

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



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

Docket No. 50-413
50-414

APPLICANTS' 1/ RESPONSE TO CHARLOTTE-MECKLENBURG
ENVIRONMENTAL COALITION PETITION
TO INTERVENE AND REQUEST FOR HEARING

On June 25, 1981, a "Notice of Receipt of Application for Facility Operating Licenses..." concerning the captioned proceeding was published in the Federal Register. (46 Fed. Reg. 32974). In response to such Notice, Charlotte-Mecklenburg Environmental Coalition ("Coalition") filed a "Petition to Intervene and Request for Hearing." 2/ Pursuant to 10 CFR

- 1/ "Applicants" refers to Duke Power Company, North Carolina Municipal Power Agency Number 1, North Carolina Electric Membership Corporation and Saluda River Electric Cooperative, Inc.
- 2/ Applicants have never been officially served with a copy of the Coalition Petition despite the clear language set forth in the Federal Register Notice. Rather, Applicants obtained a copy from the NRC on August 6, 1981. Applicants will press neither a procedural argument regarding service, nor an untimely petition argument. Rather, Applicants request this Board, in its seminal order regarding petitions to intervene, to alert the parties to the Commission's Rules of Practice and to inform such parties, from the outset, that such Rules will be strictly adhered to. Applicants refer to their past experience with several of the groups as the basis for such request. Carolina Environmental Study Group is a well-seasoned intervenor which has actively opposed Duke Power Company's nuclear program before the

(Footnote continued on next page.)

D503
5
1/1

§2.714(c) Applicants make the following response to the Petition.

On May 26, 1978, the Nuclear Regulatory Commission amended its Rules of Practice to facilitate public participation in its license application review and hearing process. 43 Fed. Reg. 17798 (April 26, 1978). With particular reference to the standard by which petitions to intervene would be judged, the Commission stated:

The Petition shall set forth with particularity the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene, with particular reference to the factors in paragraph (d) of this section, and the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene. 10 CFR §2.714(a)(2).

In determining whether the Coalition has satisfied the intervention standard Applicants have been guided by NRC case law,

(Footnote continued from previous page.)

Licensing Boards, Appeal Boards, Commission, state agencies and commissions, as well as the federal courts, to and including, the Supreme Court. It should be expected to be totally familiar with the Commission's Rules. Safe Energy Alliance and Carolina Action previously participated in the NRC proceeding involving Duke's application to transport spent fuel from its Oconee Nuclear Station for storage at its McGuire Nuclear Station. See Docket No. 70-2623. By orders of that Licensing Board dated April 12 and May 23, 1979, those two groups were dismissed from the proceeding for, either failure to provide verification of its status and the authorization of a designated representative (Safe Energy Alliance) (see note 3 infra) or failure to comply with discovery (Carolina Action).

principally Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54 (1979). Given the fact that the Coalition alleges that almost all of the approximately 1,350 persons it represents "live within 35 miles of the Catawba Nuclear Station" and that "some live or own property within a few miles of the proposed facility," Applicants acknowledge that pursuant to North Anna, supra, the Coalition has satisfied the intervention standard as contemplated in 10 CFR §2.714. 3/ Applicants hasten to add that their

3/ Applicants note that while the Petition satisfies the intervention standard as contemplated in 10 CFR §2.714, several of the member organizations have failed to provide the proper authorization regarding CMEC's ability to represent their group. Specific reference is made to the Affidavit of Lilith Quinlan Otey, a member of the Carolina Environmental Study Group, the Affidavit of Lori Glosemeyer, an apparent member of the Safe Energy Alliance, and the Affidavit of Sarah Wilson, a member of the Davidson Energy Group. None of these affidavits indicate that the respective organizations have authorized the Coalition to represent their interests in this proceeding. Inasmuch as none of the affidavits appears to be signed by a ranking official of those respective organizations, absent an affidavit reflecting the sanctioning of the group's participation in the Coalition's intervention, the Coalition must be viewed as representing only the local chapter of the League of Women Voters of North Carolina, the Joseph LeConte Chapter of the Sierra Club and Carolina Action. See Duke Power Company (Amendment to Materials License SNM-1773-Transportation of Spent Fuel from Oconee Nuclear Station for Storage at McGuire Nuclear Station), ALAB-528, 9 NRC 146, 161-52 (1979); Houston Lighting and Power Company, et al. (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 444 (1979) and the cases cited therein.

(Footnote continued on next page.)

position with regard to intervenor status should in no way be viewed as a concession with respect to the subject matter of such intervention. Rather, Applicants will await the filing of contentions 4/ and will respond in the appropriate fashion.

As a final matter, Applicants note that the Coalition has filed its Petition not only on its own behalf and on the behalf of its members, but also on behalf of "other persons who are similarly situated." (Petition, p. 1, paragraph 1). NRC precedent is clear that the Coalition cannot undertake the latter representation. See Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), LBP-77-11, 5 NRC 481, 483-84

(Footnote continued from previous page.)

Applicants would also note that two apparent members of the Coalition have also filed independent petitions to intervene. Reference is made to Carolina Environmental Study Group and Safe Energy Alliance. Applicants question this dual approach. Indeed, with respect to Safe Energy Alliance, Applicants in their response to the Alliance's letter petition to intervene have noted their opposition to its participation in any fashion. Applicants maintain that these two groups should be called upon to explain this dual participation role and that absent a satisfactory explanation they should not be permitted to participate both individually and as a member of the Coalition.

4/ Under the amended rules, petitions for intervention need not set forth contentions. Rather, the petitioner has until 15 days before the holding of the special or first prehearing conference in which to file his contentions in the form of a supplement to the petition. 10 CFR §2.714(b); Nuclear Engineering Company, Inc. (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 743 n.5 (1978).

(1977) wherein it is stated:

It is a basic legal principle that one party may not represent another without express authority to do so. Petitioners OHILI and North Shore have not presented any evidence that they are authorized to represent persons other than their own members and in the absence of such proof their respective claims that they represent persons other than their members must be rejected. See Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-183, 7 AEC 222, 223 fn.4 (March 12, 1974); Allied-General Nuclear Service (Barnwell Fuel Receiving and Storage Station), LBP-75-60, 2 NRC 687, 690 (October 1, 1975). OHILI's claim that it acts as private attorney general must also be denied. There simply is no provision in the Commission's regulations for parties to act as private attorneys general. See Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), ALAB-333, NRCI-76/6, 804, 806 fn.6 (June 22, 1976); cf Allied-General Nuclear Service, supra at 690

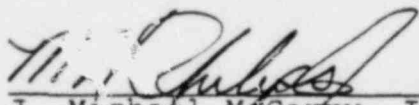
See also Allied-General Nuclear Service, et al. (Barnwell Fuel Receiving & Storage Station), LBP-75-60, 2 NRC 687, 690 (1975) wherein it is stated:

Moreover, as was held by the Atomic Safety and Licensing Board in Mississippi Power and Light Company (Grand Gulf Nuclear Station Units 1 and 2), Docket Nos. 50-416, 50-417 (Prehearing Conference Order of May 15, 1973, pp. 2-3), summarized in ALAB-130, 6 AEC 423, note 1 (June 19, 1973), class actions are not permitted under the Commission's Rules of Practice, and in any event the petitioning organization has not shown that its claims and interests are typical of the alleged class.

Manifestly, there has not been, nor can there be, any demonstration here that this Petitioner is authorized to represent the general public. See Sierra Club v. Morton, 405 U.S. 727 (1972); Nuclear Engineering Co., Inc. (Sheffield Low-Level

Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737 (1978)
Allied-General Nuclear Services (Barnwell Fuel Receiving and
Storage Station), ALAB-328, 3 NRC 420 (1976). Indeed, Congress
has vested the function of representing the general public in
the NRC Staff and the Commission itself through the Atomic
Energy Act. Accordingly, the Coalition's representation in
this proceeding should be limited to the specific organization
and appropriate members.

Respectfully submitted,


71 J. Michael McGarry, III

DEBEVOISE & LIBERMAN
1200 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 857-9833

William L. Porter
Albert V. Carr, Jr.
DUKE POWER COMPANY
P.O. Box 33189

Attorneys for Duke Power
Company

August 14, 1981