

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

DUKE POWER COMPANY, et al.,

(Catawba Nuclear Station,  
Units 1 and 2)



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*es*

Docket Nos. 50-413 OF SECRETARY  
50-414 PETITING & SERVICE  
BRANCH

CESG'S RESPONSE TO BOARD'S ORDER  
CONCERNING DATE FOR PREHEARING CONFERENCE

The Atomic Safety and Licensing Board (Board) on October 19, 1981, issued an Order asking each of the petitioners and the NRC staff to comment on a schedule proposed by Applicant, letter to Board, October 14, 1981, calling for a prehearing conference during the week of December 14. The Board set October 28 as the date for comments. CESG is submitting its response November 9, believing that it has good cause for untimely filing<sup>1</sup>.

Before addressing the matter of schedule CESG would like to note that the meeting between some petitioners and Applicant on October 6, 1981, referred to in Applicant's letter of October 14, was not, at the time it was proposed by Applicant, represented as concerned with stipulation. A phone call from Mr. Porter to Mr. Riley in the week of September 25 suggested a talk about the forthcoming Catawba proceeding. There was no mention of develop-

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<sup>1/</sup> Meetings between Applicant and other petitioners in the matter of stipulating contentions, a procedure this Board favors, have taken place as recently as October 29 and 30. A letter dated November 6, 1981, from Applicant to Mr. Presler of CMEC and of November 2, 1981, from Applicant to Mr. Guild, counsel for the Palmetto Alliance, show the stipulation process to be ongoing between Duke and CMEC. It is our view that these post October 28 developments, of which CESG had intimations, had not sufficiently ripened until November 6 to make an appropriate response possible.

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ing a stipulation of contentions. At the commencement of the October 6 meeting Messrs. Carr and McGarry, for Applicant, indicated that it was their concern to determine precisely what it was that each of the petitioners, CMEC, SEA, and CESG regarded as the issues. These matters were articulated by the several representatives with queries and exchanges with Messrs. Carr and McGarry. It was only after this identification and clarification of the issues that Mr. McGarry suggested entering into a stipulation of contentions. CESG then indicated that it was not interested. If, at the time of proposing the meeting, Applicant had indicated its interest in a stipulation of contentions it is unlikely that CESG would have participated<sup>2</sup>.

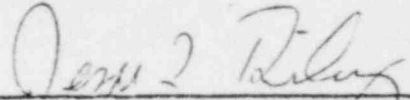
As to schedule, we see merit in the Staff's suggestion that three weeks be allowed between the time of filing contentions and the parties' responses, and holding the prehearing conference approximately a week after responses have been received. To enable Mr. Guild to meet the legal obligations he refers to in his response and to work no unnecessary hardship on those preparing responses during the holiday season, there clearly being no urgency as to the timing of the conference, the need for the

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<sup>2/</sup> CESG is cognizant that the Board "commended efforts to date to work out a stipulated set of contentions" and asks "all the petitioners and Staff to join with the Applicant in these efforts." It is CESG's view that the tryers of fact have an obligation which is best served by an active role in the determination of issues including introducing, sua sponte, matters of importance which have been neglected by the petitioners. It is our belief that an appropriate definition of issues is more likely to result from a procedure in which the contentions of the petitioners are aired before the Board, and accepted, rejected, amended or added to by the Board rather than arrived at by dealings between the petitioners and the parties.

Catawba plant being a CRSG issue, we suggest December 7 as the date for filing contentions, January 4, 1982, as the date for filing responses to the contentions, and the week of January 18, mail delivery time being what it is, as the time for the prehearing conference.

Respectfully submitted,



Jesse L. Riley, President  
Carolina Environmental  
Study Group  
854 Henley Place  
Charlotte, NC 28207  
704-375-4342

November 9, 1981

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DOCKETED  
USNRC

'81 NOV 12 P5:56

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

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BRANCH  
50-414

AFFIRMATION OF SERVICE

I hereby affirm that copies of "CESG'S RESPONSE TO BOARD'S ORDER CONCERNING DATE FOR PREHEARING CONFERENCE" in the above captioned matter have been served on the following in the U.S. mail, first class, this 9th day of November, 1981:

James L. Kelley, Chairman  
Atomic Safety & Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Michael McGarry, III, Esq.  
Debevoise and Liberman  
1200 17th Street, N.W.  
Washington, D.C. 20036

Dr. Dixon Callihan  
Union Carbide Corporation  
P.O. Box Y  
Oak Ridge, Tennessee

William L. Porter, Esq.  
Albert V. Carr, Esq.  
Duke Power Company  
P.O. Box 33189  
Charlotte, NC 28242

Dr. Richard F. Foster  
P.O. Box 4263  
Sunriver, Oregon 97701

Edward G. Ketchen, Esq.  
Counsel for NRC Staff  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Atomic Safety & Licensing Appeal Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Robert Guild, Esq.  
Attorney-at-Law  
314 Pall Mall  
Columbia, SC 29201

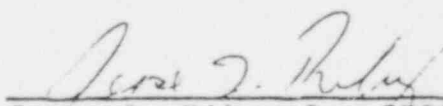
Atomic Safety & Licensing Board  
Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Palmetto Alliance  
2135 1/2 Devine Street  
Columbia, SC 29205

Docketing and Service Section  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Henry Presler, Chairman  
Charlotte Meck. Env't'l. Coalition  
942 Henley Place  
Charlotte, NC 28207

Richard P. Wilson, Esq.  
Assistant Attorney General  
2600 Bull Street  
Columbia, SC 29201

  
Jesse L. Riley for CESG