

ROBERT GUILD

ATTORNEY AT LAW

314 PALL MALL

COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE 803-252-0929

September 22, 1982

DOCKETED
USNRC

'82 SEP 24 P1:30

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

James L. Kelley,
Chairman, Atomic Safety
and Licensing Board Panel
United States Nuclear Regulatory
Commission
Washington, D.C. 20555

Dr. Richard F. Foster
Post Office Box 4263
Sunriver, Oregon 97701

Dr. Dixon Callihan
Union Carbide Corporation
Post Office Box T
Oak Ridge, Tennessee 37830

In the Matter of
Duke Power Company, et al.
(Catawba Nuclear Station, Units 1 and 2)
Docket Nos. 50-413 and 50-414

Dear Sirs:

The following comments are intended to be responsive to the Board questions contained in your Order of September 1, 1982, regarding the impact of the Appeal Board decision in this case, ALAB - 687. I have been authorized by Mr. Jesse L. Riley, President, Carolina Environmental Study Group to communicate these views on behalf of his organizations as well as for my client, Palmetto Alliance. I would welcome the opportunity to expand on these brief and somewhat tentative observations at the Second Prehearing Conference on October 7, 1982, at the Board's pleasure.

- 1.) What specific actions should this Board take as a result of ALAB - 687?

We believe that the Appeal Board substantially endorsed this Board's efforts to resolve the contradiction facing an intervenor who seeks to raise issues not susceptible to precise pleading at the outset of a license proceeding consistent with the Commission's pleading rules and hearing rights protected by governing statutes. The application of the novel law announced in ALAB - 687, "to the contentions in issue is left to (this) Licensing Board," Id. slip opinion, p.7.

8209270156 820922
PDR ADOCK 05000413
G PDR

DS03

In reconsidering your decisions in LBP-82-16 and LBP-82-50 we believe you should (a) vacate the provisions of those orders admitting contentions on the condition that greater specificity be supplied from documents not yet available, or from discovery; (b) reexamine each proposed contention previously admitted conditionally; (c) admit those contentions previously admitted subject to revision after discovery; (d) lift the stay on discovery now in effect regarding those contentions; (e) defer rulings on all other contentions previously admitted conditionally until after the availability of the required document and an opportunity for revision.

With respect to the vast majority of conditionally admitted contentions -- those addressing NEPA cost/benefit issues -- this exercise is rather academic since the relevant document, the Draft Environmental Statement, was published in August and Intervenor's are herewith filing their contentions addressing that document. Your decision on the admissibility of those contentions is appropriate now.

- 2.) Does ALAB - 687 have any automatic effect, without Licensing Board action?

No.

- 3.) Does ALAB - 687 require the Licensing Board to vacate those provisions of its prior Order which admitted contentions on the condition that greater specificity would be supplied from documents not yet available, or from discovery?

Yes.

- 4.) If so, would the Board defer any further ruling on a seemingly vague contention if that vagueness might be cured on the basis of a required document not yet available?

Yes. The Appeal Board expressly approves the course of deferring the filing of a contention until availability of the subject document, Id., slip opinion p. 15 fn. 15, and implicitly the deferral of a ruling on specificity for a contention admitted conditionally until the subject document is available. Id., slip opinion p. 4 fn. 6. In this case, as in most, the distinction does not seem to be of substantive significance.

- 5.) Should the Board reconsider whether individual contentions previously admitted conditionally may meet minimal specificity requirements?

Yes. The Board should reconsider and admit the five contentions subject to revision after discovery as sufficiently specific, if not optimally so, to meet the rules' minimal standards in light of the "publicly available information" at the time of their filing. ALAB - 687, slip opinion p. 18 fn. 17. This decision with respect to these contentions is expressly reserved for this Board. Id. Upon admission of these contentions, such

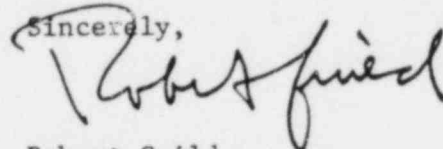
as Palmetto Number 6, Quality Control and substandard workmanship, discovery should be reopened with responses required to Palmetto's pending First Set. As the Board observed in its June 30 Order:

How else but through discovery is an intervenor going to find out, for example, about possible defects in equipment or lapses in quality assurance at a nuclear plant? Such things will not be reported in the FSAR.

Slip opinion at p. 12.

While these contentions do not "detail the evidence which will be offered in support" at the hearing on their merits, they each set forth sufficient basis for admission and development through litigation. Mississippi Power and Light Company, (Grand Gulf Nuclear Station, Units 1 and 2), ALAB - 130, GAEC 423 at 426 (1973).

Sincerely,



Robert Guild
Counsel for Palmetto Alliance

RG/cs

cc: George E. Johnson, Esq.
William L. Porter, Esq.
Albert V. Carr, Esq.
Ellen T. Ruff, Esq.
Richard P. Wilson, Esq.
Henry A. Presler
J. Michael McGarry, III, Esq.
Jesse L. Riley
Scott Stucky
Chairman, Atomic Safety & Licensing Appeal Board
Chairman, Atomic Safety & Licensing Board Panel