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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL 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))	

PALMETTO ALLIANCE AND CAROLINA ENVIRONMENTAL STUDY GROUP
MEMORANDUM ON EMERGENCY DIESEL GENERATOR QUESTIONS REFERRED
PURSUANT TO 10CFR SECTION 2.730(f)

Robert Guild
2135 1/2 Devine Street
Columbia, South Carolina
29205
(803)254-8132

Attorney for Palmetto
Alliance

Jesse L. Riley
854 Henley Place
Charlotte, North Carolina
28207
(704)375-4342

Carolina Environmental Study
Group

March 23, 1984

8403290388 840323
PDR ADOCK 05000413
G PDR

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INTRODUCTION

This matter is on referral from the Atomic Safety and Licensing Board in this proceeding regarding its rulings rejecting two parts of a three part contention advanced by Intervenor Palmetto Alliance and Carolina Environmental Study Group concerning the reliability of emergency diesel generators at Catawba supplied by Transamerica Delaval, Inc. The rulings were announced in a February 17, 1984 telephone conference, Tr. 12,541-12,551. That Transcript, together with a procedural history underlying the contentions and the referral decision itself is reflected in the Licensing Board's Memorandum and Order (Referring Certain Diesel Generator Issues to the Appeal Board) of February 23, 1984. That same day this Appeal Board solicited the parties' views on several questions with respect to the acceptance of and decision on the referred matters.

Subsequently the Licensing Board admitted, sua sponte, its own contention on the basis of certain recently discovered problems encountered with the 1-A diesel generator at Catawba in Applicants' testing program. Memorandum and Order (Admitting a Board Contention Concerning Certain Diesel Generator Problems) February 27, 1984. Finally, by Order of March 1, 1984, this Appeal Board sought the parties' consideration of this Licensing Boards contention, in expressing their views to be submitted, upon extension of time, by March 23, 1984.

On the questions presented Palmetto Alliance and Carolina Environmental Study Group express the following views: First, the referral is appropriate and should be accepted pursuant to 10CFR 2.730 (f) and consistent with the standard established in Public Service Company of Indiana (Marble Hill Nuclear Station, Units 1 and 2), ALAB-405, 5 NRC 1190 at 1192 (1977); Second, the Licensing Board's exclusion ruling should be reversed, the site-specific aspects of the emergency diesel generator claims should be remanded for adjudication since no generic resolution has either been mandated by the Commission nor would such be appropriate for resolving questions regarding the reliability of the individual diesel generators at the facility. Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station) ALAB-655, 14 NRC 799 at 816 (1981); Potomac Electric

Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2) ALAB-218, 8 AEC 79 at 84-85 (1974). Such claims related specifically to the Catawba site are reflected in the revised emergency diesel generator contention submitted this date by Intervenor in the attached Motion, which is an Exhibit to this Memorandum. Such genuinely generic and common aspects of the Transamerica Delaval, Inc., emergency diesel generator problems as the adequacy of TDI's general quality assurance program and the general operating experience with TDI manufactured engines appear to lend themselves to litigation in a single proceeding with adequate protection of the rights of all interested parties. Third, no interim licensing of Catawba can be mandated absent full qualification of the safe functioning of the emergency diesel generators, a subject on which all parties are entitled to be heard through the adjudication of these contested safety issues. Consolidated Edison Company (Indian Point Station, Unit No. 2) CLI-74-23, 7 AEC 947 at pp. 951-952; Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 2) CLI-73-4, 6 AEC 6, 7 (1973).

I.

THE REFERRAL SHOULD BE ACCEPTED

The Licensing Board made this referral pursuant to 10 C.F.R. Section 2.730(f) upon its judgement that "early appellate guidance 'is necessary to prevent detriment to the public interest or unusual delay or expense.'" We agree.

While the Board below relied on the likely unusual delay and expense to Applicants should this exclusion ruling be reversed and these diesel generator contentions be remanded for adjudication, we urge that such concerns apply with relatively equal force to the harm to the public participants intervenors Palmetto and CESG. If we are forced to go forward with the narrow and partial claims as now permitted us by the Licensing Board exclusion decision much delay, expense, and wasted duplication of effort will be required of Intervenor, whose resources can ill afford such burden, even in the event that later appellate review permits full relitigation of the excluded claims. Such immediate and serious impact would not "as a practical matter" be alleviated but would be exacerbated by success in a later appeal. Marble Hill, supra, at 1192. We agree, however, that the most compelling basis for referral is the likely impact of the questions on a number of other pending cases involving facilities with Transamerica Delaval, Inc. emergency diesel generators. The Licensing Board's February 23, 1984 Memorandum and Order adequately summarizes the NRC Staff's concerns regarding the adequacy of the TDI machines at some fifteen nuclear stations and notes, at p. 7, the other contested proceedings in which adjudication of diesel generator claims is anticipated. Palmetto and CESG urge that the referral be accepted for decision.

II.

CATAWBA-SPECIFIC DIESEL GENERATOR CLAIMS SHOULD BE REMANDED FOR ADJUDICATION BY THE LICENSING BOARD; GENERIC CLAIMS OF QUALITY ASSURANCE DEFICIENCIES AT TRANSAMERICA DELAVAL, INC. AND PROBLEMS IN OPERATING PERFORMANCE OF THEIR ENGINES IN OTHER INSTALLATIONS SHOULD BE ADJUDICATED BY GENERIC PROCEEDING.

The Licensing Board's decision to exclude the two portions of Intervenor's diesel generator contention dealing with quality assurance deficiencies at TDI and operating performance problems with their generators at other facilities is grounded substantially upon its view that such claims were "generic" to some fifteen facilities with TDI diesels, therefore, not efficiently litigated in Catawba or other individual licensing proceedings.

In addition, we were also strongly influenced by the fact that the TDI quality assurance and operational performance issues are generic in the sense that may potentially affect some fifteen different facilities.

Memorandum and Order (Referring certain diesel generator issues to the Appeal Board) at p. 7, February 23, 1984. From this generic characterization flowed the Board's conclusion that this proceeding would be substantially delayed beyond Applicants' then-stated early May fuel load date (recently extended by Applicants until late May in a March 21, 1984 conference call with the Emergency Planning Licensing Board);

thus, factor 3 of the 10 C.F.R. 2.714(a)(1) test was weighed against admission. Factor 5 - contribution to the proceeding - was also weighed against admission based on the generic and more complex characterization of these issues. Id. at p. 6. While Palmetto and CESC do not dispute the generic aspects of the original contention (and have sought to remedy the Licensing Board's concerns regarding its scope through the recast contention herewith submitted) simply declaring the subjects "generic" does not remove them from adjudication in this licensing proceeding. Intervenor urge that, even as originally drafted, the excluded portions of the diesel generator contention are proper subjects for adjudication in this licensing case. We are, however, mindful of the considerations of efficiency of interest to the Commission and its Boards which warrant generic adjudication of generic issues. Such concerns are shared by public interest organizations such as these intervenors and intervenors in other proceedings impacted by the TDI diesel generator problems. We believe that appropriate administrative tools exist for efficient litigation of such generic issues in a manner which is duly protective of the rights of intervening parties to be heard and participate; however, Palmetto and CESC urge that the Licensing Board was in error in excluding those portions of our diesel generator contention simply on the basis that these claims were "generic" in character.

In Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2) ALAB-218, 8 AEC 79 at 84-85 (1974) this Board treated the considerations at play in resolving generic issues through case-by-case adjudication as compared to proceeding via rulemaking to resolve issues of general applicability. The law permits administrative agencies the choice of either vehicle for decision making.

The Commission and other administrative agencies have the flexibility to defer broad across-the-board issues presented in a multitude of individual adjudicatory proceedings and to consolidate them for consideration in a single rulemaking proceeding, while continuing in the interim to rely on individual adjudications to resolve remaining questions.

Id. at p. 84, (citations omitted). However,

In the absence of rulemaking on a generic issue, the Commission's regulations . . . contemplate exploration of those issues (absent some specific direction to do otherwise). . .

in individual licensing proceedings. Id. at p. 85. Thus, the absence of a rulemaking proceeding or other explicit direction by the Commission with respect to the adjudication of these diesel generator issues warrants their litigation in this individual licensing proceeding notwithstanding their generic character. Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station) ALAB-655, 14 NRC 799 at 816 (1981).

Such a result is particularly appropriate here, where the matter at issue is the reliability of the specific emergency diesel generators installed at the Catawba station.

The NRC Staff's October 21, 1983 Board Notification 83-160 makes the point that the reliability of each specific diesel generator must be established on a site-specific basis.

The identification of QA problems at TDI, taken together with a number of operational problems and the Shoreham crankshaft failure, has reduced the Staff's level of confidence in the reliability of all TDI diesel generators. The Staff will require, on a case-by-case basis, a demonstration that these concerns are not applicable to specific diesel generators because of subsequent inspections or testing performed specifically to address the above matters. [emphasis supplied]

The Staff subsequently committed to the preparation of supplemental safety evaluation reports for all plants with these TDI diesel generators. Board Notification 83-160A, November 17, 1983.

As is reflected in the revised emergency diesel generator contention significant site-specific and Duke Power Company-specific claims regarding the reliability of Catawba emergency diesel generators must be adjudicated in this individual licensing proceeding. In order for Applicants, Duke Power Company, et al., to meet the reasonable assurance standard required for the issuance of the operating licenses sought in this proceeding pursuant to

10 C.F.R. section 50.57 they must demonstrate compliance with the 10 C.F.R. Part 50, Appendix A General Design Criteria clearly applicable to Catawba emergency diesel generators: Criterion 1, Quality Standards; Criterion 17, Electric Power Systems; Criterion 18, Inspection and Testing of Electric Power Systems; Criterion 33, Reactor Coolant Makeup; Criterion 34, Residual Heat Removal; Criterion 35, Emergency Core Cooling; and, Criterion 38, Containment Heat Removal. Further, Applicants retain responsibility for compliance with 10 C.F.R. Part 50, Appendix B Quality Assurance Criteria, notwithstanding the design and manufacture of the diesel generators by their contractor, Transamerica Delaval, Inc. Applicants must demonstrate compliance with the following Appendix B Quality Assurance Criteria, clearly applicable to the adequacy of the emergency diesel generators: I. Organization; III. Design Control; IV. Instructions, Procedures, and Drawings; VII. Control of Purchased Material, Equipment, and Services; X. Inspection; XI. Test Control; and, XIV. Inspection, Test, and Operating Status. It is Applicants' obligation to effectively oversee TDI's design and manufacturing program to assure that the emergency diesel generators to be installed at Catawba meet prescribed specifications and standards so that they will perform reliably in service. Id. Criterion VII. Palmetto and CESG urge that their revised diesel generator

contention focuses, appropriately, on these Catawba-specific aspects which must be resolved in this individual adjudication.

As to the genuinely generic issues with respect to the TDI diesel generators which are not efficiently resolved on a case-by-case basis, Palmetto and CESC support the fashioning of a mechanism which "would promote concentration of resources and expeditious and thorough ventilation of these issues." Memorandum and Order (Referring Certain Diesel Generator Issues To The Appeal Board) at p. 7, February 23, 1984. The Board suggests, there, that "these generic issues could be litigated in a single proceeding, by a lead-case approach, a special proceeding with multi-party participation, or possibly by some other vehicle." So long as such a generic treatment does not preclude the adjudication of plant-specific claims, and so long as such a mechanism is devised which is duly protective of the rights of participation of all interested parties, Palmetto and CESC would benefit from the time and resource efficiencies to be gained from such treatment. We would urge, however, that the specific decision as to the mechanism to be employed be founded upon the views of all parties likely to be interested in resolution of these generic claims. We suggest that this Appeal Board solicit such views through a circulation to all the parties in the fifteen identified facility proceedings. Our views as to the specific mechanism are largely dependent

upon the product of such a solicitation, particularly from other public interest organizations whose resources and expertise would likely be pooled with our own.

III.

NO INTERIM LICENSING OF THE CATAWBA FACILITY CAN BE AUTHORIZED UNTIL THE RELIABILITY OF THE EMERGENCY DIESEL GENERATORS HAS BEEN ESTABLISHED THROUGH ADJUDICATION

The Licensing Board seeks appellate guidance on the question of the propriety of an authorization of interim licensing at low power based on Staff certifications with respect to the reliability of the emergency diesel generators but prior to adjudication of the contested diesel generator safety issues, particularly in the event that these issues are remanded for adjudication, as intervenors herein have urged. Order of February 23, 1984 at pp. 7-8.

Palmetto and CESC urge that such guidance be to the effect that interim licensing absent a resolution of these contested safety issues is impermissible. As the Licensing Board itself, acknowledges, the Commission injunction is to the contrary

As a general proposition, issues should be dealt with in the hearings and not left over for later (possibly more informal) resolution (citation omitted). In some instances, however, the unresolved matter is such that Boards are nevertheless able to make the findings requisite to issuance of the license. But the mechanism of post-hearing resolution must not be employed to obviate the basic findings prerequisite to an operating

license -- including a reasonable assurance that the facility can be operated without endangering the health and safety of the public. 10 C.F.R. 50.57. In short, the "post-hearing" approach should be employed sparingly and only in clear cases. In doubtful cases, the matter should be solved in an adversary framework prior to issuance of licenses, reopening hearings if necessary.

Consolidated Edison Company of New York, Inc. (Indian Point Station, Unit No. 2) CLI-74-23, 7 AEC 947 at pp. 951-952 (1974). As explicated in an earlier decision such post-hearing resolution of contested issues deprives the parties of their entitlement to be heard:

But however reasonable or logical that result may have appeared to the Appeal Board, it does not adequately take into account the demands of the Atomic Energy Act and the Administrative Procedure Act. Those statutes provide that whenever an agency is required to conduct an adjudicatory hearing on an operating license application, all parties have the right to an opportunity to participate in the resolution of properly contested issues. Such procedural flexibility as inheres in the system does not go so far as to authorize elimination of that opportunity.

Wisconsin Electric Power Company (Point Beach Nuclear Plant, Unit 2) CLI-73-4, 6 AEC 6, 7 (1973).

Post-hearing resolution of offsite emergency planning matters stands on a somewhat different footing on the basis of explicit Commission guidance. While the Commission formerly required a reasonable assurance finding as to the present state of emergency preparedness, the Commission's regulations were amended in July of 1982 clarify that findings regarding offsite planning are "predictive in

nature" thus explicitly sanctioning some degree of post-hearing finalization of preparedness so long as a predictive finding of reasonable assurance can be made by the Licensing Board. Louisiana Power and Light Company (Waterford Steam Electric Station, Unit 3) ALAB-732, 17 NRC 1076 at 1103-1104 (1983). The Commission has also explicitly authorized the grant of fuel loading and low power operation license up to five percent of rated power prior to the conclusion of adjudication on the state of offsite emergency preparedness. 10 C.F.R. 50.47(d).

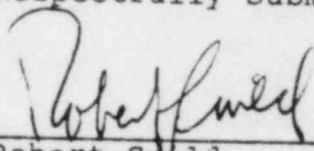
No such authority has been granted for the issuance of licenses prior to resolution of contested safety issues such as the reliability of the emergency diesel generators in question here. As argued above, the adequacy of the Catawba diesel generators can hardly be relegated to the category of "minor procedural deficiencies," Indian Point, supra, subject to post-hearing resolution, instead they must be recognized as "basic findings prerequisite to an operating license," Id., governed by no fewer than seven of the 10 C.F.R. Part 50, Appendix A General Design Criteria and seven of the 10 C.F.R. Part 50, Appendix B Quality Assurance Criteria compliance with which must be demonstrated by Applicants in order to establish the general "reasonable assurance" of safe operation entitling them to a license. 10 C.F.R. 50.57.

At the very least, Applicants are obligated to make a specific factual showing that such a reasonable assurance finding has been demonstrated absent adjudicatory resolution of the reliability of the Catawba emergency diesel generators. Such a showing might be proffered pursuant to 10 C.F.R. 50.57(c) in support a motion for zero power testing. Such provision, however, recognizes the right of any party to be heard "to the extent that his contentions are relevant to the activity to be authorized." Id. Applicants have already informed the parties and the Licensing Boards, most recently in a transcribed conference call of March 21, 1984, of their intention to seek such authority in the next month. Palmetto and CESG in response committed to oppose such requests. We believe that such authority is unwarranted on both legal and technical grounds, and that no finding of reasonable assurance of safe operation can be made, at any power level where the critical safety systems reflected in the referenced general design criteria must be operable, absent assurance that the emergency diesel generators can perform their safety function. Palmetto and CESG are prepared to present such a technical and legal position in opposition to Applicants' anticipated motion. The point, for now, is that such blanket authority for operation prior to resolution of these issues cannot simply rest on the NRC Staff's certification, but must be founded upon an opportunity for these parties to address contested issues in an adjudicatory framework.

CONCLUSION

For the foregoing reasons, Palmetto Alliance and Carolina Environmental Study Group urge the acceptance of this referral, the reversal of the Licensing Board's decision to exclude portions of Intervenor's emergency diesel generator contention, remand for adjudication of the recast Catawba-specific claims, and guidance to the Licensing Board that interim licensing of the Catawba facility is impermissible absent adversary resolution of these contested safety issues. Intervenor, further, urge that the views of other interested parties be solicited on the most suitable mechanism for efficient adjudication of the generic Transamerica Delaval, Inc., claims.

Respectfully Submitted,


Robert Guild
Attorney for Palmetto
Alliance, Inc.
2135 1/2 Devine Street
Columbia, South Carolina 29205

Jesse L. Riley
Carolina Environmental
Study Group
854 Henly Place
Charlotte, North Carolina

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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

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 CESG 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 CESC 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:

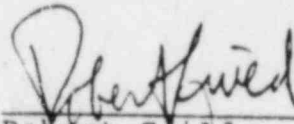
before additional licensing action is taken to authorize the operation of a nuclear power plant with TDI engines, these issues, relating to Quality Assurance, operating experience, and the ability of

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,



Robert Guild
Attorney for Palmetto
Alliance, Inc.
2135 1/2 Devine Street
Columbia, S.C. 29205
(803)254-8132

Jesse Riley
Carolina Environmental
Study Group
854 Henley Place
Charlotte, N.C.

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Units 1 and 2))	

CERTIFICATE OF SERVICE

I hereby certify that copies of PALMETTO ALLIANCE AND CAROLINA ENVIRONMENTAL STUDY GROUP MEMORANDUM ON EMERGENCY DIESEL GENERATOR QUESTIONS REFERRED PURSUANT TO 10CFR SECT. 2.730(f) in the above captioned matter has been served upon the following by deposit in the United States mail this 23 rd day of March, 1984.

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

George E. Johnson, Esq.
Office of the Executive
Legal Director
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

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

Albert V. Carr, Jr., Esq.
Duke Power Company
P.O. Box 33189
Charlotte, North Carolina
28242

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

Richard P. Wilson, Esq.
Assistant Attorney General
State of South Carolina
P.O. Box 11549
Columbia, South Carolina 29211

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

Chairman
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Jesse L. Riley
854 Henley Place
Charlotte, North Carolina
28207

Bradley Jones, Esq.
Regional Counsel,
Region II
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

J. Michael McGarry, III, Esq.
1200 Seventeenth St., N.W.
Washington, D.C. 20036

Howard A. Wilbur
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

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

Don R. Willard
Mecklenburg County Department
of Environmental Health
1200 Blythe Boulevard
Charlotte, North Carolina 28203

Alan S. Rosenthal, Chairman
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Thomas S. Moore
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission

Robert Guild,
Robert Guild, Esq. *DWG*