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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION DEC -2 P4:27

BEFORE THE COMMISSION

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

APPLICANTS' ANSWER IN OPPOSITION TO
THE GOVERNMENT ACCOUNTABILITY PROJECT'S
"MOTION FOR LEAVE TO FILE AMICUS CURIAE
BRIEF," AND MOTION TO STRIKE

On November 15, 1983, Duke Power Company, et al. ("Applicants") filed with the Nuclear Regulatory Commission a request for a stay of rulings issued in this proceeding by the Atomic Safety and Licensing Board and the Atomic Safety and Licensing Appeal Board on November 10 and November 14, 1983, respectively. (The factual background relating to these rulings is set forth in "Applicants' Motion for Stay of Orders Issued by the Atomic Safety and Licensing Board and the Atomic Safety and Licensing Appeal Board," pp. 2-4). On November 17, 1983, the Commission issued an order which deferred ruling on Applicants' request pending consideration of responses to the motion. In its order, the Commission requested that all parties submit answers to four questions relating to its consideration of Applicants' motion by November 23, 1983.

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In response to the Commission's order, the Government Accountability Project (GAP), which is not a party to this proceeding, filed with the Commission a "Motion for Leave to File Amicus Curiae Brief," ("Motion") and an amicus brief.^{1/} This brief does not address the questions raised by the Commission. Indeed, it contains no legal argument whatsoever (see GAP brief, p. 3). Rather, the brief outlines a "parade of horrors" relating to the alleged treatment of Applicants' QA welding inspector and welding inspector supervisor witnesses by Applicants' counsel. GAP's submittal is apparently designed to convince the Commission that unlimited access to these witnesses by intervenor Palmetto Alliance is warranted because these Duke Power Company (DPC) employees remain "under the direction of [DPC] officers in matters relating to this hearing" (GAP brief, p. 6). GAP argues that contact with these witnesses by Palmetto Alliance's counsel during hearing breaks and overnight is needed since it may provide "the only opportunity the [ASLB] has to insure that they hear both sides of the story from the workers -- not just the Company's" (Id.).

^{1/} "Brief for Amicus Curiae The Government Accountability Project of the Institute for Policy Studies on Duke Power Company's Request for Stay of Order as Amended, Permitting Intervenor Contact with Duke Employees Scheduled to Testify in the Operating License Hearings" ("GAP brief").

Under the guise of providing an accurate and unbiased view of events, GAP's amicus curiae brief ignores the factual record which has been compiled in this case through the testimony of the very group of witnesses whom GAP seeks to "protect." Pursuant to 10 C.F.R. §2.730, Applicants accordingly oppose GAP's motion for leave to file its amicus brief. Applicants also move to strike portions of this brief and the two accompanying affidavits as argumentative and without record support.

ARGUMENT

GAP's amicus brief is premised on the assumption that Applicants' welding inspector and welding inspector supervisor witnesses are being subjected to pressure by counsel for Applicants to tailor their testimony as their attorneys instruct them to do. For example, on p. 7 of its brief GAP characterizes its submittal as "pass[ing] along the message from the workers for relief from the pressure they are under." This insinuation is also clearly reflected in the affidavit of Billie P. Garde attached to the GAP brief, wherein Ms. Garde alleges the existence of "excessive pressure on the Catawba site toward welding quality control inspectors scheduled to testify concerning their 1981 complaints" (Garde affidavit, p. 1). Ms. Garde also describes an anonymous phone call GAP received from a DPC QA welding inspector who, although not scheduled to testify himself, allegedly expressed concern that his

fellow inspectors were being subjected to training sessions with DPC attorneys in which they were being "closely questioned about what they were supposed to say." (Garde affidavit, p. 2). Similarly, the affidavit of Louis Clark of GAP asserts that this anonymous telephone caller

told me that he happened to have friends who were being made to go 'over and over' their upcoming testimony by Duke Power Company attorneys. He said these friends were afraid and felt intimidated. The tension among the workers was intense, according to the caller. [Clark affidavit, p. 1].

In view of these allegations, GAP urges that the Commission allow GAP participation in this matter since it "provides the Commission with the only direct view of the workers [sic] plight at Catawba" (Motion, p. 6). As will be demonstrated below, this is simply not the case.

That GAP's amicus brief does not reflect "the only direct view" -- or even a correct view -- of the QA welding inspectors' situation at Catawba can be demonstrated first by an examination of the record. Such an examination reveals that, when specifically questioned about the existence of pressure, intimidation, and/or improper "coaching" from DPC attorneys with respect to their testimony, several QA welding inspectors and welding inspector supervisor Gary E. ("Beau") Ross clearly indicated on the witness stand that there had been no such pressure. See Tr. 6573-6574 (testimony of inspector Boyce

Cauthen), Tr. 6174-6176 (testimony of inspector John Bryant), Tr. 8502-8506 and Tr. 8545-8547 (testimony of inspector Scott Gantt), and Tr. 6610-6612 (testimony of welding inspector supervisor Ross). (These transcript excerpts are attached to this motion.) Thus, contrary to GAP's insinuations, these witnesses told the Board, under oath, that they had not been intimidated or influenced by counsel, and that their testimony was their own.

GAP's representation that it provides the Commission with the only accurate view of these witnesses' "plight at Catawba" is also disingenuous because it ignores evidence tending to show that any rumors or insinuations about threats to these workers' job security in retaliation for their testimony have been originated (or, at the very least, fomented) not by DPC officials but by GAP itself. See Tr. 6610-6612, wherein Mr. Ross describes the two telephone calls made by Ms. Garde of GAP to him and to his wife. See also Tr. 6175, wherein Mr. Bryant recounts a telephone call to him from Ms. Garde in which she warned him "that there is a chance of retaliation by Duke Power against the inspectors"

Finally, GAP's assertion that its amicus brief should be allowed because it alone can provide the Commission with a "direct" and, presumably, a well-supported view of these witnesses' situation is undermined by the very nature of the submittal it has made to the Commission. An

examination of the GAP brief reveals that it relies throughout upon allegations, innuendo, and sources of information whose veracity cannot be tested.

The reader is told, for example, that evidence supporting the allegations set forth on pp. 3-4 of the brief is "contained in specific detail in several sets of documents provided in discovery to Intervenor, obtained by Amicus through [FOIA], and verified during an independent investigation by Amicus . . ." (GAP brief, p. 4). No effort is made, however, to identify any of these documents specifically. Similarly, GAP asserts on p. 6 of its brief that "[t]he case against Catawba . . . is based on information submitted by employees of Duke Power. These comments are both specifically and generally the indictment of Duke's Catawba plant and the failure to implement an acceptable Quality Assurance plan." Here again, no references to such comments are provided.

Even more disturbing are Ms. Garde's and Mr. Clark's statements in their affidavits relating to their telephone conversations with an anonymous DPC welding inspector who expressed concerns about other anonymous DPC QA welding inspectors' treatment by counsel. These allegations typify the approach GAP has taken throughout its involvement in this proceeding, which has been to claim the existence of various relevant documents, worker concerns, etc., without assuming the obligation of substantiating

its allegations so that they can be met on the merits. Such a "hit and run" approach takes unfair advantage of GAP's status as a non-party to this proceeding.

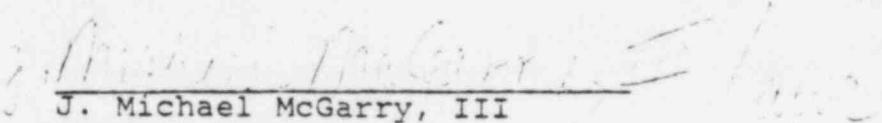
Applicants submit that the Commission cannot credit these unsupported allegations and bald assertions about unnamed individuals' supposed concerns because there is no way to confront and examine the validity of these assertions.

CONCLUSION

Based upon the foregoing, Applicants oppose GAP's motion for leave to file its amicus brief with the Commission. Should the Commission accept GAP's brief, Applicants respectfully move in the alternative that all of section III of the brief except for the first paragraph on p. 3, the last sentence on p. 4, and the excerpts from Mr. Ross' testimony on p. 5, be struck as argumentative and without record support. Applicants also move that the affidavits of Billie Garde and Louis Clark, which are

attached to the GAP brief, be struck for the same reason.

Respectfully submitted,


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December 2, 1983

1 A Yes, sir.

2 Q There was some discussion, Mr. Bryant, concerning
3 the situation where you found a rejectible condition.
4 You left the area and then you came back and the situation
5 was corrected. Do you recollect that discussion?

6 A It seems like there was a bunch of them. There
7 may not have been. I don't recall any specific one.

8 Q I believe -- Let me ask you the question. Is
9 there anything wrong with craft correcting a situation?

10 A No, sir

11 Q Now, how long have you been on the job?

12 A Just a little over seven years.

13 Q Have you raised technical concerns over those
14 seven years?

15 A Yes, sir.

16 Q Have you ever been formally disciplined for
17 raising such concerns?

18 A No, sir.

19 X Q Do you feel that any discussion you may have had
20 or had with counsel intimidated or influenced your testimony?

21 A No, sir.

22 Q Did your counsel tell you to speak the
23 truth?

24 A Yes, sir.

25 Q Do you feel that your written and oral testimony

1 is indeed your testimony and not that of your counsel?

2 A Yes, sir.

3 Q Have you had any discussions about this case
4 with Palmetto Alliance or the Government Accountability
5 Project?

6 A Yes, sir.

7 Q Would you explain those discussions.

8 A I don't remember the dates, but it was shortly
9 -- the first time Billie Garde contacted me and talked,
10 and it was shortly after -- after the discovery date up there,
11 and she informed me -- she is the one that informed me
12 of Beau's low evaluation or what he had got, and she told
13 me that she had talked with Art Allum about Beau's evaluation
14 and warned me that there is a chance of retaliation by
15 Duke Power against the inspectors and that's -- that's
16 just about it on the first conversation.

17 Q You had another conversation with her?

18 A Yes, sir.

19 Q When was that?

20 A It was earlier this -- early this week sometime.
21 I'm not sure if it was Monday or Tuesday.

22 Q And what was the nature of that conversation?

23 A Not then -- excuse me -- she informed me of the
24 10 people coming to Catawba nuclear station and that she
25 wanted me to pass the word along to Beau and the other

1 inspectors that just be truthful with them and tell them
2 what they need to know, and she told me that -- that she felt
3 that Larry Davison had committed a crime against the
4 statutes of the -- or the rules of the regulatory as far
5 as treatment toward his inspectors and that he should be
6 prosecuted for those crimes.

7 (Pause.)

8 Q Have you had any other contact with the
9 Government Accountability Project?

10 A No, sir.

11 Q You stated that you been working in Beau Ross's
12 crew; is that correct?

13 A Yes, sir.

14 Q Have you ever worked for any other supervisor?

15 A In the inspection field or --

16 Q Yes, sir. In the inspection field.

17 A No, sir.

18 Q There was some discussion this morning, Mr. Bryant,
19 concerning the Q1A forms. Do you remember discussing this
20 with Mr. Guild?

21 A Yes.

22 Q In your judgment, are Q1A forms more thoroughly
23 reviewed today than they were in the past?

24 A To some degree, you know -- they -- they are
25 basically the review -- my chain of command, it's basically
the same, but the resolution and stuff like that is more --

1 nonsafety-related pipe; is that correct?

2 A My socket welds and the fit I found, when that
3 occurred. It's nonsafety-related.

4 Q You made reference today -- yesterday -- in
5 discussing Item E3, the E reflecting the letter assigned
6 to you by the technical task force, and you made reference
7 to the fact that E3 involved Class E and F piping systems.
8 Are Class E and F piping systems safety-related?

9 A No. They just -- all they usually get is final
10 visual.

11 Q Mr. Cauthen, you also made reference, I believe,
12 in discussion of Item E3 to a phrase "slack-up on NCIs."
13 Did you mean to suggest that you, Boyce Cauthen, approved
14 any faulty work?

15 A No. Didn't. I didn't approve no faulty work.
16 The word come down from up the hill to just slack up on
17 nonconformances.

18 Q And did you handle it some other way?

19 A Yeah. When I caught them, I told them to cut
20 them out and call me back.

21 Q And you were satisfied with the way you handled
22 it?

23 A Well, they did cut it out. I rechecked it.

24 * Q Mr. Cauthen, there was some discussion this
25 morning concerning your contact with counsel. Do you recall

1 that?

2 (Pause.)

3 A The meeting we had in Charlotte?

4 Q No, sir. The questions that Mr. Guild asked you
5 this morning. Do you remember Mr. Guild asking you questions
6 about meeting with your lawyer?

7 A Yeah. I remember him asking me.

8 Q When you met with your lawyer, did your lawyer
9 intimidate you?

10 A No, sir.

11 Q Did your lawyer influence your testimony?

12 A No, sir.

13 Q Did your lawyers tell you what you had to say?

14 A Told me I had to tell the truth.

15 Q Is the testimony that you have given to this
16 Board -- both the written testimony that you are holding
17 in your hand and the oral testimony that came from your
18 mouth -- your testimony and not the testimony of your
19 attorneys?

20 A Yes, sir, that's right. I said what I wanted to
21 say.

22 Q Mr. Cauthen, you made reference to NCIs that were
23 written up as a result of your M-4I activity. Do you have
24 any reason to believe that those NCIs were not properly
25 considered?

mgc 18-6 1

Q Yes.

2 A Just casual talk, and not much of that. I haven't
3 had too many dealings with Mr. Davison.

4 Q Have you had any dealings with Mr. Davison in
5 conjunction with preparing your testimony in this case?

6 A No, sir.

7 Q Has he met with you and other inspectors on that
8 subject?

9 A Not since that meeting right before we submitted
10 our concerns.

11 Q Who have you met with in Duke management with respect
12 to the subject of your testimony?

13 A My supervisor, Bo Ross.

14 Q Mr. Ross. Anyone else?

15 A No, sir.

16 Q When did you meet with Mr. Ross?

17 A Sir?

18 Q When did you meet with Mr. Ross on that subject?

19 A This was just when he told us to get all of our
20 notes together and submit our concerns.

21 * Q After that happened, what I am talking about is
22 getting ready for your testimony in this case, have you met
23 with anyone concerning your testimony in this case?

24 A I met with attorneys.

25 Q Who was that?

mgc 18-7 1 A Ron, Al, Mike and the lady. What was her name?
2 Q Ms. Cottingham.
3 A Yes.
4 Q Anybody else?
5 A No, sir.
6 Q Mr. Morgan?
7 A No, sir.
8 Q You haven't talked to Mr. Morgan about your testimony?
9 A No, sir.
10 Q How did you come to write the testimony the way it
11 is written?
12 A We were given these questions and asked to answer.
13 Q Were you given them in writing?
14 A Yes, sir.
15 Q Did you answer them in writing?
16 A Yes.
17 Q Did you carry them home and answer them, or did
18 you sit in a room at a desk or something?
19 A We went to a room and answered them.
20 Q And what did they say about them before you went
21 off and answered them?
22 A They said to answer them honestly.
23 Q And I take it, you did?
24 A Yes, sir.
25 Q And what happened with them then, as far as you

mgc 18-8

1 know?

2 A We gave them back to the attorneys after we answered
3 them.

4 Q Did you have it written out in longhand?

5 A Yes, sir.

6 Q And someone obviously typed it up, right?

7 A Yes, sir.

8 Q Did they give it back to you then and say, "Look
9 it over"?

10 A Yes, sir.

11 Q And you did?

12 A Yes, sir.

13 Q Did you change anything, add anything, subtract
14 anything?

15 A I changed some wording to make it plainer what I
16 wanted to say.

17 Q Did you discuss the wording with the lawyers?

18 A Yes.

19 Q And tell me about what you discussed and what you
20 changed?

21 A Well, it was just a matter of -- a question of,
22 "What did you mean?" And I wrote some answers to better
23 clarify what I meant.

24 Q Do you remember where that happened?

25 A It was on the job.

mgc 18-9

1 Q I'm sorry. Where in your testimony?

2 A No. I can't remember where it happened.

3 Q Let's look at Page 2. The question appears on
4 Page 1, quote: "What is your understanding of what these
5 concerns were?"

6 Is that the answer you gave?

7 A Yes, sir.

8 Q Did that get changed?

9 A No.

10 Q At Line 16, quote, "Did you express all of your
11 concerns," end quote, and in the answer you are talking
12 about a concern you did not express.

13 Did they ask you what you meant by that?

14 A Yes, sir.

15 Q What did you say?

16 A I read my answer, and I didn't change anything.

17 Q That answer is on Line 17 through 21, and it
18 appears here just the way you wrote it out in longhand?

19 A Yes, sir.

20 Q Did the question that appears at Line 22, was that
21 originally asked to you in writing?

22 A No, sir.

23 Q So who added that question?

24 A I would say Ron.

25 Q Mr. Gibson?

mgc 18-10 1

A Yes, sir.

2

Q Did you discuss what you meant by that answer,
3 beyond what it says here?

4

A No.

5

Q They didn't ask you to amplify or explain?

6

A No.

7

Q Okay. Did they ask you what you meant when it
8 says in that answer, quote, "In my opinion, this problem
9 has grown greatly," end quote?

10

A I can't remember if they did or not.

11

Q Have they asked you or did anybody else at the
12 company ask you since then?

13

A I can't remember.

14

Q Did anybody ask you about whether Fred Bulgin has
15 been a help or a harm to the morale problem?

16

A No, sir.

17

Q Before I asked you that question today?

18

A No.

19

Q Did anybody ask you whether Larry Davison was
20 involved in that morale problem before I asked you today,
21 or words to that effect?

22

A No, sir.

23

24

25

mgc 21-16 1 it -- is, what were the subjects of questions, anticipated
2 questions, I was going to ask, the subjects of questions
3 you discussed?

4 THE WITNESS: I don't recall.

5 BY MR. GUILD:

6 Q Was it about any of the matters in your prefiled
7 testimony that we have already touched on; say, the morale
8 question?

9 A I can't say specifically what it was. I don't
10 remember.

11 Q I would ask you to try again. I will refresh
12 your recollection.

13 How about the subject of your specific concern
14 with the root condition of the weld and how that concern
15 was resolved?

16 A I can't say what was said. I don't recall.

17 Q Were there any other instructions or guidance
18 given to you by anyone representing Duke Power Company,
19 lawyers or anyone else, with respect to how to respond to
20 questions that were likely to be asked on your testimony?

21 A No, sir.

22 Q Did they tell you to tell the truth?

23 A Yes.

24 Q When did they tell you that?

25 A At several different meetings.

gc 21-17

1 Q Well, that is an instruction. I meant to include
2 that kind of thing. They did instruct you to tell the truth,
3 right?

4 A Yes, sir.

5 Q Did they instruct you to not express opinions?

6 A No, sir.

7 Q Did they instruct you to speak to things that you
8 knew for a fact?

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22joy1

1 A Not to my recollection.

2 Q Well, what instructions did they give you? They
3 did tell you to tell the truth. What other instructions
4 did they give you?

5 A That's all I remember.

6 Q And you didn't remember that a moment ago, right?

7 A I didn't know that was what you were asking a
8 moment ago.

9 Q If you have a doubt about what I am trying to get
10 at, Mr. Gantt, what I am trying to understand is what kind
11 of guidance came, instructions, information about what was
12 going to happen in this hearing about questions I was going
13 to ask or ways you were to answer questions or respond to
14 questions came from lawyers or anyone else before you
15 testified?

16 A There was no guidance as far as how to answer
17 questions at all besides tell the truth.

18 Q All right, sir. Have you had any other meetings,
19 then, with respect to your testimony in this case with anyone
20 else from Duke or representing Duke other than the October 26th
21 meeting and then the meeting last with Mr. McGarry?

22 A No, sir.

23 MR. GUILD: One moment, Mr. Chairman.

24 (Pause)

25 MR. GUILD: Mr. Chairman, reserving my rights to

1 to have a complete set. But I think the general concept
2 we have now established.

3 MR. MC GARRY: That is helpful.

4 JUDGE KELLEY: All right.

5 MR. MC GARRY: We have some questions,
6 Mr. Chairman.

7 ~~X~~ BY MR. MC GARRY:

8 Q Mr. Ross, if you can keep your voice up so
9 the court reporter and the Board and parties can hear you.
10 Mr. Ross, have you had an opportunity to discuss your
11 testimony with your counsel?

12 A Yes.

13 Q Do you feel that your counsel have sought to
14 intimidate you?

15 A No, I do not.

16 Q Do you feel that your counsel have sought
17 to influence your testimony?

18 A No.

19 Q Have your counsel told you what to say?

20 A No.

21 Q Is the testimony that you have written and
22 the testimony that you will give today orally, tomorrow
23 perhaps, your testimony and not that of your counsel?

24 A Yes, it is.

25 Q Mr. Ross, have you been contacted by either

1 Palmetto Alliance or the Government Accountability Project?

2 A I was contacted by the Government Accountability
3 Project, I think a couple of times.

4 Q Could you explain that contact?

5 A Well, the one contact was by a
6 phone call and it was a matter of, expressed some surprise
7 that I was still employed by Duke and wanted to know if
8 I had obtained a lawyer and had tried to pursue being able
9 to keep my employment at which point I told her that I
10 didn't really -- I wasn't aware that my employment was in
11 jeopardy.

12 Q And who made that phone call, to the best of
13 your knowledge?

14 A To the best of my knowledge, Ms. Garde.
15 That is who she identified herself as.

16 Q When was that?

17 A It was just when the discovery phase started.
18 I don't know the exact date. Just as the discovery phase
19 was starting.

20 Q Would April, May 1983 seem about the right
21 time?

22 A Probably so, yes.

23 Q What was the nature of the second telephone
24 conversation?

25 A The second call, I was already in bed,

ree3/6

1 and she talked to my wife and she seemed concerned again
2 that I hadn't talked to a lawyer and the fact that when we
3 got the hearings and whatnot over with that Duke was going to
4 drop me like a hot potatoe, I believe was the terms used.

5 So she again recommended I do contact a
6 lawyer and try to establish a more secure basis for
7 continuing my employment with Duke?

8 Q Mr. Ross, the second phone conversation, you did
9 not have this individual, but your wife did?

10 A That is right.

11 Q Who was that conversation with?

12 A Well, as far as I know, she said it
13 was Ms. Garde again.

14 Q When was that phone conversation?

15 A I don't remember the exact date; it was
16 something like a couple weeks after the first one, we got the
17 first phone call.

18 Q Did that phone call upset your wife?

19 A It did somewhat, yes. It did. See, she
20 doesn't really have a good understanding -- I don't confide
21 in her things that go on like I should. But she was kind
22 of upset there for awhile.

23 MR. MC GARRY: No further questions, your
24 Honor.

25 JUDGE KELLEY: Thank you. That brings us to

UNITED STATES OF AMERICA
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BEFORE THE COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Answer In Opposition To The Government Accountability Project's 'Motion For Leave To File Amicus Curiae Brief,' and Motion to Strike" in the above captioned matter have been served upon the following by deposit in the United States mail this 2nd day of December 1983.

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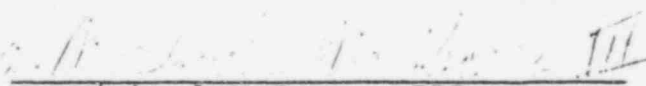
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