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April 30, 1984

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

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Re: Duke Power Company, et al.
Catawba Nuclear Station, Units 1 and 2
Docket Nos. 50-413/50-414 OL

Gentlemen:

Upon reviewing the Certificate of Service regarding "Applicants' Response to Motion of Palmetto Alliance and Carolina Environmental Study Group to Readmit Contentions on Severe Accidents, Control Room Deficiencies and Lack of Financial Qualifications" in the captioned matter, we discovered that the Response was inadvertently served to the Licensing Board convened to address emergency planning issues. The Response should have been served to the original Licensing Board. Accordingly, we are hereby re-serving by either hand delivery or overnight mail a copy of our Response. We regret any inconvenience this may have caused.

Sincerely,

Sanford L. Hartman for

Mark S. Calvert

Enclosure

cc: Service List (Without Enclosure)

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Response to Motion of Palmetto Alliance and Carolina Environmental Study Group to Readmit Contentions on Severe Accidents, Control Room Deficiencies and Lack of Financial Qualifications" in the above captioned matter has been served upon the following by deposit in the United States mail this 27th day of April, 1984.

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

APPLICANTS' RESPONSE TO MOTION OF PALMETTO ALLIANCE AND CAROLINA ENVIRONMENTAL STUDY GROUP TO READMIT CONTENTIONS ON SEVERE ACCIDENTS, CONTROL ROOM DEFICIENCIES AND LACK OF FINANCIAL QUALIFICATIONS

Pursuant to 10 C.F.R. §2.730(c), Duke Power Company, et al. ("Applicants") hereby respond to the 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" (hereafter "Intevenors' Motion").

The record in this operating license proceeding is now closed, except as to two subjects (emergency planning and diesel generators) unrelated to those issues raised by the instant Motion.1/ Accordingly, while it is labeled a motion to "readmit" various contentions, Intervenors' Motion is in actuality a motion to reopen the record to admit new contentions, since the matters they now seek to

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1/ See Tr. 11,909-11,911 (12/16/83); Memorandum and Order (Confirming Closing of the Record and Schedule for Proposed Findings) of December 30, 1983; Tr. 12,418-12,419 (1/31/84).

litigate are not part of any previously admitted contentions in this proceeding. Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), LBP-83-30, 17 NRC 1132, 1135 (1983). As will be demonstrated below, Intervenors' Motion clearly fails to meet the legal standards applicable to such motions. Applicants accordingly urge that each of these proposed contentions be denied admission.

ARGUMENT

I. General Legal Principles

A party seeking to have a new contention admitted after the close of the record must satisfy both the standards for admitting a late-filed contention -- by balancing the factors set forth in 10 C.F.R. §2.714(a)(1) -- and the standards established by NRC case law for reopening the record. Shoreham, supra, 17 NRC at 1136; Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-82-39, 16 NRC 1712, 1714-15 (1982), citing Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-5, 13 NRC 361, 364 (1981).

With respect to the standards for reopening the record, the instant Motion is clearly deficient in that it fails even to mention this standard, much less attempt to satisfy it. Shoreham, supra, holds that the criteria for

reopening the record apply when a party seeks the admission of a new contention, unrelated to those already litigated, which would logically have been heard during the previously completed portion of the hearing. This standard applies regardless of the pendency of another, separate phase of the hearing.[2] 17 NRC at 1137-38. Such is the case here. The test for reopening the record in an NRC proceeding requires: (1) that the motion be timely; (2) that new evidence of a significant safety or environmental question exists; and (3) that such new evidence might materially affect the outcome.[3] Shoreham, supra, 17 NRC at 1141; Diablo Canyon, CLI-81-5, supra, 13

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[2] The procedural posture of the Shoreham hearing at the time that decision was issued was virtually identical to that of this proceeding; that is, the record had been closed on all issues except offsite emergency planning, and a separate appealable partial initial decision was being prepared on the closed safety and environmental issues while a different licensing board heard emergency planning contentions. When presented with a motion to admit an additional contention, the original board in Shoreham ruled that the pendency of the emergency planning segment of the case did not "absolve the [intervenor] from having to meet the standards for reopening the completed hearing on all other radiological health and safety issues in order to raise a new non-emergency planning contention." 17 NRC at 1138.

[3] To the extent that a motion to reopen is not related to a litigated issue -- as is the case here -- the "outcome" to be judged is not that on a particular issue, but rather, "the action which may be permitted by the outcome of the licensing proceedings." Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523 (1973), cited in Shoreham, supra, 17 NRC at 1142.

NRC at 364-65. The proponent of such a motion thus has a "heavy burden." Kansas Gas and Electric Company (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 NRC 320, 338 (1978). Intervenors' Motion fails to satisfy this test with respect to any of the three proposed contentions raised.

First, Intervenors' motion is not timely. The record in this proceeding was closed (except for the issues of emergency planning, diesel generators, and five delayed in-camera issues) on Decmber 16, 1983, four months ago. As discussed below in our specific responses to each proposed contention (see section II), Intervenors have failed to provide convincing reasons for their failure to submit until mid-April, 1984, new contentions on severe accidents and on control room design review. As for Intervenors' proposed contention on financial qualifications, Applicants submit that it too could have been raised earlier, since the court of appeals decision which prompted Intervenors' submittal on this issue was handed down February 7, 1984.

Moreover, as will be demonstrated below, Intervenors have failed to make any showing whatsoever that "new evidence of a significant safety or environmental question" exists with respect to any of the three subject areas that these proposed contentions focus upon.

Consequently, they have also failed to show that such evidence might "materially affect the outcome" of this proceeding.4/ This omission is fatal to the Motion.

With respect to the reopening standard, the Appeal Board has held that:

> A successful movant must provide with its motion more than 'bare allegations or simple submission of new contentions.' Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-5, 13 NRC 361, 363 (1981). It is not enough merely to express a willingness to provide unspecified, additional information in support of the motion at some unknown date in the future. Any supporting material should be provided with the motion so that the test for reopening can be meaningfully applied. [Louisiana Power & Light Company (Waterford Steam Electric Station, Unit 3), ALAB-753, 18 NRC ___ (December 9, 1983)(slip op. at pp. 2-3).

A review of the instant Motion demonstrates that no such supporting information has been provided by Intervenors.

Even if this Board were to resolve the first two reopening factors of timeliness and significance of the issue in favor of Intervenors, (a conclusion which Applicants do not believe is warranted), the Board

> . . . must then proceed to consider whether one or more of the issues requires the receipt of further evidence for its resolution. If not, there is obviously no need to reopen the record for an additional evidentiary hearing.

4/ The Appeal Board has held that it is not always possible to consider each of these factors in isolation. "The questions of whether the matter sought to be raised is significant and whether it presents a triable issue may often be intertwined, and can be so treated . . . " Vermont Yankee Nuclear Power Station, ALAB-138, supra, 6 AEC at 524.

> As is always the case, such a hearing need not be held unless there is a triable issue of fact.
>
> In other words, to justify the granting of a motion to reopen the moving papers must be strong enough, in the light of any opposing filings, to avoid summary disposition. Thus, even though a matter is timely raised and involves significant safety considerations, no reopening of the evidentiary hearing will be required if the affidavits submitted in response to the motion demonstrate that there is no genuine unresolved issue of fact, i.e., if the undisputed facts establish that the apparently significant safety issue does not exist, has been resolved, or for some other reason will have no effect upon the outcome of the licensing proceeding. [Vermont Yankee Nuclear Power Station, ALAB-138, supra, 6 AEC at 523].

Intervenors' Motion is simply silent on this point; it does not demonstrate that further evidence is needed in this proceeding on any of the issues raised. Again, such failure must be viewed as being fatal to the Motion.5/

In sum, applying the above criteria, Intervenors have not made the necessary showing that a reopening of the record is warranted on any of the three proposed contentions. It is Applicants' position that this failure is dispositive of the Motion.

5/ In the event there is a change in the Commission's position regarding financial qualifications, (see discussison in II.C, below), Applicants reserve the right to file affidavits which will demonstrate that there is no merit to Intervenors' proposed contention on that issue.

NRC case precedent also requires that a Motion such as this one address the standard for admitting late contentions.6/ This standard requires consideration and balancing of all of the five factors set forth in 10 C.F.R. §2.714(a)(1).7/ The instant Motion makes no reference to the §2.714(a) factors in discussing its proposed contentions relating to severe accidents and financial qualifications.8/ Intervenors do address these

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6/ Shoreham, supra, 17 NRC at 1136, and cases cited therein.

7/ These factors are:

(i) Good cause, if any, for failure to file on time.

(ii) The availability of other means whereby the petitioner's interest will be protected.

(iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.

(iv) The extent to which the petitioner's interest will be represented by existing parties.

(v) The extent to which the petitioner's participation will broaden the issues or delay the proceedings.

8/ Intervenors' failure even to acknowledge that the factors set forth in §2.714(a)(1) apply to their proposed contentions on severe accidents and financial qualifications demonstrates a blatant disregard for the Commission's Rules of Practice. See Duke Power Company, et al. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 470 (1982), wherein the Appeal Board stated that "the determination of whether to accept [a contention] on an untimely basis involved a consideration of all five Section 2.714(a) factors -- and not just the reason (substantial or not as the

(footnote continued)

criteria with repect to their proposed contention on control-room design; however, as will be demonstrated below (see section II.B), Intevenors' conclusion that a balancing of these factors weighs in favor of admission of that contention is unsupportable.

II. Response to Specific Proposed Contentions

A. Proposed Contention on Severe Accidents

Intervenors seek to have the Board admit for litigation the four "plainly credible, Catawba specific" accident scenarios originally advanced by Palmetto Alliance and CESG in their March 31, 1982 "Responses and Objections to Order following Prehearing Conference," pp. 5-10.9/ While acknowledging that this Board dismissed their contentions on severe accidents in its December 1, 1982 Order (pp. 24-29), Intervenors allege that "subsequent developments" and "more recent information" have under-

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(footnote continued from previous page)
case may be) why the petitioner did not meet the deadline." See also Duke Power Co. (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-615, 12 NRC 350, 352 (1980), wherein the Appeal Board ruled that "the late petitioner must address each of those five factors [in §2.714(a)(1)] and affirmatively demonstrate that on balance, they favor permitting his tardy admission to the proceeding." (citations omitted). In view of Palmetto Alliance and CESG's extensive experience as participants in NRC proceedings, their failure to satisfy NRC requirements on this point is inexcusable.

9/ These accident scenarios include: (1) offsite power failure; (2) ATWS; (3) fatigue failure of the reactor pressure vessel; (4) stud bolt failure.

mined the premise for the Board's action and have made 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 the issuance of an OL for Catawba." (Motion, p. 3). For the reasons set forth below, Applicants submit that these late-filed proposed contentions should be denied.

The specific accident scenarios leading to potential hydrogen release which Intervenors raise include (1) off-site power failure; (2) Anticipated Transients Without Scram (ATWS); (3) fatigue failure of the reactor pressure vessel; (4) stud bolt failure. See "Palmetto Alliance and Carolina Environmental Study Group Responses and Objections to Order Following Prehearing Conference," March 31, 1982, pp. 6-10. Applicants submit that none of these four particular accident scenarios need be further addressed by the Board in this proceeding.

With respect to accident scenarios premised upon offsite power failure, Applicants submit that further consideration of such scenarios has been decisively rejected by this Board. Palmetto Alliance Contention 18, dealing with loss of off-site power to the Catawba diesel generators, was rejected by the Board in its December 1, 1982 Order (pp. 3, 5) as "fatally vague." Subsequently,

in rejecting Intervenors' motion for reconsideration of its ruling on this off-site power contention, the Board stated: "we have once again (and for the last time) considered these contentions and we conclude, once again, that they are not sufficiently specific." February 3, 1983 Board Order, at p. 2. See also p. 3.

As to ATWS, this matter is currently the subject of an ongoing NRC reulemaking proceeding.10/ Accordingly, contentions dealing with this subject should not be accepted for litigation in individual licensing proceedings. Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 85 (1974). Consistent with this doctrine, this Board has previously rejected a Palmetto Alliance contention dealing with ATWS. See the Board's March 5, 1982 Order (p. 31), wherein the Board referred to the ongoing rulemaking on ATWS and ruled that "the Commission wishes to confine these generic issues to the generic rulemaking context."

10/ The Commission has considered three proposed rules on this subject which have been published for comment. See "Standards for the Reduction of Risk from Anticipated Transients Without Scram (ATWS) Events for Light-Water-Cooled Nuclear Power Plants." 46 Fed. Reg. 57521 (1981). The Commission has been actively pursuing a resolution of this issue. Although the final rule has yet to be published, resolution of the issue is sufficiently advanced that litigation in a licensing proceeding is clearly inappropriate.

Intervenors' accident scenario dealing with fatigue failure of the reactor pressure vessel raises essentially the same concerns as were litigated last fall in this proceeding in Contention 18/44. The record is closed on that contention, and no showing has been made that a reopening of the record on that issue is warranted. See Applicants' "Response in Opposition to 'CESG's Offer of Proof Relating to Reactor Vessel Technology . . .,'" dated March 2, 1984.

Finally, with respect to the postulated accident scenario involving stud bolt failure, Applicants believe that further consideration of a contention based on such a scenario has been prohibited by this Board. On pp. 25-26 in its December 1, 1982 Order, the Board stated, after reciting the history of this issue in the both McGuire proceedings and the Catawa CP proceeding, that:

> We agree with the Applicants' position that yet another relitigation of this particulr scenario is barred by the doctrines of res judicata and collateral estoppel. CESG has been unsuccessfully attempting to challenge the safety of Duke Power Company's reactor stud bolts since the McGuire construction permit proceeding in 1972-73 . . . . We see nothing in the present stud bolt scenario to differentiate it from its predecessors, and CESG points to nothing new. Therefore the proffered contention -- a matter already litigated between the same parties at the construction permit stage -- may not be relitigated now. (citations omitted).

Failure to Satisfy Standards For Reopening the Record and for the Admission of Late-filed Contentions

A balancing of the five factors set forth at 10 C.F.R. § 2.714(a)(1) indicates that these proposed contentions should not be admitted in this proceeding.

With respect to factor (i) -- good cause for failure to file on time -- Applicants assert that none of the alleged "new developments" and "recent information" that Intervenors cite in support of admission of this proposed contention constitutes good cause for this untimely submittal. For example, on p. 3 of the instant Motion, Intervenors cite the Staff's discussion, in the February, 1983 Safety Evaluation Report for Catawba, NUREG-0954, of the status and application of the hydrogen control issue to Catawba. Therein, the NRC Staff notes (p. C-22) that the rulemaking proceeding on degraded core issues has not yet been completed, and that in the interim, a set of short-term actions relating to hydrogen control requirements were developed and implemented. The Staff concludes that the Catawba facility can be operated before complete resolution of this issue (and before completion of the rulemaking) "without undue risk to the health and safety of the public," because (a) Duke Power Company is conducting research into hydrogen combustion phenomena and mitigation measures; (b) the NRC will require as a

licensing condition that Catawba "shall be provided with an acceptable hydrogen control system justified by suitable programs of experiments and analysis;" and (c) in the interim, Applicants have committed to providing "appropriate hydrogen control measures;" these measures must be implemented before initial fuel loading. (SER, pp. C-22 and C-23).

The Staff's conclusion as set forth in the SER clearly cannot be said to constitute "recent information" of a "new development" which would warrant acceptance of a late contention. Nor do Intervenors clarify the supposed significance of the Staff's conclusion as the basis for their proposed contention, merely stating that they "disagree" with this conclusion and that they "seek to litigate the adequacy of such measures through the vehicle of the contentions and accident scenarios submitted" (Motion, p. 3). Even more significant for the purpose of evaluating the good cause factor is the fact that Intervenors do not explain why they have waited until April, 1984 to submit a proposed contention based upon the SER, which was provided to the parties in this proceeding immediately after its issuance in February, 1983.

Intervenors also rely upon NRC Staff statements in NUREG-0606, which is dated November 18, 1983, in support of their proposed severe accident contentions. Here

again, Intervenors offer no explanation as to why a contention based upon this NRC document could not have been filed several months earlier. Nor do they explain why the Staff's comments on the hydrogen control issue in NUREG-0606 are significant enough to serve as the basis for a late-filed contention. (The fact that the hydrogen control issue is classified as an unresolved safety issue is not in dispute).

In Board Notification 84-057, Thomas Novak, NRC Assistant Director for Licensing, forwarded to the parties two documents from Sandia National Laboratory (SNL) which "may be material and relevant to the matter of temperatures used to qualify equipment located in an ice condenser containment." The documents describe "recent calculations performed to investigate the temperature response of equipment in the Sequoyah containment during a spectrum of severe accidents." One of the documents attached, a Sandia Rough Draft Report, reviewed accident sequence probabilities and the associated equipment temperatures and concluded, in Mr. Novak's words, that "there are several accident sequences, with a probability close to that of the sequence used as the design basis for hydrogen igniter systems, which result in equipment temperatures higher than the qualification temperature."

Intervenors urge that this Board notification be considered "new information" significant enough to justify the admission of their proposed severe accident contention. Applicants do not believe that it should be so interpreted. In the first place, in transmitting these documents to the parties Mr. Novak states:

> At this time it is difficult to assess the accuracy of these calculations and, therefore, the reports' conclusions. There are, from a cursory review, a number of errors and items which require clarification.

Until the NRC Staff completes its review and evaluation of the SNL documents, any conclusions as to their potential significance would clearly be premature.

Moreover, Intervenors have failed to demonstrate in their Motion precisely why out of all the ongoing research and documentation available on this subject, these particular SNL Reports provide a sufficient basis for a late-filed contention. In rejecting Intervenors' original severe accident contentions in its December 1, 1992 Order, the Board was aware that research on severe accident sequences involving potential hydrogen releases was ongoing. Given this ongoing research, the issuance of periodic updates on its status is to be expected. The information contained in such updates is, in general, cumulative. The Board Notification in question constitutes an example of such cumulative information on

an issue that will ultimately be resolved generically. It should be viewed as merely part of the ongoing resolution of a complex technical issue that has required extensive research, not as significant new information which warrants admission of a new severe accident contention.

In sum, Intervenors have failed to show "good cause" for their failure to file these proposed contentions much earlier in this proceeding. This lack of good cause should weigh heavily against the Intervenors. See Washington Public Power Supply System, et al. (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC ___ (November 15, 1983, slip op at p. 8), wherein the Appeal Board noted that, in assessing the "good cause" factor for a late-filed contention, "the true importance of the tardiness will generally hinge upon the posture of the proceeding at the time the petition surfaces."

With respect to factors (ii) and (iv) -- the availability of other means and other parties to protect Intervenors' interests -- Applicants believe that the ongoing rulemaking on hydrogen control issues should adequately address Intervenors' concerns. (The status of this rulemaking is discussed below at pp. 20-25). Applicants note that factors (ii) and (iv) have been described as generally carrying less weight than the other three

factors. See, e.g., Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 NRC 1760, 1767 (1982).

Factor (iii) -- the extent to which participation may be expected to assist in developing a sound record on the issue of hydrogen control -- is given significant weight in balancing the five criteria in §2.714(a). See WPPSS No. 3, supra, slip op. at p. 18. For this reason, late petitioners are expected to address this criterion with as much particularity as possible, identifying precise issues and witnesses and summarizing their testimony. Id. Intervenors have failed to do so.

A review of the record compiled to date in this proceeding makes clear that Intervenors could not reasonably be expected to contribute to the development of a sound record on the issue of severe accidents. The Board's experience with the quality of Intervenors' participation on technical issues such as those presented by Contentions 16, 44 and DES 17 clearly supports such a conclusion. A more recent indication of Intervenors' likely inability to contribute to the development of a sound record on complex severe accident contentions is seen in their recent failure to produce an expert witness to testify on the subject of diesel generators. This

default led to the Board's dismissal of Intervenors' contention on diesel generator crankshaft design. April 13, 1984 Order, at p. 2.

Factor (v) -- the extent to which Intervenors' participation on the severe accidents issue would broaden the issues or delay the proceeding -- also argues against admission of this late-filed proposed contention. A review of the litigation of a similar issue in the operating license proceeding for Duke's McGuire Station reveals that approximately one year was necessary to resolve the question. Such time would delay issuance of an operating license well beyond the time that the plant would be ready to operate. In addition, Applicants note that the Appeal Board has recognized that this factor assumes particular significance during the later stages of a licensing proceeding, since "[m]anifestly, the later the petition, the greater the potential that the petitioner's participation will drag out the proceeding." Detroit Edison Company (Greenwood Energy Center, Units 2 and 3), ALAB-476, 7 NRC 759, 762 (1978).

In sum, a balancing of the § 2.714(a)(1) criteria indicates that Intervenors' proposed severe accident contentions should be denied on the basis of untimeliness.

Moreover, consideration of the three-pronged test in Shoreham, supra, 17 NRC at 1141, demonstrates that there is no justification for reopening the record to consider Intervenors' severe accident contention. The record in this proceeding was closed on December 16, 1983. As discussed supra, in connection with factor (i) under §2.714(a)(1), the information on which Intervenors rely does not represent "recent information" or a "new development." This situation is not comparable, for example, to the "new development" recognized in the Diablo Canyon proceeding: occurrence of an earthquake in the vicinity of Diablo Canyon three weeks after the issuance of a partial inital decision. See Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-598, 11 NRC 876 (1980). Thus the Intervenors fail the first prong of the test, which requires a timely submission by the Intervenor.

Neither does the Intervenors' proposed contention on severe accidents raise significant safety or environemtnal issues, as is required by the second prong of the test for reopening the record. As described infra in the section addressing the pending rulemaking on hydrogen control, the Commission has continued to maintain the acceptability of distributed igniter systems such as at Catawba. Absent guidance from the Commission that such measures are

inadequate for this interim period prior to the issuance of a rule, the severe accident contention cannot be said to raise significant safety or environmental issues. This failure to raise significant issues also means that the third prong of the test for reopening the record has not been satisfied, so that evidence taken in connection with the proposed contention could not materially affect the outcome of this proceeding.

Because this Motion fails to satisfy any of the three criteria of the test for reopening the record, the Board must reject the Intervenors' proposed severe accident contention.

Pending Rulemaking on Hydrogen Control

The fact that the Commission's hydrogen control rulemaking is still ongoing provides additional grounds for the rejection of Intervenors' previously rejected severe accident scenarios. See Douglas Point, supra, 8 AEC at 85. The basis for Intervenors' argument that these contentions should be admitted and litigated is the assertion that the premise upon which the rejection was based is no longer valid. The Board based its decision in part upon the likely resolution of hydrogen control by rulemaking prior to the issuance of the Catawba operating license. December 1,1982 Order, at pp. 26-29. The Board stated that:

> The Commission can and sometimes does remove any doubt on this score by specifically stating whether boards should continue to litigate generic issues while a rulemaking on them is pending. But since the Commission has provided no explicit guidance here, we must exercise an informed discretion in the circumstances of this case. [Id. at p. 27].

Although it now appears that ultimate resolution of hydrogen control by rulemaking is not likely until 1985, the Commission position on hydrogen control by use of ignition systems has remained consistent. Furthermore, since the issuance of the Board's December 1, 1982 Order, the Commission has provided guidance that hydrogen control should not be addressed in individual proceedings.

The Commission has found the use of hydrogen igniter systems to be an acceptable interim solution for ice condenser containments. The Commission required, as a condition for the full power license for Sequoyah 1, the installation of such an igniter system. See 46 Fed. Reg. 62281 (1981). (This is discussed in Duke Power Company (William B. McGuire Nuclear Station, Units 1 and 2), CLI-81-15, 14 NRC 1, 10 (1981)). The Commission also required such an igniter system for McGuire. McGuire, supra, 14 NRC at 2.11/

11/ The Commission has also approved distributive ignition systems for McGuire Unit 2 and Sequoyah Unit 2.

Significantly, the Commission has not waivered in its further pronouncements on the subject of requiring hydrogen igniter systems. In its December 23, 1981 proposed rule on Interim Requirements Related to Hydrogen Control, the Commission stated:

> This new requirement [to install a hydrogen control system capable of accommodating an amount of hydrogen equivalent to that generated from the reaction of 75% of the active region fuel cladding with water without loss of containment integrity] is being contemplated as a result of safety issues raised during licensing reviews of new ice condenser . . . plants. In these reviews, it has become clear that additional protection is required to provide assurance that large amounts of hydrogen can be safely accommodated by these plants. The particular type of hydrogen control system to be selected is left to the discretion of the applicant or licensee; however, it must be found acceptable by the NRC based upon suitable programs of experiment and analysis . . . . <u>At present, a distributed igniter system has been found acceptable for the Sequoyah plant with an ice condenser containment</u>, but only as an interim solution while the hydrogen control matter is studied further. [46 Fed. Reg. 62281 (1981)(emphasis added)].

The Commission stated further that:

> As a result of the review of the deliberate ignition systems installed at Sequoyah and McGuire, the staff has identified issues which need to be investigated further. A spectrum of degraded core accident scenarios, including those which may lead to inadvertent suppression of combustion in the lower compartment due to a steam rich atmosphere, and several hydrogen combustion phenomena are continuing to be reviewed. In addition, there is incomplete verification of analytical models and equipment survivability. These issues are being addressed in ongoing research by NRC and the nuclear industry. <u>The Commission</u>

> concludes, based on available information, that the issues are sufficiently resolved to warrant interim approval of deliberate ignition systems for ice condenser plants. However, the Commission has required in individual licensing proceedings and in the section of this rule on analyses . . . that studies of alternative hydrogen management systems be performed prior to the long-term approval of any particular method. [Id. at 62282 (emphasis added)].

Although, as Intervenors point out, final agency action remains to be taken on this rulemaking, the Commission has continued to maintain the acceptability of distributed igniter systems in its further pronouncements. In its "Proposed Commission Policy Statement on Severe Accidents and Related Views on Nuclear Reactor Regulation" (48 Fed. Reg. 16014)(1983), the Commission discussed the bases for its belief that pending the resolution of large generic programs presently underway, existing design basis requirements provide reasonable assurance that the risk of degraded core accidents is acceptable:

> There are presently two rules, one final and one proposed, on hydrogen control and related matters (46 Fed Reg. 58484, December 2, 1981, and 46 Fed. Reg. 62281, December 23, 1981). These rules are intended to provide reasonable assurance, pending generic resolution, that the risk of degraded-core accidents for plants designed in accordance with current regulatory requirements is acceptable. Accordingly, individual licensing proceedings are not appropriate forums for a broad examination of the Commission's regulatory requirements relating to control and mitigation of accidents more severe than the design basis. Similarly, notwithstanding the Class 9 accidents review requirements for environmental hearings of the Commission's

> Statement of Interim Policy on 'Nuclear Power Plant Accident Considerations Under the National Environmental Policy Act of 1969' (45 Fed. Reg. 40101, June 13, 1980), the capability of current designs or procedures (or alternatives thereto) to control or mitigate severe accidents should not be addressed in case-related safety hearings. . . .
>
> . . . .
>
> In this regard, the Commission notes that much of the work to be done by the staff and its contractors as part of the Severe Accident Research Plan can be applied to light-water reactors either yet to be designed or to reactors now in operation. In some cases, the value of a change may be realized on either old or new designs. Examples of this would be changes in operator training or procedures for severe accidents and the addition of hydrogen ignition systems. In other cases, the cost of design variations could only be justified for new designs. [48 Fed. Reg. at 16018 (emphasis added)].

In discussing containment strength and comparing containment types, the Commission stated:

> Through an integrated systems analysis it may be possible to demonstrate that other containment types [besides large dry] exhibit a functional containment capability equivalent to that of large dry containments. Although containment strength is an important feature to be considered in such an analysis, credits should also be given to the inherent energy and radionuclide absorption capabilities of the various designs as well as other design features that limit or control combustible gases. [Id. at 16019 (emphasis added)].

What emerges from these statements is the Commission's continued support for the requirement of hydrogen control systems such as igniters. Furthermore, notwith-

standing delays in ultimate rulemaking resolution, the Commission has indicated that such a forum is to be preferred over adjudication.12/

Applicants' position that Intervenors' proposed severe accident contention should not be admitted because the subject matter of these contentions is still the focus of an ongoing NRC rulemaking is also directly supported by recent NRC case law. In Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), LBP-83-39, 18 NRC 67 (1983), the licensing board rejected a proposed contention premised upon the occurrence of an accident greater than design basis. While recognizing that the Commission's 1983 proposed Policy Statement on Severe Accidents has not been adopted, the licensing board ruled, referring to the proposed Policy Statement, that

> it is prudent for us to accept it now as disclosing the Commission's present intent to impose the very clear . . . mandate not to litigate a contention such as I-60. If the policy statement, as adopted, changes this mandate materially, we will of course consider any such change. [18 NRC at 87-88].

12/ Applicants note that the adequacy of the igniter system was litigated in Duke's McGuire proceeding, which involved CESG. Under the logic of the Board's res judicata and collateral estoppel ruling on the stud bolt accident scenario (December 1, 1982 Order, at pp. 25-26), further consideration of this issue in this proceeding should not be permitted.

Applicants also rely upon Metropolitan Edison Company, et al. (Three Mile Island Nuclear Station, Unit No. 1), ALAB-729, 17 NRC 814 (1983), wherein the Appeal Board reiterated its earlier ruling in Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 772-73 (1977) that:

> parties interested in litigating unresolved safety issues must do something more than simply offer a checklist of unresolved issues; they must show that the issues have some specific safety significance for the reactor in question and that the [OL] application fails to resolve the matters satisfactorily. [17 NRC at 889].

Intervenors have failed to show the required nexus between their postulated accident scenarios and the Catawba facility.

Finally, Intervenors make much of the fact that in dismissing their original severe accident contentions, the Board assumed that a final rule relating to a hydrogen control would be forthcoming from the Commission in 1983. See December 1, 1982 Order, at p. 28. Although the pendency of this rulemaking was considered by the Board in dismissing these contentions, the fact that no final rule has yet been issued should not disturb the Board's ruling. First, as the Board recognized, "the pertinent rulemaking directly addresses the Intervenors' hydrogen concerns." Id. The fact that a final rule will be published addressing these concerns clearly weighs against

litigation of Intervenors' hydrogen scenarios in this proceeding. Moreover, as noted above, the Commission has specifically permitted the use of distributive ignition systems during the pendency of this rulemaking. Finally, and perhaps most sigificantly, the Commission has issued operating licenses to ice condenser plants (Sequoyah and McGuire) since the Board's December 1, 1982 Order, while the rulemaking is still ongoing.

Thus, for the reasons stated, the Board should not admit and litigate Intervenors' hydrogen control contentions.

B. Proposed Contention on Alleged Control Room Design Deficiencies

Intervenors' Motion also seeks to have the Board admit a proposed contention concerning alleged deficiencies in Applicants' control room design review. While acknowledging that their submittal is untimely, Intervenors assert that "new information" in a March, 1984 Draft Preliminary Safety Evaluation Report on Catawba control room design warrants admission of their proposed contention. As will be demonstrated below, such is not the case.

Intervenors interpret this draft SER on control room design as expressing "questions regarding the scheduling of implementation and the verification of corrective actions until the end of the first refueling outage after fuel load licensing." (Motion, p. 5). However,

Intervenors' reliance upon the Staff's comments in this document as grounds for the admission of a revised contention is misplaced. On April 9, 1984, Applicants submitted a letter to the NRC responding to each of the "open items' identified in this draft SER. Copies of this letter were sent to the Intervenors.[13]/ It is Applicants' understanding that the NRC has subsequently reviewed this transmittal and has closed out all of the open items. Applicants also understand that the resolution of these open items will be reflected in the next SER.

Moreover, Intervenors attempt to convey the impression that they had no reason to submit a revised contention on the issue of control room design until they became aware of the draft SER. Such an impression would be erroneous. The record reflects that the Intervenors have had a more than ample opportunity to file contentions on this matter at a much earlier stage of this proceeding. After Intervenors' original control room design contention was dismissed by this Board in its December 1, 1982 Order (pp. 3, 6-7) Applicants, pursuant to the Board's direction, submitted copies of Applicants' Control Room Review Plan to the Intervenors on February 28, 1983. Intervenors filed no new contention upon receiving this information. Subsequently, on April 18, 1983, Applicants

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[13]/ Applicants will provide a copy of this document to the parties on Monday, April 30, 1984.

filed a motion with this Board asking that it direct Intervenors to file any contentions that they wished to propose on control room design review. In that motion, Applicants noted that the already-filed plan would be supplemented by a submittal filed around June 8, 1983. Intervenors never filed a response to this motion, nor did they file any proposed contentions. On June 1, 1983, by letter from Hal B. Tucker of Duke Power Company to Harold R. Denton, a copy of the control room design review documents was transmitted to the NRC. Copies of this submittal were sent to the Intervenors. No proposed contentions were filed by Palmetto Alliance or CESG. On June 8, 1983, counsel for Applicants wrote to the Board informing them that the foregoing documents had been provided.

Eight months later, on the last day of hearings in this proceeding, counsel for Palmetto Alliance erroneously stated that Applicants had never complied with the Board's direction to provide Intervenors with the results of the control room design review, asserted that Intervenors intended to pursue the issue of control room design review, and suggested that the Board should hold open the record pending resolution of that issue. (Tr. 12404-05, 1/31/84). In order to correct this misapprehension and set the record straight, Applicants reiterated the history

of the correspondence and document transmittals relating to control room design in a February 2, 1984 letter to the Board. Intervenors were sent a copy of this letter. As reflected in a February 17th conference call, the Board set February 10, 1984 as a deadline for Intervenors to respond to the Applicants' February 2nd confirmation. (Tr. 12,561-62, 2/17/84). The Intervenors admitted never having responded. (Tr. 12,562, 2/17/84).14/

This recital of facts makes clear that Palmetto Alliance and CESG have been on notice for many months of the detailed control room design for Catawba, and could have filed a proposed contention on this subject at any time. They did not do so. Instead, they have characteristically waited until the eleventh hour of this licensing proceeding, four months after the close of the record, to proffer a "revised" contention on this issue. Having defaulted on their opportunity to file, Intervenors now attempt to justify their tardiness by tying the proposed contention to the draft SER. This transparent effort by

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14/ Judge Kelley responded as follows during the February 17th conference call:

> And we gave you [Intervenors] a specific response date, and you forgot it. Well, you know, that happens; I understand that. But I read Mr. McGarry's filing, and it looked pretty satisfactory to me. And to keep it [the issue of control room design] alive now -- you had a bit[e] at the apple -- seems to me unwarranted. [Tr. 12,564, Kelley 2/17/84].

the Intervenors to ignore their "ironclad obligation" to examine promptly publicly available information such as Applicants' control room design reivew documents, promptly and to file any contentions based on such information promptly should not be countenanced by this Board. See Catawba, ALAB-687, supra, 16 NRC 460.

Failure to Satisfy Standards For Reopening the Record and For Admission of Late-Filed Contentions

In view of the fact that the Intervenors have provided no valid reason for their failing to file a control room design contention during the many months that information has been available on this subject, Applicants contend that Intervenors cannot possibly be said to have established good cause for their untimely submittal. Intervenors' sudden asserted dependence upon the "licensing analysis by the NRC Staff available to Intervenors for less than one month" (Motion, p. 5) is not persuasive, given the availability of numerous documents dealing with the Catawba control room design since at least last June. This factor should therefore weigh heavily against admission of this proposed contention. Factors (ii) and (iv) under §2.714(a)(1) do not appear to weigh against admitting this proposed contention.

Factor (iii), the extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record, also argues against admission of this proposed contention. As noted in the discussion in section II.A, above, this factor is given significant weight in balancing the § 2.714(a)(1) criteria, and parties sponsoring late-filed contentions are expected to address it with as much particularity as possible. WPPSS No. 3, supra, slip op. at p. 3. Intervenors have made no effort to meet this requirement, asserting only that they "stand ready" to assist the Board in "developing a sound record for decision on this important safety issue," and that they are "prepared to commit their time and resources to the identification of expert technical assistance to support their litigation" (Motion, p. 6). Such generalized assertions, without any supporting basis, fall far short of the definite and detailed showing that the Appeal Board in WPPSS No. 3 required. See also Waterford, ALAB-753, supra, slip op. at pp. 2-3, which holds that a petitioner's expressed willingness to "provide unspecified, additional information in support of [a motion to reopen] at some unknown date in the future" is insufficient to satisfy the reopening standard.

Finally, Applicants believe that admission of this proposed contention would delay the licensing proceeding significantly. Litigation of this issue could well consume more than the few remaining months before Applicants will be ready to operate the Catawba plant.

Moreover, under the three-pronged test for reopening the record, described in Shoreham, supra, 17 NRC at 1141, the Intervenors fail to justify admitting at this late date a control room design contention. As discussed supra, in connection with the §2.714(a) factors, the Intervenors have had more than enough information for many months to raise this contention. Thus the first prong of the test for reopening, requiring a timely motion, has not been satisfied by Intervenors.

The Intervenors similarly fail the second prong of the test by failing to show that the nature of the Catawba control room design raises a significant safety or enviromental issue. As noted above, Applicants have resolved the open items set forth in the draft SER, and this fact should be reflected in the next SER.

Failing the second prong by failing to raise a significant safety or environmental issue, the Intervenors necessarily also fail the third prong of the test, being unable to show that control room design evidence might materially affect the outcome of this proceeding. Thus,

failing all these prongs of the test for reopening the record, this Board must reject the proposed contention on control room design.

C. Proposed Contention on Financial Qualifications

On p. 7 of the instant Motion, Intervenors urge that the Board "admit and litigate [the] issue of financial qualification," asserting 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." As the basis for this request, Intervenors cite the February 7, 1984 remand by the U.S. Court of Appeals of the Commission's rule eliminating financial qualification requirements for electric utilities applying for NRC construction permits or operating licenses.15/ Contrary to Intervenors' assertions, it is clear that the readmission of this contention would not constitute the "proper course for this Board."

15/ On March 31, 1982, the Commission published a notice of rulemaking (47 Fed. Reg. 13750) (1982) amending 10 C.F.R. Part 2 and Part 50 to eliminate requirements for a showing of financial qualifications for electric utilities applying for construction permits or operating licenses for production or utilization facilities. On petition for review of the rule, the U.S. Court of Appeals for the D.C. Circuit remanded the rule to the Commission for clarification of its accompanying statement of basis and purpose. New England Coalition on Nuclear Pollution v. NRC, No. 82-1581 (D.C. Cir., Feb. 7, 1984).

In response to the U.S. Court of Appeals' remand of its 1982 financial qualifications rule, the NRC issued a Statement of Policy on February 27, 1984 in which it announced that it would conduct an expedited rulemaking on financial qualification to address the problems the court perceived in the rule. The Commission indicated therein that it "expects to complete an adequate response to the D.C. Circuit's decision before the court issues its mandate." This Statement of Policy further noted that until the mandate of the court of appeals was issued, the Commission's 1982 financial qualification rule would remain in effect; and directed its Licensing Boards and Appeal Boards "to continue to treat the rule as valid." (44 Fed. Reg. 7981) (1984). Pursuant to this direction, licensing boards in other proceedings have denied late-filed proposed contentions dealing with financial qualifications. Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), LBP __, 27 NRC ___ (Order Confirming Miscellaneous Oral Record Rulings, March 15, 1984, at p. 2).16/

16/ In rejecting the untimely financial qualifications contention, the Board in Limerick noted that, if Commission policy on this question should change, intervenors could then file a proposed late contention within twenty days. (Id., slip op. at p. 3).

Consistent with its announced intention to remedy the perceived defects in its 1982 rule expeditiously, on April 2, 1984, the Commission published a proposed rule dealing with financial qualifications for NRC license applicants. (49 Fed. Reg. 13044)(1984). This proposed rule would eliminate the financial qualifications review and findings for electric utilities that are applying for operating licenses for utilization facilities if the utility is a regulated public utility or is authorized to set its own rates.17/ The Commission explained therein that at the operating license review stage, where the focus is on safe operation rather than construction, "the regulated status of electric utilities continues to provide a reliable basis for finding financial qualification" (49 Fed. Reg. 13045). Accordingly, the Commission believes that "case-by-case review of financial qualifications for all electric utilities at the operating license stage is unnecessary" (Id.), since the rate regulation process

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17/ The proposed rule would retain Commission review of financial qualifications under 10 C.F.R. § 50.33(f) at the construction permit stage, and at the operating license stage for applicants for any production or utilization facility licenses which are not regulated electric utilities or which lack the authority to set their own rates for service. See 49 Fed. Reg. 13045 (1984).

generally assures that regulated utilities will be "able to meet the costs of safe operation of a nuclear power facility." (Id.).18/

The mandate of the court of appeals in the financial qualifications remand decision was issued on April 16, 1984. Thus the 1982 NRC regulation on financial qualifications is no longer in effect. However, it does not necessarily follow that financial qualifications contentions should now be admitted for litigation in NRC licensing proceedings. On the contrary, the above references to the new proposed rule clearly express the Commission's belief that "as a generic matter electric utilities should be presumed financially qualified to operate the nuclear plants they have constructed," and,

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18/ The Commission further noted that past experience supports its position that OL applicants should not be required to demonstrate their financial qualifications in individual licensing proceedings:

> Under the financial qualifications reviews at the operating license stage conducted under the original rule, the Commission has found in every case that the state and local public utility commissions could be counted on to provide all reasonable operating costs to licensees, including costs of compliance with NRC requirements associated with safe plant operation. As a result, electric utilities applying for operating licenses have invariably been found financially qualified. This case experience bolsters the Commission's conclusion that as a generic matter electric utilities should be presumed financially qualified to operate the nuclear plants they have constructed and that further case-by-case review on this issue is neither necessary nor productive. (49 Fed. Reg. 13045) (emphasis added).

even more explicitly, that "further case-by-case review on this issue is neither necessary nor productive." (49 Fed. Reg. 13045)(1984)(emphasis added).

Moreover, Applicants understand that an updated NRC Statement of Policy regarding the treatment of financial qualifications issue in individual licensing proceedings is now being considered by the Commission. The public issuances of such a Statement of Policy would in all likelihood clarify the manner in which this matter is to be treated in ongoing operating license proceedings pending the issuance of a final rule. In the interim before a new Statement of Policy (or other pronouncement) is released, Applicants submit that the approach taken by the Commission in the new proposed rule reveals an apparent intent that financial qualifications contention not be litigated in operating license proceedings.19/

Moreover, the publication by the Commission of a new proposed rule dealing with financial qualification requirements provides additional grounds for rejecting this proposed contention. See Douglas Point, supra, 8 AEC at 85, wherein the Appeal Board stated: "In short, the Vermont Yankee line of cases stands for the proposition

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19/ Applicants wish to reserve the right to supplement or amend their response to this proposed contention to take into consideration any future Commission pronouncements on the issue of financial qualifications.

that licensing boards should not accept in individual license proceedings contentions which are (or are about to become) the subject of general rulemaking by the Commission."

Failure to Meet Standards for Reopening the Record or for Admission of Late-Filed Contentions

In addition to the reasons set forth above, Applicants further object to the admission of a proposed contention on financial qualifications on the grounds that such proposed contention does not meet the standards for admission of late-filed contentions.

As to the "good cause" factor (§ 2.714(a)(1)(17)), Applicants note that the decision of the U.S. Court of Appeals for the D.C. Circuit remanding the Commission's financial qualification rule was handed down on February 7, 1984 -- more than two months before Intervenors filed the instant Motion. Intervenors have given no indication as to why they delayed so long in filing a motion to admit a financial qualifications contention. Accordingly, they cannot be said to have demonstrated "good cause" for their tardy submittal. Moreover, this lack of good cause should weigh particularly heavily against the Intervenors given the advanced stage of this licensing proceeding. See WPPSS No. 3, supra, ALAB-747, slip op. at p. 8. As distinguished from the situation in ALAB-747, the record

in the Catawba proceeding has been closed since December, 1983, and Applicants are currently scheduled to load fuel in late May, 1984. Admission of a financial qualifications contention at this late date -- particularly when no concrete basis for such a contention has been provided by the Intervenors -- would unfairly prejudice Applicants.

Factors (ii) and (iv) -- weigh against admission of a financial qualifications contention. The ongoing NRC rulemaking on this issue should adequately protect Intervenors' interest. As previously noted, these two factors have been described as generally carrying less weight than the other three factors. See, e.g., Fermi, supra, ALAB-707, 16 NRC at 1767.

Factor (iii) -- the extent to which Intervenors' participation may be expected to assist in developing a sound record on the issue of financial qualifications -- is given significant weight in balancing the five criteria in §2.714. See WPPSS No. 3, supra, slip op. at p. 18. For this reason, late petitioners are expected to address this criterion with as much particularity as possible, identifying precise issues and witnesses and summarizing their testimony. Id. Intervenors have failed to do so. Rather, the instant Motion merely asserts that Intervenors "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" (Motion, p. 7).20/ No indication is given of the particular issues which would be raised, the type of evidence which would be adduced, the type of witnesses which would be called, or the nature of their testimony. Furthermore, as noted above, a review of the record in this proceeding provides telling evidence that Intervenors could not reasonably be expected to contribute to the development of a sound record on the issue of Applicants' financial qualifications.

Factor (v) -- the extent to which Intervenors' participation on the financial qualification issue would broaden the issues or delay the proceeding -- also argues against admission of this late-filed proposed contention. A review of Duke's McGuire proceeding indicates that over a year was needed to resolve a similar issue. Such time would compromise Applicants' impending need for an operating license.

Moreover, evaluation of the Intervenors' proposed financial qualifications contention under the three-pronged test for reopening the record demonstrates the Board should reject this contention. See Shoreham, surpa,

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20/ As noted above, such general and unsupported assertions are also insufficient to support a motion to reopen the record. Waterford, supra.

17 NRC at 1141. As described supra in connection with factor (1) of §2.714(a)(1), the Intervenors' contention cannot be considered timely. This being the case, the Intervenors fail to meet this aspect of the three-pronged reopening test.

The Intervenors likewise fail to meet the second prong of the test, in that they have not established that Applicants' financial qualifications constitute a significant safety or environmental issue. As discussed supra, the NRC has announced that it will conduct an expedited rulemaking on financial qualifications. There is nothing in the nature of the financial qualifications issue that requires the Licensing Board to intercede at this time and attempt to resolve this issue on a site-specific basis. The sort of significant and new safety or enviromental issue which provides a good reason for reopning the record (such as the unexpected seismic activity which prompted the Diablo Canyon Licensing Board to reopen the record) is not raised by the proposed financial qualifications contention. Thus the Intervenors have failed the second prong of the test for reopening the record.

Lacking a significant safety or environmental issue, the proposed financial qualifications contention does not raise matters which many materially affect the outcome of

this proceeding. Thus the Intervenors also fail the third prong of the reopening test as well. Having failed to meet all three standards of the test for reopening the record, the Intervenors' proposed contention on financial qualifications must be rejected. This factor assumes particular significance during the later stages of a licensing proceeding. Greenwood, supra, 7 NRC at 762.

III. Conclusion

Based on the foregoing, Applicants urge that Intervenors' Motion to reopen the record in this proceeding and admit their three proposed contentions should be denied.

Respectfully submitted,

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