

4/6/81  
UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 )  
DUKE POWER COMPANY )  
 )  
(William B. McGuire Nuclear )  
Station, Units 1 and 2) )

Docket Nos. 50-369  
50-370

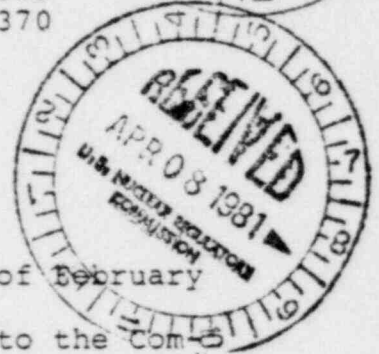
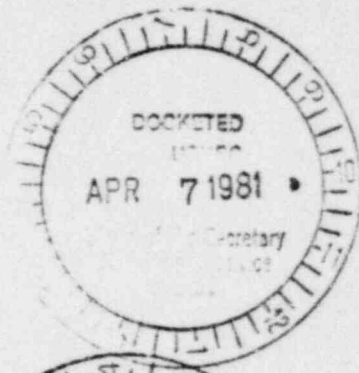
APPLICANT'S RESPONSE TO CESG'S  
REQUEST FOR CERTIFICATION OR REFERRAL

By its "...Objection to Memorandum and Order of February 17, 1981 and Motion for Certification or Referral to the Commission," dated March 2, 1981, Carolina Environmental Study Group ("CESG"), Intervenor herein, has requested this Board to endorse an interlocutory appeal to the Commission from the subject Memorandum and Order, which denied CESG's attempt to have litigated certain additional contentions. The Board, during the recently concluded evidentiary hearings, orally extended the time within which Applicant and Staff could respond, to ten days after the record was closed. The record was closed during the March 25, 1981 conference call between the Board and parties. Applicant Duke Power Company hereby responds in opposition to CESG's motion.

There is, of course, no interlocutory appeal as of right from an order declining to admit one or more contentions, short of a total denial of a petition to intervene. 10 CFR §2.714a 1/

1/ The rule is explained and the authorities reviewed in Gulf States Utilities Company (River Bend Station, Units 1 and 2) ALAB-329, 3 NRC 607, 610 (1976). For more recent

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Applicant is cognizant however that 10 CFR §2.730(f) does provide for such appeal when "necessary to prevent detriment to the public interest." Applicant submits that the Commission's Statement of Interim Policy regarding Class 9 Accidents 2/ was promulgated pursuant to the National Environmental Policy Act and the Atomic Energy Act and thus it cannot be said that the public interest has not been adequately considered. In the Interim Policy Statement the Commission has exempted applications, such as McGuire, from its requirements. Inasmuch as the Commission has specifically addressed this matter, certification or referral is unnecessary.

It should be noted that Intervenor has had an opportunity to raise the issue, for the Commission has provided a forum upon the showing of special circumstance. The pleadings in the instant case and the Board's decision clearly demonstrate that Intervenor has made no such showing. This failure must weigh heavily against its request for certification or referral.

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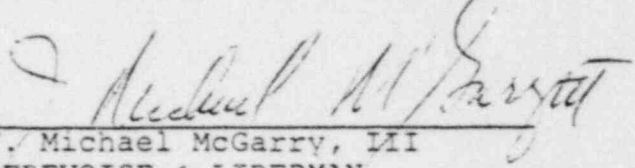
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decisions to the same effect, see the two related decisions in Houston Lighting and Power Company (Allen's Creek Nuclear Generating Station, Unit 1) ALAB-585 and ALAB-586, 11 NRC 469 (1980) and 11 NRC 472 (1980), respectively.

2/ See Commission Statement of Interim Policy entitled "Nuclear Power Plant Accident Considerations Under the National Environmental Policy Act of 1969," 45 Fed. Reg. 40101, June 13, 1980.

For the above stated reasons, Applicant requests Intervenor's motion be denied.

Respectfully submitted,

  
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Of Counsel

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DUKE POWER COMPANY

April 6, 1981

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

CERTIFICATE OF SERVICE

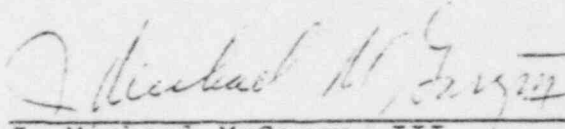
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