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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED

COMMISSIONERS:

'82 DEC 23 P2:56

Nunzio J. Palladino, Chairman
Victor Gilinsky
John F. Ahearne
Thomas M. Roberts
James K. Asselstine

PROCESSING & SERVICE
BRANCH

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

Docket Nos. 50-413
50-414

ORDER

In ALAB-687, the Atomic Safety and Licensing Appeal Board ("Appeal Board") held that timely but non-specific contentions could not be admitted conditionally. The Appeal Board further held that the lateness criteria in 10 CFR 2.714(a) were automatically satisfied for adequately specific late-filed contentions based on information that is required by NRC rules to be submitted to NRC but is not required to be and is not submitted early enough for timely filing of contentions. Examples of documents which are "institutionally unavailable" due to the NRC's hearing schedule are the applicant's emergency plan and the staff's environmental impact statement. The Appeal Board based its decision on the conclusion that section 189a. hearing rights would be rendered nugatory if a late-filed contention supported by such documents could be rejected for failing to satisfy the late filing factors in 10 CFR 2.714(a). The Appeal Board explicitly declined to decide whether the

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timely availability of information, such as contained in an applicant's environmental report, would trigger an obligation to file timely contentions based on that information as long as those contentions were not directed to the adequacy of the staff's performance of its responsibilities, such as its compliance with the National Environmental Policy Act. The Commission does not wish to review the Appeal Board's decision that timely but non-specific contentions cannot be admitted conditionally by an Atomic Safety and Licensing Board. However, the Commission does wish to review the following issues:

1. Does section 189a. of the Atomic Energy Act of 1954, as amended, require an Atomic Safety and Licensing Board to give controlling weight to the good cause factor in 10 CFR 2.714(a)(1)(i) in determining whether to admit a late-filed contention that could not be filed in a timely manner because the "institutional unavailability" of licensing-related documents precluded the timely formulation of that contention with the requisite specificity?
2. Is there "good cause" for filing a late contention when the reason given for late filing is the previous "institutional unavailability" of an agency document, e.g. the FES, but the information relied on was available early enough to provide the basis for a timely filed contention, e.g. in an applicant's environmental report?

The parties to the review proceeding shall be the parties below. The staff shall file its brief no later than 30 days after the date of

this Order. The other parties may file briefs by the same date. Reply briefs may be filed no later than 50 days after the date of this Order. In addition, because of the generic nature of the issue on review in this proceeding, the Commission invites other persons to address the issue by submitting amicus briefs no later than 50 days after the date of this Order.

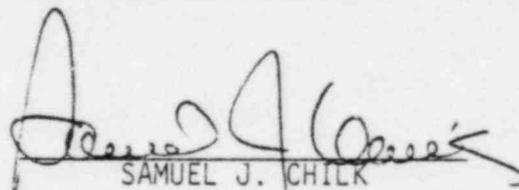
Commissioner Asselstine concurs in the Commission's taking review on issue number 1, but dissents from the Commission's taking review of issue number 2. Commissioner Gilinsky dissents from this Order.

It is so ORDERED.



Dated at Washington, DC,
this 23^d day of December 1982.

For the Commission *


SAMUEL J. CHILK
Secretary of the Commission

* Commissioner Gilinsky was not present when this Order was approved, but had previously indicated his disapproval.