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RELATED CORRESPONDENCE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of)	
)	
DUKE POWER COMPANY, <u>et al.</u>)	Docket Nos. 50-413
)	50-414
(Catawba Nuclear Station,)	
Units 1 and 2))	May 31, 1984

PALMETTO ALLIANCE AND CAROLINA ENVIRONMENTAL STUDY GROUP
MOTION TO COMPEL DISCOVERY FROM APPLICANTS

Pursuant to 10 C.F.R. §2.740(f) and in accordance with the Board's direction in the conference call of May 21, 1984, Intervenor Palmetto Alliance and Carolina Environmental Study Group hereby move to compel discovery from Applicants with respect to Interrogatories and Requests to Produce Documents regarding Emergency Diesel Generator Contentions served March 26, 1984. Such motion is made on the grounds that Applicants have failed to provide full, complete and responsive answers to the interrogatories propounded by Intervenor, as required; and have, instead, provided only evasive, incomplete and unresponsive answers, or have interposed insubstantial and unwarranted objections in place of answers. Palmetto and CESC seek full, complete and responsive answers to these interrogatories, and the identification of relevant documents in order to adequately prepare for hearing through the discovery of evidence bearing on our claims and the claims or defenses of Applicants and the NRC Staff, including the identification and description of physical and documentary evidence.

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Intervenors Palmetto and CESH jointly propounded fifty-two specific interrogatories to Applicants of which thirty-nine related to the Board contention. See, Memorandum and Order (Admitting a Board Contention Concerning Certain Diesel Generator Problems), February 27, 1984. Out of these thirty-nine, Applicants provided responsive answers to only eleven while interposing unwarranted and improper objections to fully twenty-eight others. With respect to an additional set of interrogatories served independently by CESH on March 26, 1984, Applicants object to an additional two. The vast majority of Applicants' stated objections rely on asserted lack of relevance to the Board contention regarding the operational reliability of the Catawba Transamerica Delavel diesels. To put Applicants' views in perspective, at the outset, it should be noted that the NRC Staff, in responding to the same interrogatories, asserted relevance objections to only four specific interrogatories (Nos. 22-25) while either answering the remainder or indicating specifically where such information was otherwise available (such as from Applicants, the Owners Group or from other general information). Intervenors believe that the NRC Staff has been, on the whole, responsive, and seeks no relief by way of compelled discovery against them.

Intervenors, therefore, respectfully move for an order compelling discovery from Applicants with respect to Interrogatories and Requests to Produce documents relating to Specific Interrogatories Nos. 13, 14, 15, 16, 17, 18, 19, 20, 21,

22, 23, 24, 25, 27, 28, 30, 31, 32, 33, 35A, 36, 39, 41, 42, 44A, 50, 51, and 52; CESG Interrogatories No. 12 and 18.

Applicants note at the outset in their responses, p. 2, "there is no warrant for discovery on the generic issues of either TDI quality assurance or the operational history of TDI diesel engines in marine applications or at sites other than Catawba." Applicants take this position in the face of their own acknowledged understanding of this Board's observation in its February 27 Order, at p. 2, "that this Board contention also has generic aspects because its thrust is more toward operational reliability than design considerations. As the Applicants' letter points out, "these matters are similar in nature to matters found with other TDI diesels. We expect, therefore, that litigation of this contention may involve us in proof of diesel operating histories from other nuclear plants with diesels of the same design." Applicants' response of April 2, 1984, at p. 3. True to their promise Applicants, then, go on to evade and refuse to answer any interrogatories which arguably or however remotely implicate evidence regarding the quality of either Duke's or Transamerica Delaval's programs for the design, fabrication, construction and testing of these emergency diesel generators; or their actual operating experience in other applications.

At its foundation the Board's contention questions the implications of the variety of problems which have occurred in the testing of the Catawba diesel generators for the safe and reliable service of these machines in their critical safety

related functions. It is apparent that in addition to weighing the adequacy of the remedial measures adopted by Applicants for the known problems which come to light in the testing and inspection program employed by Applicants, evidence must be adduced, and this Board must make findings, with respect to the assurance that problems and deficiencies yet undiscovered will not impugn the reliability of the emergency diesel generators safety service. Such evidence and such a conclusion must necessarily be predictive; but, nonetheless, it must be based upon the fullest empirical evidence available which has a predictive relation to the performance of the Catawba machines. Intervenors submit that the Applicants, the TDI Owners Group, the NRC Staff as well as Intervenors ourselves rely upon the operating experience of other TDI diesels (of identical and similar design) as well as available data regarding the inspection, testing, and surveillance of TDI diesels at all pertinent stages from design through procurement, manufacture, installation and actual operation. In short, all parties acknowledge the probative value of the operational history and quality assurance evidence as predictive of the reasonable assurance that the Catawba emergency diesel generators will, or will not, perform reliably in service. See, General Design Criterion 1 "Quality Standards and Records," 10 C.F.R. Part 50, Appendix A; and "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," 10 C.F.R. Part 50, Appendix B. See also, Applicants' February 22, 1984 response to NRC Staff

questions, particularly answers 12(1) and (2). The appeal board in this proceeding in ALAB 768, April 17, 1984, explicitly concluded that "the issues concerning the reliability of the TDI diesel generators do not appear to be wholly generic." Slip op. at p. 8, noting differences in models and operating histories, and concluding that this Licensing Board's suggestion of a lead case approach for litigation of the generic aspects of TDI quality assurance and operating history was not warranted. While we may view the policy issue of administrative efficiency otherwise, nothing in this Licensing Board's decisions nor in ALAB 768 stands for the proposition that quality assurance and operating history evidence is not relevant to the question of reasonable assurance of reliable service of these machines.

Palmetto and CESH urge this Board to overrule Applicants' objections to providing responsive answers to any interrogatories which objections are founded upon the asserted irrelevance of such quality assurance related evidence. We ask that full and complete and responsive answers to the following interrogatories be compelled: Nos. 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 36, 41, 42, 50, 52; CESH: Nos. 12 and 18.

Palmetto and CESH ask this Board to overrule Applicants' asserted objections to the following additional interrogatories and to compel full, complete and responsive answers:

19. The question seeks identification of the supplier of non-TDI manufactured components and a description of records reflecting surveillance and inspection of each. To the extent

that Applicants' answer is limited to the subjects contained in the original Board contention, it should be expanded to reflect the additional operational problems subsequently identified. Further, Board Notification No. 84-097 of May 17, 1984, confirms that the existence of metal files found in Catawba diesel generators 1B and 2A "could have compromised the diesel generators' ability to provide emergency power as required," and/or attributed to the supplier of the generators to TDI: Parson Peebles Electric Products. Such a problem is obviously relevant to reliable service of the Catawba diesel generators.

22-25. These questions, similarly, seek evidence with respect to the discovery and cause of the occurrence of the files found in the Catawba generators and the existence of other extraneous items not detected during the course of prescribed inspections and surveillance.

27. The question seeks identification of other emergency diesel generators used in nuclear applications. This information is sought in order that Intervenors may obtain further evidence with respect to the adequacy of the TDI diesels through comparison with other acceptable machines. Applicants object to collecting this information through a survey of all manufacturers. Such a survey is not sought; however, Applicants should be required to provide what information is within their knowledge. Their lack of knowledge may itself be material. Applicants' objection to providing further information should be overruled.

28. Intervenors seek evidence, known to Applicants, with respect to the deficiencies and LERs with regard to other diesel generators acceptable in nuclear applications. Such comparative evidence is either itself relevant or is reasonably calculated to lead to relevant evidence of the reliability of the Catawba diesels.

30. Intervenors seek evidence within Applicants' knowledge with respect to the actual performance of emergency diesel generators under emergency conditions. Such evidence, to the extent known, will likely provide a foundation for evaluating the significance of the limitations on the operating capability of the Catawba diesel generators.

31. While Applicants deny that replacement options are presently under considerations, Applicants should be required to respond within the scope of their knowledge. Such evidence clearly bears on the defenses available to Applicants as well as remedies and license conditions which might be available to Intervenors as well.

32. Intervenors seek to discover Applicants' knowledge of just such replacement options believed to be under consideration by Lilco at Shoreham. The Shoreham TDI problems were the precipitating event for NRC Staff investigation and Duke's own testing and inspection programs. The Shoreham remedies may well be of significance to Catawba in the future.

33. Intervenors seek a fully responsive answer reflecting the extent of Applicants' knowledge of part 21 reports with

respect to diesel generators in addition to TDI. Such knowledge bears on not only the reliability of the TDI machines but possible remedies available to the parties of this proceeding.

35A. Applicants respond in part that a maintenance and testing program is under development but object to providing further information. Such information clearly bears on Applicants' defense that such maintenance and testing programs will provide assurance of future reliable operation as well as bearing on available remedies. Applicants should be required to divulge the "further information" known to it.

39. This question seeks Applicants' position and evidence on the reliability of the Catawba diesels for operation at power levels short of full power and prior to full qualification. Such evidence is likely to bear on not only the availability of remedies but on the capability of the machines themselves to the extent that such evidence reflects the relationship between levels of qualification and required performance and service.

44A. Intervenors seek evidence with respect to competing bids sought and submitted in addition to the TDI proposals. Such bids themselves would likely provide substantive evidence of alternative design, manufacturing and testing approaches as well as shedding light on Applicants' knowledge and thoroughness in the selection of the TDI machines.

51. Intervenors seek further information with respect to the existence of circumstances in which the TDI diesels would likely be called into service. In Applicants' 2/24/84 submittal

to the NRC Staff, they described undervoltage incidents with respect only to the limited experience at Catawba. Intervenors submit that Applicants Ocone and McGuire experience will provide useful predictive data, fully taking into account relevant differences and circumstances, bearing on the reliability of Applicants' system as well as the frequency of external initiating events such as storms or other failures.

For the foregoing reasons, Intervenors, Carolina Environmental Study Group and Palmetto Alliance, request this Board order Applicants to provide full, complete, and responsive answers, together with relevant documents, to the discovery sought with respect to the admitted emergency diesel generator contention.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of *Palmetto Alliance and Carolina Environmental Study Group Motion to Compel Discovery from Applicants*

in the above captioned matter have been served upon the following by deposit in the United States mail this *1st* day of *June*, 198*4*

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