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

Before Administrative Judges:

DOCKETED  
USNRC

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

'84 SEP -5 A11:17

OFFICE OF SECRETARY  
REGULATORY & SAFETY  
BRANCH

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

Docket Nos. 50-413  
50-414

DOCKET NUMBER 50-413/41402

September 4, 1984

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MEMORANDUM AND ORDER  
(Further Statement of Board Views Concerning Dismissal  
of the Diesel Generator Contention and  
Order Directing Parties' Positions on  
Resolution of Remaining Foreman Override Issue)

In the Board's Order of August 22, 1984 dismissing the Intervenor's diesel generator contention, we said that a "fuller statement of the Board's views will issue shortly." Provision of that statement is the primary purpose of this Memorandum and Order.

Our admission of this contention was initially conditioned on the Intervenor securing the assistance of an expert to present testimony, or at least to provide expert assistance in cross-examination at the hearing. Partial Initial Decision of June 22, 1984, p. 273, n.50. When it later appeared that the Intervenor might not certify any expert's physical presence at the hearing, for any purpose, we authorized an

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alternative method by which the Intervenors could demonstrate their potential ability to make a contribution on the highly technical diesel generator contention. As stated in our Order of July 20, 1984, this alternative method required the Intervenors --

by August 20, 1984, [to] prepare and have in the hands of the Board and parties a reasonably detailed statement of their technical positions, reflecting their review of the reports [prepared by the Applicants and Staff on the Catawba diesels], specifying the respects in which they disagree with those reports, and describing how they propose to substantiate their positions.

We added that --

As we envision it, the statement of technical position outlined in option 2 would have to be prepared with substantial assistance from qualified experts.

As matters developed, the Intervenors made no attempt to certify the presence of a named expert at the hearing. They did express their intention to take the alternative approach we had provided and to file a statement of their technical positions. Tr. 12,800. However, their filing of August 16, 1984 in purported satisfaction of that obligation scarcely resembled a "statement of technical position" as we had defined it. What we received, instead, was merely a copy of certain prepared testimony borrowed from the Shoreham proceeding.

The defects in this submission are apparent. First, as we noted in our prior order, it "does not reflect any review by a qualified expert of the reports concerning the Catawba diesels previously prepared by the Applicant's and Staff's consultants." The diesel generator contention in this case is site-specific to Catawba. It focuses exclusively on problems that have actually arisen in the course of testing and

inspection at Catawba. By contrast, the proffered testimony from the Shoreham case is based on a contention that is not only broader but also contains many more specifics.<sup>1</sup> Furthermore, the models of diesel generator engines at Catawba and Shoreham are different, and their designs differ in significant respects.<sup>2</sup> In light of these factors, it seems reasonable to assume that prefiled testimony from Shoreham, drafted without any consideration of the site-specific data relating to Catawba, would have little or no application to the Catawba case. Although we have not attempted to analyze the Intervenor's Shoreham testimony, there are some clear indications of its irrelevance here. For one thing, so far as we are aware, the Catawba diesels have not experienced problems with their crankshafts or cylinder blocks. Thus, two of the Intervenor's four proposed topics -- though seemingly relevant at Shoreham -- are irrelevant here. The proposed testimony itself indicates that a third topic, the Shoreham piston skirts, also has no bearing on Catawba.<sup>3</sup> Before we would have given any

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<sup>1</sup> The Intervenor's covering letter of August 16, 1986, at p. 2, seems to reflect their mistaken belief that the Shoreham contention has been admitted in this case.

<sup>2</sup> The Catawba diesels are TDI Model DSRV 16-4, a 16 cylinder engine also found at many other reactors. See Review and Evaluation of Catawba Diesels by Battelle Laboratory, August 1984, p. 1. The Shoreham diesels are TDI Model DSR-48, an 8 cylinder engine not in widespread use at other reactors.

<sup>3</sup> See proffered testimony, Exhibit 2, from the Shoreham case at pp. 30, 43, 45, 47.

consideration to the proffered Shoreham testimony as a "statement of technical position," we would have required, at a minimum, an explanation from a qualified expert of how that testimony was relevant to the Catawba contention. No such explanation was put forward.<sup>4</sup>

Even if we were to assume that some unidentified portions of the Shoreham testimony are relevant to matters encompassed in the Catawba contention -- for example, because they bear on defects found in many different TDI models -- that would not get us very far in resolving the Catawba contention. The Applicants and/or the Staff have proposed various solutions ("fixes," in engineering jargon) for the problems that have arisen at Catawba. Presumably a hearing on the Catawba contention would focus on the site-specific "fixes" for Catawba, something the experts on a different model at Shoreham either may not have addressed, or may have addressed only in a different engineering context.

The Intervenors' submission is not an acceptable "statement of technical position" for yet another reason. In requiring that such a statement be made with the assistance of a qualified expert, albeit one who might not attend the hearing, we assumed the Intervenors would work

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<sup>4</sup> Palmetto's covering letter of August 16, 1984 was, in part, an effort to show relationships between the proffered Shoreham testimony, the Catawba diesel contention, and the Staff's technical position paper on the Catawba diesels. There is nothing to indicate that there was any expert input into this simplistic discussion. Its only tendency to convince is toward our independent conclusion that the Shoreham and Catawba diesel cases are largely dissimilar.



directly with the expert and acquire through that interaction the grasp of the technical issues necessary for them to make a contribution through cross-examination. But we have no reason to expect that such a contribution would be forthcoming from an Intervenor who merely makes xerox copies of testimony from other cases.

The Interveners argued that we should have postponed the hearing from the week of August 23, 1984 to some unspecified date in the fall, after the Shoreham diesel hearing is over. Tr. 12,730-12,732. They asserted that the developed Shoreham record would be important to this case and implied that they might then have been able to obtain expert assistance from among the Intervenor's witnesses in Shoreham. Tr. 12,751-12,754. We rejected linking the Catawba schedule to the Shoreham schedule in that manner. As we have discussed, the two cases involve many different issues and appear to be more different than they are alike. Even where they might have covered similar ground, it does not follow that the Shoreham record could have been introduced later at Catawba; the witnesses themselves probably would have had to appear and be subject to questioning. In that regard, the Interveners did not make any unequivocal commitments about the availability of any particular Shoreham witnesses. Their potential availability, even after the Shoreham hearing, was speculative.

More fundamentally, we would have rejected the suggested delay even if there had been some definite prospect of Intervenor expert witnesses after the Shoreham hearing. Such a delay would have been unjustified, given the following circumstances:

-- First, the late diesel contention was in the case for about six months, affording all parties ample time for discovery and to prepare for a late August hearing.<sup>5</sup>

-- Second, the Intervenors and all parties first agreed to a hearing date of August 6, 1984 in late May 1984. That date was later moved three weeks to August 27, 1984, over the Intervenors' objection, only because of a 3-week slippage in availability of the Staff's technical position.

-- Third, the Applicants have already loaded fuel in Unit 1 and expect to be ready for criticality in late September. However, it would have been necessary to resolve the diesel generator contention prior to criticality.

-- Fourth, the Shoreham hearing is scheduled to begin on September 5, 1984 and is now expected to last about one month. Thus, the Shoreham witnesses probably would not be available for a Catawba hearing until mid-October or later. Given the Commission's Policy Statement on timely completion of operating license proceedings (13 NRC 452), we would require a very good reason to delay this matter beyond the Applicants' expected criticality date by linking it to the conclusion of another hearing of uncertain duration.

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<sup>5</sup> The contention was first admitted in February as a Board sua sponte contention. The sua sponte contention was disapproved by the Commission on June 8, 1984, but it was readmitted by the Board two weeks later as a late Intervenor contention.

-- Finally, few if any experts are so unique that a hearing should not go forward without a particular expert in attendance. Although experts on diesel engines may not grow on trees, neither, we believe, should they be as scarce as hens' teeth. We are convinced that the Intervenors could have obtained assistance from experts, other than those involved in the Shoreham case, if they had made timely and diligent efforts to do so.

In rejecting the diesel generator contention in this case, we stress again that we do so because the Intervenors have not met their burden of demonstrating their ability to make a contribution on that contention. We do not reach the merits. The safety of the Catawba diesel generators is now a matter for Staff resolution.


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We have reviewed the Applicants report dated August 3, 1984 on that portion of the "foreman override" issue on which the record was left open in our Partial Initial Decision of June 22, 1984. Staff counsel advises the Board that the Staff served its report on that subject under a covering letter dated August 31, 1984. We stated in our Partial Initial Decision that --

In view of the present posture of the Welder B concerns, we are holding the record open for the purpose of reviewing reports from the Applicants and Staff on their resolutions of these concerns. Upon receipt of those reports we can consider whether any further proceedings are appropriate, such as party comments on the reports or further evidentiary hearings.

Each party is directed to file with the Board its position as to what action should be taken next on this subject, taking into account the reports from the Applicants and Staff. Two possible next steps are listed in the above quotation. Another approach may be preferable. In any event, each party should explain and justify its recommended approach in appropriate detail. These submissions shall be served by September 12, 1984.

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD

  
James L. Kelley, Chairman  
ADMINISTRATIVE JUDGE

Bethesda, Maryland  
September 4, 1984