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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING APPEAL BOARD

'84 OCT 10 P2:22

Administrative Judges:

Alan S. Rosenthal, Chairman
Thomas S. Moore
Howard A. Wilber

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH
October 10, 1984

In the Matter of)
)
)
DUKE POWER COMPANY, ET AL.)
)
(Catawba Nuclear Station,)
Units 1 and 2))
_____)

SERVED OCT 10 1984

Docket Nos. 50-413 OL
50-414 OL

MEMORANDUM AND ORDER

We received yesterday afternoon the oral emergency motion of intervenors Palmetto Alliance and Carolina Environmental Study Group for directed certification under 10 CFR 2.718(i) and a stay pendente lite under 10 CFR 2.788 of a Licensing Board oral order entered earlier in the day at the applicants' behest. That order directed the receipt in camera of the testimony of a panel of applicants' witnesses on the so-called "foreman override" issue currently being heard by the Licensing Board in Charlotte, North Carolina. In so directing, the Licensing Board rejected the position of the intervenors that the testimony should be received in a public hearing.

Given the seriousness of any unwarranted departure from the Commission's general policy calling for its adjudicatory

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hearings to be conducted in public,¹ we scheduled an immediate telephone conference for the purpose of obtaining the positions of the parties on the intervenors' motion. After entertaining the arguments of counsel for the intervenors, the applicants, the NRC staff and (as amici curiae) local newspapers apparently interested in covering the hearing, we concluded that (1) no valid basis had been assigned for the challenged Licensing Board order; and (2) the order "affected the basic structure of the proceeding in a pervasive or unusual manner."² We therefore granted the motion for directed certification and summarily reversed that order. The reversal was orally communicated to the parties by the Secretary to this Board. The parties were further informed that, in taking our action, we did not reach any other question, including whether the testimony of any Duke Power Company employee subpoenaed by the intervenors should, upon the request of that employee, be received in camera.

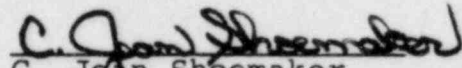
The oral reversal of the Licensing Board's order is hereby confirmed.

¹ See 10 CFR 2.751.

² See Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-405, 5 NRC 1190, 1192 (1977).

It is so ORDERED.

FOR THE APPEAL BOARD


C. Jean Shoemaker
Secretary to the
Appeal Board