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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

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USNRC

Before Administrative Judges: '84 JUL 23 110:09

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

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

SERVED JUL 23 1984
Docket Nos. 50-413 OL
50-414 OL
ASLBP No. 81-463-06 OL
July 20, 1984

MEMORANDUM AND ORDER
(Concerning Hearing and Associated
Dates and Expert Assistance for the
Diesel Generator Contention)

Schedule and Hearing Location. The Board and parties participated in a telephone conference call on July 16, 1984 concerning the timing of a hearing on the Palmetto and CESG diesel generator contention which we admitted in our Partial Initial Decision of June 22, 1984 (pp. 272-74, n.50). On the basis of that discussion, particularly the Staff's expectation that its technical analysis will be available about August 6, 1984, the Board establishes the following schedule:

August 15, 1984 Discovery closes, unless parties agree to later responses.

¹ See Tr. 12,768. We expect the parties to negotiate any discovery (Footnote Continued)

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August 20, 1984 All written testimony to be in the hands
of the Board and parties.

August 27, 1984 Commencement of evidentiary hearing.

We expect the hearing to last no more than five days and perhaps less. The hearing will be held at the Mecklenberg County Courthouse, Room 307, 800 East 4th Street, Charlotte, N. C.; beginning at 9 a.m. on the 27th.

Assistance of Experts for the Intervenors. We expect that the Applicants and Staff will call expert witnesses, as they have in the past. The Intervenors' prospects of having expert assistance are presently unclear. We stated in admitting the diesel generator contention that --

"We do not believe the present Intervenors can make a substantial contribution to these technical issues unless they are prepared to present expert testimony or at least have expert assistance in their cross-examination."

In his letter to the Board of July 6, 1984, Mr. Guild, Counsel for the Intervenors, submitted the name and a brief description of

(Footnote Continued)

disputes outstanding as of August 15, before bringing them to the Board. In any event, such disputes will not have the effect of delaying the filing of testimony or the hearing.

qualifications of Dr. Robert Anderson, a metallurgist. Although Mr. Guild's letter did not describe the nature and extent of Dr. Anderson's anticipated assistance to the Intervenors, we assumed, in accordance with the above-quoted statement, that such assistance might include Dr. Anderson's testimony and would extend at a minimum to review of the submissions of the other parties and his presence at the hearing to assist directly in cross-examination. However, when this question arose in the telephone conference, Mr. Guild could give us no assurance that Dr. Anderson would file written testimony, or that he would even be present at the hearing. We were told that Dr. Anderson had been retained by the Intervenors in the Shoreham case, for which an evidentiary hearing is scheduled to begin on September 5, 1984 in the week following the Catawba hearing. The discussion in the telephone conference suggested to us that Dr. Anderson might be contemplating assistance to the Catawba Intervenors only during such spare time as he may have, if any, and only insofar as his work at Shoreham might be relevant to Catawba. See Tr. 12,749-55. Such "assistance" would be inadequate to ensure a significant technical contribution from the Catawba Intervenors because, among other things, the diesel engine models and the admitted contentions at Shoreham and Catawba are different. Indeed, the Catawba contention is restricted to problems that have actually arisen in testing the Catawba diesels. In short, at this time it appears to us that Dr. Anderson may do little more than lend his name to the Intervenors.

In these circumstances, we require a firmer assurance that the Intervenor will be able to make a significant technical contribution in a hearing on the diesel contention. To that end, they shall either--

1. By August 1, 1984, serve on the Board and parties a certification that Dr. Anderson² (a) will review, at a minimum, the Applicants' Final Report entitled "Catawba Nuclear Station Diesel Engine 1A Component Revalidation Inspection" dated June 29, 1984, the Staff's Battelle report as described in the telephone conference (Tr. 12,724-26), and the written testimony of the Applicants and Staff and (b) will be present at the hearing to cross-examine or assist the Intervenor in cross-examining in his areas of expertise; or

2. By August 20, 1984, prepare and have in the hands of the Board and parties a reasonably detailed statement of their technical positions, reflecting their review of the reports referenced in the preceding paragraph, specifying the respects in which they disagree with those reports, and describing how they propose to substantiate their positions.

As we envision it, the statement of technical position outlined in option 2 would have to be prepared with substantial assistance from qualified experts. In this regard, the Intervenor must bear in mind

² Or an equivalently qualified expert submitted to and approved by the Board by August 15, 1984. For present purposes, we are satisfied with Dr. Anderson's qualifications as described by Mr. Guild. He would, of course, be subject to voir dire challenge at the hearing like any other proffered expert.

that in moving admission of this late contention, the burden is on them as movants to show that their participation "may reasonably be expected to assist in developing a sound record." 10 C.F.R. § 2.714(a)(1)(iii). Given the technical nature of the issues involved, the Intervenors' effort to date to meet that burden -- with technical assistance limited to whatever Dr. Anderson might do -- is patently inadequate. See Washington Public Power Supply System (WPPSS Nuclear Project No. 3), 18 NRC 1167, 1177. In any event, preparing a statement of positions involves no additional burden, because the same (and more) work would have to be done in order to make a contribution at the hearing.


Should the Intervenors elect to submit a statement of technical positions, the Board would promptly review it and determine whether they had met their threshold burden under 10 C.F.R. § 2.714(a)(1)(iii), in whole or in part. Based upon that determination, the Board would (1) if their burden were fully met, proceed to hearing on diesel problems within the scope of the contention, or (2) if their burden were partly met, proceed to a hearing limited to problems on which that burden had been met; or (3) if the Intervenors failed altogether to meet their threshold burden, dismiss the contention.

The other parties should not be put to the unnecessary work of preparing written testimony if the Intervenors are not prepared to meet the obligations imposed by either of the options we have described. Accordingly, although a statement of technical positions need not be delivered until August 20, 1984, the Intervenors are to notify the

Applicants and Staff no later than August 15, 1984, if they are not going to deliver such a statement by August 20, 1984.

This Memorandum and Order was read to the parties on the telephone on the date of issuance.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD


James L. Kelley, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland
July 20, 1984