

ORIGINAL

1 UNITED STATES OF AMERICA

2 NUCLEAR REGULATORY COMMISSION

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7 In the matter of :

8  
9 DUKE POWER COMPANY, et al

Docket No. 50-413  
50-414

10 (Catawba Nuclear Station,  
11 Units 1 & 2)

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17 Telephone Conference

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20 Location: Bethesda, Maryland

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21 Date: Wednesday, August 8, 1984

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1 UNITED STATES OF AMERICA  
2 NUCLEAR REGULATORY COMMISSION  
3 BEFORE THE ATOMIC SAFETY & LICENSING BOARD PANEL  
4 TELEPHONE CONFERENCE  
5

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7 In the Matter of:

8 DUKE POWER COMPANY, ET AL  
9 (Catawba Nuclear Station,  
10 Units 1 &2)

Docket No's.  
50-413 OL  
50-414 OL  
ASLB No. 81-463-01

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12  
13 4350 E. West Highway  
14 Bethesda, Maryland  
15 Wednesday, August 8, 1984

16 The telephone conference call in the above-entitled  
17 matter was convened at 2:00 pm., pursuant to notice.  
18

19 APPEARANCES :

20 Board Members:

21 JAMES L. KELLEY, Esq., Chairman  
22 Administrative Law Judge  
23 Atomic Safety and Licensing Board Panel  
24 U.S. Nuclear Regulatory Commission  
25 Washington, D.C. 20555

1 APPEARANCES CONTINUED :

2  
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4 Atomic Safety & Licensing Board Panel

5 PAUL W. PURDOM, Member  
6 Atomic Safety & Licensing Board Panel

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21 On Behalf of the Intervenor, Palmetto Alliance:

22 ROBERT GUILD, Esq.  
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24 Charleston, South Carolina

25 On Behalf of the Intervenor, Carolina Environmental  
Study Group:

JESSE RILEY  
Charlotte, N. Carolina

1 (The following introductions were given by  
2 telephone)

3 MR. JOHNSON: This is George Johnson representing  
4 the NRC staff.

5 MR. GUILD: This is Robert Guild for Palmetto  
6 Alliance.

7 MR. RILEY: Jesse Riley for CESG.

8 CHAIRMAN KELLEY: Thank you very much. Before  
9 passing through the main reason for this call let me just  
10 note a couple of documents received, at least in my office,  
11 and then we can see if everybody else has them. I now  
12 have the staff's Technical Evaluation Report under a cover  
13 letter from Mr. Johnson to the Board and parties, and I  
14 know Judge Foster was suppose to get his today. Has that  
15 arrangement been made?

16 MR. FOSTER: Arrangements are made. It hasn't  
17 arrived at Bay Street yet.

18 CHAIRMAN KELLEY: Okay.

19 MR. JOHNSON: This is George Johnson. I gave  
20 it to the transportation people around 11:00 or 11:30 so  
21 it should be coming.

22 MR. FOSTER: I'm looking for it.

23 CHAIRMAN KELLEY: Okay. And what about others,  
24 Mr. McGarry, Mr. Carr, have you got that document?

25 MR. CARR: Yes sir we do. This is Albert Carr.

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1 CHAIRMAN KELLEY: And the intervenors, Mr. Guild?

2 MR. GUILD: No sir I have not received mine yet.

3 CHAIRMAN KELLEY: Is that coming Federal Express?  
4 Or, how is that going to get there Mr. Johnson?

5 MR. JOHNSON: I think it is coming either  
6 Federal Express or Express Mail, one of the services.

7 CHAIRMAN KELLEY: Okay. So hopefully today or  
8 at least tomorrow it should be there. Mr. Riley, do you  
9 have yours?

10 MR. RILEY: It came about 2 or 3 hours ago.

11 CHAIRMAN KELLEY: Okay fine. Judge Purdom did  
12 you get yours?

13 JUDGE PURDOM: I received something this morning  
14 but I haven't looked at it yet.

15 CHAIRMAN KELLEY: Okay. The other thing I got  
16 and time is not as much of the essence there I guess, but  
17 I did get, I just want to acknowledge the applicant's  
18 investigation of the Welder B allegations under a cover  
19 letter from Mr. Carr dated August 3 and I assume everyone  
20 else will-either has that or will get it shortly.

21 The background for today's telephone conference call  
22 is briefly this; I received a call the other day from Mr.  
23 Carr and Mr. McGarry and Mr. McGarry referred to Mr. Guild's  
24 letter of August 1 to the Board with copies to the parties  
25 about the unavailability of Dr. Anderson, and indicated his

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1 desire to make a motion to dismiss the diesel generator  
2 contention with reference particularly to that letter and,  
3 perhaps, other factors. But, we did not discuss it beyond  
4 that. I simply said, well, having heard his request, we  
5 would set up this call which we proceeded to do. And that  
6 is our main purpose today, to give the applicants an  
7 opportunity to make their motion.

8 I think, let's follow our usual sequence in the case.  
9 Mr. McGarry, Mr. Carr or both can present their motion.  
10 Then we hear next from staff as to their position and then  
11 Mr. Guild and Mr. Riley, in the third slot, would have an  
12 opportunity to respond to both. Is that satisfactory to  
13 everyone?

14 MR. GUILD: Judge, this is Guild. Without  
15 hearing their motion it is somewhat difficult to tell what  
16 the nature of our response should be. It is our position  
17 that the contention should not be dismissed. We oppose  
18 the motion. I was informed late yesterday by Al Carr and  
19 Mike McGarry that they would by such a motion. We would  
20 ask the opportunity to review their motion and to formulate  
21 a position in due course and not to respond orally today.  
22 We believe that prerogative is one that is protected by  
23 Rules of Practice 10CFR 2730 with respect to motions,  
24 normally providing for motions in writing and a 10 day  
25 response time. We have no problem with the device of the

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LAR 3

1 conference call, but I would point out that in the past,  
2 when motions have been lodged by this party, the applicants  
3 have insisted and received an opportunity to review  
4 transcripts and to respond here in writing or in a follow-  
5 up conference call and we would ask that opportunity today.

6 CHAIRMAN KELLEY: Well, I guess we can hear from  
7 parties on the procedural point. Let me make an observation  
8 and a suggestion. We have heard a great many motions in  
9 this case orally, followed by oral responses. It is also  
10 true as Mr. Guild points out, that in some cases a  
11 responding party has said that they want time to look at  
12 the transcript, and I think generally speaking we have  
13 granted that request.

14 I don't see that it follows necessarily a ten day  
15 response, a ten day response time. That's what the rule  
16 states in the normal course if no other time is set but  
17 the Board has the authority to set a different time. If  
18 a shorter time were called for and a longer time if that's  
19 called for.

20 Let me make the suggestion that we hear Mr. McGarry  
21 and Mr. Carr's motion presentation and that having heard  
22 it you may discover Mr. Guild that it is something that you  
23 can respond to now and if you can, fine, I would ask you to  
24 do so. If you feel you need some more time then we can  
25 figure out, under the circumstances, what an appropriate

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Tape 1

1 time might be.

2 That's my reaction. What it boils down to I guess is  
3 that we would like to hear the whole motion today and go  
4 ahead and have it before us. If either the staff or the  
5 intervenors feel they need time to look at transcript then  
6 we can discuss how much time will be made available. Any  
7 comments on that then from Mr. Guild or Mr. Johnson?

8 MR. GUILD: This is Bob Guild. That sounds like  
9 an acceptable way to move forward.

10 CHAIRMAN KELLEY: Mr. Johnson?

11 MR. JOHNSON: I would have some comments but  
12 they really would depend on the nature of the motion.

13 CHAIRMAN KELLEY: It kind of depends on what is  
14 said, so why don't we go ahead and hear the motion and  
15 then take further comments if necessary, or people who  
16 want to make them.

17 MR. JOHNSON: Thank you sir.

18 CHAIRMAN KELLEY: Okay. Mr. McGarry?

19 MR. MCGARRY: Just for the record, the record  
20 should reflect that Mr. Carr and myself did contact Mr.  
21 Filey and Mr. Guild yesterday and alerted them to the  
22 nature of this phone call.

23 The purpose of the phone call is for the applicants  
24 to make a motion to dismiss. The basis of our motion is  
25 failure to comply with Board imposed conditions. I would

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LAR 5 25



1 like to review some relevant events.

2 First of all, turning our attention to the June 22  
3 partial initial decision, Footnote 50, pages 272 through  
4 274, particularly on page 273, the Board states as follows:  
5 "As we have made clear in the past, we do not believe the  
6 present intervenors can make a substantial contribution in  
7 technical issues unless they are prepared to present expert  
8 testimony or at least have expert assistance in their cross  
9 examination."

10 The intervenors have repeatedly indicated that they  
11 will be able to produce experts. So far, however, they  
12 have not done so. Now that the intervenors have in hand  
13 the applicant's report on site specific problems at  
14 Catawba they should be in a position to move quickly to  
15 obtain the appropriate expert assistance.

16 Circumstances are admission of this late contention.  
17 His condition, upon the intervenors serving by July 6, 1984,  
18 their designation of a main diesel generator expert, or  
19 experts, along with a discription of qualifications  
20 (resume).

21 Failure to meat this condition will result in dismissal  
22 of this contention". It is clear,- that is the end of the  
23 quote, the relevant section of the quote. It is clear  
24 that the contention is to be admitted based upon the  
25 active participation by an expert on behalf of the

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LAR 6

1 intervenors.

2 The next item, we would direct the Board's attention  
3 to, is the intervenors' July 6, 1984 identification of  
4 Dr. Anderson as their expert. The only relevant portion  
5 thereof is the quote where they state that Dr. Anderson  
6 is to be their source of expert assistance.

7 On July the 16th there was a conference call. In  
8 that conference call, the Board pursued the question of  
9 the participation of Dr. Anderson and raised various  
10 questions in that regard. The Board followed up that  
11 conference call with a July 20th, 1984 order. In that  
12 order the Board made reference to, with observation, that  
13 Dr. Anderson appeared to be pursuing Catawba in its spare  
14 time and that it appeared to the Board that he was doing  
15 little more than lending his name.

16 And, we direct the Board's attention to page 3 of  
17 that order of which it is well familiar. The Board then  
18 imposed a condition. That condition was an either or  
19 condition. The first part of that condition was that by  
20 August 1st, 1984 the intervenors were to certify that Dr.  
21 Anderson, at a minimum, would review the applicant's  
22 staff reports and attend the hearing either to assist in  
23 cross-examination or to conduct cross-examination.

24 Alternatively, the Board permitted intervenors to  
25 prepare by August the 20th, a detailed statement of

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1 technical positions which reflects three things.

2 First, a review of the applicant's staff reports.  
3 Second, the respect in which the intervenors disagree with  
4 the reports, and third, a demonstration of how their  
5 position will be substantiated.

6 The Board specifically stated, on page 4 of that order,  
7 and I quote: "As we envision it, the statement of  
8 technical position outlined at Option 2 would have to be  
9 prepared with substantial assistance of qualified experts."

10 Then we turn to the August 1 letter of Palmetto  
11 Alliance that addresses the Board's July 20th order. In  
12 that letter, on the first page, second paragraph, the  
13 intervenors state; "Due to Dr. Anderson's prior professional  
14 commitment, we are unable to make such certification at  
15 this time."

16 Turning to page 2, the carry over paragraph, the  
17 last sentence; "Because of his obligations to the  
18 shoreham intervenors which I am informed extended through  
19 our scheduled hearing date on into September, when the  
20 Shoreham hearings will be conducted, I am unable to make  
21 the certification required of us by the Board."

22 Turning to the last paragraph; "Thus, the present  
23 scheduling of hearings in this proceeding (adopted over  
24 our objection) in advance of, and conflicting with pre-  
25 hearing required for -- and Shoreham will serve only to

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1 deprive the parties and the Board of a benefit of Dr.  
2 Anderson's expertise here."

3 Now, taking that information and background we make  
4 our motion, which again is premised on the intervenor's  
5 failure to comply with a Board imposed condition. The  
6 June 22 Partial Initial Decision makes clear that the  
7 intervenors much have an expert. If they do not have an  
8 expert, the Board made clear, that the contention would  
9 be dismissed.

10 We read the August 1st letter as reflecting the  
11 unavailability of an expert. Specific reference is made  
12 in the last passage that I quoted. That the parties and  
13 the Board will be deprived of the benefit of Dr. Anderson.  
14 We read that to say that Dr. Anderson will not participate.

15 Even if you could read this letter to say that Dr.  
16 Anderson would participate, at most one could conclude  
17 on the basis of the existing record, that he is merely  
18 lending his name and participating in his spare time.  
19 And, as this Board stated in its July 20th order on page  
20 5, that that type of assistance by Dr. Anderson is,  
21 "patently inadequate".

22 Secondly, our motion should not be viewed as  
23 premature. Admittedly, the Board permitted the intervenors  
24 until August the 20th to file a technical report. However,  
25 the Board conditioned that technical report upon the

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LAR 9

1 substantial and significant assistance of expert -- We  
2 maintain that the record now reflect that there is no  
3 participation by an expert.

4 Secondly, the Board in its July 20th order, instructed  
5 the intervenors that by August 15th they were to notify  
6 the parties as to whether or not they were going to file  
7 a technical review. The Board took such action recognizing  
8 the time and expense that the other parties were enduring  
9 in efforts to prepare testimony.

10 I maintain,- we maintain that the motion is not  
11 premature with respect to this later point. The applicants  
12 are spending quite a bit of time and quite a bit of  
13 money at this particular point in preparing a case. And,  
14 if this matter is susceptible to a motion to dismiss,  
15 which we maintain it is because of the lack of an expert,  
16 the Board should so act at this point time rather than  
17 waiting until August the 15th or August the 20th.

18 A third basis for our motion is the Appeal Board's  
19 decision,- The third point supporting our motion is the  
20 Board's decision in Washington Public Power Supply System  
21 case, ALAB 747 which this licensing Board has made  
22 reference to. We maintain that that decision supports  
23 our motion.

-- and ALAB 747, the Appeal Board set forth criteria  
for late file contention. With regard to item 3 which is

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1 a demonstration of a contribution that an intervenor can  
2 make, the Appeal Board established the criteria that have  
3 to be satisfied prior to the admission of a contention.  
4 And those criteria are threefold.

5 The intervenors are to set out with particularity  
6 the precise issues it plans to cover. Second, they are  
7 to identify witnesses, and third, they are to summarize  
8 the proposed testimony.

9 The Board, in our view, would have been in a position  
10 to dismiss this case on a basis of ALAB 747 back in June  
11 and July of this year. However, this Board, in our view,  
12 saw that ALAB 747, by giving the intervenors additional  
13 time to meet factor three. Again, ALAB 747 should be read  
14 as establishing a criteria that must be satisfied prior to  
15 the admission. We maintain the Board gave the intervenors  
16 additional time to satisfy condition 3 and they have still  
17 yet to satisfy that condition.

18 A fourth point that we would raise in support of our  
19 motion is this Board should not be of the view that any  
20 due process violation have occurred. We read the  
21 intervenors' August 11st letter as suggesting that that,  
22 perhaps, may occur, particularly make reference to the  
23 suggestion that the scheduling of this hearing on the heels  
of the Shoreham proceeding compromises the intervenors'  
ability to obtain the assistance of Dr. Anders.

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LAR 11 25

1           There are several points we would like to make in  
2 this. First of all, diesel generator issues came known  
3 to the intervenors, as the record will reflect, in August  
4 of 1983. The intervenors have been trying to raise this  
5 issue since November/December of 1983. There have been  
6 numerous Board notifications concerning this issue commencing  
7 in late 1983. The applicant informed the Board and parties  
8 February of 1984 of the Catawba specific problem.

9           Duke discovery on Catawba specific problems has been  
10 available since April 2, 1984 and has been supplemented  
11 thereafter. Accordingly there has been plenty of time  
12 for the intervenors to prepare. We would note in this  
13 regard that Shoreham is not being conducted the same week  
14 that the scheduled Catawba proceedings will be conducted  
15 but this motion is not granted.

16           You would also note the applicants have obtained the  
17 services of various witnesses who will participate in the  
18 Shoreham proceeding. A second point with respect to the  
19 due process argument is that the Board should recognize  
20 that the intervenors agree to a schedule which would have  
21 resulted in this case being tried this very week, August  
22 6. And we maintain, that being the case, the witnesses  
23 should have been prepared to go forward on that date.

          The Board will recognize that the hearing was slit  
because of the staff position and timing of their documents

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1 and all parties agreed to that subsequently.

2 Another point with respect to due process is the  
3 intervenors have raised the Shoreham issue before and has  
4 been rejected by this Board. Another point that we make  
5 with respect to support of our motion, the failure to  
6 comply with the discovery indicates a lack of contribution  
7 because of the non-participation of the expert.

8 On July 18th we served interrogatories on Dr.  
9 Anderson. The purpose of those interrogatories, as set  
10 forth in our cover letter, was to probe the extent of  
11 Dr. Anderson's involvement in Catawba and to obtain  
12 information concerning his review and position on the  
13 adequacy of our tests and inspection program which is set  
14 forth in our reports. To that end, we took each problem  
15 that we have seen at Catawba and asked Dr. Anderson a  
16 series of questions.

17 The responde to our interrogatories was due August  
18 6. This past Monday. We have received no response.  
19 And our understanding from Mr. Gowdy -- is that a response  
20 is not forthcoming. We would note as an aside, in the  
21 event that this Board denies our motion to dismiss, we  
22 would ask this Board to grant our motion to compel answers  
23 to our interrogatories. We would ask that they grant  
24 that forthwith so that we can obtain those answers very  
25 early next week, Monday or Tuesday, so we can factor that

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1 into the testimony that we have to submit on the 20th.

2 Secondly, with respect to discovery, the existing  
3 state of the record shows that expert testimony, or expert  
4 assistance, is indeed necessary. On March the 19th we  
5 served interrogatories upon the intervenors which were  
6 similar to the interrogatories we served on Dr. Anderson.  
7 On April the 1st we obtained responses from Mr. Guild and  
8 from Mr. Riley and, indeed, that document reflects that  
9 those two gentlemen identify themselves as the individuals  
10 responding to the interrogatories.

11 We maintain that that interrogatory response is  
12 totally inadequate. For example, in asking them a series  
13 of questions on the lube oil pre-lube lock (phonetic)  
14 they respond that, - yeah, we asked them whether our  
15 solution was adequate.

16 CHAIRMAN KELLEY: Let me raise a question Mr.  
17 McGarry as to whether we are really in a position to rule  
18 on motions that compel direct answers to certain questions.  
19 I'm -

20 MR. MCGARRY: If you can-

21 (Talking over one another)

22 MR. MCGARRY: If you can just reserve on that.  
23 I'm not advancing that at this particular point in time.

24 CHAIRMAN KELLEY: Okay.

25 MR. MCGARRY: But I'm suggesting, Judge Kelley,

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1 is that we sought information concerning the views of the  
2 expert and that information is not forthcoming and our  
3 receiving that information will not be forthcoming. That  
4 indicates that the expert has not been involved in this  
5 proceeding.

6 Then we direct your attention to an earlier round  
7 of discovery to see if the lack of involvement of an expert  
8 can be cured by the existing parties which maintain cannot  
9 be, and we believe you have already stated that to be the  
10 case. But, to reemphasize that point, we look at their  
11 responses and they specifically state; "Intervenors have  
12 insufficient information to know whether or not such fixes  
13 or modifications are adequate." Our point being that the  
14 intervenors, that is Mr. Guild or Mr. Riley, are taking  
15 the position that without expert assistance they cannot  
16 make a contribution to this proceeding.

17 In sum, for the various reasons that we have set  
18 forth today, we believe that a motion to dismiss is in  
19 order at this particular point in time. Our primary  
20 position is that the Board established a condition that  
21 an expert must be involved in the intervenors' participation  
22 in this case. And, absent that participation, the  
23 contention must be dismissed.

24 It is clear that there is no expert participation in  
25 this proceeding and it is clear that there will be no expert

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1 participation in this proceeding on behalf of the  
2 intervenors. And, accordingly, the motion to dismiss  
3 should be granted.

4 CHAIRMAN KELLEY: Just one question Mr. McGarry.  
5 You say it is clear that there will be no expert  
6 participation on behalf of the intervenors. I'm afraid  
7 that is not completely clear to me. Mr. Guild wrote a  
8 letter about Dr. Anderson and I read the letter as saying  
9 that Dr. Anderson won't be around. He is not going to be  
10 in the case.

11 MR. MCGARRY: That's right.

12 CHAIRMAN KELLEY: And I accept that. But, I  
13 don't know whether the intervenors are going to get an  
14 expert tomorrow or the next day who, if he doesn't come to  
15 the hearing, might not help write the statement of  
16 technical possession. That's not due until the 20th of  
17 August as I recall.

18 MR. MCGARRY: Do not forget the Board's  
19 initial position.

20 CHAIRMAN: Well, my view is, I am just speaking  
21 for myself Mr. McGarry, I don't feel bound by that initial  
22 statement in that sense. We gave them an option to write  
23 a statement with expert input and under that option you  
24 don't have to have an expert at the hearing. That's the  
25 way we wrote the last order. For good or real, that's what

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LAR 16 25

1 we said and I thought that that was, in that sense, a  
2 relaxation of Footnote 50. Speaking for myself, again.

3 MR. MCGARRY: Quite candidly we were a little  
4 bit perplexed by that statement in your July 20th order  
5 in relation to the June 22 position which we felt was  
6 pretty clear. And, particularly in light of the Appeal  
7 Board's decision in the WHOOPS case which indicates you  
8 have to have some expert.

9 Right now our position is this Board doesn't know  
10 whether or not there is going to be an expert.

11 CHAIRMAN KELLEY: Well, we will have to find  
12 out. Maybe later today. I'm assuming that Dr. Anderson  
13 is just gone. We are not worrying about him anymore.  
14 I'd like to find out what other experts. We will be  
15 hearing Mr. Guild and Mr. Riley and maybe we will get  
16 some light shed there on whether anybody else is going to  
17 be available. That's the only point I wanted to make.  
18 Maybe, let me ask Mr. Johnson if he feels that he is  
19 ready to make some comments.

20 MR. JOHNSON: Yes sir. I am prepared to make  
21 a few comments.

22 CHAIRMAN KELLEY: Go ahead.

23 MR. JOHNSON: I had read the Footnote 50  
24 directive as the first of two conditions that the intervenors  
25 had to make in order to -- -- And the first condition in

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1 that order was that by July 6th, 1984 they designate a  
2 named expert, his qualifications, which they did. But,  
3 the operation of the most recent letter, seems to me, is  
4 to withdraw the substance of that designation, and as a  
5 result they would seem to not be meeting the first condition  
6 of that initial footnote.

7 Now, I hear you saying that that has been superceded  
8 but when I had read these orders together, was that they  
9 had followed in sequence and that the second order was  
10 based on the first order. In other words, you were acting,  
11 when you issued this July 20th order on the basis of having  
12 issued the first directive and then the July 6th letter  
13 had seemed to satisfy that initial condition. And then  
14 we were moving on to the next stage.

15 So, I'm just clarifying the way I interpreted the  
16 two orders, the way they sit together.

17 CHAIRMAN KELLEY: Okay. Well, let me just  
18 restate, in order to find out what the Board meant, the  
19 Board will have to confer on this very point and precisely  
20 the way it is being raised now I can't say that we have.  
21 I can tell you what was in my mind. That if you did this  
22 detailed statement, you would have to have an expert  
23 help you write it. You couldn't do without expert  
24 participation. But, it wasn't necessarily required that  
25 the expert be there at the hearing. That, I saw as an

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LAR 18

1 alternative option. That's just one man's view. Go ahead.

2 MR. JOHNSON: Yes sir. The other point I have  
3 relates to the second order and I understand that it doesn't  
4 require, in the second alternative, that at this point  
5 in time an expert be designated on its face. However, I  
6 think the applicant's point is well taken with regard to  
7 the timeliness of their request, their motion, because the  
8 substance of the injury or burden that is being imposed  
9 is being imposed now. And by the 20th or the 21st, when  
10 this statement is due, all the testimony and preparation  
11 for the hearing will be very substantially completed and  
12 all the burden that is being imposed upon the other  
13 parties will have occurred. And so, it seems to me, if  
14 we know now, I say, if, we know now, that there will be  
15 no expert assistance, I think fairness would seem to  
16 indicate that perhaps now would be the time to decide  
17 that the condition to the admission of the contention is  
18 not met. That is the 27 14A liii with regard to  
19 contribution of the,- to the developing of a sound record.  
20 Those are the two points that I would like to make with  
21 regard to the two orders, and if no expert is to be  
22 available from the intervenors for assistance in  
23 developing these questions or developing,- not questions,  
24 but positions , or to be at the hearing to assist, then  
25 I don't believe that either the literal or the reading

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LAR 19

1 of the two order, or the intent of the orders is being met.

2 CHAIRMAN KELLEY: Well, just a comment. Let me  
3 assure you, let me assure everybody, when we set up the  
4 time deadlines in this last order and wherein we acknowledged  
5 our awareness that it was a burden upon parties to prepare  
6 testimony and prepare the exhibits for hearing, it  
7 gets cancelled a few days before the hearing date. And  
8 we tried to accomodate that to some extent.

9 If there had been no hurry at all we would have gone  
10 through this entire expert designation, filing statements  
11 of, - in the alternative, filing statement of technical  
12 position, that would have been done before anybody wrote  
13 a word of testimony. But that simply wasn't possible  
14 especially with the applicants' desire to get this matter  
15 resolved in the very near future.

16 I assume the applicants are willing to write  
17 testimony that never sees the light of day as long as they  
18 get this issue resolved in the next month or two as opposed  
19 to next Christmas. But, we were aware of that and, frankly,  
20 we tried to strike a balance. Maybe we didn't strike the  
21 best balance but we tried to factor that in and be  
22 reasonable among all parties concerned.

23 I certainly agree with you Mr. Johnson that if the  
24 intervenors can tell us today that they haven't got an  
25 expert, they are not going to be able to find one, and

NRC 113  
Tape 1  
LAR 20

1 they are just going to come to the hearing without one,  
2 it would be good to hear that now instead of two weeks from  
3 now. We go ahead and decide whether to dismiss the  
4 contention, which we already said we would, it's a little  
5 different though, if the intervenors are going to tell us,  
6 and they are going to have their chance in a minute, that  
7 they are out looking for an expert and hope to find one,  
8 and hope to bring him to the hearing or hope to file a  
9 statement of technical position. And, if that is something  
10 that they are trying to do, and I would like to know, we  
11 have already issued an order which gave them certain  
12 times within which to do it and I, for one, would be  
13 reluctant to try to ratchet that time back.

14 But, I guess, with that, Mr. Guild, you having heard  
15 the motions and the staff's position, are you ready to  
16 speak to the motion?

17 MR. GUILD: No sir I'm not. And, I think much  
18 of what has been said shed very interesting light on the  
19 willingness of the applicants and the staff to join these  
20 issues about safety of these machines. It is interesting  
21 that the burden which we understood under the Atomic  
22 Energy Act and implementing regulations remained on  
23 applicants to show they can safely run the plant has been  
24 effectively shifted to intervenors to demonstrate that  
25 they can prove otherwise in the face of -- -- staff and

NRC 113 24  
Tape 1  
LAR 21 25



1 industry technical documents cast doubts about that.

2 The status we are in right now Judge is that I was  
3 informed at 5:00 yesterday that such a motion was  
4 anticipated. I told Mike McGarry and Al Carr that I  
5 thought it was premature. I am pleased to see that they  
6 at least acknowledge that as an issue and addressed it.  
7 I told them also that we thought that they were setting  
8 up an issue of most clear due process violations that  
9 I can imagine in the treatment of what is being characterized  
10 as a late file contention. All the obligations falling  
11 therefrom on only the intervenors and not on the applicant.

12 But, that if they insisted on maintaining that  
13 position, we are perfectly happy to see them dig the hole  
14 and then climb into it. But, with due regard to the  
15 dimensions of that hole, Judge, and we think it really  
16 is a serious procedural error that has been committed  
17 by the Board and at the behest of staff and the applicant.

18 We do ask a fair opportunity as extended to the  
19 applicants in other -- to read what they have had to say,  
20 to prepare ourselves for responsible fashion to respond  
21 to their arguments as well as to the questions raised  
22 by the Board, and most particularly, we should point out  
23 that the key staff document which establishes the technical  
24 position which the staff and the applicants make so much  
25 of as being the real point here and not the so-called

NRC 113  
Tape 1  
LAR 22

1 Archain (phonetic) legal maneuvering going -- all of this,  
2 that document has not yet arrived in my hand. It arrived  
3 only hours ago and Mr. Riley, notwithstanding that fact,  
4 he tells me that there are significant questions raised  
5 by Batelle (phonetic) Labs with regard to conditions they  
6 would impose on the operation.

7 I think that you will find that that technical  
8 report adds more weight to the concerns that we have had  
9 rather than less. Be that as it may, it seems to me  
10 that it is only fair that we have an opportunity to not  
11 only review the motion which has now been made orally by  
12 applicants, the questions raised by the Board, and staff's  
13 position, as well as do a more thorough review of that  
14 recent staff technical report and be able to respond.

15 The short and the long of it Judge, we oppose the  
16 motion to dismiss. We believe we are entitled to the  
17 procedural relief at least as set forth in the Board's  
18 July 20th order, and mindful of the procedural options  
19 that were presented there, we are pursuing this contention.  
20 And, intend to pursue it and would like to have an  
21 opportunity to be heard after some opportunity to prepare  
22 to -- motion.

23 CHAIRMAN KELLEY: Let me ask you a couple of  
24 factual questions and I think you should be able to  
25 respond to at this point. I read your letter of August 1

NRC 113  
Tape 1  
LAR 23

1 to us as saying that Dr. Anderson is simply not in the  
2 picture of this case, right?

3 MR. GUILD: No sir that's not correct. Dr.  
4 Anderson is unable to comply with the terms of the  
5 certification which you required of this party and that  
6 was to certify as of the first of August that he would  
7 be physically present at the Catawba proceedings the  
8 27th of August or thereafter either to present testimony  
9 himself, or to physically assist.

10 For the reasons stated in that letter, -- prior  
11 professional commitments, the very week before he is to  
12 appear in Shoreham proceedings. So, in short, the answer  
13 to your question is, no. That letter should not be read  
14 as saying that Dr. Anderson will not provide expert  
15 assistance.

16 CHAIRMAN KELLEY: Let me rephrase it. Dr.  
17 Anderson, if we have a hearing beginning on the 27th of  
18 August as planned, Dr. Anderson will not be present,  
19 right?

20 MR. GUILD: I cannot promise as of the first  
21 of August he will be present. It is possible. He could  
22 be present Judge, but I'm unable to make the certification  
23 that you required of me as of the first.

24 CHAIRMAN KELLEY: I think the Board is going  
25 to consider then that Dr. Anderson is not going to be a

NRC 113  
Tape 1  
LAR 24

1 witness at that hearing and we have to be practical to  
2 that extent. Let me ask you-

3 MR. GUILD: I would say that's a fair conclusion  
4 Judge. I can only tell you that I can't, as an officer  
5 of this agency or as a lawyer, certify that as of the  
6 first of August, promise by my professional commitment  
7 on the line, that he would physically be present. I can't  
8 make him be present.

9 CHAIRMAN KELLEY: Okay. And I've stated the  
10 conclusion I draw from what I hear. Let me ask you whether  
11 you are actively pursuing finding another expert or experts  
12 on diesel generators to,- let's put it this way first,  
13 to be at the hearing and either cross examine themselves  
14 or assist you in doing so?

15 MR. GUILD: Judge, that is under advisement.  
16 I can't tell you what we have on the way. So doing, I  
17 know that as of the first of August, just prior to the  
18 first of August, we reached the determination that we  
19 were unable to make the certification, an expert of Dr.  
20 Anderson's qualifications would be physically present.

21 CHAIRMAN KELLEY: Well then, let me ask Mr. Riley.  
22 If you can't tell me, Mr. Guild, what you are doing in  
23 the way of looking for an expert, let me ask Mr. Riley  
24 what he is doing in the way of looking for an expert.  
25 Mr. Riley, can you speak to that?

1 MR. RILEY: I - (voice muffled)

2 CHAIRMAN KELLEY: I'm sorry? Your voice is  
3 awfully muffled.

4 MR. RILEY: That's alright. I will try to  
5 speak quite loudly.

6 CHAIRMAN KELLEY: That's better.

7 MR. RILEY: Last May I spent looking for an  
8 expert. A friend of mine is an employee of a major  
9 manufacturer of heavy duty diesel. I discussed our problem  
10 with him and he gave me a reference to a person in his  
11 --. The same time Mr. Guild had learned of Dr. Anderson  
12 -- credentials seemed remarkably well qualified. In  
13 discussion we decided that we would go with Dr. Anderson.  
14 Dr. Anderson disappeared, so to speak, in a matter of  
15 speaking, at least behind a screen, more or less around  
16 August 1.

17 On seeing this development I called my friend and  
18 found that he was in -- and would be back on the 10th of  
19 August at which time, of course, I would like to review  
20 the matter. I have already obtained some information  
21 from him that certainly gives me a posture with respect  
22 to the diesel -- --. Now, there are other matters I would  
23 like to add at this point. It has to do with response  
24 to the interrogatories that Mr. McGarry referred to.

NRC 113 24  
Tape 1  
LAR 26 25

It is very hard to give factual answers in a situation

1 where you are not privy to the observations of the  
2 experience. The first real indication we got of how things  
3 were with diesel generator 1A was in the July 6 filing  
4 to the Board by the applicant signed by Albert Carr which  
5 gives a response to our discovery request which earlier  
6 had not been responded to, -- hand look of how diesel  
7 1A behaved in its extended run.

8 Now, today we received an even more performance  
9 document. It is -- -- the manager of the Nuclear Maintenance  
10 group of the power company -- Mr. Cerile Ray (Phonetic)  
11 who is the technical program director for the PDI diesel  
12 generator -- group. You have that document -- -- mailing.

13 And then, for the first time, we have the blow by  
14 blow story of how diesel generator 1A and 1B performed  
15 -- and we find out that there were 120 starts in the 1A --  
16 That 29 times, I'm sorry, 36 times the start was not  
17 satisfactory. In 45 times there was a -- shutdown and  
18 that of the 120 starts 29 were made with -- --.

19 Now that is leading information. That isn't the  
20 sort of information we can respond to in a responsive  
21 interrogatory. And should we say the terms that -- --  
22 as you specify, specific information -- diesel only most  
23 recently and very -- today have we been in a position to  
do so.

CHAIRMAN KELLEY: And you also got today the

NPC 113<sup>24</sup>  
Tape 1  
LAR 27 25

1 staff's position, is that right?

2 MR. RILEY: I certainly did and I don't know if  
3 you,- did you read it yet?

4 CHAIRMAN KELLEY: I've only glanced at it. I  
5 haven't read it.

6 MR. RILEY: Fine. Let me suggest that you take  
7 a look at page 95 -- -- consideration. It raises very much  
8 a question as to whether or not a license can be issued  
9 at the present, well, in the recently foreseeable future  
10 because what it calls for is a development for some  
11 equipment for the TDI diesel that has -- in place. It  
12 has to be designed, fabricated, tested, worked successfully  
13 as used as a qualifier with respect to it.

14 CHAIRMAN KELLEY: Well, we will have to look at  
15 that.

16 MR. GUILD: And Judge, this is Guild again, my  
17 fundamental point is, in support of what Mr. Riley has  
18 just said, that the documents that will allow an expert  
19 to reach a -- conclusion about the technical position on  
20 these issues are only now coming into our possession.  
21 It hasn't come into mine yet but I understand from Mr.  
22 Riley they came today. Now, we have transmitted to  
23 Mr. Anderson, the documents that were available to us  
24 heretofore, and he has those under review.

25 Again, I am unable to certify that his physical

NRC 113  
Tape 1  
LAR 28

1 attendance at the August 27 hearing, and it seems to me,  
2 just as you pointed out earlier, that an applicant can't  
3 have it both ways. They can't complain about the burden  
4 of preparing for an August 27th hearing which burden would  
5 not be applicable if they would agree to our position  
6 which would provide us with Dr. Anderson's personal  
7 assistance, and that is, scheduling the hearings at a time  
8 when they don't conflict with his prior commitments to  
9 assist the Shreham intervenors whose hearing commences  
10 the first week in September.

11 Our competing need for his expert assistance, which  
12 is what I understand is the primary basis for applicant's  
13 motion to dismiss this contention, they caught us with  
14 our witness unavailable through circumstances beyond our  
15 control, but within their control to the extent that their  
16 consent to a later hearing on the Catawba issue without  
17 -- probably for us and for them, it is also the primary  
18 basis now for their motion to dismiss.

19 We think that it is just simply unfair that these  
20 burdens be placed on us to come up with expert conclusions  
21 about evolving technical problems which staff has not even  
22 taken a position on until the transmittal is being  
23 circulated now, and for which all of the best brains in  
24 the country are presently hard at work in getting ready  
25 for the lead case which is to commence one week after our

NRC 113  
Tape 1  
LAR 29



1 own.

2 CHAIRMAN KELLEY: I think,-- position changes  
3 on that -

4 (Talking over one another)

5 MR. GUILD: We are moving on these issues but  
6 we think the motion is premature and want an opportunity  
7 to respond to it and to have the benefits of what we  
8 understood was the alternative course made available to  
9 us in the order of July 20.

10 CHAIRMAN KELLEY: Mr. Guild, speaking for  
11 Palmetto, do you envision what we called option 2, this  
12 filing of a statement of technical position, was substantial  
13 assistance of experts, as something that you aspire to  
14 meet and you think you have a reasonable chance to meet?

15 MR. GUILD: Yes sir.

16 CHAIRMAN KELLEY: Mr. Riley, do you agree with  
17 that?

18 MR. RILEY: I agree with that, yes.

19 MR. GUILD: We think the scheme which you set  
20 forth Judge is a reasonable one accomodating those  
21 conflicting interest and that is for us to make an  
22 intelligible review of the documents that are now being  
23 circulated and try to meet that obligation.

24 CHAIRMAN KELLEY: Yeah, when would you be  
25 prepared to respond to this motion?

NRC 113  
Tape 1  
LAR 30

1 MR. GUILD: Well, Judge, I don't have,- I don't  
2 even have, of course, a transcript that is available to me.  
3 If I could get an overnight mail version of the transcript  
4 and, let's say Monday.

5 CHAIRMAN KELLEY: I have a problem there. I  
6 am going to be out next week. I am not around next week  
7 at all. What about Friday afternoon?

8 MR. GUILD: Yes sir. If I can get a copy of  
9 the transcript.

10 CHAIRMAN KELLEY: Where are you now? Are you  
11 in Charleston-

12 MR. GUILD: I'm in Columbia, Judge.

13 CHAIRMAN KELLEY: You are in Columbia.

14 MR. GUILD: Yeah. Just as an aside, I  
15 understand that you circulated the OI investigation report  
16 and I surmise you sent it to my Charleston address.

17 CHAIRMAN KELLEY: I think we probably did.

18 MR. GUILD: And so I haven't received that yet.  
19 I just ask that if things are intended personally for  
20 me that you send them to the Columbia Palmetto office  
21 because that's where I will be.

22 CHAIRMAN KELLEY: Let me ask the report. Would  
23 you have a copy of this done tomorrow morning? Can you  
24 mail it directly from there if we paid you for it or  
25 something?

NRC 113  
Tape 1  
LAR 31

1 REPORTER: --

2 CHAIRMAN KELLEY: Now, what address do you want  
3 it sent to Mr. Guild?

4 MR. GUILD: To Columbia, the Palmetto Alliance  
5 address sir.

6 CHAIRMAN KELLEY: Well, it may not get there  
7 until Friday morning.

8 MR. GUILD: That would be alright.

9 CHAIRMAN KELLEY: Will the other gentlemen be  
10 able to take a little time Friday afternoon to hear  
11 Mr. Guild respond?

12 MR. JOHNSON: Yes sir.

13 CHAIRMAN KELLEY: My colleagues?

14 MR. PURDOM: Purdom can.

15 MR. FOSTER: Foster can.

16 CHAIRMAN KELLEY: You want 2:30, 3:00?

17 MR. GUILD: How about 3:00 Judge?

18 CHAIRMAN KELLEY: 3:00?

19 MR. RILEY: I have a problem. I have an  
20 appointment and I -- until about 3:30.

21 CHAIRMAN KELLEY: Well, can Mr. Guild give a  
22 legal response and, - did you manage today, Mr. Riley to  
23 say basically what you needed to say this afternoon? I  
24 think Mr. Guild plans to give a legal response to the motion.

25 MR. GUILD: Judge, if I could, since factual

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Tape 1  
LAR 32

1 questions may be involved in terms of the technical issues,  
2 if we could set it for 4:00 and that would insure Mr. Riley  
3 participation, it would be most helpful.

4 MR. RILEY: ( His voice was totally muffled at  
5 this point)

6 CHAIRMAN KELLEY: You say you can make 3:00?

7 MR. RILEY: I can make 3:30. I can try to make  
8 3:00. --

9 CHAIRMAN KELLEY: I don't think it would be  
10 terribly long.

11 MR. GUILD: Can we say 4:00 then and avoid  
12 the problem.

13 MR. RILEY: Well, 3:15 would even do it. --

14 CHAIRMAN KELLEY: There are people, not me  
15 for heaven sake, but there are people who leave early on  
16 Friday. Let's say 3:15?

17 MR. RILEY: Let's stick with 3:15. That would  
18 be fine.

19 CHAIRMAN KELLEY: Okay. We will call from here  
20 and that's the same set of numbers for everybody?

21 UNIDENTIFIED: Not for me. I will be home.

22 CHAIRMAN KELLEY: Okay. Now, let me ask my  
23 colleagues, Dick you got questions, observations?

24 MR. FOSTER: No.

25 CHAIRMAN KELLEY: Walt?

NRC 113  
Tape 1  
LAR 33

1 MR. PURDOM: No.

2 CHAIRMAN KELLEY: Was that Mr. Carr I heard?

3 MR. CARR: Yeah, I was just wondering if we  
4 could make about two more points in response to the things  
5 that were said earlier and I think that will wrap us up.  
6 We probably won't even have to say anything Friday.

7 CHAIRMAN KELLEY: Okay. Make it brief.

8 MR. CARR: With respect to Mr. Guild's and  
9 Mr. Riley's representation as it was stated at various  
10 --. Frankly, I find myself almost in a state of disbelief.  
11 The record clearly -- in March the 30th we filed our  
12 initial response interrogatories and in there we identified  
13 documents that were available and have been available for  
14 their inspection and copying in our offices here since  
15 April the 2nd of this year.

16 Supplementing that response, on the 25th of June  
17 and also identified additional documents which were  
18 available, we filed another supplement to that response in  
19 late July identifying yet more documents. We have supplied  
20 lists of those documents.

21 Right now, at the close of business today, we are  
22 less than one week from the scheduled close of discovery  
23 and no representative of intervenors has been to these  
24 offices to inspect these documents. And for them to sit  
25 there and represent to this Board that they are just now

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Tape 1  
LAR 34

1 receiving what they characterize as critical documents  
2 when the underlying information has been available for  
3 4 months, simply misstates the record and I want the record  
4 to be very clear on this point.

5 MR. GUILD: Mr. Chairman, there is no need for  
6 Mr. Carr to get exercise or to cast unprofessional  
7 aspersions about as he is.

8 CHAIRMAN KELLEY: Mr. Guild, let me let Mr.  
9 Carr say his piece and you can have your -

10 MR. GUILD: Well, I would appreciate it since  
11 you are so quick to chastise this counsel for such  
12 intemperate language, that you would chastise applicant's  
13 counsel when, in this circumstance it is appropriate.  
14 There is no need for Mr. Carr to get exercise or -

15 CHAIRMAN KELLEY: Mr. Guild -

16 MR. GUILD: - or accuse -

17 CHAIRMAN KELLEY: Mr. Guild -

18 MR. GUILD: I heard him just basically saying-

19 CHAIRMAN KELLEY: Mr. Guild, Mr. Guild, you  
20 are about to forfeit your Friday response. Now, be quiet.

21 MR. GUILD: Mr. Chairman, I must specifically  
22 request that you ought to chastise the counsel for the  
23 applicant's. I think it is just unfair -

24 CHAIRMAN KELLEY: Mr. Guild, your request is  
25 denied. Now, you be quiet.

NRC 113  
Tape 1  
LAR 35

1 Mr. Carr go ahead.

2 MR. CARR: I'm complete Your Honor. Mr. Guild  
3 responded that point clearly -- dates on which they  
4 were available.

5 CHAIRMAN KELLEY: Alright. Mr. Guild, do you  
6 want to respond briefly?

7 MR. GUILD: My position is hopefully clear,  
8 Judge, and that is that if I had started out with such a  
9 tirade, you would have had me up in a second and I recent,  
10 frankly, the failure of this Board to adhere to a minimum  
11 amount of evenhandedness when Mr. Carr cast these  
12 aspersions about the professional conduct of his adversaries.  
13 It is just not necessary in order to make his point.

14 If he has legal and factual arguments to advance,  
15 he can advance them in the same fashion that the balance  
16 of this argument has been advanced in. There is no need  
17 for him to basically say that his adversaries are lying  
18 to the Board. If you are going to say that I would  
19 respectfully suggest that he do what he is professional  
20 obligated to do and that is demonstrate point by point  
21 that he has a claim in that regard because time and time  
22 again-

23 CHAIRMAN KELLEY: Mr. Guild- I asked you  
24 briefly. Now you are getting a little bit redundant.  
25 I will give you the Board's belief that Mr. Carr's comments

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Tape 1  
LAR 36 25

1 were well within the bounds of permissible advocacy. I  
2 take exception to your suggesting that the Board is not  
3 evenhanded in its rulings. We think we are. This  
4 conversation, this telephone conference, I believe, has  
5 covered its business. Now, we have set -

6 MR. GUILD: Now, what I would just suggest, if  
7 I may,-

8 CHAIRMAN KELLEY: No, Mr. Guild-

9 MR. GUILD: If you would say -

10 CHAIRMAN KELLEY: Write me a letter Mr. Guild.  
11 Write me a letter.

12 (Talking over each other)

13 CHAIRMAN KELLEY: No, you do it in a letter  
14 Mr. Guild. Try a letter. Gentlemen, 3:15 Friday  
15 afternoon, Good-bye.

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NRC 113<sup>24</sup>  
Tape 1  
LAR 37 25



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CERTIFICATE OF PROCEEDINGS

This is to certify that the attached proceedings before  
the NRC

In the matter of: DUKE POWER COMPANY, et al  
(Catawba Nuclear Station, Units 1,2)

Date of Proceeding: August 8, 1984

Place of Proceeding: Bethesda, Maryland

were held as herein appears, and that this is the original  
transcript for the file of the Commission.

Tom Berry  
Official Reporter - Typed

*Tom Berry*  
Official Reporter - Signature