

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE 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))	

APPLICANTS' MOTION TO DISMISS INTERVENORS'
CONTENTION ON DIESEL GENERATORS

During a telephone conference call on February 17, 1984, the Atomic Safety and Licensing Board in this proceeding admitted part of Intervenor's late-filed contention dealing with the crankshaft design of Applicants' TDI emergency diesel generators.^{1/} (Tr. 12,545). In balancing the five factors governing admission of late contentions, the Board indicated its concern as to whether Intervenor could satisfy §2.714(a)(1)(iii) -- viz., the extent to which Intervenor's participation on this issue could "reasonably be expected to assist in developing a sound record." Because of the importance of this factor, the Board ruled that Intervenor's contention on diesel generator crankshaft design was being admitted on the

^{1/} The Board denied admission of the remaining 2 portions of Intervenor's proposed contention, which focused on TDI's QA program and the operating performance history of TDI generators. (Tr. 12,549-51). The Board certified its ruling on these 2 issues to the Atomic Safety and Licensing Appeal Board. (Tr. 12,550-51; Memorandum and Order of February 23, 1984).

condition that by April 2, 1984, Intervenors file with the Board and the parties (1) the names and the qualifications of the expert witness(es) Intervenors planned to call on the subject of diesel generators; and (2) a summary of these expert witnesses' proposed testimony.^{2/} (Tr. 12,548). The Board stated that if Intervenors' submission of information was determined to be inadequate, "then, we [the Board] at that point would dismiss the contention." (Tr. 12,548). Subsequently, during a March 14, 1984 telephone conference call, the Board reiterated to counsel for Palmetto Alliance: "You say you are looking for an expert, and I think you should be aware if you don't find him by the 2nd of April, there isn't going to be any contention." (Tr. 12,610-11).

To date, the Intervenors have not come forward with the names of any expert witnesses, nor have they submitted any outlines of proposed expert testimony on the subject of diesel generators. Moreover, in an April 2, 1984 telephone conference call,^{3/} counsel for Intervenor

^{2/} The basis for the Licensing Board's conditional admission of this contention was the decision in Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC (November 15, 1983), wherein the Appeal Board reiterated its earlier rulings that in addressing §2.714(a)(1)(iii), a petitioner should state "with as much particularity as possible the precise issues it plans to cover, identify its prospective witnesses, and summarize their proposed testimony." (slip op. at p. 18).

^{3/} This conference call was held between the Licensing
(footnote continued)

Palmetto Alliance stated (Tr. 49) that the filing required by this Board would not be made because "Intervenors have been unable to find an expert witness." Counsel for Palmetto Alliance acknowledged that due to this fact, Intervenors' diesel generator crankshaft design contention "will no longer -- by automatic operation of Judge Kelley's order -- will no longer be in the case" (Tr. 49).

In addition to their admitted failure to comply with these Board-ordered conditions, Intervenors' default on their discovery obligations on this contention provides a separate basis for a Board finding that Intervenors will be unable to contribute to the development of a sound record on their contention. Applicants' interrogatories to Palmetto Alliance and CESG on this contention^{4/} were formulated specifically to determine Intervenors' ability to contribute to developing a record on the adequacy of the crankshaft design of the Catawba emergency diesel generators. Accordingly, the interrogatories were based on analyses of the original and modified Shoreham crankshafts (materials which Intervenors already had in their

(footnote continued from previous page)

Board convened to rule on the emergency planning contentions in this proceeding -- Judges Margulies, Hooper and Lazo -- and the parties. A copy of the relevant transcript pages are attached to this motion.

^{4/} "Applicants' Interrogatories and Requests to Produce Documents on Diesel Generator Contention to Carolina Environmental Study Group and Palmetto Alliance," March 11, 1984.

possession), as well as an analysis of the DSRV-16 crankshafts, similar to those at Catawba.^{5/} To answer Applicants' interrogatories, Intervenor was required to demonstrate an ability to understand and to critique these analyses. Intervenor's interrogatory responses relating to these analyses did not do so. On the contrary, these responses, in which Intervenor answered only one out of sixty specific interrogatories on their own contention, clearly demonstrate that they cannot reasonably be expected to assist in the development of a sound record on this issue -- if, indeed, they can be expected to make any contribution at all.

^{5/} Applicants did not know whether Intervenor had this analysis in their possession. Accordingly, Applicants provided Intervenor with a report by Mississippi Power & Light Co. containing a summary and pertinent conclusions relating to this analysis.

In view of Intervenor's failure to make the showing required by the Board, Applicants move pursuant to 10 C.F.R. §2.730(b) that Intervenor's diesel generator contention be dismissed.

Respectfully submitted,

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April 6, 1984

1 On the crankshaft design issue, which is the
2 first diesel generator contention, in the absence of a
3 prefiled testimony of an expert witness due today, which will
4 not be forthcoming since Intervenorors have been unable to
5 find an expert witness, that contention will no longer --
6 by automatic operation of Judge Kelley's order -- will no
7 longer be in the case.

8 So then we have the Board's testing contention
9 and the contentions that are before the Board on our proposal
10 for revision. Those matters -- the Applicants give us
11 absolutely nothing by extending discovery in this case and
12 the only remaining contention does not even have a
13 termination.

14 Now as to the schedule itself, this is the first
15 time we've heard it advanced. It wasn't advanced in either
16 the sit-down meeting with the Applicants or the NRC Staff.
17 I can react only very generally to suggest that providing
18 half-days for trial of contentions sounds to me to be
19 unreasonable in the extreme. We don't have a day-by-day
20 counter-proposal. We would suggest that once we have a
21 handle on the witnesses to be called by Applicants and
22 witnesses that we should expect from NRC Staff and from
23 the Intervenorors, then it should be a fairly simple matter
24 of sitting down and making at least an intelligent estimate
25 of the amount of time it would take for direct and cross

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD - SECRETARY
DOCKETING & SERVICE
BRANCH

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(Catawba Nuclear Station,)
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Motion to Dismiss Intervenor's Contention on Diesel Generators" in the above captioned matter has been served upon the following by deposit in the United States mail this 6th day of April, 1984.

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