



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

PDR-016
LPDR

DEC 10 1985

Docket No. 50-413/50-414

Mr. Albert V. Carr, Jr.
Duke Power Company
Legal Department
P.O. Box 33189
Charlotte, NC 28242

IN RESPONSE REFER
TO FOIA-85-584

Dear Mr. Carr:

This is the second partial response to your letter dated August 19, 1985, in which you requested, pursuant to the Freedom of Information Act (FOIA), copies of all records related to and underlying Enforcement Action No. EA-84-93 regarding the Catawba nuclear station.

The documents listed on the enclosed Appendix D are already available for public inspection and copying in the NRC Public Document Room (PDR). The file location is noted next to the description of each document. Additional records related to your request have been identified in NRC's response to a previous FOIA request. This response is maintained in the PDR in folder FOIA-83-253 under the names of Phillips and Garde. You may obtain copies of those records by referring to the above FOIA folder.

The documents listed on the enclosed Appendix E are being placed in the PDR in Washington, DC, and at the NRC Local Public Document Room in South Carolina at the following address:

York County Library
138 East Black Street
Rock Hill, SC 29730
Ms. Mary Mallaney
Assistant Reference Librarian
Telephone: (803) 324-3055

The records listed on the enclosed Appendix F are being withheld in their entirety from public disclosure pursuant to Exemption (2) of the FOIA (5 U.S.C. 552(b)(2)) and 10 CFR 9.5(a)(2) of the Commission's regulations. These records relate to trivial administrative matters of no genuine public interest.

The documents listed on the enclosed Appendix G are being withheld in their entirety. The applicable FOIA exemptions are noted next to the document descriptions on the appendix. Information withheld pursuant to Exemption (5) consists of predecisional information which constitutes advice, opinions and recommendations of the staff. Disclosure would inhibit the frank and candid exchange of communications in future deliberations and thus would not be in the public interest. This predecisional information is being withheld pursuant to Exemption (5) of the FOIA (5 U.S.C. 552(b)(5)) and 10 CFR 9.5(a)(5) of the Commission's regulations. There are no reasonably segregable factual portions.

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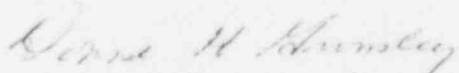
Information withheld pursuant to Exemption (7)(A) consists of investigatory records compiled for law enforcement purposes, the release of which would interfere with an ongoing enforcement proceeding. This information is being withheld from public disclosure pursuant to Exemption (7)(A) of the FOIA (5 U.S.C. 552(b)(7)(A)) and 10 CFR 9.5(a)(7)(i) of the Commission's regulations.

Pursuant to 10 CFR 9.15 of the Commission's regulations, it has been determined that the information withheld is exempt from production or disclosure and that its production or disclosure is contrary to the public interest. The person responsible for this denial is Mr. John C. Hoyle, Assistant Secretary of the Commission.

This denial may be appealed to the Secretary of the Commission within 30 days from the receipt of this letter. Any such appeal must be in writing, addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should clearly state on the envelope and in the letter that it is an "Appeal from an Initial FOIA Decision."

The staff is continuing to search for and review records subject to your FOIA request. We will notify you as soon as possible with regard to the remaining records.

Sincerely,



Donnie H. Grimsley, Director
Division of Rules and Records
Office of Administration

Enclosures: As stated

APPENDIX D

DOCUMENTS IN PDR

1. 10/28/83 Ltr from Garde to Dircks, Accession No. 8507270174 (3 pages)
2. 11/23/83 Ltr from Dircks to Garde, Accession No. 8312120171 (1 page)
3. 01/26/84 Ltr from Government Accountability Project to Chairman and Commissioners, Accession No. 8401310287 (7 pages)

APPENDIX E

DOCUMENTS BEING PLACED IN PDR AND LPDR

1. 02/08/84 Ltr from Garde to DeYoung (1 page)
2. 02/15/84 Note to File, re: 1/20/84 meeting with Billie Garde (Attendees: DeYoung, Taylor, Axelrad, Burns) (4 pages)
3. 05/30/84 Note to George Johnson, OELD (1 page)
4. 10/29/84 Routing Slip to George Johnson from Steve Burns (1 page)
5. 08/07/85 Note to Ed from Burns (1 page)

APPENDIX F

RECORDS DENIED IN ENTIRETY

EXEMPTION (?)

1. 07/01/85 Memo from L. Zech to S. J. Chilk, "SECY-85-226 -- DD-85-9; Review of Director Decision in the Matter of Duke Power Company." (1 page)
2. 07/03/85 Memo from S. J. Chilk to Commissioners, "SECY-85-226 -- DD-85-9; Review of Director's Decision in the Matter of Duke Power Company," (1 page)

APPENDIX G
RECORDS DENIED IN ENTIRETY

WITHHOLDING EXEMPTION

1. 03/06/85 Memo from Chilk to Dircks and Plaine, (5)
subject: SECY-85-33 - Brown and Root, Inc.
v. Donovan, Scope of Employee Whistleblower
Protection Under Section 2.10 of Energy
Reorganization Act of 1974 (1 page - Ex. 5)
w/attachment: a. 1/28/85 - SECY 85-33
(10 pages) Ex. 5
2. 07/09/85 Vote Sheet of L. Zech on SECY-85-226, (5)
"DD-85-9; Review of Director's Decision
in the Matter of Duke Power Company",
(2 pages)
3. 07/11/85 Note from S. Sohinki to F. Bernthal, (5)
"SECY-85-226", (1 page)
4. 07/13/85 Vote Sheet of T. Roberts on SECY-85-226, (5)
"DD-85-9; Review of Director's Decision
in the Matter of Duke Power Company",
(1 page)
5. 07/18/85 Vote Sheet of F. Bernthal on SECY-85-226, (5)
"DD-85-9; Review of Director's Decision
in the Matter of Duke Power Company",
(2 pages)
6. 07/26/85 Briefing Note from C. W. Reamer to (5)
N.J. Palladino regarding
SECY-85-226 with handwritten
comments (2 pages)
7. 07/28/85 Response Sheet of N.J. Palladino (5)
on SECY-85-226, "DD-85-9;
Review of Director's Decision
in the Matter of Duke Power
Company" (1 page)
8. 07/30/85 Memo from S.J. Chilk to Commission, (5)
"Staff Requirements Memorandum",
with attached undated draft memo
from S.J. Chilk to H.H.E. Plaine,
"SECY-85-226, DD-85-9; Review of
Director's Decision in the Matter of
Duke Power Company", (7 pages)
(Draft memo attaches vote sheets of
F. Bernthal, T. Roberts, and L. Zech)

APPENDIX G
(Continued)

WITHHOLDING EXEMPTION

9. 08/05/85 Memo from Chilk to Plaine, subject: (7)(A)
SECY-85-226 - DD-85-9: Review of
Director's Decision in the Matter
of Duke Power Company (1 page)
10. Undated Handwritten notes from C.W. Reamer to (5)
N.J. Palladino on 07/30/85 memo
from Chilk to Commission, "Staff
Requirements Memorandum", with Attached
undated draft memo from S.J. Chilk to
H.H.E. Plaine, "SECY-85-226, DD-85-9;
Review of Director's Decision in the
Matter of Duke Power Company",
(7 pages) (Draft memo attached vote
sheets of F. Bernthal, T. Roberts and L. Zech)

DUKE POWER COMPANY

LEGAL DEPARTMENT

P. O. Box 33189

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WILLIAM J. BOWMAN, JR.
RONALD L. GIBSON

704 373 2570

August 19, 1985

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-85-584

Rec'd 8-20-85

J. M. Felton, Director
Division of Rules and Records
Office of Administration
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Re: Freedom of Information Act Request
Regarding Enforcement Action EA 84-93

Dear Mr. Felton:

Pursuant to the Freedom of Information Act (5 USC §552) and the NRC's implementing regulations thereunder (10 CFR §9.3 et seq.) I hereby request on behalf of Duke Power Company all documents related to and underlying Enforcement Action No. EA 84-93 being taken against Duke Power Company. This enforcement action is reflected in the Notice of Violation and Proposed Imposition of Civil Penalty issued August 13, 1985.

This request extends not only to all relevant documents at NRC Headquarters relating to the enforcement action and the events surrounding Mr. Gary E. "Beau" Ross, but also to all such documents within NRC Region II including any such documents reflecting any communications between Region II and NRC Headquarters. This request includes, but is not limited to, all documents reflecting, underlying, or otherwise relevant to:

1. Any communications between NRC employees and/or representatives and members and/or representatives of Palmetto Alliance, the Government Accountability Project and/or any other outside group or individual concerning possible enforcement action based on the events surrounding Mr. Ross and/or the concerns expressed by the welding inspectors at Catawba Nuclear Station, and/or alleged harassment and/or intimidation of any quality control/quality assurance inspector at the Catawba Nuclear Station.
2. The June 4, 1985 Director's Decision (DD-85-9), including alternative drafts or proposals, and including all documents reflecting any independent fact-finding investigation conducted by NRC in connection with the enforcement action or concerning Mr. Ross.
3. Any decision to engage or not to engage in any independent fact-finding in connection with the enforcement action and Mr. Ross.
4. Deliberations regarding whether the record developed before the Atomic Safety and Licensing Board was adequate to support a finding of discrimination within the meaning of 42 USC §5851 and/or 10 CFR §50.7. This request also extends to any documents reflecting deliberations whether the

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J. M. Felton, Director
U. S. Nuclear REgulatory Commission
August 19, 1985
Page two

record developed before the Atomic Safety and Licensing Board was adequate to support the Board's finding of discrimination.

5. Deliberations regarding the appropriate severity level to be assigned the alleged violation.

6. Any communications between representatives of the NRC and representatives of the Department of Labor relating to this enforcement action or the events surrounding Mr. Ross.

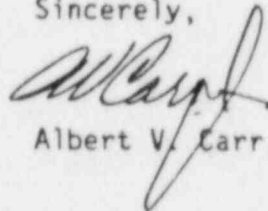
7. The Commission's decision not to review DD-85-9, including documents underlying and reflecting the majority votes of Chairman Palladino and Commissioners Bernthal and Asselstine, and documents underlying and reflecting the dissenting views of Commissioners Roberts and Zech.

8. The August 13, 1985 Notice of Violation including alternative drafts or proposals.

9. The August 13, 1985 Proposed Imposition of Civil Penalty, including alternative drafts or proposals.

I would appreciate your prompt response to this request within the ten working day period provided in 10 CFR §9.9. Duke Power Company's deadline for responding to the Notice of Violation and Proposed Imposition of Civil Penalty is September 12, 1985. The documents I am requesting could well prove to be significant to that response. Accordingly, I hope that this request will be met as expeditiously as possible. If you cannot meet this request within the period set out in the regulations, please notify me as soon as possible, and tell me when you will be able to respond.

Sincerely,



Albert V. Carr, Jr.

c: James N. Taylor
Jane A. Axelrad