

October 11, 1984

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'84 OCT 16 AM 11:00

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

Docket Nos. 50-413 OL
50-414 OL

NRC STAFF RESPONSE TO APPEAL BOARD
REQUEST FOR POSITIONS ON LIFTING
STAY OF APPEAL BRIEFING OBLIGATIONS

I. INTRODUCTION

By Order of October 4, 1984, the Atomic Safety and Licensing Appeal Board (Appeal Board) has requested the parties to reconsider their positions that the stay of the briefing schedule placed into effect on July 20, 1984, pursuant to the motion of Intervenor Palmetto Alliance, should remain in effect pending the disposition of the "Welder B/foreman override" quality assurance issue. The Appeal Board also requested particularization of reasons why the briefing "clock" should not begin to run (including the significance attached to a reasonably expeditious ultimate resolution of the issues already decided), should a party favor continuation of the briefing deferral. As shown below, the Staff does not require a stay of the briefing schedule in order to accommodate its other hearing obligations. Moreover, since final proposed findings of fact and conclusions of law are scheduled to be submitted simultaneously by all parties on October 19, 1984, the briefing schedule "clock" on the

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already decided issues could begin to run as of that date without causing hardship to any party. Thus, while a consolidated appeal briefing schedule could be accomplished by further stay of about one month, the absence of hardship, and the fact that the great majority of issues has already been decided, result in there being no compelling reason for continuing the stay beyond October 19, 1984.

II. DISCUSSION

The stay in the briefing schedule granted by the Appeal Board on July 20, 1984 was supported primarily on two bases: (1) the expectation that at least two partial initial decisions, in addition to that issued on June 22, 1984, would be forthcoming and be the subject of appeals and (2) the burden on the parties of pending hearing obligations on the late-filed Catawba-specific diesel generator contention. Since that time, a supplemental Partial Initial Decision (PID) has been issued on the emergency planning contentions, the diesel generator contention has been dismissed, and hearings have been held on October 9-11, 1984, on the "Welder 3/foreman override" quality assurance issue. In addition, Intervenor Palmetto Alliance has, on behalf of itself and Carolina Environmental Study Group, filed a notice of appeal of the supplemental PID on emergency planning issues. Neither Applicants nor the NRC Staff have filed notices of appeal with respect to either PID. Finally, completion of party hearing obligations with respect to the lone remaining hearing issue is expected on October 19, 1984 (when proposed findings are due) under the current schedule for hearing of the "foreman override" issue established by the Licensing Board hearing that matter.

Inasmuch as Intervenor's are the sole appellants in the proceeding thus far, they are the parties initially, and principally, affected by going forward with the briefing schedule prior to completion of the "foreman override" hearings. However, under the current hearing schedule, the Staff perceives no hardship upon any party if the briefing clock were to commence running, with respect to the issues currently before the Appeal Board, on October 19, 1984, the date for filing of all parties' proposed findings on the "foreman override" issue. By that date, both principal justifications for the current stay will have been removed in that (1) there will be no further conflicting party hearing obligations, and (2) the great majority of the matters considered by the two Catawba licensing boards will have been decided. ^{*}/

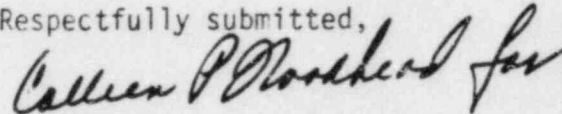
In sum, the Staff perceives no hardship to itself or the other parties by commencement of the appeal briefing schedule on the decided issues in this proceeding with the completion of party hearing obligations (on October 19, 1984). While some economy of party resources might be achieved by continued stay until ten days following the anticipated Licensing Board "foreman override" decision on October 26, 1984, there are no compelling reasons to stay the schedule beyond October 19, 1984.

^{*}/ The only additional consideration that might weigh in favor of a further deferral of the appellate briefing schedule is that the Licensing Board currently intends to issue a decision on the "foreman override" matter by October 26, 1984. Further deferral of the appellate briefing schedule until the time for filing a notice of appeal from the "foreman override" decision has expired would allow a fully consolidated appeal briefing encompassing all appeals from all Licensing Board decisions.

III. CONCLUSION

While further stay of the appeal briefing schedule until ten days following the anticipated Licensing Board "foreman override" decision would permit a fully consolidated appeal, there are no compelling reasons for further stay of the pending appeals. The Staff does not oppose lifting of the stay of appellate briefing schedules, particularly after the parties' hearing obligations have been satisfied as of October 19, 1984.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "George E. Johnson for".

George E. Johnson
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 11th day of October, 1984

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO APPEAL BOARD REQUEST FOR POSITIONS ON LIFTING STAY OF APPEAL BRIEFING OBLIGATIONS" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, this 11th day of October, 1984:

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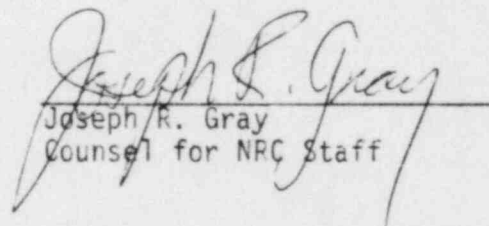
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