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

|                                   |   |                    |
|-----------------------------------|---|--------------------|
| In the Matter of                  | ) |                    |
|                                   | ) |                    |
| Duke Power Company, <u>et al.</u> | ) | Docket Nos. 50-413 |
|                                   | ) | 50-414             |
| (Catawba Nuclear Station          | ) |                    |
| Units 1 and 2)                    | ) | March 23, 1984     |
|                                   | ) |                    |

PALMETTO ALLIANCE AND CAROLINA ENVIRONMENTAL STUDY GROUP  
 MOTION TO AMEND AND SUPPLEMENT DIESEL GENERATOR  
 CONTENTIONS; OR, IN THE ALTERNATIVE, MOTION FOR  
ADMISSION OF A NEW DIESEL GENERATOR CONTENTION

Pursuant to 10 C.F.R. Sections 2.714(a)(1), 2.718, and 2.730 Palmetto Alliance and Carolina Environmental Study Group hereby move to amend and supplement the recently admitted diesel generator contentions; or, alternatively, move for the admission of a new diesel generator contention. This motion is advanced in order to accomplish the purpose of "simplification, clarification, and specification of the issues," admitted for litigation in this proceeding regarding the safe functioning of the emergency diesel generators at Catawba. Intervenors submit that this purpose is consistent with the policy of the Commission as reflected in its Rules of Practice, e.g. 10 C.F.R. Section 2.752(a)(1) and (2); and will serve the ends of justice, See, Rule 15 Federal Rules of Civil Procedure. Alternatively, Intervenors move for the admission of a new diesel generator contention pursuant to

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10 C.F.R. 2.714(a)(1), and set forth below the requisite showing of a favorable balance on the five factor test for admission of such a new contention as therein provided. This pleading is being simultaneously filed with this Licensing Board as well as with the Atomic Safety and Licensing Appeal Board as an Exhibit to Intervenor's Memorandum of this date addressing questions posed by the Appeal Board in its Orders of February 23 and March 1, 1984, on referral from this Board's February 23, 1984 Memorandum and Order (Referring Certain Diesel Generator Issues To The Appeal Board).

Palmetto Alliance and Carolina Environmental Study Group offer the following amended and supplemented; or, alternatively, new diesel generator contention for litigation in this proceeding:

The Applicants have not demonstrated a reasonable assurance that the Transamerica Delavel, Inc. emergency diesel generators at the Catawba Nuclear Station can perform their safety function in service because of:

- (1) Applicants' failure to effectively assure that the TDI designed, manufactured and supplied equipment conformed to procurement requirements such as codes, standards and specifications through such measures as proper source evaluation and selection, objective evidence of quality, examination of the equipment upon delivery, and assessment of the effectiveness of TDI's Quality Assurance program;
- (2) Design, manufacturing and installation deficiencies in TDI emergency diesel generator components identified recently by the TDI Owners Group as potentially significant problems which may be present in the Catawba model DSRV 16 diesel generators

including: Connecting Rod Bearings, Pistons, Cylinder Heads, Cylinder Liners, Cylinder Block, Head Studs, Push Rods, Rocker Arm Capscrews, Connecting Rods, Fuel Injection Lines, and Turbocharger;

- (3) Failure by Applicants to demonstrate that the concerns regarding the reliability of TDI diesel generators are not applicable to the specific diesel generators at Catawba through adequate testing and inspection performed specifically for this purpose. Applicants have not demonstrated the adequacy of their reliance upon generic qualification of each of the Catawba diesels through the testing and inspection of only a limited sampling of components and individual engines.

On the record of the safety hearings in this proceeding, December 5, 1983, Palmetto and CESG offered a late contention regarding the safe functioning of the Catawba emergency diesel generators based on NRC Staff conclusions reflected in recent NRC Staff Board Notifications 83-160 and 83-160A. After arguments were advanced by all parties on this proposed contention the Board provided for its admission, in part, and for the referral to the Appeal Board of aspects of the contention which the Board viewed as generic issues not practically litigated in this individual licensing proceeding at this time given the imminence of Applicants' planned May fuel load schedule. The Board ruling was announced on the record of a conference call February 17, 1984, Tr. 12,541-12,551. In its Order of February 23, 1984 the Board recited the factual and procedural history of the new diesel generator contention and formally referred the

generic aspects to the Appeal Board. The full contention as stated by the Board reads as follows:

The Applicants have not demonstrated a reasonable assurance that the TDI emergency diesel generators at Catawba Nuclear Station can perform their safety function in service because of:

- (1) Inadequate design of the crankshafts;
- (2) Deficiencies in Quality Assurance at TDI;
- (3) Operating performance history of TDI generators at other nuclear facilities.

Id. at p. 4. It is parts (2) and (3) of the contention which the Board excluded, which exclusion ruling was referred to the Appeal Board for consideration.

In reaching this conclusion the Board applied the five factor balancing test set forth at 10 C.F.R. 2.714(a)(1) as required by the Commission decision in this proceeding, CLI-83-19, 17 NRC 1041 (June 30, 1983). The Board found that factors 1, 2 and 4 weighed in favor of admission of all three aspects of the proposed contention. Tr. 12,544. The application of factors 3, contribution to the record, and 5, delay, proved more difficult and were the basis for admitting only the crankshaft design portion of the contention while excluding, and referring, the more complicated "generic" aspects of quality assurance at TDI and operating history of TDI generators which the Board concluded would require "a very substantial delay" and substantial expertise for trial. Tr. 12,549. In so ruling the Board observed that the decisions to exclude were "debatable," Tr. 12,550, and that it was "strongly influenced by the fact that these

issues are generic in character." Tr. 12,549. Upon a finding that this ruling excluding these generic aspects of the proposed contention presented a potential impact on similar diesel generator issues in a number of other pending cases and that early appellate guidance was needed to "prevent detriment to the public interest or unusual delay or expense," 10 C.F.R Section 2.730(f), the Board referred these exclusion rulings to the Appeal Board for such guidance. Memorandum and Order February 23, 1984 at pp. 8-9.

Intervenors offer the above amended, supplemented, or newly framed diesel generator contention in order to narrow and specify the issues for litigation in this proceeding, to supplement the previously stated contention with recent new information, and to recast the contention so as to focus on Catawba-specific as contrasted with generic considerations.

Palmetto Alliance and CESC submit that this contention be admitted for litigation as an amendment or supplementation to Intervenors' previously submitted diesel generator contention on the basis of good cause shown and as serving the ends of justice and the efficient trial of this case; but, further, as a new contention meeting, fully, the requirements of the five factors for admission of a late filed contention as set forth at 10 C.F.R. Section 2.714(a)(1):



1. Good cause.

The Board's previous conclusion that Intervenor's have established good cause for the filing of the diesel generator contentions, Tr. 12,543, is equally applicable here. The clarification and amendment which we offer here is founded in substantial part upon the rulings of the Board itself of February 23 and 27, 1984 expressing concerns regarding the trial in this proceeding of wide ranging matters of generic import to many other licensing proceedings. The supplementation of the previous diesel generator contention is the direct result of recent information with respect to likely Catawba-specific hardware deficiencies and inadequacies in Applicants' oversight of TDI's quality assurance performance and the proposed Catawba-specific testing and inspection programs. Applicants' oversight of TDI's QA program and its testing and inspection experience and plan was first described in its February 22, 1984 submittal to the NRC Staff, thereafter circulated to Intervenor's. It was not until March 11, 1984, that Applicants transmitted to Intervenor's the first evaluation of hardware deficiencies in the DSRV-16 model generator as at Catawba. This evaluation was contained in a February 20, 1984 submittal by Mississippi Power and Light Company to the NRC Staff regarding its Grand Gulf facility's TDI generators which is relied upon extensively by Applicants to qualify the Catawba equipment. Good cause is shown for the present filing of the newly framed diesel generator contention by Intervenor's.

2. Availability of other means, or

4. Other parties to represent Intervenor's interest.

The same facts which warranted the Board's conclusion that factors 2 and 4 supported admission of the earlier diesel generator contention apply with equal force here. Intervenor's rely on the Board's previous analysis, Tr. 12,544, to establish that these factors weigh in favor of admission.

3. Ability to contribute to the record.

While the Board expressed considerable doubt on this factor with respect to the generic and broad aspects of the original contention which focussed on QA failures at TDI and the operating history of TDI generators, Intervenor's urge that they may reasonably be expected to assist in developing a sound record on this contention as recast. The Board's conclusion, Tr. 12,549, was heavily influenced by the generic scope of the rejected aspects of the original contention. By recasting the contention to focus on Catawba-site specific aspects such as Duke's failure to adequately oversee TDI QA and the Catawba-specific inspection and testing program Intervenor's assure that their contribution would be most effective. Palmetto and CESG urge that the demonstrated experience and capabilities of their counsel and Authorized Representative, respectively, in this

proceeding, to date, uniquely support a conclusion that they can " reasonably be expected to assist in developing a sound record" on these important issues. Intervenors ask that the Board acknowledge the experience and qualification of this counsel for Palmetto Alliance in this and other proceedings before the Commission, its Licensing and Appeal Boards, the United States Courts of Appeals and District Courts, State Courts and Administrative Agencies. CESG's authorized representative, Jesse Riley, has been qualified as an expert examiner and witness in numerous proceedings before Commission and its Boards and has ably participated in numerous proceedings before this agency and others as an authorized representative for CESG.

Intervenors urge that this showing of ability to contribute must be viewed as sufficient to warrant admission of the recast contention in light of the overwhelmingly favorable weighing of the good cause factor in favor of admission. Not only is such ability to contribute sufficiently demonstrated, in itself, but the requirement of a greater showing on this factor, to outweigh the good cause showing does violence even to the Commission's instructions to consider all five factors on weighing a late filed contention. Catawba, CLI-83-19, 17 NRC 1041, 1045 (1983). In the event, however, that this Board concludes otherwise; Intervenors ask that as to such matters on which greater contribution is to be required, admission of such matters be conditioned upon a later identification of an expert witness



or other evidence as was the case with the conditionally admitted crankshaft design contention, Tr. 12,548.

Intervenors submit that they are actively consulting with Intervenor parties to other proceedings involving TDI diesel generator issues and with national public interest organizations with access to technical expertise relevant to these matters, and will contribute such expertise to the record on this issue.

5. Delay of the proceeding.

The Board concluded that as to the excluded aspects of the original contention a "very substantial delay" would inure from admission of those issues. Tr. 12,549. The recast contention, here, through narrowing and Catawba-specific focusing eliminates the likelihood of such extensive delays. However, as the Board observed with respect to the admitted crankshaft design issue, the necessity of litigation, itself, (there beyond summary disposition) reflected that any such delay would be only for "good reason" Tr. 12,546. In referring excluded portions of the original contention to the Appeal Board this Board noted the more recent commitment of the Commission's own Executive Director for Operations:

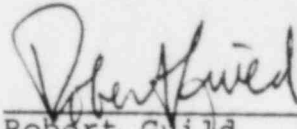
before additional licensing action is taken to authorize the operation of a nuclear power plant with TDI engines, these issues, relating to Quality Assurance, operating experience, and the ability of

the machines to reliably perform thier intended function, must be addressed.

Id. at p. 5. Thus, in this adversary proceeding where these issues have been admitted for litigation among the parties, their resolution cannot be condemned as producing unjustified or unwarranted delay. The protection of the interests of Intervenorors in this proceeding, and the health and safety of the public require full and fair adjudication of these issues despite Applicants' fuel load plans. Any contrary result would be inconsistent with this Board's overriding commitment to reaching a sound decision on the safety of this facility.

For the foregoing reasons Intervenorors Palmetto Alliance and Carolina Environmental Study Group urge that this motion be granted and that the recast contention be admitted for litigation. We believe that the admission and litigation of these serious Catawba-specific issues with respect to the safe functioning of the emergency diesel generators would best protect the interest of the parties and public while providing otherwise for the more generic aspects of the Transamerica Delaval Diesel Generator problems. We urge both the Licensing Board and the Appeal Board to consider Intervenorors' proposed approach to addressing these difficult, but important issues.

Respectfully Submitted,



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March 23, 1984