

1 ORIGINAL

2 UNITED STATES OF AMERICA

3 NUCLEAR REGULATORY COMMISSION

4
5
6 In the Matter of:

7 DUKE POWER COMPANY, et al

8 (Catawba Nuclear Station,
9 Units 1 & 2)

Docket No. 50-413 OL
50-414 OL

10
11
12
13
14
15
16
17
18 TELEPHONE CONFERENCE

19
20
21 Location: Bethesda, Maryland
22 Date: August 10, 1984

Pages:
12,808-12,836

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY & LICENSING BOARD PANEL
TELEPHONE CONFERENCE

In the Matter of: Docket No's.
50-413 OL
DUKE POWER COMPANY, et al. 50-414 OL
ASLB No. 81-463-01
(Catawba Nuclear Station,
Units 1 & 2)

BETHESDA, MD.
Friday, August 10, 1984

The telephone conference call in the above-entitled matter was convened at 3:18 p.m., pursuant to notice.

APPEARANCES:

Board Members

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

RICHARD F. FOSTER, Member
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

1 APPEARANCES, Cont'd:

2 PAUL W. PURDOM, Member
3 Atomic Safety & Licensing Board Panel
4 U.S. Nuclear Regulatory Commission
5 Washington, D.C. 20555

6 On Behalf of the Applicants:

7 J. MICHAEL McGARRY, Esq.
8 Debevoise & Lieberman
9 1200 Seventeenth Street, N.W.
10 Washington, D.C.

11 ALBERT V. CARR, Esq.
12 Duke Power Company
13 422 South Church Street
14 Charlotte, North Carolina

15 On Behalf of the NRC Staff:

16 GEORGE JOHNSON, Esq.
17 Office of the Executive Legal Director
18 U.S. Nuclear Regulatory Commission
19 Washington, D.C. 20555

20 On Behalf of the Intervenor, Palmetto Alliance:

21 ROBERT GUILD, Esq.
22 P.O. Box 12097
23 Charleston, South Carolina

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

JESSE RILEY
Charlotte, North Carolina

1 JUDGE KELLEY: Good afternoon, gentlemen.
2 This is Judge Kelley. We are on the record. Reporter,
3 did you get the names?

4 REPORTER: Yes.

5 JUDGE KELLEY: Okay, so we are straight on
6 who's on. On Wednesday we heard a motion from the
7 applicants seeking dismissal of the diesel generator
8 tension in relation to our requirement of expertise
9 for the intervenor's case. We heard that motion and
10 we heard some comments from the staff. Mr. Guild
11 asked for a delayed opportunity to respond based on
12 his chance to read the transcript.

13 Mr. Guild, I did try to get a transcript
14 sent down there. Did it get there?

15 MR. GUILD: Yes sir, I got it about an
16 hour ago.

17 JUDGE KELLEY: Oh, okay. Well strictly
18 speaking given the Board's view of the motion,
19 response really wouldn't be necessary. The Board's
20 considered the applicant's motion and the staff's
21 comments and we are going to rule in the intervenor's
22 favor and deny that motion. The, I will go ahead and
23 give our reasons for that. Give you a chance to
24 comment after my ruling, Mr. Guild, briefly if you
25 want to.

1 We are denying the motion as premature
2 under the Board's order of July 20, under that order
3 as we understand it and as we thought we had written
4 it, that there were really three options.

5 There was an option to certify Dr. Anderson's
6 participation and presence at the hearing. Mr.
7 Guild's letter reflected that they couldn't make that
8 certification. But as we understood it and as we
9 contemplated it they would have a further opportunity
10 to find another qualified expert, provided that
11 person was certified to the Board by the 15th and
12 separate and apart from that in another option was
13 their preparing with expert assistance a statement of
14 technical position, such a statement wouldn't be due
15 until the 20th. We did, however, build in a require-
16 ment that such a statement, if it was not going to be
17 forthcoming, that the other parties be advised by the
18 15th.

19 So, neither option, neither the second
20 option, that is another expert, or the third option,
21 a statement of technical position has yet ripened to
22 the point where it has to be done. And for that
23 reason we deny the motion. There was a separate
24 legal point that Mr. McGarry heard, mainly that the
25 actual presentation of an affirmative case and in the

1 form of expert testimony was required under the
2 so-called "Woops" case (phonetic) that we cited at
3 Saylab (phonetic) 747 and it is actually now in
4 18 NRC 1167, page 1177 and true that some language
5 there can be read to that effect. We don't think
6 that's the only permissible reading, however, and
7 we think that it is significance that the con-
8 currence filed by Judge Edels (phonetic) in that
9 case which says that the case should not be read as
10 necessarily requiring an affirmative case, is
11 persuasive and unanswered by the majority and so
12 we conclude that we have some discretion in im-
13 plementing factor 3 of the 5 factors, call it the
14 contribution factor if you will. The Board would
15 have the discretion to require an affirmative case
16 in appropriate circumstances. We've chosen not to
17 go that far here and we are going to allow the
18 statement of a technical position if an expert is not
19 going to be available at the hearing.

20 I should stress, however, that as we
21 understand the technical position requirement, it
22 would be required that there be actual qualified
23 expert assistance in the preparation of the statement.

24 So, that's our ruling. Basically on the
25 motion. I would like to add a couple of points.

1 We do, as we indicated on Wednesday, we do
2 regret that the time pressures in this case may require
3 some work by the applicants and staff in the form of
4 testimony preparation that may turn out to be
5 unnecessary and if that proves to be the case, that's
6 unfortunate but we think that the time factor is such
7 that it is unavoidable. At least not entirely.

8 In order to minimize that possibility,
9 however, we are going to give some supplementary
10 instructions which will be the same in substance as
11 our order of July 20 by which we will fill in a few
12 more details and make, hopefully, a bit clearer
13 exactly what everyone's obligations are. And let me
14 give those supplementary instructions at this point.

15 The order of 7/20 spoke of deadlines of
16 the 15th of August, both to find another expert and to
17 inform the parties that no statement of technical
18 qualification was going to be forthcoming. Now that
19 was heeded in turn for the existing deadlines for hearing
20 for filing testimony. The staff's service of its
21 paper was actually made on the 7th. We had recited
22 in the order an expectation that it would be available
23 around the 6th. There was some discussion between
24 Mr. Johnson and me and Mr. Johnson and other parties
25 about the day by day slippage and the upshot is that

1 since Mr. Johnson's papers weren't served until the
2 7th we are going to give until the 16th instead of the
3 15th, that is a week from yesterday is the 16th. The
4 16th is a Thursday.

5 Now with regard to obligations that ripen
6 on that day. The intervenors will be required on the
7 16th to mail a written certification by express mail
8 to the Chairman, regular mail to the remaining people
9 on the list that you have a qualified expert who will
10 attend the hearing and who will assist you in your
11 questioning.

12 Alternatively, on the 16th you are to mail
13 a written certification, again by express mail to the
14 Chairman, that you will supply a statement of
15 technical position as described in option 2 on page
16 4 of the July 20 order. Now that reference is to the
17 paragraph which describes the statement of technical
18 position. And you are to include in such a certifica-
19 tion, the name and qualifications of the expert or
20 experts who are assisting you.

21 Those are the two options. Either certify
22 on the 16th you got an expert to come to the hearing
23 or certify on the 16th that you will file a statement
24 by the, by the 21st, again I am adding a day on that
25 and tell us who the expert is whose assisting in the

1 preparation of the statement. And in addition, the
2 intervenors shall inform counsel for the applicants and
3 the staff by telephone on the 16th whether you are
4 certifying to the option of the expert present at the
5 trial or whether you are certifying that you will
6 file a written statement, or if you are doing neither,
7 that you're doing neither.

8 Now if the intervenors certify to neither
9 of these options, or if their certifications are
10 in the Board's judgment inadequate, then the diesel
11 generator contention will be dismissed as we in-
12 dicated earlier.

13 If a certification of an expert at the
14 hearing, or certification about a technical statement
15 is in our judgment adequate, then the testimony
16 is filed on the 21st and we will go forward to the
17 hearing.

18 I said 21st for filing testimony. I said
19 21st for filing statement of technical position. That
20 is simply a slippage of one day, just like the
21 slippage from the 15th to the 16th.

22 Now, I read those what I call supplementary
23 instructions. I may have read them a little faster
24 than you would have liked. If you want to write them
25 down, I can go back and read them more slowly.

1 Alternatively, I can have my secretary
2 redevelop more slowly. Afterwards to the secretary
3 or other person on your end. I'll ask the intervenor
4 first.

5 Mr. Guild, did you follow my statement?

6 MR. GUILD: Yes sir, I did. I think I've
7 got it down. I wonder if I could just ask that
8 through regular mail you could send us a copy of the
9 transcript of this call. I think that this would be
10 sufficient. But I've got the dates and I think I've
11 got the details.

12 JUDGE KELLEY: I can do that. I can send it
13 express, I mention I am not going to be in here next
14 week. I won't get this transcript til Monday but as
15 soon as I get it, I can leave an instruction to
16 express mail it.

17 MR. GUILD: That will be fine, Judge.

18 JUDGE KELLEY: Okay. Mr. Riley, did that
19 come through to you?

20 MR. RILEY: Yes, it did. May I raise a
21 question, sir?

22 JUDGE KELLEY: Okay.

23 MR. RILEY: The experts that I have been in
24 consultation with (inaudible)
25 He is very sensitive about emerging because of the

1 competitive position. I just wondered, is there
2 anything that we can do that is sort of in camera
3 with respect to the identification of an expert?
4 In other words, he doesn't want the service because
5 competitor, you might say, of TDI, (inaudible)

6 JUDGE KELLEY: Do you envision him at this
7 point, Mr. Riley, as a person who would attend the
8 hearing and assist in question or under the option of
9 filing a statement of technical position?

10 MR. RILEY: The latter.

11 JUDGE KELLEY: The latter. Any comments
12 from parties? Mr. McGarry?

13 MR. CARR: Just one part, Judge.

14 JUDGE KELLEY: Go ahead.

15 MR. CARR: May I ask first a question
16 about your supplemental petition? I followed you
17 all the way through with, I just have one question
18 about the certification on the 16th.

19 JUDGE KELLEY: Right.

20 MR. CARR: Assuming that in that cer-
21 tification that identification of the experts, state-
22 ment of his qualifications and that kind of thing.

23 JUDGE KELLEY: Yes.

24 MR. CARR: Okay. As far as, so far as
25 hiding the identity of an expert who has helped prepare

1 the technical document, frankly I really hadn't given
2 it any thought. Let me just say that we are going to
3 file today maybe a dozen basic interrogatories on the
4 intervenors that ask very basic questions about the
5 role that an expert, whoever they had, in formulating
6 this statement that would be filed the 21st if they
7 choose that option.

8 The reason we do that is, well a little
9 bit clearly understand that the Board contemplate the
10 expert's participation and all these are designed to
11 do is point out in what way the expert has participated
12 in this so that it can assist us, and in fact the
13 Board, to determine whether they have met that burden.

14 If the expert is identified to me, which I
15 would assume would have to be, I wouldn't disclose
16 his name to TDI. But we have a lot of consultants
17 working on this matter. Some of whom I assume know
18 TVI, none of them are TVI people. So as to some
19 affirmative action on my part, I wouldn't be able to
20 guarantee that this man's name wouldn't get out or
21 this person's name wouldn't get out. I would be more
22 than happy to ask people who are working for us not
23 to disclose it. If that would help.

24 JUDGE KELLEY: Yes.

25 MR. CARR: But we've got probably a dozen

1 people or more working on this matter and I said I
2 would be willing to ask them. I couldn't guarantee
3 that it wouldn't get out.

4 JUDGE KELLEY: The people that you say that
5 you have consultants working, are they actual TDI
6 employees did you say?

7 MR. CARR: Nobody from TDI is working on
8 it. There are employees of course from Duke, of
9 Failure Analysis Associates, Dominion Engineering,
10 TDI incorporate.

11 JUDGE KELLEY: They are people who, in
12 turn, at least the outside people might have some
13 contacts with TDI people?

14 MR. CARR: Yes, sir.

15 JUDGE KELLEY: Probably would.

16 MR. CARR: I know they have contacts with
17 the owner's group for example.

18 JUDGE KELLEY: Okay, Mr. Johnson, can you
19 comment on the question that Mr. Riley raises and
20 let's focus there first. Mr. Riley raises the
21 question about his concern about confidentiality and
22 Mr. Carr made his point, could you, do you have any
23 reaction to that?

24 MR. JOHNSON: My reaction would be that if
25 Mr. Carr could do that, I could probably do what he's

1 doing. Maybe to the extent that we have contacts, our
2 consultants and staff and we could request that they
3 not disclose the name of this individual, if that's
4 what's requested.

5 JUDGE KELLEY: Mr. Riley, does that answer
6 your concern?

7 MR. RILEY: I think that I would have to
8 discuss it with the person involved. I think there
9 is (inaudible) of the matter. I think that his name
10 is less important than his employer's name.

11 MR. JOHNSON: I'm sorry, I didn't catch
12 that, Jesse.

13 MR. RILEY: I think his name is less
14 important than his employer's name.

15 MR. CARR: This is Al Carr again. If I
16 understand Jesse's contemplation that this person
17 would help him in preparation in some sort of a
18 technical document but would not actually appear at
19 or participate in the hearing, is that correct, Jesse?

20 MR. RILEY: That is correct, Al.

21 MR. CARR: So we don't have a problem then
22 with a voir dire and trying to find a publication that
23 the person may have written, that sort of thing?

24 MR. RILEY: That's right.

25 JUDGE KELLEY: If I could just wonder aloud

1 a little bit, gentlemen, on this particular point,
2 it sounds from the comments from Mr. Riley and Mr.
3 Carr and Mr. Johnson that you might well be able to
4 work out some understanding. Mr. Riley indicated his
5 desire to get back to the gentleman in question and
6 see whether the kinds of things that had been spoken
7 of here might be satisfactory from his standpoint.

8 It's the sort of thing that, I don't think
9 lends itself to definitive resolution this afternoon
10 in this phone call and I would suggest, unless at
11 some reason why we had to come to grips with it any-
12 way today, that you let Mr. Riley get back to the
13 gentleman and report what has been said so far and
14 perhaps among the parties then next week, early next
15 week, you could nail down an understanding that
16 would serve.

17 We are not in a position to draft a
18 protective order this afternoon, I don't think.

19 MR. RILEY: If I may comment, Judge, I
20 think that's reasonable to me. I'd also like to
21 correct the error in what I said in our last con-
22 ference.

23 I believe I said the gentleman was in North
24 Korea. He's in Korea, I assume that's South Korea.
25 He is due back today.

1 JUDGE KELLEY: Okay. Well, I went through
2 the basic ruling and basic points that we wanted to
3 make. Let me go back around the table. Mr. Guild,
4 on this general subject of certifications and when
5 and what, any questions or comments from you?

6 MR. GUILD: Yes sir. I think I understand
7 the nature of the Board's ruling and I think I have
8 the details down sufficiently to go forward. I
9 wanted to observe first that Mr. Riley's observation
10 highlights the difficult position we're in. The
11 universe of people with expertise, the particularly
12 high level of this issue is limited, is limited
13 obviously by financial resources which are of
14 obviously greater limiting factor to intervenors
15 than they are to applicants.

16 But it is also limited because the subject
17 of these diesel generators currently under study
18 monopolized if you will by the owner's group and the
19 efforts that are going forward in the first big
20 litigation at Shoreham. So we have a difficulty
21 because there is a limited pool of people out there
22 and among the pool that are out there, there are
23 such competitive constraints as Mr. Riley pointed
24 out that limit the availability of people to
25 volunteer assistance to intervenors. And we have to

1 rely largely on volunteer assistance.

2 I do want to emphasize that we wish the
3 record to reflect our exception to the Board's
4 ruling generally with respect to the interpretation
5 of 11 747, as applied and in the Board's July 20
6 ruling, it's June 22nd Partial Initial Decision in
7 this regard and as it applies today although we
8 certainly think that the Chairman's observations
9 about the significance of Judge Ellison concurring
10 opinion with respect to the ability of parties to
11 proceed to rule a case on cross examination is well
12 taken as far as it goes.

13 We do think that there are some very
14 important distinctions in this case that make the
15 explicit holding in the Woops decision inapplicable
16 and I would only, only in passing, that there the
17 Appeal Board expressly states at page 1180 of the
18 reported decision, that in that particular instance
19 where the grant of the petition for later inter-
20 vention which was what was an issue there, was
21 determinative of whether there would be any adjudicatory
22 hearing at all. The factor 3 contribution to the
23 development of the record has a specially significant
24 bearing and that of course is not the circumstance we
25 find ourself in at Catawba as we (inaudible)

1 adjudicatory hearing in this case. And diesel
2 generators contentions have been through many, many
3 permeatations which leads us to the point where we are
4 at right now.

5 Judge, I wanted to ask the transcript of the
6 other day that I just looked through briefly, the
7 August 8th telephone conference transcript be corrected
8 in one particular, at transcript page 12,795, line
9 3, you have me responding to a question by saying as
10 follows:

11 "I would say that's a fair conclusion,
12 Judge."

13 This is with respect to what the Board
14 should consider regarding Mr. Anderson's ability to
15 assist and the actual response should be corrected
16 to say:

17 "I would not say that is a fair conclusion,
18 Judge."

19 Perhaps you could check that reference,
20 but it is a material point since I did disagree with
21 the Chairman's conclusion from my August 1st letter.

22 JUDGE KELLEY: That was a statement attributable
23 to you, right?

24 MR. GUILD: Yes sir, it was.

25 JUDGE KELLEY: And you want it to say would

1 not rather than would?

2 MR. GUILD: Yes.

3 JUDGE KELLEY: Okay. In context, that
4 sounds right to me.

5 MR. GUILD: Right, I think I was asking you
6 to draw a more general understanding that his
7 assistance would be limited because he wasn't
8 physically available but would not be, that he, that
9 he would not be completely unavailable to assist
10 intervenors, only his physical presence at the hearing.
11 I can understand the Board's ruling with respect to the
12 supplementary instruction, Judge, and we will move
13 forward on that basis.

14 I would like the record to also reflect that
15 I just before this conference call ran out to pick
16 up the technical evaluation report that Mr. Johnson
17 sent our way yesterday or the day before. I point out
18 that I have a little bit of trouble with the air
19 freight people down here, George, and if it matters in
20 the future, you might try express mail or Federal
21 Express. I got, Judge, I got your package on the
22 transcript barely this morning and I have had some
23 difficulty getting these air freight deliveries.

24 Judge, I wanted to understand, if I could,
25 again, what the significance of this technical evaluation

1 report is in terms of its, its status as a staff
2 evaluation document. Is this now the staff's position
3 with respect to the contested issue as to the
4 reliability of TDI's at Catawba. Is this in place
5 of the safety evaluation report supplement?

6 MR. JOHNSON: This is George Johnson. I
7 would be glad to address that. In fact I was planning
8 to try to clarify the record on this because some
9 statements were made in the previous telephone conference
10 that suggested perhaps that this wasn't clearly
11 understood.

12 And what this is, is the staff consultants,
13 technical evaluation which has been accepted by the
14 staff, the staff's position will be reflected in
15 something called a safety evaluation report which is
16 in preparation and will be issued very shortly and
17 circulated to the parties. And also reflected in the
18 testimony that we file.

19 But, I can tell you that the safety
20 evaluation report will enlarge, I believe, and
21 incorporate by reference the technical report. In
22 other words the technical report will serve as one of
23 the primary basis, or the primary basis for the
24 staff's position and therefore, you couldn't say that
25 it as such the staff's position but the staff's

1 position will be based on it.

2 MR. GUILD: Judge Kelley? This is Guild
3 again. The point of the question is that on cursory
4 review of the TER, the Batel (phonetic) document,
5 I direct the Board's attention to page 2, I guess it
6 is part or paragraph 1.2 entitled "Limited Applicability
7 of Conclusions"

8 There is a page and a half statement, if
9 you will, caveats that have to do with the, in
10 essence, incomplete status of the review and limited
11 applicability of the conclusions that are reached
12 by PNL, the consultant in this document. And then
13 as Mr. Riley referenced in the conference call the
14 other day, page 95 of the report at paragraph 8.3
15 entitled, "Key Considerations", there are key
16 considerations that are described as integral to the
17 general conclusions which are reached. And these,
18 if you will, limiting conditions of operation, on
19 the applicant.

20 I then read a document that also came in
21 the same day, today, that is a July 17th, 84
22 communication from applicants to the, to, excuse me
23 a second here, it came in the same package and I don't
24 have the date right before me but essentially it is a
25 series of communications from the company to the NRC

1 saying there are a number of particulars which we don't
2 agree with the limiting conditions that are being
3 either advised, recommended or imposed upon us in the
4 Bartel Technical Evaluation Report.

5 Now the short and long of all that is this.
6 If we didn't have before us the obligation to provide
7 a technical review, a detailed technical review with
8 qualified expert assistance of this document in part,
9 I'm sort, I'm trying with some difficulty to under-
10 stand exactly what it is we have before us. Because
11 if, in fact, this is no more than a technical basis or
12 an underpanning or a piece of evidence behind what may be
13 a differing staff conclusion and there seems to be a
14 basis for at least the applicant saying that we are
15 not going to agree to these conditions and Mr. Johnson's
16 last comment of an expectation that the SER supple-
17 ment may different from particulars by way of con-
18 clusion from the TER, it seems very clear that,
19 members of the Board, that the target that we have to
20 focus on is very much a moving target and one which
21 may not reflect the position of the staff of the
22 Nuclear Regulatory Commission.

23 In that regard, it becomes all the more
24 difficult for intervenors to even at this point, now
25 the 10th of August with an August 16 and August 21 date

1 for completion of a technical review of this document,
2 to come up with intelligible technical critique of
3 a position that is not yet been established.

4 So, I make that observation because I think
5 it bears on all of the procedural decisions the
6 Board has been making. And I think it also goes to the
7 question of what this Board should be looking for
8 by way of a technical position from this party,
9 Alliance TSG, when the technical position of the
10 applicant's and the NRC staff are themselves in a
11 state of obvious buck.

12 JUDGE KELLEY: Okay, well I understand the
13 point you're making, Mr. Guild, and I think some of the
14 points you are making without implying any comment on
15 my part on the content of staff's filing or the
16 applicant's filing but to the extent that they go
17 to impeachment of their positions, you will have an
18 opportunity to elaborate on that.

19 I understood Mr. Johnson, I think the
20 Board would be concerned if we were getting this TER
21 from Batel and we were then to receive in a few days
22 something drastically different by way of a technical
23 position from the staff. But I hear Mr. Johnson
24 saying that they are putting this forward is something
25 that they basically agree with and will sponsor, am I

1 right about that, Mr. Johnson?

2 MR. JOHNSON: I think that that's very close.
3 I think the safety evaluation report is in very large
4 part based on the technical review that is contained in
5 the technical evaluation report and the staff reaches
6 its own regulatory conclusions but almost all of it
7 is based upon the facts that are set forth in the
8 document that has already circulated.

9 MR. GUILD: This is Guild again. I and
10 George Johnson had spoken the other day and I had
11 asked in anticipation of this report whether or not
12 the staff would be willing to make available either
13 drafts of either this report or technical position
14 on these issues, anticipating that there may be some
15 differences between a draft and a final document
16 that we are entitled to know about by way of discovery
17 as a basis for potentially impeaching the staff
18 position and hearing.

19 And I understood in short from George
20 Johnson that the staff would oppose producing such
21 drafts. I ask now on the record that the Board direct
22 the staff to make available what they have at this time
23 by way of, of documents that reflect the staff's
24 position as it exists now. I think those are necessary
25 underpinnings for us to be able to understand and

1 anticipate points, at least points where the staff's
2 position may differ from that of its consultant,
3 Batel and essentially what credence we should give to
4 the staff's anticipated bottom line position that
5 these machines are licensable.

6 What conditions, in other words, the staff
7 would attach to that conclusion that may or may not be
8 the same as the conditions that Batel attached.

9 Judge, we believe that based on the prospect
10 of trying to get our technical analysis ourselves and
11 with discovery to close the 15th of August, best
12 join this issue right now. And that is my asking the
13 Board to direct the staff to make available draft
14 documents that it had in its possession.

15 MR. JOHNSON: If I may respond?

16 JUDGE KELLEY: Yes.

17 MR. JOHNSON: For the staff I think any
18 differences between the staff safety evaluation and
19 the technical report will be obvious when the safety
20 evaluation report is available and it will be
21 available very shortly. I don't believe that drafts
22 of the safety evaluation report are appropriate subjects
23 for discovery. It is the type of draft, the government
24 decisional document that is ordinarily protected and I
25 think to reveal that information at this point just

1 interferes with the decision making process of the
2 government and appropriate for discovery. I don't
3 think there is a real substantial need for it either.

4 JUDGE KELLEY: Okay, gentlemen, the Board
5 can take that request in response to Mr. Guild and Mr.
6 Johnson under advisement and we will make a ruling on
7 it. We may not get our ruling announced to you for
8 a week or so. If we get it decided before that and if
9 we decide in favor of it and we decide to direct the
10 staff to produce something, then we will do so as
11 quickly as we can. But I think that is all we can do
12 on it this afternoon.

13 MR. RILEY: Judge Kelley?

14 JUDGE KELLEY: Yes.

15 MR. RILEY: This is sort of a nuts and bolts
16 question. It may be out of order. On page 95 of the
17 Batel document, there are four (inaudible)

18 JUDGE KELLEY: Excuse me, could you speak up
19 please?

20 MR. RILEY: Yes, there are four bolted items
21 on page 95 of the Batel report that contain the
22 word must. There appears to be Duke must implement.
23 And then later says the system must. And something
24 must and then again must. And I am not quite sure of
25 the status of all those words. Is that basically an

1 order by the staff to Duke? Is it a strong recommendation?
2 What bearing will it have on what Duke actually does?
3 Will it effect the scheduling of, very critical of the
4 plant? Just how does that effect our considerations
5 here?

6 JUDGE KELLEY: Mr. Johnson, if I understand
7 the current status of the Batel report, that is
8 Batei talking?

9 MR. JOHNSON: Yes sir. Yes sir.

10 JUDGE KELLEY: The staff may agree with them
11 and the staff may say must too, but they haven't
12 said it yet as I understood you.

13 MR. JOHNSON: Yes, I think the staff's
14 position will become clear very, very shortly.

15 MR. RILEY: Can you tell when, George,
16 very shortly might be, given the fact that we are
17 counting days to critical deadlines for intervenors.

18 MR. JOHNSON: Yes, I don't know for sure but
19 I am hoping to get something, I am hoping that
20 something will be available next week.

21 MR. RILEY: Judge, we just ask that if Mr.
22 Johnson has that available, given, recognizing that
23 we still have pending also a motion with regard to
24 drafts.

25 JUDGE KELLEY: Yes.

1 MR. RILEY: If when he has that document
2 available he gets it to particularly the intervenors
3 who are under this time restraint by quick mail so we
4 will have at least the benefit of seeing it before we
5 have to make our next filing.

6 MR. JOHNSON: I have no problem with that.
7 I just can't say for sure just when it's going to
8 come out. But my understanding of the process that
9 is going on is that it is just a matter of days.

10 JUDGE KELLEY: Okay. Now I think, again
11 I think that covers it from the Board's standpoint.
12 Is there anything else that people want to bring up
13 on the subject of diesel generators? Mr. Guild?

14 MR. GUILD: No sir.

15 JUDGE KELLEY: Mr. Riley?

16 MR. RILEY: No sir.

17 JUDGE KELLEY: Mr. Carr?

18 MR. CARR: One thing, Your Honor, and I sort
19 of hesitate to raise it. You had pending an oral
20 motion on pending interrogatories, that is transcript
21 12/7/83 through 12/7/85. I guess though because the
22 interrogatories were based specifically on the, our
23 June 29th document and predicated on the availability
24 of an expert by the intervenors that they don't yet
25 have, I guess we can ask that the Board grant the motion

1 and then when the answers aren't forthcoming we can move
2 for dismissal but I doubt that would get us very
3 far. I think those interrogatories should just remain
4 pending at this point. Maybe we can work something out
5 with Mr. Guild and Mr. Riley on those.

6 JUDGE KELLEY: I think that sounds prudent.

7 MR. CARR: And as I indicated earlier, we
8 are serving a limited set of interrogatories this
9 afternoon. It just essentially goes to participation,
10 of an expert, if any, in preparation of the technical
11 documents.

12 MR. GUILD: Judge, this is Guild, and I don't
13 want to mess up the good time that we seem to be in
14 agreement on a point. We would oppose a motion to
15 compel and would like to be heard in opposition if
16 there is a motion to compel that is to be understood
17 as pending, it would seem to me that if applicant's
18 have a motion to compel, I (inaudible)
19 that we oppose the motion when they brought the
20 matter to my attention even before our last conference
21 call. But it would seem to me that it is all the more
22 appropriate that they put such a motion to compel in
23 writing so they give us an opportunity to respond to
24 it. That certainly has always been the process for
25 the issues, we do have an opposition to and I don't

1 believe that this conference call with it, unless you
2 want me to, but the fact of the matter is, we don't
3 think it should be either granted or treated as pending
4 without opposition at this point.

5 JUDGE KELLEY: I'm going to suggest and I
6 realize that the hour of the days are passing.
7 Nevertheless, if the intervenors aren't under an
8 obligation to find their expert until late part of
9 next week, I really think it is premature to pursue
10 this any further. But we will be available on the
11 telephone the first part of next week and deal with
12 this whole, we will deal with these matters promptly
13 in light of the way the world looks like that time.
14 I rather just wait until then.

15 Staff, anything else?

16 MR. JOHNSON: Staff doesn't have anything
17 else.

18 JUDGE KELLEY: Okay. Well, gentlemen,
19 I think that we got some points covered and I appreciate
20 your time and attention. I expect before too long
21 we will be lack on the phone as more things come up
22 but that's all we have this afternoon. Thank you
23 very much. Good-bye.

24 (Telephone conference over at 3:55 P.M.)
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 10, 1984

Place of Proceeding: Bethesda, Maryland

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

Melba Reeder / DRB
Official Reporter
MELBA REEDER

Karin Wooters / DRB
Official Transcriber
KARIN WOOTERS