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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

APPLICANTS' RESPONSE TO PALMETTO ALLIANCE'S
"REQUEST FOR REMEDIAL MEASURES IN LIGHT OF
DUKE POWER COMPANY'S COMMUNICATION WITH WORKERS"

I. Introduction

On March 30, 1983, Intervenor Palmetto Alliance filed a "Request For Remedial Measures In Light Of Duke Power Company's Communication With Workers." Pursuant to 10 CFR §2.730(c), Applicants provide the following response.¹

At issue is the propriety of Applicants' communications with present and former employees concerning Palmetto Alliance's Quality Assurance contention (Contention 6).²

- ¹ In conference calls of March 25 and March 31, 1983, the Licensing Board directed that Applicants' response be filed on or before April 8, 1983.
- ² In furtherance of its operating history contention (Contention 7), Palmetto Alliance has also sought the identity of certain employees. Applicants have been ordered to disclose the names of present and former Oconee and McGuire employees and former employees who have been disciplined for noncompliance with NRC operating and administrative procedures. See Memorandum and Order of February 9, 1983. During the March 31, 1983 conference call counsel for Applicants notified the Board and parties of their intent to send letters similar to those already sent to Catawba employees to
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Applicants have sent a letter to present and former Catawba Quality Assurance employees and a limited number of Catawba construction employees whose names were released to Palmetto Alliance in discovery. Applicants' counsel also had a meeting with present Catawba Quality Assurance employees. See Applicants' March 22, 1983, report to the Board and parties which details their contacts with such employees. In each instance the communication was limited to informing the employees (1) that their names had been disclosed to Palmetto Alliance over Applicants' objection, (2) of the nature of the concern which gave rise to the disclosure of their names, (3) that they may be contacted, (4) that they were free to speak to Palmetto Alliance, but (5) that they were under no obligation to speak to Palmetto Alliance.³

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Ocone and McGuire employees. Counsel for Applicants have agreed to refrain from sending such letters until the Board has had an opportunity to review this pleading and those of the other parties. See Board Memorandum and Order of April 1, 1983. Applicants' contact with such employees will be similar to the letters contained in Applicants' March 22, 1983 report to the Board.

In light of the above, the instant pleading should also be read to address the propriety of Applicants' anticipated contact with relevant employees and former employees concerning Palmetto Alliance Contention 7.

- ³ In the meeting with Quality Assurance employees, Applicants' counsel also asked that they be provided with any information responsive to Palmetto Alliance interrogatory 23 on Contention 6 so that such could be furnished in discovery.

Palmetto Alliance requests that the Board "direct certain remedial measures in light of the communications already made by" Applicants to "undo the 'chilling effect' on potential cooperation" and "to supply material information on worker rights and responsibilities omitted in Duke's communication." The remedial measures requested by Palmetto Alliance are:

1. A Board-ordered meeting between representatives of Palmetto Alliance, the Government Accountability Project (GAP) and Catawba personnel contacted by Applicants "for the purpose of discussing Palmetto Alliance's Quality Assurance contention and discovery related thereto."
2. A Board-ordered on-site meeting, with the agreement of the NRC Staff, between Catawba construction workers and personnel contacted by Applicants and a senior NRC official, such as the Region III Administrator, "for the purpose of briefing these workers on their rights and responsibilities with respect to giving evidence . . . , reporting defects in Quality Assurance . . . , and assuring confidentiality in providing information to the NRC." Palmetto Alliance also requests that the Board provide for it and GAP to attend such on-site meeting.
3. An official notice from the Board to be mailed at Applicants' expense to all persons contacted by Applicants which would "explain in concise terms the workers' rights and responsibilities with respect to giving evidence . . . , reporting defects . . . and protecting confidentiality in providing information to the NRC."

Palmetto Alliance alleges that Applicants' communications "fail[ed] to provide a complete picture of worker rights and responsibilities" and were "seriously

incomplete, and therefore misleading" since Applicants did not explain as a part of those communications with employees certain statutory and regulatory provisions (i.e., 10 CFR Part 19, "Notices, Instructions and Reports to Workers; Inspections;" Part 21, "Reporting of Defects and Noncompliance;" Part 50, Appendix B, Quality Assurance Criterion XVI; NRC I&E policy and practice on complaints and confidentiality; and the provisions of 42 U.S.C. §5851) which Palmetto Alliance apparently asserts govern rights and responsibilities of workers.

Applicants maintain, for the reasons set forth below, that there is no basis for Palmetto Alliance's request, and that it should therefore be denied. Applicants' opposition to Palmetto Alliance's request is three-fold: first, it is entirely proper for Applicants to discuss ongoing litigation with employees; second, the content of such discussions has in no way chilled any employees' potential cooperation with Palmetto Alliance; and third, the remedial requests go far beyond any action necessary to correct the alleged harm caused by Applicants' communications with employees.⁴

⁴ Palmetto Alliance's pleading is characterized throughout by conclusory assertions of wrongdoing and an asserted corresponding need for remedial action without a single citation to legal authority to support its claims or to provide a rationale for the relief it seeks. Despite the fact that the instant request raises significant questions of law and demands the extraordinary remedy of "remedial actions," Palmetto Alliance apparently sees no need to discuss applicable legal precedent to explain
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II. Argument

APPLICANTS WERE ENTIRELY WITHIN THEIR
RIGHTS IN CONTACTING EMPLOYEES BY LETTER
AND IN MEETING WITH THEM

The underlying circumstances giving rise to Applicants' contact pertain to Palmetto Alliance's discovery of names of various Duke employees and former employees.

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and buttress its presentation. For example, while it alleges the need for remedies to undo the "chilling effect" it believes has been caused by Applicants' contacts with its workers (p. 2), Palmetto Alliance provides no indication of the principles of law it seeks to raise by this statement (i.e., First Amendment questions) or the standards by which such activities are to be judged. Nor does Palmetto Alliance state any basis for its interesting assertion that Applicants should have all communications with employees approved by the Board. This failure to provide any support or legal analysis whatsoever for its claims and accusations reveals a disturbing -- and continuing -- disregard or misconception by Palmetto Alliance as to its obligations as a party to this proceeding. See, for example, "Palmetto Alliance Statement of Position on Issues Accepted for Review" (January 24, 1983), and Palmetto Alliance's Motions to Compel Discovery from Applicants dated October 4, 1982 and November 3, 1982.

In NRC proceedings -- as in other types of administrative proceedings or in a court of law -- the proponent of a motion has certain responsibilities imposed upon him by virtue of his status as a party. One such fundamental responsibility is the duty to "advance correct and proper interpretations of applicable law to assist the judge in making his decision." Houston Lighting and Power Company (South Texas Project, Units 1 and 2), CLI-82-9, June 18, 1982 (additional view of Commissioner Roberts at p. 1). This most basic obligation, which leads to an informed and predictable resolution of the issues, furthers the efficiency of the proceeding, and promotes the interests of all of the parties. It is part of the Intervenor's larger responsibility to "structure [its] participation so that it is meaningful, so that it alerts the agency to the intervenor's posi-

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Applicants objected to the disclosure of such names primarily on the basis that employees' right to privacy should be protected. In its Memorandum and Order of February 9, 1983, the Board ordered that employees names be disclosed. Prior to this date, and also as a result of the Order, Applicants gathered information from various employees in response to interrogatories which asked if employees had concerns with workmanship. As a result of this effort, some employees inquired about the nature of this proceeding and their involvement therewith. This concern, coupled with what Applicants felt to be a breach of their employees' right to privacy, caused Applicants to draft and transmit the letters attached to the March 22 report.

The subject letters served one basic purpose, viz, to apprise employees of the status of discovery in this licensing proceeding and of the fact that information concerning them had been released to a third party (Palmetto

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tion" Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978). Specifically, pleadings submitted by intervenors should disclose the authorities and evidence upon which the intervenors rely. Public Service Electric and Gas Co., et al. (Salem Nuclear Generating Station, Unit 1), ALAB-650, 14 NRC 43, 49-51 (1981).

A submittal such as this one, which is completely devoid of any supporting authority, cannot be said to meet this obligation. Further, to respond to such a submittal places an undue burden on the Board and other parties to ferret out arguments, to conduct the initial research and to provide the necessary legal authority. See Salem, supra, 14 NRC at 50.

Alliance) which might attempt to contact them. From the standpoint of maintaining good employee relations by keeping employees informed on matters that affected them, it was imperative that Applicants provide employees with this information. Certainly, employees have a right to know that their employer has been required to divulge personal information about them and to be informed of the probable consequences of that action. However, without setting forth any supporting basis,⁵ Palmetto Alliance apparently seeks to have the Board determine that the employer-employee relationship cannot exist in this case and that Applicants' contacts with employees must be matched by Palmetto's contact with employees. Such a position runs afoul of employer-employee case law and places the Board in the position of infringing upon Applicants' ability to conduct its business, a position which the law recognizes is untenable.⁶

⁵ See n. 4, supra.

⁶ See Portland General Electric Company, et al. (Trojan Nuclear Plant), LBP-78-32, 8 NRC 413, 454 (1978), wherein the Board, determining that the adverse environmental impacts associated with an enlargement of a spent fuel pool would be negligible, stated:

We therefore believe that we need not consider alternatives or the need for modification in any detail. Indeed, in the opinion of this Board, not only is such consideration unnecessary, it is very inadvisable, since it infringes upon those very prerogatives and duties of corporate management which we should eschew usurping.

At the most fundamental level, Applicants' right to communicate with their employees is guaranteed under the free speech protections of the Federal Constitution. That basic principle has been firmly established in labor relations cases dealing with employer communications regarding unionization efforts.⁷ The courts have consistently recognized an employer's right to communicate its opinions on union activities to its employees. In NLRB v. Gissel Packing Co., 395 U.S. 575, 617 (1969), the Supreme Court declared that "an employer's free speech right to communicate his views to his employees is firmly established and cannot be infringed by a union or the [NLRB]." See also NLRB v. Proler International Corporation, 635 F.2d 351, 355 (5th Cir. 1981) (employer has constitutional right to express his opinions about a union); and Florida Steel Corporation v. NLRB, 587 F.2d 735 (5th Cir. 1979), which is discussed below at pp. 18-19. Under the labor laws, an employer's right to communicate with his employees is conditioned only by statutory language that forbids any

⁷ A corporation's free speech rights are not limited to the labor relations area. See First National Bank of Boston v. Bellotti, 435 U.S. 765, 776, 784 (1978).

Applicants rely upon case authority in the labor relations area because the factual issues therein are most closely analogous to some of the issues raised in Palmetto Alliance's pleading. However, applicants are not to be viewed as stating that the National Labor Relations Act (NLRA) is controlling. Further, Palmetto Alliance is not in a position to invoke the panoply of rights afforded unions and other parties under the NLRA.

threat of reprisal or force, or promise of benefit by the employer. NLRB v. Gissel Packing Co., supra; National Labor Relations Act §8(c), 29 U.S.C. §158(c). An employer may speak to groups of his employees so long as the speech contains no coercion, threat of reprisal, interference with a union election or deliberate misrepresentation. Union Carbide Corporation v. NLRB, 310 F.2d 844, 845 (6th Cir. 1962).

A review of the circumstances giving rise to Applicants' communications and a review of the letters⁸ themselves reveals that the improprieties referenced in the above-cited case law do not exist. Specifically, the subject letters do not coerce, threaten, interfere or deliberately misrepresent. Union Carbide Corporation v. NLRB, supra, 310 F.2d at 845. Accordingly, such letters must be viewed as a proper exercise of an employer's constitutional right to communicate with employees. In sum, Applicants must be permitted to inform employees of relevant matters and, absent a showing of coercion, threat, interference, or deliberate misrepresentation (a showing not made in this case), must be permitted to do so without resort to this Board for approval.

⁸ As noted in the March 22 report, Applicants' contact with employees consisted of the letters attached to the report and discussions. Inasmuch as the discussions paralleled the letters, this pleading focuses upon the letters now before the Board; the same arguments pertain to the discussions.

APPLICANTS' COMMUNICATION WITH
EMPLOYEES HAS NOT HAD A
"CHILLING EFFECT"

Palmetto Alliance alleges that remedial action is needed to undo what it refers to as the "chilling effect" of Applicants' letters. References to the alleged "chilling effect" of an action typically imply that the exercise of an individual's First Amendment rights has been constrained. Since Palmetto Alliance did not elaborate on what it meant by this term,⁹ Applicants have been obliged to interpret the "chilling effect" accusation as best they can, based upon common usage. Applicants infer that Palmetto Alliance claims that these employees' exercise of their constitutionally-protected freedom of speech has been "chilled" by the distribution of Applicants' letters. As will be demonstrated below, Palmetto Alliance's application of this terminology to the letters in question is nothing more than an attempt to raise a constitutional question simply by use of a "buzzword," and is inapplicable both legally and factually.

⁹ See n. 4, supra.

Palmetto Alliance's assertion that the company's letters had a "chilling effect" is inappropriate, first of all, because First Amendment claims typically involve a challenge to a government action rather than an action by a private employer. It is obvious that the same level of constitutional scrutiny is not applicable in the present situation. See Central Hardware Co. v. NLRB, 407 U.S. 539, 547 (1972).

The applicability of the "chilling effect" line of cases is further diminished by virtue of the fact that no employee has come forward with such an allegation; rather, the claim is made by Palmetto Alliance, a party not in privity with Applicants' employees. See National Student Association, Inc. v. Hershey, 412 F.2d 1103, 1119, n. 46 (D.C. Cir. 1969), wherein the Court, in addressing a First Amendment question such as that raised by Palmetto Alliance, stated that proper standing is determined by

whether the plaintiff has at stake a sufficient interest so as to create a case or controversy as to him. Thus, a chilling effect which amounts to a justiciable injury confers standing to challenge the source of the chill on any person who plausibly alleges that he is chilled. [emphasis in original].

Palmetto Alliance does not contend that its rights have been chilled; rather, it asserts at p. 10 that "the written communications reported to have been sent by Duke to present and former workers will serve to 'chill' and

discourage their reporting . . ." (emphasis added). Nevertheless, Applicants have addressed below the legal standards applicable to First Amendment cases in order to demonstrate that even if Duke's letters were judged by the more stringent standards applicable to a government action, it could only be concluded that Applicants' actions produced no chilling effect upon its workers' constitutional rights.

The starting point for consideration of First Amendment claims is whether the claim presents a justiciable case or controversy with the meaning of Article III of the U.S. Constitution. It has been held that suits which allege constitutional injury in the form of a "chilling effect" may be "more readily justiciable than comparable suits not so affected within a First Amendment interest."¹⁰ This does not mean, however, that every policy, regulation or action alleged to have a chilling effect upon protected speech (or any other constitutionally protected right) is a justiciable controversy. Rather, federal courts typically make this determination on a case-by-case basis.¹¹

¹⁰ National Student Association, supra, 412 F.2d at 1113. See also Reed Enterprises v. Corcoran, 354 F.2d 519, 523 (D.C. Cir. 1965).

¹¹ National Student Association, supra, 412 F.2d at 1115.

In determining whether an alleged chilling effect upon the exercise of First Amendment rights gives rise to a case or controversy, recent federal cases have applied certain specific criteria. First, as a threshold requirement, the plaintiff must plausibly allege that it is in fact vulnerable to the asserted chilling effect. This requirement apparently stems from the principle that First Amendment questions must be presented in the context of a specific live grievance rather than a hypothetical one. See United Public Workers v. Mitchell, 330 U.S. 75, 89-90 (1947). Once this showing has been made, the sufficiency of a given chilling effect is gauged by considering, inter alia, the following:

- (1) the severity and scope of the alleged chilling effect on First Amendment freedoms,
- (2) the likelihood of other opportunities to vindicate such First Amendment rights as may be infringed with reasonable promptness, and
- (3) the nature of the issues which a full adjudication on the merits must resolve, and the need for factual referents in order properly to define and narrow the issues.¹²

¹² National Student Association, *supra*, 412 F.2d at 1115. See also National Conference of Catholic Bishops v. Smith, 653 F.2d 535, 542 (D.C. Cir. 1981); National Treasury Employees Union v. Kurtz, 600 F.2d 984, 988-89 (D.C. Cir. 1979), Oklahoma Publishing Company v. United States, 515 F. Supp. 1255, 1258 (W.D. Okla. 1981); Wilkes v. Internal Revenue Service Jacksonville District, 509 F. Supp. 305, 310-312 (M.D. Fla. 1981), wherein these criteria were applied.

When these three considerations are applied to Palmetto Alliance's claim of a "chilling effect" upon the First Amendment rights of Applicants' employees, it is obvious that Palmetto Alliance has failed to make the showing necessary to warrant the "remedial action" which it seeks. Indeed, Palmetto Alliance has not even addressed these (or any) legal criteria.¹³

Assuming, arguendo, that Palmetto Alliance has met the threshold burden of setting forth "plausible" allegations as to these employees' vulnerability to a chilling effect upon their freedom of speech (an assumption which Applicants maintain is unwarranted and which can only be made by the employees), an examination of the letters in question in the context of the three criteria set forth above clearly indicates that there has been no "chilling effect" upon the exercise of these individuals' rights. For example, the "severity and scope" of the chilling effect alleged to have been caused by these letters must necessarily be minimal -- if not nonexistent -- since Palmetto Alliance has failed to pinpoint a single specific injury to these employees' rights. Palmetto Alliance does not assert that any employees have been subjected to retaliatory action, or threats of such action, by Applicants; nor does it claim that the distribution of these letters has

¹³ See n. 4, supra.

actually prevented any employee from exercising protected rights. Instead, this allegation appears to be based on nothing more than Palmetto Alliance's surmise that these letters could deter "potential cooperation" by employees. Palmetto Alliance's failure to show that there has been a chilling effect in itself mandates dismissal of this claim.¹⁴

Application of the remaining criteria does nothing to advance Palmetto Alliance's argument. Assuming, for example, that the letters in question did predispose some

¹⁴ See Smith v. Price, 616 F.2d 1371, 1379-80 (5th Cir. 1980), wherein a police officer's claim that he had been dismissed because of unconstitutional personnel regulations was dismissed as non-justiciable:

In the case of regulations governing speech or conduct, a threat of interference with rights of the plaintiff beyond that implied by the mere existence of the regulations must be shown. United Public Workers v. Mitchell [citation omitted]. Officer Smith's challenge to the regulations which were not asserted as a basis for his discharge is non-justiciable because he has suffered no injury from them beyond the mere fact that they exist; Smith has never claimed that he desired to engage in activity violative of those regulations.

See also National Treasury Employees Union, supra, Kurtz, 600 F.2d 984 (D.C. Cir. 1979) (Union's constitutional challenge to certain I.R.S. regulations prohibiting disclosure of certain information without prior approval held not to present federal case or controversy because complaint did not allege that any employees had been subjected to adverse action or threats thereof, or prevented from exercising any right due to the mere existence of the regulations.)

employees to refrain from talking with Palmetto Alliance,¹⁵ there has been no showing made that Palmetto Alliance lacks other effective means of communication with the employees. Indeed, this Board, in its Memorandum and Order of April 6, 1983 refused to regulate Palmetto Alliance's communication with Applicants' employees. As for the third criterion, Palmetto Alliance has, as shown above, failed to base its allegations upon any "factual referent" or actual instance of a "chilling effect." An examination of the contacts made by Applicants reveals that the letters simply provided information to employees that their names had been disclosed to Palmetto Alliance, over Applicants' objection, and that such action might result in their being contacted by Palmetto Alliance as part of the ongoing discovery in this proceeding. Inasmuch as the communications between Applicants and its employees were factually correct, neutral in tone, and disseminated to affected employees in a manner entirely consistent with other routine corporate communications, such must be viewed as reasonable and prudent action with no attendant chilling effect.

Support for the reasonableness of Applicants' contact is found in an examination of similar controversies arising in the area of labor law.¹⁶ In NLRB v. J.W. Mortell Com-

¹⁵ An objective reading of these letters makes this supposition extremely implausible.

pany, 440 F.2d 455 (7th Cir. 1971), the NLRB sent letters to employees seeking their cooperation in providing testimony at a hearing to determine whether a union should be certified despite its rejection during an election. Their employer posted notices which stated that the union had misrepresented the NLRB letter and pointed out that the employees were not obligated to provide information to NLRB attorneys before the hearing. The notices contain statements such as: "You are under no obligation to discuss the case with [a NLRB attorney] prior to the hearing. If you wish to discuss the matter with him, you are encouraged to do so." and "Feel free to [meet with the attorney] or feel free to stay away. No one can legally pressure you either way." 440 F.2d at 460-61. The NLRB contended that these notices interfered with its investigation and efforts to obtain witnesses. The majority opinion did not address the question of the propriety of these notices, but the concurring opinion concluded that the notices taken as a whole were proper. The concurring judge found no basis to con-

¹⁶ See NLRB v. Gissel, *supra*, 395 U.S. at 617, which recognizes that Section 8(c) of the National Labor Relations Act:

merely implements the First Amendment by requiring that the expression of 'any views, argument, or opinion' shall not be 'evidence of an unfair labor practice,' so long as such expression contains 'no threat of reprisal or force or promise of benefit' in violation of §8(a)(1).

clude that the employer had interfered with the employees' right or that the NLRB attorneys were hampered in the presentation of their case.

In Florida Steel Corporation v. NLRB, 587 F.2d 735 (5th Cir. 1979) at issue was an employer's letter to employees.¹⁷ The Court, holding that the letter was protected free speech, found that the letter "shows no tendency to inter-fere with, restrain, or coerce the employees . . ." Id. at 753. Significantly, the Court (quoting J.P. Stevens & Co. v. NLRB, 449 F.2d 595 (4th Cir. 1971)) stated:

It startles the conscience to deny an employer -- no matter its historical infractions of the Act -- the right to tell its employees the truth. Without conceding inappropriateness of the occasion or absence of cause here, these considerations, even if present, cannot override the stubbornness of the facts. However unbecoming, verity can never amount to illegality. [Id. at 752].

¹⁷ The pertinent part of the letter read as follows:

. . . In addition, if a National Labor Relations Board agent should drop in on you, you may ask for an opportunity to obtain legal counsel before you talk to him.

If you should want some legal counsel, or just help in handling any of the situations described above, all you need to do is let your supervisor know. He will put you in touch with someone who can help you. [Id. at 750].

The Court went on to hold that:

Whatever the employees might do about obtaining counsel or talking with a Board agent was entirely optional with them, and this was the clear meaning of the Company's letter. [Id. at 753].

Applying the reasoning of the above cases, it is clear that the notice sent by Applicants to employees is in no way coercive and does not hinder employees in the exercise of their right to cooperate with Palmetto Alliance. Applicants' letters specifically apprised all employees that whether they talk with Palmetto Alliance "is solely your own business." Applicants' contact accurately reflected the facts and Palmetto Alliance has not argued otherwise. Nor has there been any showing by Palmetto Alliance that the employees' receipt of such communication has hindered Palmetto Alliance's effort to obtain witnesses.

In sum, Applicants' actions cannot be said to have a chilling effect on this proceeding.

PALMETTO ALLIANCE'S SPECIFIC
REQUESTS FOR REMEDIAL RELIEF
ARE UNWARRANTED

Palmetto Alliance makes three requests for remedial relief: (1) that it be given an opportunity to meet with contacted employees to discuss its Quality Assurance contention and related discovery; (2) that a senior NRC official be permitted to meet onsite with construction and Quality Assurance workers to brief them on their rights and

responsibilities concerning defects in workmanship and that Palmetto Alliance representatives be permitted to attend; (3) that the Board inform the contacted persons, in writing, of their rights and responsibilities to give evidence and report defects and alert them to the protections of confidentiality. Underlying such requests is Palmetto Alliance's challenge to the propriety of the instant employer/employee contact and the alleged chilling effect the language of such contact has. For the reasons set forth in Sections I and II, supra, Applicants submit that such allegations are without merit. It also appears (although the argument is far from clear) that Palmetto Alliance's request for remedial relief is further premised upon Applicants' reference to Messrs. McAfee and Hoopingarner and to alleged omissions in the letters.

Palmetto Alliance alleges that Applicants' "fingering" of Messrs. Hoopingarner and McAfee as potential Palmetto Alliance witnesses on the issue of faulty workmanship has the potential for "embarrassment, harassment, and, perhaps, even physical reprisal." Palmetto Alliance appears to contend that, but for Applicants' letters, Messrs. McAfee and Hoopingarner would not be publicly associated with either the group intervening in opposition to the Catawba plant or their allegations raised with respect to faulty Quality Assurance practices and construction. Palmetto

Alliance alleges that it was irresponsible for Applicants to identify the two named former employees. Given the seriousness of this charge, it is important at this time that the record properly reflect the level of notoriety voluntarily attained by Messrs. Hoopingarner and McAfee well prior to distribution of the letters. Based upon information in the public record, Palmetto Alliance's assertion that Applicants' letters have "fingered" Messrs. Hoopingarner and McAfee by publicly associating them and their allegations with this proceeding is totally in error. Indeed, given the state of the public record, such an assertion should itself be characterized as irresponsible.

As an attachment to this pleading Applicants have provided copies of local newspaper articles, as well as a television transcript, which indicate the extensive local media coverage which Messrs. McAfee and Hoopingarner have actively sought and attained. Even a cursory examination of these documents makes clear that both the identities and allegations of these individuals regarding unsafe practices, faulty workmanship and deficient Quality Assurance have been well documented in the local media since 1979. Applicants note that the names and addresses (and, in the case of Mr. McAfee, home telephone number) of these two former Duke employees appear in several of these local

articles.¹⁸ In addition, both individuals submitted affidavits alleging personal knowledge of such practices as part of Palmetto Alliance's original petition to intervene, which, of course, is a public document. Moreover, at the prehearing conference (in York, South Carolina) of January 1982, Messrs. Hoopingarner and McAfee were explicitly identified and their respective concerns over faulty workmanship were discussed. See Tr. 117-118. If any doubt remains, the following statement of counsel for Palmetto Alliance at the prehearing conference belies any claim that Applicants have brought Messrs. Hoopingarner and McAfee's names and allegations to the attention of the public for the first time:

Mr. Chairman, both of those individuals [Messrs. Hoopingarner and McAfee] by formally submitting affidavits in support of the Palmetto Alliance contention obviously are willing to be publicly associated with this specific part of the basis behind our quality assurance contention.

So, to that extent, they have already gone public with it, and their names should be associated with it at this point, although we don't feel that is part of our obligation to support a contention with that evidentiary-type information at this stage. [emphasis added, Tr. 118].

Later in the transcript Palmetto Alliance's counsel reiterated:

¹⁸ The Yorkville Enquirer of July 30, 1981, reflects that Mr. McAfee was actually soliciting telephone calls from individuals seeking more information concerning Palmetto Alliance's intervention.

Both of the people that I have reference to are ready and able to testify about personal knowledge with respect to construction deficiencies, and they are champing at the bit to some degree to explain in detail what their concerns have been. [Tr. 120].

. . . I'm informed that both [McAfee and Hoopingarner] have widely discussed their complaints with either NRC Staff or publicly, in a fashion that has been easily available to the Applicant, and, presumably, to the Regulatory Staff. [emphasis added, Tr. 125].

In view of the widespread publicity Messrs. McAfee and Hoopingarner have already sought and received, Palmetto Alliance should not be permitted to allege that Applicants have disclosed their identity, "fingered" them or made their views public knowledge. It is clear that Applicants' letters did not reveal for the first time to Applicants' employees the identities, views, and concerns of these individuals and their active participation in this licensing proceeding. With respect to the need for referring specifically to Messrs. Hoopingarner and McAfee, Applicants maintain that such was necessary to properly put into context for affected employees how the issue arose, the nature of the issue and by whom they may be contacted.

Palmetto Alliance maintains that "Duke should be permitted no comfort or absolution from full responsibility for any harm to these courageous men which may result from this, at least irresponsible action." Applicants cannot

let this statement pass unanswered. In essence, Palmetto Alliance is suggesting that Applicants have not only countenanced, but also promoted, potential criminal activity. Applicants unequivocally deny such allegations. More importantly, it is Applicants' position that such irresponsible comment on an extremely important issue should not be tolerated by this Board. Applicants request that the Board instruct Palmetto Alliance's counsel to refrain from such inflammatory language in the future. Cf. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1 and 2), LBP __, __ NRC __, (January 11, 1983) slip op. at pp. 14-15 (Intervenor reprimanded for contemptuous content of a pleading). Further, as the Board informed Palmetto Alliance during the March 31, 1983 conference call, if it feels that a basis exists to support such a damning accusation, relevant facts should be presented in affidavit form to the Board and protective action sought. Absent such a presentation of sworn testimony, this Board must not condone Palmetto Alliance's cavalier raising of extremely volatile allegations.

Palmetto Alliance further requests that affected employees be advised of their rights and responsibilities with respect to reporting instances of faulty workmanship because of alleged omissions in Applicants' letters.

Palmetto Alliance asserts that Applicants "fail[ed] to provide a complete picture of worker rights and responsibilities," and makes reference to specific omissions.

Employee rights concerning confidentiality are governed by statute (42 U.S.C. §5851) and regulation (10 C.F.R. §50.7). Section 50.7(e) requires that a "Notice to Employees" be posted at various locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Applicants assert that they have fully complied with such statutory and regulatory requirements, by posting the required notices at conspicuous points on the site. By so doing Applicants have provided their employees with a "complete picture of worker rights and responsibilities," including informing the employees of the protections afforded them when disclosing, inter alia, possible violations of NRC regulations. 10 CFR §50.7(a)(1)(i). NRC regulations clearly do not contemplate that a licensee must inform its employees of this protection whenever the employer discusses ongoing litigation with its employees or sends out other routine communications. However, if the Board feels that additional notification of protection is necessary, Applicants of course have no objection to a Board-approved or Board-authorized notice. However, Applicants are of the view that the adequacy of notification (i.e., posting of

notices) is a matter within the jurisdiction of the NRC Staff. If the Staff feels that notice has been inadequate, or if the situation warrants, it can take appropriate steps.

With respect to the asserted duty to provide information concerning faulty workmanship, Applicants are aware of no statutory or regulatory requirement that construction workers and Quality Assurance employees report any perceived deficiency directly to the NRC. However, Duke Power Company's internal corporate policy, implemented through a recourse procedure, requests and encourages that employees notify their supervisors of defects or other problems at the plant of which they are aware. Given the fact that all employees have been made aware of the employee recourse procedure, that this procedure has been utilized routinely by Quality Assurance employees and others, and that there is no statutory or regulatory requirement for such employees to report directly to the NRC, Palmetto Alliance's request is without basis.¹⁹

¹⁹ During the March 31, 1983 conference call and in Palmetto Alliance's Request For Remedial Measures, Palmetto Alliance has repeatedly stated that Applicants' employees have a legal "duty" to come forward with information concerning faulty workmanship. As stated above, no such legal duty exists. Accordingly, Applicants request that the Board instruct Palmetto Alliance to refrain from misinforming any of Applicants' current or former employees in any contact that Palmetto Alliance might have with them that they have a legal duty to come forward.

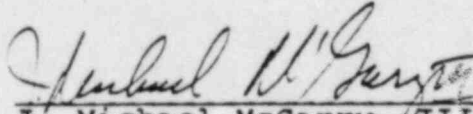
Lastly, the so-called "remedial measures" sought by Palmetto Alliance are in no way commensurate with the alleged wrongdoing of which it complains. The specific remedies requested are far in excess of those needed to correct any alleged wrongdoing. For example, Palmetto Alliance has shown no colorable basis upon which to justify an order permitting it to come onto the Catawba plant site. Applicants particularly object to this request because such action would interfere with ongoing construction.²⁰ In sum, any need for additional "remedial measures" has been removed now that the Board has issued an order permitting Palmetto Alliance free access to Applicants' employees offsite.

²⁰ In support of this specific request, Palmetto Alliance refers to the Zimmer proceeding. Applicants maintain that requests for remedial relief should be based upon the facts confronting the Board. Palmetto Alliance has made no showing that the facts in the Zimmer case parallel the facts in Catawba. In any event, as Palmetto Alliance itself acknowledges, the NRC Staff has yet to grant the relief being sought in Zimmer; rather, the NRC "is considering" whether to permit intervenor participation in an on-site worker briefing.

III. Conclusion

For the above stated reasons, Applicants respectfully request that Palmetto Alliance's Request For Remedial Measures be denied.

Respectfully submitted,


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Attorneys for Duke Power
Company, et al.

April 8, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'83 APR 11 10:14

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))

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Response To Palmetto Alliance's 'Request For Remedial Measures In Light Of Duke Power Company's Communication With Workers'" in the above captioned matter have been served upon the following by deposit in the United States mail this 8th day of April, 1983.

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U.S. Nuclear Regulatory
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Washington, D.C. 20555

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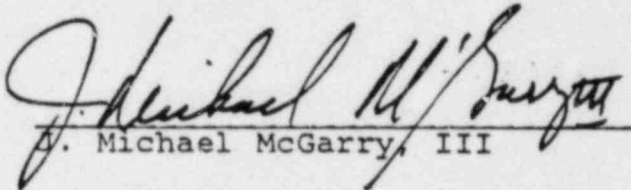
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Michael McGarry, III

Check nuclear energy risks, benefits

The members of the Rock Hill City Council should be commended for their willingness to listen to the people concerning the proposed improvements to Dave Lyle Boulevard and Freedom Road. This shows that they care how people feel and that they are concerned about the well being of the people most directly affected. Let us hope that this concern will continue well into the future.

Several months have passed since I first became concerned about the prospects of the construction of the Catawba Nuclear Station. My concern grows each day as construction advances and the day Catawba becomes radioactive inches closer.

An accident at Catawba could make this city an uninhabitable host town. However, the people of this community are still misinformed, misled, and lied to about the dangers of nuclear power.

The recent accident at Three Mile Island would convince the majority of the people of the dangers of nuclear power if the facts about the accident were readily available. Few people realize that there was no instrumentation in place to measure the precise composition of the radioactive steam which was vented into the atmosphere. The only instruments present were simple thermoluminescent dosimeters which measure gamma radiation, but cannot distinguish between different chemical elements.

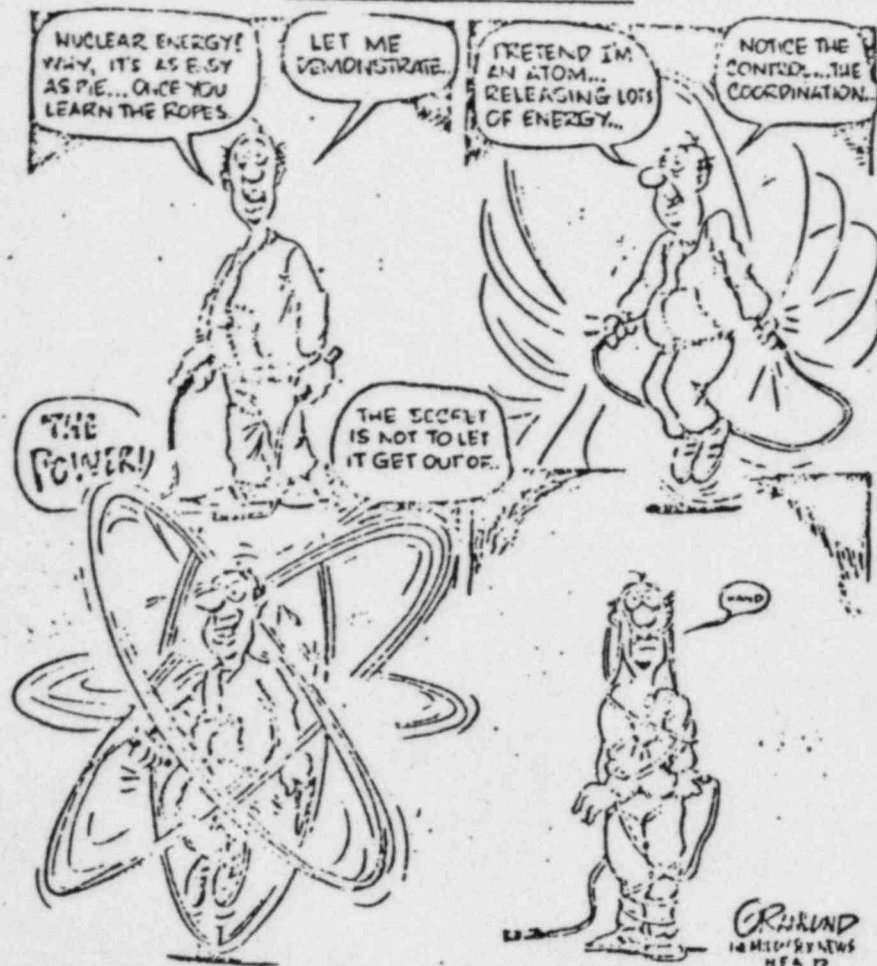
The NRC's expert in the field, Dr. John Brodsky, lists 21 radioactive chemicals produced in the fission process in a nuclear reactor. Dr. Brodsky estimates that the gases in a cloud of steam produce damages ten times greater than the amount of external gamma radiation absorbed by the body. Only the external gamma

radiation absorbed by the body could be measured by the simple thermoluminescent dosimeters. Therefore, most of the radiation exposure at the time of the accident could not be measured.

Large centralized technologies,

Guest Columnist

RON McAFEE
2161 India Hook Road
Rock Hill



especially like that of our own country which plans to depend on nuclear energy to a greater extent, are leading to the centralization of political, social, and economic power. As a result, this is lessening the ability of the citizens in the community to control their future.

We, the people, don't need the nukes! The power companies need the nukes to produce more power, increase the average person's dependence on centralized electricity, increase their own profits, and to increase the social and political control they exert on the people.

The Rock Hill City Council will make a decision in the near future on whether to purchase a portion of the Catawba Nuclear Station. Before this happens, the people of this area should be informed about the risks and benefits from this action. After the people have been truthfully educated concerning this matter, they will be able to make a reasonable decision and help their elected officials do the same.

We hear a lot about the "benefits" and very little truth about the health risks for us and future generations or about the energy alternatives which already are superior to nuclear power.

The people must be educated with regard for the facts, rather than regard for the profits of the power companies. It is my opinion that solar energy and other renewable resources would produce more employment, more social equity, and a more humane society than the building of nukes which still have poisonous levels of radioactivity several centuries after their proposed 30 year "life" spans.

Several centuries is a long time compared to the two years I worked at the Catawba Nuclear Station. It was during this time that I became convinced that the Catawba Nuclear Station should not be built, and much less convinced that I wanted a nuke for a neighbor.

Ron McAfee
2161 India Hook Road
Rock Hill

TRANSCRIPT OF SEGMENT FROM KNOW NUKES
WLOS TV - APRIL 1982

Aerial shots of Catawba in
background

ANNOUNCER: About 20 miles to the south
Duke has nearly completed
another huge nuclear power
plant called the Catawba
Nuclear Station. Protestors
are gearing up to fight this
plant's operation, aiming at
problems they've found in its
construction.

Background shows shots of
the reactor building

RON MCAFEE: What disturbed me was that I
was trained by one set of
procedures and then I was told
to ignore the procedures.

Inside shots of the reactor
building

ANNOUNCER: Ron McAfee was a Quality Control
Inspector for Duke Power Company
for two years - in the late 70s.
He says Duke supervisors let
shoddy workmanship at Catawba go
by in the reactor's electrical
system.

Background shots of
Catawba construction

RON MCAFEE: It's when I found something that
was wrong that they didn't correct
but they told me to sign my name
any way - that's bothering me.
I could no longer work at a plant
like this because I had become
educated about the problems with
this technology and the dangers
and I could not morally do it any
longer.

Inside the reactor
building

ANNOUNCER: McAfee has joined a local citizens
protest to keep Catawba from
generating electricity. He
intends to tell what he knows to
the Nuclear Regulatory Commission
which must license the plant before
it can operate. But Duke officials
answer the charges saying the
construction at Catawba is the
best.

Catawba Nuclear Plant Opponents Raise Issues Before Licensing Board

By JACK HORAN

Observer Staff Writer

YORK, S.C. — Opponents of the Catawba nuclear plant sought Tuesday to convince a federal licensing board to accept up to 74 legal arguments against the plant, including one that would require Charlotte be included in expanded accident evacuation plans.

"Charlotte is very close to the facility," said Columbia lawyer Bob Guild, who represents the anti-nuclear Palmetto Alliance, arguing that, consequently, the government-required 10-mile evacuation zone is inadequate.

Catawba, in York County, S.C., is 19 miles southwest of downtown Charlotte and about 10 miles from the city limits.

The Duke Power Co.-owned plant is scheduled to start up in 1984. Duke attorney Mike McGarry told the Nuclear Regulatory Commission (NRC) licensing board that the agency's emergency regulations take into account large population centers near a nuclear plant.

"There is no special circumstance to go beyond the EPZ (Emergency Planning Zone) requirement," McGarry said.

Licensing board chairman James Kelley said even if the board should turn down the proposed Palmetto Alliance contention, the group could request a waiver under special NRC rules to include Charlotte.

The NRC hearing, attended by about 35 people at the county ag-

ricultural center, was the first public skirmish over an operating license for the \$2.7 billion plant. Kelley said the board will decide next month which, if any, of the 74 issues will be argued at licensing hearings in early 1983.

The contentions are being put forth by three citizens' groups — the Charlotte-Mecklenburg Environmental Coalition, Carolina Environmental Study Group and the Palmetto Alliance.

One contention offered by the Palmetto Alliance centers on allegations of shoddy workmanship and unsafe working conditions at the plant. They were brought by former Duke workers Ron McAfee, of York, and Nolan Hoopingarner II, of Clover, both of whom are members of the Palmetto Alliance and were present at Tuesday's session.

When their allegations were brought up during the discussions, NRC lawyer Ed Keichen told the board that if "they have specifics, they should come forward right now and give it to our inspection people ... we need more than very generalized accusations."

Guild responded that both men have discussed their complaints with NRC personnel.

Attending the hearing was Peter Van Doorn, NRC inspector assigned to Catawba, who said, "We're aware of their concerns. It's not something new to us ... at this point we have found no problems."

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NRC rates Catawba plant below average

By JENNIFER WOODS
and BETH RUDOWSKIE

Evening Herald staff writers

ROCK HILL — The Catawba Nuclear Plant got a "below average" rating on construction, along with 11 other nuclear plants under construction, in a national report to be released tomorrow or Wednesday, according to a regional official of the Nuclear Regulatory Commission.

Duke officials responded that they are aware of the rating and have corrected problems pointed out by the NRC.

The report was part of a nationwide "report card" the NRC decided to issue after the 1979 nuclear accident at Three Mile Island in Pennsylvania. Of plants under construction, 12 were graded below average, 65 as average and no units above average.

Duke's problems were detailed in a report based on a study done at Catawba between September 1979 through August 1980. It cited problems in Duke's "quality assurance (safety inspection) program," Joe Gilliland of the NRC regional office in Atlanta said today.

Gilliland said Duke was notified of the report in February of this year.

Wayne Henry, quality assurance manager for Duke Power, said this morning, "We did receive the report that said we're below average. We responded to them (the NRC) and held meetings with them..."

"We have corrected the problems. All the specific findings have been cleared," Henry said.

Construction management and quality control, the NRC said, were the source of Duke's problems.

Gilliland said the NRC required that Duke "have a handle on procedural matters during construction and keeping their drawings up to date."

"If you've got a blueprint going a certain way and a change is made, their drawing has got to reflect it."

"You need to remember that below average doesn't mean it's a disaster," Gilliland added.

Henry said Duke has made efforts to step up inspection of defective materials — like pipes and fittings with scratches — and to improve handling and storage of materials at the Catawba plant.

Units one and two of the Catawba plant received a construction license from the NRC in August 1975.

"We are not aware of any major issues at this time. Duke was pretty quick to correct the situation," Gilliland said.

Rock Hill City Councilman Doug Echols said this morning the report would probably not affect Rock Hill's decision to buy a share in a reactor at the Catawba plant.

"We would certainly hope any construction deficiencies continue to be addressed in accordance with the NRC," Echols said.

Rock Hill, along with 9 other South Carolina cities formed the Piedmont Municipal Power Agency, to buy a quarter of a reactor at the Catawba station. Rock Hill has contracted to get 28 percent of the PMPA power. Almost one-third of operating power plants in the nation were classified below normal.

The report was released Sunday by Critical Mass, Ralph Nader's anti-nuclear group.

The report ranks 21 of the country's 72 licensed power reactors as "below average." Fifteen reactors received "above average" ratings and the other 36 were classified as "average."

The report cited examples of poor operator training, inadvertent

See N-plant, page 14

Ratings don't surprise N-foe

By JENNIFER WOODS

Evening Herald staff writer

YORK — Ron McAfee, 25, of Route 1, York was a proponent of nuclear power when he started work as Duke Power safety inspector in March, 1977.

McAfee quit his job as a "certified electrical quality control inspector" in March, 1979, and by then had become an opponent of nuclear power.

"My concerns were over the way Catawba was built and my concern over nuclear technology," McAfee said this morning.

"I'm not a bit surprised at the NRC findings," McAfee said about reports that Catawba nuclear reactor units 1 and 2 were rated "below average" in a national study done by the NRC.

McAfee described his job as "inspecting the structural components of the nuclear safety equipment."

Checking hangers that hold electrical cables that control the movement and operation of electrical equipment in the reactor was part of McAfee's job.

"Some of them were braced in the wrong direction from what the blueprints said," McAfee said.

"So they changed the blueprints. It ended up the workers were designing the plant," McAfee said.

McAfee said "apathy" was the

major problem he observed while working at Catawba.

"Workers, engineers and management... had the attitude if we don't do it right, the inspectors can catch it. And then maybe we'll have to do it over and work longer," McAfee said.

McAfee said he thought many of the workers weren't concerned about construction costs, "because they didn't buy power from Duke."

"Some of them were shipped in from 100 miles away," he said.

McAfee has a bachelor's degree from Gardner-Webb and studied Biblical literature at Vanderbilt University.

*file
Catawba*

9/22/81
Rock Hill
Evening Herald

Catawba Nuclear license opposed

Four citizens' organizations with environmental, economic and renewable energy interests announced they are filing papers to legally intervene in the operating license of Duke Power Company's Catawba Nuclear Station.

Spokespeople for North Carolina's Carolina Environmental Study Group, The Charlotte/Mecklenburg Environmental Coalition and The Safe Energy Alliance and South Carolina's Palmetto Alliance say that many of their members and families live within the ten-mile emergency planning zone surrounding the two 1145 megawatt nuclear reactors.

A resident of York and mother of two, Susan Smith, explained why she was submitting her affidavit with the Petition for Intervention filed by the Palmetto Alliance, "Duke Power Company would not have to hold a public hearing if no one raised legal question about the plant. We have a number of issues to raise that are vital to the health and safety of the people in York and Mecklenburg Counties.

"It's also unfair to let Duke Power invest millions of dollars in building these nuclear plants and then ask for a license to operate them. The NRC is not going to turn down their application and, in fact, never has turned one down but intervenors in other nuclear operating licenses have made substantial contributions in pointing out unsafe conditions and we intend to do our best."

All four of the intervening organizations are depending on donations and fund-raising events to finance the project, which could be years away from a final decision.

For more information contact: Henry Prosser, 704-333-8589; Ron McAfee, 803-684-2677; or Michael Lowe, 502-254-8132.

The issues the intervening organizations intend to raise

include:

- The cumulative biological effects of radiation produced by the entire uranium fuel cycle required to run the nuclear reactors.

- Substandard workmanship and poor quality control in safety related areas of the plant (A number of former Duke Power Company construction workers, including a Certified Quality Control Inspector and one a Palmetto Alliance member in York,

have complained of systematic deficiencies in plant construction and company pressure to approve faulty workmanship.)

- The ability of State and local agencies to implement emergency evacuation plans in Rock Hill, Fort Mill, and York, as well as Carowinds and Heritage, U.S.A., all of which are in the EPZ. Federal law requires the use of

evacuation plans.

- The ability of the thin-wall design to withstand the pressure that could be created in a severe accident.

- Duke Power's failure to consider the possibility of "Class 9" melt down.

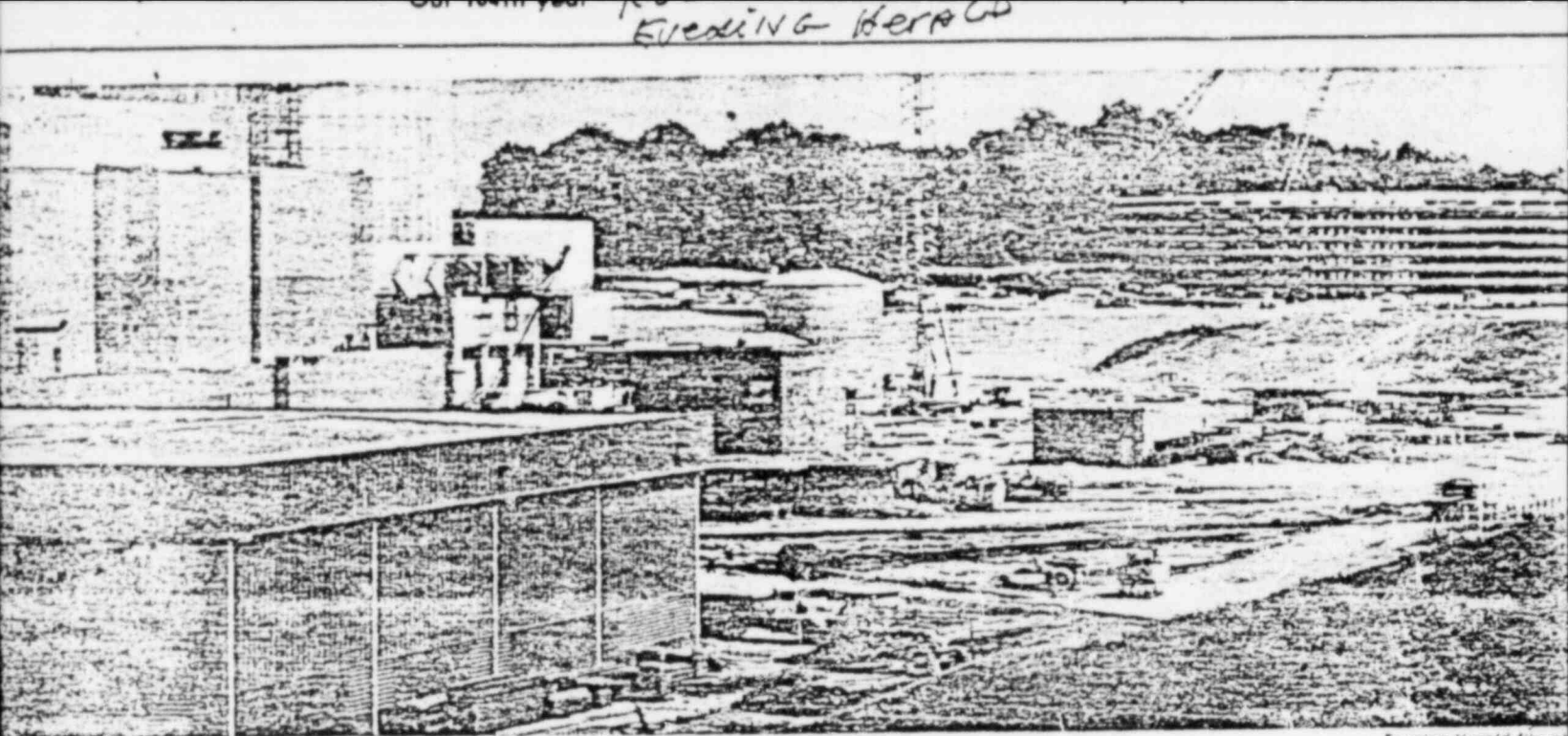
- Financial capability of Duke Power Company to cope with a crippling accident such as Three Mile Island.

- The possibility of the spent fuel pools at Catawba becoming a "temporary" AFR (away from reactor) storage facility for the Company's other nuclear reactors, thereby decreasing the space needed for the plant's own fuel.

The petition to intervene filed by Palmetto Alliance,

Inc. included affidavits signed by the following people who live within the environmental protection zone and the surrounding community:

Anne Springs Clow, Fort Mill; Mary F. Freeman, Fort Mill; Nolan R. Hooper Garner, II, Clover; Ruth S. Lowe, Rock Hill; Alice S. McAfee, Clover; William R. McAfee, York area and Susan H. Smith of York.



CATAWBA NUCLEAR STATION UNDER CONSTRUCTION
Palmetto Alliance opposes licensing for the plant

Evening Herald file photo

Nuke foes find support in NRC's criticism of Catawba construction

By JENNIFER WOODS
Evening Herald staff writer
ROCK HILL — A Nuclear Regulatory Commission report released Monday that criticizes construction of the Catawba Nuclear plant supports a South Carolina anti-nuclear group's claim of poor workmanship at the site northwest of Rock Hill.

The group, Palmetto Alliance, a statewide environmental organization based in Columbia, dedicated to the "promotion of renewable non-nuclear energy forms" is intervening in the operating license proceedings for the Catawba plant. Members want a hearing to oppose the licensing.

The nationwide NRC report rated units 1 and 2 of the Catawba plant "below average" in construction, citing problems in construction management, quality control and the handling of construction materials.

Duke officials said Monday they were aware of the rating and have corrected most of the problems studied by the NRC.

Duke Power Co., which was granted a construction license for the \$2.7



Lowe

McAfee

billion Catawba station in August 1975 applied for an operating license for the plant this year.

The Palmetto Alliance filed a petition protesting the proposed operating license in July.

"Substandard workmanship and poor quality control strongly suggest that actual plant construction is substantially below NRC standards in many safety related areas," says the petition.

Palmetto Alliance, organized in 1979 and claiming a mailing list of about 3,500 people inside and outside the state, is dedicated to "public education and organizing against the nuclear industry."

In an interview this month, Michael Lowe, a spokesman for the group, said it regularly intervenes in the licensing of nuclear power plants and in requests for utility rate hikes. It participates in legislative lobbying and promotes renewable energy resources, such as solar power, in South Carolina.

Ron McAfee of Route 1, York, and Nolan Hoopingarner II of Route 5, Clover, are active members of Palmetto Alliance and are intervenors in the proceedings for Catawba's operating license.

Hoopingarner and McAfee are both former Duke employees who say they observed deficiencies in plant construction and problems in construction management at the Catawba plant. Lowe says the Palmetto Alliance will use testimony from McAfee and Hoopingarner and others to protest the Catawba operating license on the following grounds.

— Construction: "Nuclear construction is very exacting work," Lowe said this morning.

"Everything has to be done to perfection. A weld has to be perfect, ... and the tedious nature of construc-

tion makes it subject to workmanship."

Lowe said one of the alliance's main objections is to the three containment buildings at Catawba.

"Most plants have thick walls," Lowe said. "Duke has designed the McGuire Catawba plants with thin walls, an ice-cooler (surrounding the tor building) to keep steam pressure down, in case of an accident."

"But we have seen accidents exceed the containment (safety) at Catawba," Lowe said.

— Nuclear waste: "We will not allow any attempt to store any waste from Catawba from any other plant in the Duke system," Lowe said.

— Health and environmental hazards: "The hazards of radiation off by this plant are not minimal," Lowe said.

"That's only part of the story. There are radiation hazards from the mining of fuel through transportation to its handling in final disposal."

— Economics: Lowe says the Catawba plant may be violating antitrust laws by giving Duke Power Company a monopoly of generating power and construction capital.

Complaining N-Worker Is Suspended

By JACK HORAN

Observer Staff Writer

A construction worker at the uncompleted Catawba nuclear plant who has charged unsafe working conditions exist at the plant has been suspended by Duke Power Co. for failing to follow orders.

Nolan Hoopingarner, 29, denies he disobeyed his foreman and claims he is being harassed. He said Duke managers, who suspended him Aug. 13, wanted to get him off the site before the arrival of a touring utility group.

Duke spokesman Ira Kaplan disputed the charge. Kaplan said construction and line superintendents from several S.C. rural co-operatives toured the plant Thursday but Hoopingarner's suspension had nothing to do with the visit.

Kaplan said Duke officials are investigating the complaint against Hoopingarner, who lives in Clover.

Hoopingarner, employed since 1977, has complained that scaffolding was improperly built, that live electrical cables have been left lying on the floor unprotected and that a welder made improper welds.

Duke's safety committee found Hoopingarner's complaints invalid. The S.C. Occupational Safety and Health Administration (OSHA) in Columbia conducted an inspection at Catawba as a result of Hoopingarner's complaint but an OSHA official said in June that investigators found no violations.

Hoopingarner said the Nuclear Regulatory Commission (NRC) in Atlanta informed him Monday that the welder denied making incorrect welds. NRC investigators couldn't be reached for comment.

Hoopingarner said he filed a complaint Wednesday with the U.S. Department of Labor, contending Duke discriminated against him because he filed safety complaints.

**** The Charlotte News, Thursday, May 15, 1980 13A

Carpenter charges work site unsafe at Duke's Catawba nuclear station

By CATHY STEELE ROCHE
News Staff Writer

A carpenter at Duke Power Co.'s Catawba Nuclear Station, under construction on Lake Wylie, 18 miles south of Charlotte, has charged the work site is unsafe.

Nolan Hoopingarner II first complained to Duke, then contacted the federal Nuclear Regulatory Commission (NRC) and the S.C. Occupational Safety and Health Administration (OSHA).

Duke spokeswoman Angie Howard said Hoopingarner's concerns were reviewed by Duke and the company found no safety violations at the site, in York County, S.C.

NRC spokesman Ken Clark in

Atlanta said an NRC inspector toured the site to check the allegations, but referred the complaint to OSHA, because it was related to construction safety, not the safety of the nuclear plant.

Hoopingarner made his complaint to OSHA by telephone May 6, alleging nine safety violations. OSHA public information director Jim Knight said.

Because none involved imminent danger to workers, OSHA listed the charges on a complaint form and mailed it to Hoopingarner for his signature. Knight said the form has not been returned and the agency can take no action until it is.

Hoopingarner could not be reached for comment today.

Ms. Howard said his allegations

include lack of handrails around scaffolding, exposed electrical cable and improper welding.

She said handrails are not required if safety belts or nets are provided and that Hoopingarner's other allegations were also invalid.

Although OSHA has not investigated the latest complaints, Knight said the agency found two serious and 23 non-serious violations at the Catawba construction site last September during its most recent inspection.

OSHA sought to fine Duke \$1,260 for those violations. Knight said Duke contested the citation and attorneys are nearing settlement of the issue without a hearing.

Ex-Inspector Criticizes Duke Plant

Observer Staff and Wire Reports

ROCK HILL — A former quality control inspector at the Catawba Nuclear Station has accused Duke Power Co. of tolerating careless workmanship that could affect the future safety of the plant.

Spokesmen for Duke, which is building the plant on Lake Wylie 19 miles southwest of Charlotte, denied the accusation.

Ron McAfee, the former employee, said the two years he spent at the Catawba plant site, including nine months as an inspector, convinced him the company has been guilty of "ignoring and deliberately violating regulations having to do with design and safety considerations."

McAfee, 23, claimed that apathetic workers often ignored design and safety measures and that, as an inspector, he was discouraged from reporting irregularities.

Duke officials said the Catawba plant meets all federal building codes and guidelines. They said any irregularities are caught by inspectors.

"I can assure you that this plant is built in accordance with all applicable regulations," said Larry Davison, a senior quality control engineer at the plant. "Our program is designed to catch and correct anything that goes wrong."

Davison and project manager Douglas Beam called McAfee an inexperienced inspector who never voiced objections during his employment at the plant.

McAfee voluntarily left his job in February. A Duke spokesman said Thursday that McAfee said at the time he had "had it with Duke Power."

McAfee went to work at Sunbelt Solar and Wood Energy Inc. at Rock Hill and has become active in efforts to form an anti-nuclear alliance.

McAfee, who started as a laborer at the plant in 1977, went through Duke's own inspector-training program before receiving certification as an inspector. The program included four months of on-the-job training and a 17-hour certification course. In a class of four, McAfee had the highest score on his certification test, Duke officials said.

In a letter to the anti-nuclear Carolina Coalition to Stop Nuclear Power, McAfee listed five problems with the plant.

The following are McAfee's charges and Duke's responses:

- Portions of an outer concrete shell were poured during heavy rain, contrary to guidelines.

Davison said concrete inspectors check all pourings. McAfee was an

See EX-INSPECTOR Pg. 2C, Cl. 6

Ex-Inspector Criticizes Duke Plant

Continued from Page 1C

electrical inspector responsible for the correct installation of electrical support systems. As such, Davison said, McAfee lacked the qualifications to criticize concrete work.

- Blueprints were changed to allow for construction errors.

Engineering plans allow a certain degree of flexibility, Davison said. Sometimes in correcting a mistake, he added, designs are revised after being reviewed by "technical people in the field" and by the plant's Quality Assurance Department.

- Identifying markers on the heads of anchor bolts used to support electrical cables were often indistinguishable.

Beam said that to his knowledge there are no markings on the bolt heads and their size is documented on paper. Davison said McAfee was not trained to test anchor bolt installations. McAfee contends checking the bolts was one of his prime responsibilities.

- Leaks in the roof of the central control room may have resulted in some damage to important equipment.

Davison acknowledged that rain had entered the control room, but said no damage was done to the equipment.

To McAfee's final charge that there is a general waste of manpower and materials at the site, Davison responded, "I disagree with that 100 percent."

Greensboro Daily News, Friday, Oct. 26, 1979 D3

Duke Accused Of Allowing Careless Work At New Plant

ROCK HILL, S.C. (AP) — A former quality control inspector at the Catawba Nuclear Station has accused Duke Power Co. of tolerating careless workmanship that could affect the future safety of the plant.

Spokesmen for Duke, which is building the plant on Lake Wylie, denied the accusation.

Ron McAfee, the former employee, said the two years he spent at the nuclear facility, including nine months as an inspector, convinced him the company has been guilty of "ignoring and deliberately violating regulations having to do with design and safety considerations."

McAfee, 23, of Rock Hill, claimed that often apathetic workers ignored design and strict safety measures and that, as an inspector, he was discouraged from reporting irregularities.

Duke officials said the Catawba plant meets all codes and guidelines. They said any irregularities are caught by inspectors.

"I can assure you that this plant is built in accordance with all applicable regulations," said Larry Davison, a senior quality control engineer at the plant. "Our program is designed to catch and correct anything that goes wrong."

Davison and project manager Douglas Beam called McAfee an inexperienced inspector who never voiced objections during his employment at the plant.

McAfee, who began working at the plant in 1977 as a laborer, went through

Duke's own inspector training program before receiving certification as an inspector. The program included four months on-the-job training and a 17-hour certification course. In a class of four, McAfee had the highest score on his certification test, Duke officials said.

In a letter to the Carolina Coalition to Stop Nuclear Power, McAfee listed five problems with the plant.

The following are McAfee's charges and Duke's responses:

- Portions of a concrete outer reaction shell were poured during heavy rain.

Davison said concrete inspectors check all pourings. McAfee was an electrical inspector responsible for the correct installation of electrical support systems. As such, Davison said, McAfee lacked the qualifications to criticize concrete work.

- Blueprints were changed to reflect construction errors.

Engineering plans allow a certain degree of flexibility, Davison said. Sometimes, in correcting a mistake, he added, designs are revised after being reviewed by "technical people in the field" and by the plant's Quality Assurance Department.

And several other papers...

Duke Power Guilty of 'Violating Regulations'

ROCK HILL, S.C. (AP) — Duke Power Co. is guilty of "ignoring and deliberately violating regulations having to do with design and safety considerations" at its Catawba Nuclear Station, says a former quality control inspector.

Ron McAfee, the former employee, says the utility has tolerated careless workmanship that could put future safety of the plant, now under construction on Lake Wylie, in jeopardy.

The charges were denied by Duke.

McAfee, 23, of Rock Hill, worked at the facility two years, including nine months as an inspector. He said he often found that workers ignored design and safety measures, but that he was discouraged from reporting irregularities.

But Duke officials said any irregularities are caught by inspectors and that all codes and guidelines are followed.

"I can assure you that this plant is built in accordance with all applicable regulations," said Larry Davison, a senior quality control engineer at the plant. "Our

program is designed to catch and correct anything that goes wrong."

Davison and project manager Douglas Beam called McAfee an inexperienced inspector who never

voiced objections during his employment at the plant.

McAfee was trained as an inspector by Duke after he was hired as a laborer. The inspector training program includes four months on-the-

job training and a 17-hour certification course. Duke officials said McAfee had the highest score on his certification test in a class of four.

In a letter to the Carolina Coalition to Stop Nuclear

Power, McAfee listed five problems with the plant.

The following are McAfee's charges and Duke's responses:

— Portions of a concrete outer reaction shell were poured during heavy rain.

Davison said concrete inspectors check all pourings and that McAfee, as an electrical inspector, lacked the qualifications to criticize concrete work.

— Blueprints were changed to reflect construction errors.

Engineering plans allow a certain degree of flexibility, Davison said. Sometimes, in correcting a mistake, he added, designs are revised after being reviewed by "technical people in the field" and by the plant's Quality Assurance Department.

— Identifying markers on the heads of anchor bolts

used to support electrical cables were often indistinguishable.

Although McAfee says checking the bolts was one of his prime responsibilities, Davison said he was not trained to test anchor bolt installations. Beam says to his knowledge there are no markings on the bolt heads and their size is documented on paper.

— Leaks in the roof of the central control room may have resulted in some damage to important equipment.

Davison acknowledged that rain had entered the control room, but said no damage was done to the equipment.

To McAfee's final charge that there is a general waste of manpower and materials at the site, Davison responded, "I disagree with that 100percent."

Two Duke officials deny accusations of careless work

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responsibilities.

— that leaks in the roof of the central control room may have resulted in some damage to important equipment. He says heaters were installed to dry out the equipment.

(Davison acknowledged that rain had entered the control room, but said no damage had been done to the equipment.)

— that there is a general waste of manpower and materials at the Carters Station. McAfee says workers are bored and as a result, often apathetic.

("I disagree with that 100 percent," Davison says.)

McAfee claims inspectors are dissuaded from reporting errors. Such findings are made on Non-Conforming Item (NCI) reports.

"We were told once we initiated an NCI," McAfee says, "there was about \$700 worth of paperwork involved. For obvious reasons...we were discouraged from writing these."

Beam disagrees.

"We have written over 6,000 (NCIs)," the project manager says. "I don't call that 'discouraging.' I don't think we ever discourage writing legitimate NCIs."

McAfee works for Sunbelt Solar and Wood Energy in Rock Hill.

Ex-inspector charges carelessness at N-plant

By JIM MORRILL

Evening Herald staff writer

ROCK HILL. — A former quality control inspector at the Catawba Nuclear Station, under construction on Lake Wylie, has accused Duke Power Company — the plant's builder — of tolerating careless workmanship that could affect the future safety of the plant.

Duke spokesmen deny the accusations.

Ron McAfee says the two years he spent at the nuclear facility — including nine months as an inspector — convinced him that the company has been guilty of "ignoring and deliberately violating regulations having to do with design and safety considerations."

McAfee, 23, of Rock Hill, claims often-aphetic workers ignore designs and strict safety measures and that as an inspector he was "discouraged" from reporting many irregularities.

Duke Power Company officials deny McAfee's allegations and say the Catawba plant meets all codes, guidelines and design requirements. Any irregularities, they say, are caught by qualified inspectors.

"I can assure you that this plant is built in accordance with all applicable regulations," says Larry Davison, a senior quality control engineer at the plant. "Our program is designed to catch and correct anything that goes wrong."

Davison, along with project manager Douglas Beam, calls McAfee



RON McAFEE
Anti-nuclear activist

an "inexperienced" inspector who never voiced objections during his time at the plant.

McAfee, who began working at the plant in 1977 as a laborer, went through Duke's own inspector-training program before receiving certification as an inspector. The program included four months on-the-job training and a 17-hour certification course. In a class of four, McAfee had the highest score on his certification tests, Duke officials say.

After being certified, he worked as an inspector for five months before

leaving in March because he'd "had it with nuclear power."

While describing some of the things he criticizes as relatively minor, McAfee says he was disturbed to see them in a nuclear plant.

"When you are working with a nuclear power plant, a minor problem can become a major problem later on."

Now an anti-nuclear activist, McAfee details several charges in a letter written for use by the Carolina Coalition to Stop Nuclear Power. The letter is intended as resource material for the coalition, made up of the League of Women Voters, the Sierra Club, the Lawyer's Guild, environmental groups and other organizations.

In the letter, McAfee lists five "problems":

- that portions of the concrete outer reactor shells were poured during heavy rain and that "precautions were rarely taken to assure that the extra water did not weaken the concrete."

- (Davison says concrete inspectors check all pourings and that McAfee — an electrical inspector responsible for the correct installation of electrical support systems — lacked the qualifications to criticize concrete work.)

- that blueprints were changed to reflect construction errors. When this happened, says McAfee, "design engineering considerations became secondary."

- (Engineering plans allow a cer-

tain degree of flexibility, Davison says. Sometimes, in correcting mistakes, he adds, designs are revised after being reviewed by "technical people in the field" and by the plant's Quality Assurance department.)

- that identifying markings on the heads of anchor bolts, used to support electrical cables, were often indistinguishable. "Though the problem was serious," McAfee says, "no enduring attempt was made to correct it."

- (Beam says to his knowledge, there are no markings on the bolt heads and their size is documented on paper. Davison says McAfee was not trained to test anchor bolts installations; McAfee contends checking the bolts was one of his prime

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Duke to meet public

ROCK HILL. — A Duke Power Company representative will talk about energy conservation and nuclear power plants at 7:30 tonight at the Oratory's Pope John Center on Orchard Lane.

Mary Cartwright of Duke's public relations office will discuss "Technical Ways to Conserve Energy" and "Questions About Nuclear Power Plants."

The meeting, which is open to the public, is sponsored by the American Association of University Women.

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