

-RELATED CORRESPONDENCE

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD '34 JUN -4 P2:20

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

OFFICE OF THE
SECRETARY
NRC

MOTION TO QUASH SUBPOENA
BY
T. LAFONTINE ODOM,
CHAIRMAN, MECKLENBURG COUNTY BOARD OF COMMISSIONERS

Pursuant to 10 CFR 2.720(f), T. LaFontine Odom, Chairman of the Mecklenburg County Board of Commissioners, by and through counsel, hereby moves to quash the subpoena issued by the Atomic Safety and Licensing Board of the Nuclear Regulatory Commission requiring his attendance at a hearing in Rock Hill, South Carolina, on June 6, 7, or 8, 1984 for the following reasons:

(1) In his official capacity as Chairman of the Mecklenburg County Board of Commissioners, on June 6, 7, and 8 he is scheduled to be in Tulsa, Oklahoma on the Charlotte Chamber of Commerce "Charlotte Inter-City Visit To Tulsa," an event scheduled four months ago for June 6, 7, and 8, 1984. Chairman Odom must be at the Charlotte Douglas Municipal Airport by 11:30 a.m. on June 6, 1984 and will not return to Charlotte until approximately 3:30 p.m. on June 8, 1984. The purpose of the trip is to review public/private projects and governmental projects which have been undertaken in Tulsa, Oklahoma for the purpose of determining their relevance and applicability to Charlotte and Mecklenburg County. Issues being covered this year include health care cost containment, public schools, and public parks, all matters with which the Mecklenburg County Board of Commissioners must deal. Mr. Odom has been invited to go on this trip in his official capacity as Chairman of the Mecklenburg County Board of Commissioners, and he is scheduled to take part in the program at various times during these three

days in his official capacity. Mr. William Veeder, Executive Director of the Charlotte Chamber of Commerce, informed the undersigned on May 31, 1984 that before he scheduled the dates for this year's trip, he checked with Chairman Odom to make sure that Chairman Odom's schedule would allow him to attend on the proposed dates. To require Chairman Odom to miss any portion of the Tulsa trip would interfere with the proper functioning of Mecklenburg County Government.

(2) The information which the application for issuance of subpoenas by Palmetto Alliance and Carolina Environmental Study Group indicates Chairman Odom's testimony is sought with respect to is available from other witnesses, especially from Mr. Wayne Broome, whom the undersigned understands has been testifying frequently in the hearing as a witness called by Duke Power Company. The undersigned submits that the rationale articulated by Judge Margulies in the May 25, 1984 hearing, recorded on pages 2744 and 2746 of the transcript, with respect to the Panel's reasons not to subpoena the Governors of the State of North Carolina and the State of South Carolina apply equally as well to this subpoena. As stated by Judge Margulies with respect to the Governors of North and South Carolina:

"Such high-ranking officers should not be called upon personally to give testimony unless there is a clear showing that such testimony is essential to prevent prejudice or injustice to a party who would require that testimony.

"Such high-ranking officials should not be required to respond unless the testimony was unavailable from lesser-ranking officers within their States.

"We are not satisfied it is essential to present prejudice or injustice or that lesser-ranking officials are not available from the States of North and South Carolina and cannot give such testimony.

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"The fact that they have the ultimate responsibility does not mean that they have the sole knowledge as to what the requirements are and how the office operates and functions."

The undersigned submits that the reasons articulated by Judge Margulies for not issuing subpoenas for the Governors of the States of North and South Carolina are equally applicable in this instance. There will be no prejudice to Palmetto Alliance or Carolina Environmental Study Group if the subpoena were quashed because other lesser-ranking officials in Mecklenburg County Government, Mr. Wayne Broome and Mr. Luther Fincher (who has also been subpoenaed) of the Charlotte-Mecklenburg Emergency Management Office, will be available to testify as to the same information sought from Chairman Odom. In fact, because of their positions in County Government, Mr. Broome and Mr. Fincher may be in even better positions than Chairman Odom to respond to questions asked by the Intervenor about the contentions identified in the Application seeking the subpoenas.

In light of the statement made by Judge Margulies during the May 25, 1984 hearing, found at page 2767 of the transcript, that "[s]hould any witnesses be unavailable, it is a problem that Intervenor will have to accept," and for the reasons shown above, T. LaFontaine Odom, Chairman of the Mecklenburg County Board of Commissioners, acting by and through counsel, respectfully requests that the subpoena issued by the Atomic Safety and Licensing Board of the Nuclear Regulatory Commission requiring his attendance on the days of June 6, 7, or 8, 1984 be quashed in that his attendance on any of these days is unreasonable under the circumstances and is not necessary to prevent prejudice or injustice to the Intervenor.

Respectfully submitted this the 31st day of May, 1984.



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CERTIFICATE OF SERVICE

I hereby certify that copies of Motion to Quash by T. LaFontine Odom, Chairman, Mecklenburg County Board of Commissioners, in the above captioned matter have been served upon the following by deposit in the United States mail this 31st day of May, 1984.

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