

LAW OFFICES OF  
BISHOP, LIBERMAN, COOK, FURCELL & REYNOLDS

200 SEVENTEENTH STREET, N. W.  
WASHINGTON, D. C. 20036  
202 857-9800  
TELEX 440574 INTLAW U

84 JAN 17 10:57  
IN NEW YORK  
BISHOP, LIBERMAN & COOK  
26 BROADWAY  
NEW YORK, NEW YORK 10004  
212 248-6900  
TELEX 222767

January 13, 1984

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

Dr. Richard F. Foster  
P.O. Box 4263  
Sunriver, Oregon 97702

Dr. Paul W. Purdom  
235 Columbia Drive  
Decatur, Georgia 30030

Re: Duke Power Company, et al. (Catawba  
Nuclear Station, Units 1 and 2),  
Docket Nos. 50-413, 50-414

Gentlemen:

In a January 12, 1984 conference call, Applicants argued against the admission of Intervenor's late filed contention concerning the adequacy of the crankshaft of the diesel generators. Applicants argument addressed the five late contention factors set forth in 10 C.F.R. §2.714(a)(1). The first of these factors relates to whether good cause has been shown to excuse the late filing. Applicants argued good cause had not been shown. In reviewing prehearing conference transcripts, Applicants discovered, after the conference call, that on September 9, 1983, Intervenor's raised the diesel generator crankshaft matter and were informed by the Board as follows:

JUDGE KELLEY: I'm not ruling. I'm giving you a reaction. Mr. Riley, we don't take late contentions over the telephone. That's the short answer.

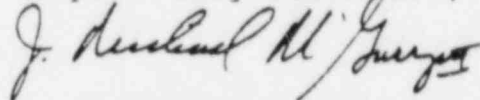
8401180222 840113  
PDR ADOCK 05000413  
G PDR

D503

My reaction to your pointing this out is it's not under Contention 6. If you want to pursue it, feel free to file a petition for acceptance of a late contention. (Tr. 1324. 1/

In that Intervenor had been on notice of the diesel generator crankshaft matter some three months prior to their raising it as a new contention and inasmuch as they had specifically been put on notice by the Board of the proper course to follow (i.e., file a new contention) their inaction for three months must weigh heavily against them. This is particularly the case when the motion for a new contention was raised shortly before the record was closed.

Respectfully submitted,



J. Michael McGarry, III

cc: All Parties

Enclosure

---

1/ For the convenience of the Board and parties Applicants have attached the relevant transcript pages.

1 Diesel Generator Crank Shaft Failure." It certainly is a  
2 quality matter in my judgment, and lists the Catawba plant  
3 as having that type of problem at page 2.

4 JUDGE KELLEY: What contention does that fall under?

5 MR. RILEY: I would say it would be generally  
6 under this -- what Mr. Guild is raising, Contention 6, quality  
7 assurance problem with respect to diesel generators.

8 JUDGE KELLEY: Who made their diesel generator?  
9 I thought Westinghouse or somebody made the diesel generator.

10 MR. RILEY: No, this Trans-America --

11 JUDGE KELLEY: It isn't the Duke Power Company, is it?

12 MR. RILEY: No, but Duke's concern could be  
13 quality of material that it purchases.

14 JUDGE KELLEY: Well, I assume so, under an  
15 appropriate contention. I know of no such contention in  
16 this case. Contention 6 has got nothing to do with that, as  
17 far as I know.

18 MR. RILEY: All right, I read your ruling, Judge.  
19 It certainly --

20 JUDGE KELLEY: I'm not ruling. I'm giving you a  
21 reaction. Mr. Riley, we don't take late contentions over  
22 the telephone. That's the short answer. My reaction to your  
23 pointing this out is it's not under Contention 6. If you want  
24 to pursue it, feel free to file a petition for acceptance of  
25 a late contention.

1 MR. GIBSON: Yes, sir.

2 MR. GUILD: Judge, it is of interest to us to know  
3 whether or not that was served on the Staff. We believe that  
4 the INPO report should have been the subject of a Board  
5 notification. And I would ask if Mr. Goldberg kindly would  
6 relay to Mr. Johnson the question of whether or not that INPO  
7 report was made available to the NRR staff. I've seen some  
8 correspondence with Mr. O'Reilly that suggests that it may  
9 have been, but I can't confirm exactly whether it has been.

10 JUDGE KELLEY: I guess he can find out. I don't  
11 know if he can find out by Monday because he's off today and  
12 he's probably going to fly on Sunday. But in any event, I  
13 assume he could find out.

14 MR. GIBSON: Like all other documents, this was  
15 made available to NRC. It was not served, and we're not under  
16 the impression that --

17 JUDGE KELLEY: For starters, why don't we get  
18 copies of it on Monday. We've been asked to look at this and  
19 we'll look at it, and you can follow up -- we can follow up  
20 as we need to then. It's hard to hear you anyway, Mr. Gibson.  
21 I think -- let's drop the point for the moment and you can  
22 resurrect it Monday if need be when we're face to face.

23 MR. RILEY: Judge Kelley, I would like the Board to  
24 take note of a very recent publication by the NRC. It's  
25 I&E Information Notice number H358 entitled "Trans-America