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DOCKETED
USNRC

June 27, 1984

Mr. Richard C. DeYoung
Director
Office of Inspection and Enforcement
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

PROD. & UTIL. REG.

50-413/44-84

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(2.206)

LETTER OF SUBJ.
DOCKETING & SER.
BRANCH

Dear Mr. DeYoung:

This is a request for action on behalf of my client, Palmetto Alliance, pursuant to 10 C.F.R. §2.206 with respect to the Catawba Nuclear Station, Units 1 and 2, under construction by Duke Power Company, et. al., in York County, South Carolina. We ask that you institute a proceeding pursuant to §2.202 to modify, suspend, or revoke the Construction Permit for the Catawba facility, institute appropriate civil and criminal enforcement proceedings, and take such other action as may be proper to address serious and repeated instances of harassment and intimidation of Quality Control inspectors at Catawba, numerous violations of the Commission's Quality Assurance Criteria of 10 C.F.R. Part 50, Appendix B, and the detrimental effects of such licensee conduct on the effectiveness of the Quality Assurance program for safe construction of the Catawba facility.

In a Partial Initial Decision of June 22, 1984, the Atomic Safety and Licensing Board in the Catawba operating license proceeding reached important and critical factual conclusions as to the existence of harassment, retaliation and intimidation of a number of welding quality control inspectors intended to impede these inspectors in their implementation of the Quality Assurance program requirements at Catawba. Such harassment included the retaliatory treatment of senior welding quality control inspector supervisor G. E. "Beau" Ross at the hands of such supervisory personnel as corporate quality assurance manager George Grier and project QA manager Larry R. Davison. The Licensing Board found that such retaliation was attributable to Duke Power Company and was in response to Mr. Ross and his crew's "strict adherence to QA procedures and expression of safety concerns." Id., slip op. pp. 150-161, at 159. The Board rejected Palmetto Alliance's argument that such conduct required a finding of violation of 10 C.F.R. §50.7 on the grounds that Mr. Ross, apparently, was not engaged in "protected activities" within the meaning of that provision. We, of course, disagree. However, the Board does conclude that such conduct violates not only the

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spirit of that provision but requirements of 10 C.F.R. Part 50, Appendix B and other Commission authority. Id. The Board, further, concluded that at least five other improper cases of harassment of welding inspectors were proven by the evidence available in the proceeding. In each instance the conduct was found to have been intended to impede the inspector in his performance and to have been either condoned or ineffectually treated by Duke management. Id. Slip op. pp. 162-181.

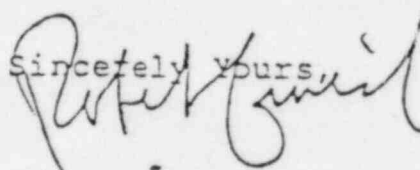
The Catawba Licensing Board also reviewed the evidence of specific Quality Assurance program violations raised by many of these same welding inspectors who worked on Mr. Ross's crew. In the face of a contrary Duke Power Company internal "investigation" and denials in the licensing proceeding the Licensing Board concluded that some forty-two individual violations of the 10 C.F.R. Part 50, Appendix B Quality Assurance criteria were established by the evidence in the Catawba proceeding.

Yet, in the face of this solid confirmation of the longstanding concerns by present and former Catawba workers, the Palmetto Alliance, the Government Accountability Project, and others who have followed the Catawba case, the Licensing Board takes no effective action; and, instead, continues to follow the longstanding practice of licensing nuclear plants despite known serious problems. The Board, for example, concludes that Duke need only revise its harassment policy some time within the next six months, Id., at p. 181; and that "the discriminatory actions against Mr. Ross, while blameworthy, are not a basis for denying or conditioning the license application. We expect the airing of this matter in public hearing and in this decision will have a salutary affect on the Company's handling of similar matters in the future." Id. at p. 161. With respect to the forty-three Appendix B violations the Board apparently supports the Region II staff view that under a crabbed interpretation of the Commission's enforcement policy Duke Power Company, itself, deserves credit for having identified these violations even though the source is the harassed welding inspectors themselves. Id. at p. 126. Thus, in the face of this ineffectual Licensing Board response the duty to take all necessary and proper remedial action rests squarely on your shoulders and requires your prompt action pursuant to §2.206 of the Commission's Rules in order to fully probe the significance of this serious misconduct by Duke Power Company and take needed remedial measures to insure that the full scope of Quality Assurance deficiencies are identified and corrected prior to operation of the Catawba Nuclear Station. While we believe that the record in the Catawba operating license proceeding provides ample need for enforcement action against Duke and such remedial measures as an independent audit and reinspection of safety systems at the

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facility we urge you to fully investigate the Quality Assurance and construction programs at Catawba, not just in welding as was the limited scope of the license proceeding consideration, but in all significant areas in order to assure that the public health and safety of those residing near the Catawba facility is fully protected.

If we may be of further assistance in pursuing this request for action please advise me at the office of the Palmetto Alliance set out below. By copy of this letter I am notifying Duke Power Company of this request.

Sincerely yours


Robert Guild

Palmetto Alliance, Inc.
2135½ Devine Street
Columbia, S. C. 29205
803/254-8132

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

James L. Kelley, Chairman
Dr. Richard F. Foster
Dr. Paul W. Purdom

In the Matter of
DUKE POWER COMPANY, et al.
(Catawba Nuclear Station,
Units 1 and 2)

Docket Nos. 50-413
50-414

ASLBP No. 81-463-06 OL

PARTIAL INITIAL DECISION

Appearances

J. Michael McGarry, III, Anne W. Cottingham, and Mark S. Calvert,
Washington, D.C., and Albert V. Carr, Jr., and Ronald L. Gibson,
Charlotte, North Carolina, for the Applicants, Duke Power Company,
et al.

Robert Guild, Columbia, South Carolina, and John Clewett, Washington,
D.C., for the Intervenor, Palmetto Alliance.

Jesse L. Riley, Charlotte, North Carolina, for the Intervenor, Carolina
Environmental Study Group.

George E. Johnson and Bradley Jones for the Nuclear Regulatory
Commission Staff.

Richard P. Wilson for the State of South Carolina.

record was made. In Ross' case, an extensive record was made that could be a basis for firing, but Mr. Ross was not dealt with completely openly.

43. George Grier, who succeeded Mr. Wells as corporate quality assurance manager, wrote a lengthy confidential memorandum to the file about a meeting he had with Mr. Ross while Ross' recourse on his rating was pending. The memorandum read in part as follows (Palmetto Ex. 33):

The last area I discussed was in regards to the hearings. I explained to Beau that one of our big tasks would be to put the concerns expressed by welding inspectors into perspective. The intervenors will be characterizing those concerns in the worst possible light. We need to be clear on the significance of those concerns and in particular will have to be clear on the meaning of terms like "intimidation," "threats," "falsification" and "pressure to approve faulty workmanship." These are words that are used in the concerns and could be used to describe very extreme circumstances.

The Board views the illusion to possible problems at a hearing in connection with Mr. Grier's counselling Mr. Ross about his performance as improper. Although Mr. Grier denied any improper intent (Tr. 3834), the Board thinks a reasonable person probably would interpret these comments as an attempt to influence future testimony in this proceeding.

44. Based on our review of the testimony and exhibits, the setting in which events occurred, and the credibility of the witnesses, the Board finds that the 1981-1982 evaluation, the November 1982 interim evaluation, and the 1982-83 evaluation of Mr. Ross, all at the "fair" or "2" level, were unfair and in retaliation for Mr. Ross' and his crew's

strict adherence to QA procedures and expression of safety concerns.²⁷ The persons directly responsible for the discriminatory evaluations of Mr. Ross were Mr. Davison, Mr. Allum (as to the interim and 1982-1983 evaluations), and Mr. Grier (as to the 1982-1983 evaluation, which he should have overruled). Mr. Grier and Mr. Davison occupy senior level supervisory positions. Therefore, these actions are fully attributable to the Duke Power Company.

45. In retrospect, Duke would have been wise to listen to Mr. Ross and the complaints of his crew of welding inspectors as they developed long prior to the Task Force Reviews. Instead, the company chose to let the problem fester and ultimately to accuse Mr. Ross of being unsupportive of management and acting inappropriately in questioning management decisions. Duke corporate management has chosen to

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Palmetto asks us to find the Ross evaluations to be violations of 10 C.F.R. 50, apparently meaning 10 C.F.R. 50.7. PFF 254. That provision prohibits discrimination against an employee for engaging in certain "protected activities," as defined in section 210 of the Energy Reorganization Act of 1974. Since there is no clear evidence in the record indicating that Mr. Ross himself voiced concerns to the NRC prior to the evaluation in question, we find no violation of 10 C.F.R. 50.7. But see Ross, Tr. 6777. However, the evaluations did constitute discrimination against Mr. Ross on account of his voicing safety concerns. They therefore violated the spirit of section 50.7, if not its letter. In any event, a retaliatory job evaluation against an employee for raising safety concerns is inconsistent with the thrust of 10 C.F.R. Part 50, Appendix B and the "reasonable assurance" determinations that must be made under 10 C.F.R. 50.57(a)(3) and the Callaway decision discussed at p. 20, above. Presumably, a pattern of such evaluations, not shown here, could preclude the necessary determinations and result in denial of an operating license.