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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DOCKETED  
USNRC

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OFFICE OF SECRETARY  
LICENSING & SERVICE  
BRANCH

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

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Docket Nos. 50-413  
50-414

April 12, 1984

PALMETTO ALLIANCE AND CAROLINA ENVIRONMENTAL STUDY GROUP  
MOTION TO READMIT CONTENTIONS REGARDING  
SEVERE ACCIDENTS, CONTROL ROOM DESIGN DEFICIENCIES  
AND LACK OF FINANCIAL QUALIFICATIONS

Pursuant to 10 C.F.R. Sections 2.714(a)(1), 2.718, and 2.730 Palmetto Alliance and Carolina Environmental Study Group hereby move to readmit and provide for the litigation of previously admitted contentions on the subjects of severe accidents, control room design deficiencies and lack of financial qualifications. Contentions on these subjects were previously filed by Intervenorors pursuant to 10 C.F.R. Section 2.714(a)(3)(b) and the Licensing Board's Order of November 5, 1981 providing for the timely submission of the contentions which Intervenorors sought to have litigated in this proceeding. In that same pleading Intervenorors sought the opportunity to amend or expand that filing on the basis of information not then known to Intervenorors. This motion is advanced now on the basis, in part, of such new information, as well as on the basis of subsequent changes in applicable law and regulation.

1. SEVERE ACCIDENTS

In their December, 1981 filing, Palmetto and CESG advanced four contentions on the subject of severe accidents at the Catawba Nuclear Station:

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Palmetto Alliance contentions No. 5, 9 and 31 (CESG 2). In the Board's March 5, 1982 Memorandum and Order (Reflecting Decisions Made Following Prehearing Conference), pp. 27-28 the Board rejected the contentions on the basis of the failure of Intervenor to advance a site specific "serious and credible accident scenario," and the December 23, 1981 proposed Commission rule, 46 F.R. 62281 on the subject of hydrogen control measures. In their March 31, 1982, Responses And Objections To Order Following Prehearing Conference, Palmetto and CESG advanced a series of "plainly credible, Catawba specific, accident scenarios," pp. 5-10: 1. offsite power failure; 2. ATWS; 3. fatigue failure of the reactor pressure vessel; and 4. stud bolt failure. By Order of July 8, 1982 this Board sought comments by Applicants and NRC Staff with respect to Intervenor's posited scenarios. Finally, the Board reviewed these scenarios and confirmed its rejection of these contentions in its Memorandum and Order (Reflecting Decisions Made Following Second Prehearing Conference) of December 1, 1982 16 NRC 1791 at 1807 et seq. The Board, there, rejected the capitalized stud bolt failure scenario on the grounds of res judicata, as having been previously litigated by CESG. With respect to the other three scenarios, the Board noted that the NRC Staff supported admission of these as sufficiently specific for litigation, but rejected their admission on the grounds of the pending rulemaking:

The basic criterion is safety -- is there a substantial safety reason for litigating the generic issue as the rulemaking progresses? In some cases, such as TMI Restart, such litigation probably should be allowed if it appears that the facility in question may be licensed to operate before the rulemaking can be completed. In such a case, litigation may be necessary as a predicate for acquired safety findings. In other cases, however, it may become apparent that the rulemaking will be completed well before the facility can be licensed to operate. In that kind of case there would normally be no safety justification for litigating the generic issues, and strong resource management reasons not to litigate. . . . It now appears that a final rule would be adopted in the next several

months (fn 8: January or February, 1983.) Given the present status of this proceeding, no operating licenses for Catawba are likely to issue before some time in 1984, a year or more after the final rule. Thus we see no safety justification for litigating the Intervenor's hydrogen scenarios in this case, and we are rejecting them as proposed contentions.

Id., 16 NRC at 1809-1810.

Subsequent developments make clear that the premise underlying this Board's rejection of Intervenor's hydrogen control accident scenarios is no longer viable, and more recent information makes clear that the serious safety issues involved in the adequacy of hydrogen control measures and the effects of hydrogen burns on safety equipment must be resolved through litigation in this proceeding prior to licensing the Catawba Station. The hydrogen control issue has been denominated unresolved safety issue A-48. Its status and application to Catawba as of February, 1983 is described at pages C-22 and 23 of the Safety Evaluation Report, NUREG-0954. The Staff, there, reflects the unresolved character of the pending proposed rulemaking and its conclusion that interim measures are satisfactory at Catawba in the meantime. Of course, Intervenor's disagree and seek to litigate the adequacy of such measures through the vehicle of the contentions and accident scenarios submitted. In its Aqua Book, "Unresolved Safety Issues Summary," NUREG 0606, Vol. 5, No. 4 (November 18, 1983) the NRC Staff projects a scheduled completion for unresolved safety issue A-48 of June 30, 1985. There, the Staff described the problem as follows:

postulated reactor accidents which result in a degraded or melted core can result in generation and release to the containment of large quantities of hydrogen. The hydrogen is formed from the reaction of the zirconium fuel cladding with steam at high temperature and/or by radiolysis of water. Experience gained from the TMI-2 accident indicates that we may want to require more specific design provisions for handling larger hydrogen releases than currently required by the regulations, particularly for smaller, low pressure containment designs.

Id., at p. 38.

Finally, the most recent Board Notification No. 84-057 of April 2, 1984, reflects the potentially troubling results of ongoing technical studies by Sandia National Laboratory of likely excessive temperature effects on safety equipment under several postulated hydrogen ignition accident scenarios in ice condensor containments. Such an effect would likely exacerbate accident scenarios by degrading the operability of such engineered safety features as containment recirculation fans and spray systems as well as the other components.

In light of these regulatory developments including the matters included in the referenced Board Notification as further basis Palmetto and CESC seek readmission and an opportunity to litigate the plainly credible accident scenarios in order to establish our earlier claims that Applicants have not established reasonable assurance that the Catawba Station can operate safely.

## 2. CONTROL ROOM DESIGN DEFICIENCIES

In its March 5, 1982 Memorandum and Order (Reflecting Decisions Made Following Prehearing Conference), at pp. 23-24 this Board initially admitted a portion of Palmetto Alliance control room design contention No. 22 conditioned upon later detail after submission of further licensing documents reflecting Applicants' control room design review. Subsequently, in light of the Appeal Board's rejection of the device of conditional admission of contentions, this Board determined to reject, rather than defer rulings on these control room design issues observing that new information contained in documents not yet available might provide a later basis for more specific contentions. Memorandum and Order (Reflecting Decisions Made Following Second Prehearing Conference) 16 NRC at 1795-6. The basis for such specific contentions has recently been provided by Applicants and the NRC Staff.

By letter of March 9, 1984, Thomas M. Novak, Assistant Director for Licensing, of the NRC Staff transmits for review and comment to Applicants a Preliminary Draft Safety Evaluation Report for the detailed control room design review at Catawba Unit 1. There the Staff expresses its conclusions as to Applicants' satisfaction of the nine requirements of Supplement 1 to NUREG 0727. While expressing general satisfaction with Applicants' efforts to meet the requirements of these standards for control room design, the Staff expresses questions regarding the scheduling of implementation and the verification of corrective actions until the end of the first refueling outage after fuel load licensing. It is on the basis of this analysis that Intervenor seek the readmission of previously filed contentions challenging the adequacy of Applicants' control room design.

Palmetto and CESC offer the following revised contention for litigation:

Applicants have failed to demonstrate reasonable assurance that the Catawba Nuclear Station can operate safely since they have failed to adequately meet regulatory requirements for the correction of Human Engineering Deficiencies (HED's) in the Catawba control room design and instrumentation in the absence of sufficient attention to the interaction of human factors and efficiency of operation considerations. As reflected in the "Human Engineering Factors Engineering Branch - Detailed Control Room Design Review For Catawba Nuclear Station Unit 1," transmitted by cover letter of March 9, 1984, Applicants have failed to demonstrate the justification for delaying correction of identified human engineering deficiencies until the end of the first refueling outage, and have failed to provide adequate verification that the implemented corrective actions in fact resolved identified identified human engineering deficiencies. Id., pp. 14-15.

Palmetto and CESC submit that this revised control room design deficiency contention should be admitted pursuant to 10 C.F.R. 2.714(a)(1) on the grounds that the balancing of the five factors warrants its admission for litigation. First, good cause is established by the contention's dependence on a licensing analysis by the NRC Staff available to Intervenor for less than one month. It is this "Preliminary Draft SER" which first iden-

tifies the scheduling and corrective action deficiencies in Applicants' control room design review. Second and fourth, as is commonly the case, the interest of petitioners can only be adequately protected by their own representation in this proceeding in support of this issue. While the NRC Staff can cease to represent the public interest outside this proceeding, petitioners' interest is best protected by their own efforts. Third, petitioners identified this issue of inadequate control room design as one of concern to them at the very earliest. We stand ready, now, to assist this Board in developing a sound record for decision on this important safety issue. Palmetto and CESC ask the Board to note the effectiveness of the participation by their representatives and counsel in this and other proceedings on the basis of which this Board should conclude that they may reasonably be expected to assist in developing a sound record. Fifth, while the introduction of a new issue, inevitably will expand the proceeding and require time for resolution Palmetto and CESC submit that such a commitment of time and resources is well founded to resolve such an important safety issue. Furthermore, the Staff itself observes that resolution of the scheduling and corrective action deficiencies in Applicants' control room design review program must precede licensing authorization. Thus, a commitment to litigation of this contention could not only be productive but a necessary predicate to reasonable assurance of safe operation. On the foregoing basis Palmetto and CESC ask that the revised control room design deficiency contention be admitted for litigation. Intervenors are prepared to commit their time and resources to the identification of expert technical assistance to support their litigation of this contention.

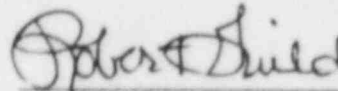


3. LACK OF FINANCIAL QUALIFICATIONS.

By its March 5, 1982 Memorandum and Order (Reflecting Decisions Made Following Prehearing Conference) this Board conditionally admitted Palmetto Alliance contention No. 24 questioning the financial qualifications of the small municipal and cooperative owners of the Catawba facility. Id. at p. 24. However, upon reconsideration as sought by Applicants and the NRC Staff the Board determined to dismiss Palmetto contentions Nos. 24 and 25 relating to financial qualifications and decommissioning on the basis of the subsequently adopted new Commission rule barring consideration of such contentions, 47 F.R. 13750. Memorandum and Order (Overruling Objections Following Prehearing Conference, Denying Requests For Referral To The Appeal Board, In Addressing Certain Related Questions) at p. 2, July 8, 1982.

On February 7, 1984, the United States Court of Appeals for the District of Columbia Circuit struck down the Commission attempt to eliminate the financial qualifications requirements in licensing proceedings. New England Coalition on Nuclear Pollution v. Nuclear Regulatory Commission, No. 82-1581 (February 7, 1984). It is the position of Palmetto and CESC that in the absence of a valid rule barring our previously filed financial qualifications contention these matters should be readmitted for litigation in this proceeding at this time. While we are aware of proposals by the Commission to reinstitute rulemaking in an effort to remedy the evidentiary deficiencies identified by the Court of Appeals, we urge that the proper course for this Board is to admit and litigate issue of financial qualifications in this proceeding at this time. Palmetto and CESC would be prepared to demonstrate that the lack of financial qualification of the small municipal systems which are co-owners of this facility will likely adversely affect the safe operation and shutdown of the Catawba facility.

On the foregoing basis, Palmetto Alliance and Carolina Environmental Study Group request that this Board admit the above contentions for litigation in this proceeding at the present time.



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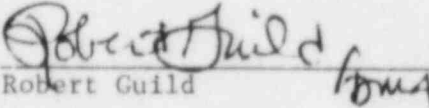
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