumstances required by 10 CFR §2.758 was "a much stricter standard" than the current requirements for acceptance of contentions in licensing proceedings. 1/

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1/ Applicants note that where Intervenors have attempted to raise "special circumstances" in their Motion, such attempts fall far short of the Commission's regulations in this area. For example, Commission regulations state that the sole ground for waiver or exception of any rule or regulation in an adjudicatory proceeding involving initial licensing "shall be that special circumstances . . . are such that application of the rule or regulation (or provision thereof) would not serve the purposes for which the rule or regulation was adopted." 10 CFR §2.758(b). Further, a petition seeking waiver or exception of Commission rules or regulations must by affidavit make a prima facie showing that such special circumstances do exist. 10 CFR §2.758(b), (c), and (d). See also Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-37, 8 NRC 575, 584-5 (1978).

Integrated into such basic administrative practice, the Commission in recent decisions in the TMI proceeding (i.e., Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), CLI-80-16, 11 NRC 674 (1980) and Order of September 26, 1980 (Docket No. 50-289 (Restart)) stated that issues beyond regulatory requirements could be litigated if intervenors could set forth a credible accident scenario resulting in off-site doses in excess of 10 CFR Part 100 guideline values. Id. Significantly, the Commission did not state that the requirements of 10 CFR §2.758 requiring a showing of special circumstances to challenge Commission regulations were to be waived in setting forth such credible accident scenarios. Indeed, in the TMI proceeding, prior to authorizing litigation of hydrogen generation above the parameters set forth in 10 CFR §50.44, special circumstances were shown to be present (i.e., operator interference with the ECCS during the TMI accident which resulted in lack of core cooling and excessive generation of hydrogen). TMI, supra, 11 NRC at 675-6. See also Duke Power Company (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-669, 15 NRC\_\_\_\_, Slip op. at 3 (March 30, 1982) wherein it was noted that litigation of hydrogen generation in the McGuire proceeding was based upon the fact that such an accident had occurred at TMI.

Applicants submit that to allow Intervenor to challenge the adequacy of Commission regulations in individual licensing proceedings under the guise of a "credible accident" theory

without first establishing special circumstances as required by 10 CFR §2.758 is clearly contrary to Commission regulations, case law and indeed, rational agency practice. See Applicants' Response to CESG's Contentions at pp. 9-11. If such a condition prevailed, every substantive NRC regulation would be subject to challenge in individual licensing proceedings not because special circumstances brought such regulations into question but merely because an Intervenor had a vivid imagination. Indeed this may be the case here where Intervenor state that the four scenarios presented are to be recombined into an unspecified number of additional scenarios. Such a result clearly can not be accepted.

Applying these standards here, Intervenor, in attempting to set forth credible accident scenarios, have apparently defined "credible accidents" as being bound only by the limit of imagination, irrespective of the number of NRC regulations that must fall to arrive at the "desired" serious consequences. For example, in their first scenario, regarding off-site power failure, Intervenor hypothesize the complete loss of all off-site power and "[h]alf of the diesel electric generating capacity." Intervenor's Motion at p. 6. Intervenor assume that such loss would result in insufficient power capability for safe shutdown and after some undefined period of time massive fuel failure. Intervenor's Motion at pp. 6-7. Intervenor apparently choose to ignore General Design Criteria 17 and 18, 10 CFR



Part 50, Appendix A, which set forth the Commission imposed requirements, including multiple redundant power sources, single-failure criterion and inspection and testing, that provide reasonable assurance that such a situation will not occur. 2/ In that Intervenors do not contest Applicants' compliance with such regulations (set forth in Applicants' FSAR at Sections 8.3.1.2.1 and 8.3.1.2.2), Intervenors' position must be that such regulations are inadequate. (Applicants note that to the extent Intervenors question compliance, Intervenors have failed to set forth a basis with specificity for such an assertion.) In that Intervenors have made no showing of special circumstances as required by 10 CFR §2.758, Applicants submit that Intervenors are precluded from litigating these issues here. 3/

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2/ Applicants note that General Design Criterion 17 requires that onsite power capabilities be provided which will assure plant safety even in the event of a single failure, such as loss of one of the two diesels provided for each unit as Intervenors postulate here. Applicants' FSAR at Section 8.3.1.2.1 sets forth compliance with Commission requirement. In short, even assuming loss of power as CESG hypothesizes, there is still adequate power capabilities to assure plant safety.

3/ Applicants are cognizant of the litigation of such issues in the St. Lucie proceeding. Florida Power & Light Company (St. Lucie Nuclear Power Plant, Unit No. 2), ALAB-603, 12 NRC 30 (1980). There, however, the concern giving rise to such litigation was the questionable off-site power grid system in the peninsular Florida area. Id.

Applicants submit that in the two other accident scenarios presented 4/, Intervenors have also challenged Commission regulations without a showing of special circumstances (e.g., Appendix G and H to 10 CFR Part 50 set forth requirements related to material properties which provide assurance that failures such as speculated by Intervenors in their reactor vessel and stud-bolt failure scenarios will not occur. 5/). Further, Applicants note that Intervenors apparently do not question compliance with such regulations, or, to the extent compliance is questioned, Intervenors provide no basis with specificity for such assertions.

In sum, Applicants submit that Intervenors' accident scenarios, wherein numerous pieces of safety-grade equipment designed to strict NRC requirements with redundant power sources and independent, separated operational trains, all suddenly fail to operate, despite detailed NRC rulemaking proceedings that established the adequacy of such systems, cannot be litigated absent a showing of special circumstances required by 10 CFR §2.758. Intervenors have raised no such

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4/ Applicants maintain that Intervenors' attempt to litigate an ATWS scenario here is barred by ongoing Commission rulemaking. 46 Fed. Reg. 57521 (November 24, 1981). See also Applicants' Response to Palmetto's Contentions at pp. 84-85.

5/ Applicants compliance with such regulations regarding the reactor vessel and stud-bolts are set forth in Applicants' FSAR at Section 5.3.2.1 and 5.3.1.7, respectively. Further, Applicants note that compliance with regulations regarding stud-bolt failure has been unsuccessfully litigated by Intervenor CESG at the Catawba construction permit stage (1 NRC 626, 642-6 (1975)), and the McGuire construction permit stage (6 AEC 92, 106-108 (1973)).



special circumstances that would warrant litigation of Commission regulations in this licensing proceeding. Further, Intervenors have not attempted to demonstrate the credibility of such scenarios. 6/ Rather, Intervenors' position is apparently that Commission regulations are inadequate and the hypothesized accidents listed in Intervenors' Motion may occur as a result of such inadequacies. Applicants submit that, without more, such bald assertions cannot serve as the basis for litigating Commission regulations in individual licensing proceedings under the guise of a "credible accident" theory, or for that matter under any theory.

Applicants note that if Intervenors have concerns about the adequacy of Commission regulations with regard to these accident scenarios, which Applicants note are generic and not Catawba-specific, the appropriate forum to address Intervenors' concerns is before the Commission (i.e., a petition for rulemaking pursuant to 10 CFR §2.802) and not in this licensing proceeding.

2. Operator Qualification (Palmetto's Proposed Contention
- 8). Applicants' response is as set forth in Applicants'

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6/ Applicants submit that Intervenors' argument that hypothetical accidents are credible because the NRC has ongoing studies regarding such accidents is totally without merit. In responding to this argument, Applicants simply note that there are ongoing studies regarding electromagnetic pulses in the event of a nuclear explosion, and surely such an accident is incredible. See SECY-81-641 "Electromagnetic Pulse (EMP) - Effects on Nuclear Power Plants" (November 5, 1981). See also Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-440-OL and 50-441-OL, unpublished Order of November 30, 1981.

Response to Palmetto's Contentions at pp. 45-47; and "Applicants' Response to Licensing Board Questions" at pp. 1-9 (March 31, 1982).

Applicants note that Palmetto has apparently narrowed its contention to relate only to the alleged failure of Applicants to comply with Commission requirements regarding the lack of reactor operator experience for senior reactor operator candidates as set forth in the Commission's proposed rule codifying NUREG-0737 items (46 Fed. Reg. 26491 (May 13, 1981)). See Intervenor's Motion at pp. 11-12.

3. Cost-Benefit (Palmetto's Proposed Contentions 11, 12, 13, 30, 33, 34 and 39; and CESC's Proposed Contentions 1, 5, 6 and 12). Applicants' response is as set forth in their Responses to Palmetto's Contentions at pp. 53-58 and CESC's Contentions at pp. 51-54. With regard to contentions involving need for power issues, Applicants note that the Commission recently issued a final rule precluding litigation of such issues in operating licensing proceedings without a showing of special circumstances as required by 10 CFR §2.758. 47 Fed. Reg. 12940 (March 26, 1982). In the Statement of Considerations to this final rule, the Commission reiterated that 10 CFR §2.758 requires "the petitioning party to make a prima facie showing that application of the regulation to a particular aspect of the proceeding would not serve the purposes for which the rule was adopted. This is a much stricter standard than the current requirements for raising need for power and alternative energy sources in OL

proceedings." 47 Fed. Reg. at 12941. See also note 1, supra. In that Intervenor's have made no such showing here, Applicants submit that such contentions clearly must be denied.

4. Spent Fuel Transportation and Storage (Palmetto's Proposed Contentions 14, 15, 16, 17 and 38; and CESG's Proposed Contention 11). Applicants' response is set forth in their Responses to Palmetto's Contentions at pp. 58-65 and CESG's Contentions at pp. 65-67 and Applicants' March 31, 1982 Response to Licensing Board Questions at pp. 14-17.

5. ECCS (Palmetto's Proposed Contentions 19 and 45; and CESG's Proposed Contention 19). Applicants' response is as set forth in their Responses to Palmetto's Contentions at pp. 67-69 and CESG's Contentions at pp. 76-77. Applicants' note that Intervenor's citation to the McGuire RESAR is inappropriate in that this document is a generic Westinghouse document used at the construction permit stage which reflects neither the final design of McGuire nor Catawba. In short, Intervenor's Motion does little to provide the requisite bases and specificity to litigate these contentions.

6. ALARA (Palmetto's Proposed Contention 20). Applicants' response is as set forth in their Response to Palmetto's Contention at pp. 69-72.

7. Control Room Design - Human Factors (Palmetto's Proposed Contentions 22 and 42; and CESG's Proposed Contention 16).

Applicants' response is as set forth in their Responses to Palmetto's Contentions at pp. 74-77 and CESG's Contentions at pp. 71-73.

8. Decommissioning (Palmetto's Proposed Contention 25).

Applicants' response is as set forth in their Response to Palmetto's Contention at pp. 80-82.

9. ATWS (Palmetto's Proposed Contention 28). Applicants' response is as set forth in their Response to Palmetto's Contentions at pp. 84-85.

10. Systems Interaction (Palmetto's Proposed Contention 29). Applicants' response is as set forth in their Response to Palmetto's Contentions at pp. 85-87.

11. Risk Evaluation (Palmetto's and CESG's Proposed Contentions 32 and 3, respectively). Applicants' response is as set forth in their Response to CESG's Contention at pp. 47-50. Further, Applicants note that Intervenor's Motion does little to add specificity and bases, or even clarity, to their initial pleadings. Rather, as the thrust of their argument, Intervenor's seek to raise as special circumstances the proximity of Catawba to Charlotte, North Carolina. As noted in Applicants' previous pleadings, population distribution around Catawba is not special circumstances. Duke Power

Company (Catawba Nuclear Station, Units 1 and 2), DD-81-1, 13 NRC 45, 53-55 (1981). 6/

12. Emergency Planning (Palmetto's and CESC's Proposed Contentions 25 and 8, respectively). Applicants' response is as set forth in their Response to CESC's Contentions at pp. 57-63.

13. Costs of Severe Accidents (Palmetto's and CESC's Proposed Contentions 36 and 9, respectively). Applicants' response is as set forth in their Response to CESC's Contentions at p. 64.

14. Crisis Relocation (Palmetto's and CESC's Proposed Contentions 37 and 10, respectively). Applicants' response is as set forth in their Response to CESC's Contentions at pp. 63-64.

15. Electromagnetic Pulse (Palmetto and CESC's Proposed Contentions 41 and 15, respectively). Applicants' response is as set forth in their Response to CESC's Contentions at pp. 68-70.

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6/ It does not suffice for Intervenor's vaguely to suggest special circumstances. Rather, 10 CFR §2.758(b) specifically requires

an affidavit that identifies the specific aspect or aspects of the subject matter of the proceedings as to which application of the rule or regulation (or provision thereof) would not serve the purposes for which the rule or regulation was adopted, and shall set forth with particularity the special circumstances alleged to justify the waiver or exception requested.

16. Embrittlement (Palmetto's and CESG's Proposed Contentions 44 and 18, respectively). Applicants' response is as set forth in Applicants' Response to CESG's Contentions at pp. 74-76. Further, apart from the technical inaccuracies contained in Intervenor's Motion (e.g., contrary to Intervenor's assertion an unanticipated rapid increase in reference temperature has not been found in essentially all reactor vessels), Applicants reiterate that Intervenor has failed to specify either why this may be a problem at Catawba, or the inadequacies of Applicants' analysis which demonstrates that at Catawba there will be no rapid increase above 200°F of the reference temperature.

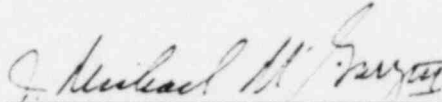
17. Releases to Lake Wylie (Palmetto and CESG's Proposed Contentions 46 and 20, respectively). Applicants' response is as set forth in their Response to CESG's Contentions at pp. 77-78.

18. Liability of New Owners (Palmetto's and CESG's Contentions 48 and 22, respectively). Subsequent to Applicants' response to Intervenor's Contentions, the Commission issued a final rule in this area eliminating requirements for financial qualification review in ongoing construction permit and operating licensing proceedings. 47 Fed. Reg. 13750 (March 31, 1982). Thus, Palmetto's Contentions 24, 25 and 48 and CESG's Contention 22 must be rejected in light of these new Commission regulations. See "Applicants' Motion For Reconsideration Or In The Alternative For Certification" at pp. 47-50 (March 31, 1982).



In conclusion from the foregoing, Applicants maintain that Intervenor's request for reconsideration and other relief must be denied.

Respectfully submitted,



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April 15, 1982

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY LICENSING BOARD

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DUKE POWER COMPANY, et al.	)	Docket No. 40-413
	)	40-414
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Units 1 and 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Response to Intervenor's Joint Request For Reconsideration of Contentions" in the above captioned matter, have been served upon the following by deposit in the United States mail this 15th day of April, 1982.

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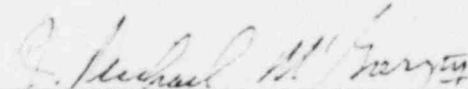
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