

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USING

ATOMIC SAFETY AND LICENSING APPEAL BOARD 84 FEB 14 P2:09

Administrative Judges:

Alan S. Rosenthal, Chairman
Thomas S. Moore
Howard A. Wilber

February 14, 1984

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In the Matter of)

DUKE POWER COMPANY, ET AL.)

(Catawba Nuclear Station,
Units 1 and 2))

Docket Nos. 50-413
50-414

J. Michael McGarry, III, and Joseph B. Knotts,
Jr., Washington, D.C., and Albert V. Carr,
Jr., Ronald L. Gibson and Ronald V. Shearin,
Charlotte, North Carolina, for the applicants,
Duke Power Company, et al.

George E. Johnson for the Nuclear Regulatory
Commission staff.

MEMORANDUM AND ORDER

By their petition for directed certification of the Licensing Board's December 30, 1983 memorandum and order (unpublished), the applicants seek interlocutory review of the admission to this proceeding of a revised version of intervenor Palmetto Alliance's contention 11. The NRC staff opposes the petition on dual grounds: (1) the admission of

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contention 11 was not erroneous;¹ and (2) in any event, the Marble Hill criteria for interlocutory review are not met.²

Without passing on the merits of the challenged ruling below, we agree with the staff's second point and, accordingly, deny the petition. In the totality of circumstances, the matter of the admissibility of contention 11 is best left for our examination (should appellate scrutiny be necessary at all) following rendition of the Licensing Board's initial decision.³

¹ Before the Licensing Board, the staff took the position that contention 11 constituted an impermissible attack upon Commission regulations. In light of the Licensing Board's explanation in the December 30 memorandum and order of the reach of the contention as revised by it, the staff has explicitly abandoned that position. See NRC Staff Response to Petition for Directed Certification of Duke Power Company et al. (February 1, 1984) at 1.

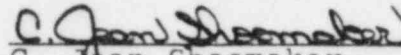
The intervenor did not file a response to the directed certification petition.

² See Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-405, 5 NRC 1190, 1192, (1977).

³ See Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-675, 15 NRC 1105, 1113 (1982); Pennsylvania Power & Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-641, 13 NRC 550, 551-53 (1981).

It is so ORDERED.

FOR THE APPEAL BOARD



C. Jean Shoemaker
Secretary to the
Appeal Board

Mr. Moore did not participate in the consideration and disposition of this matter.