

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD 74 852 20 41:15

In the matter of	)	
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DUKE POWER COMPANY, <u>et al.</u>	)	Docket Nos. 50-413
	)	50-414/06
(Catawba Nuclear Station,	)	
Units 1 and 2)	)	September 17, 1984

MOTION BY PALMETTO ALLIANCE AND CAROLINA ENVIRONMENTAL STUDY GROUP FOR THE CONDUCT OF FURTHER PROCEEDINGS TO CONSIDER EVIDENCE OF FOREMAN OVERRIDE

Recent concerns expressed by numerous Catawba workers of improper foreman pressure to perform faulty work or violate quality assurance procedures compel the need for further proceedings to determine the extent and significance of the practice of "foreman override" at Catawba. As directed by the Board in its September 4, 1984 Memorandum and Order we herewith submit our position "as to what action should be taken next on this subject," Id., p. 8.

Pursuant to 10 CFR 2.740(b)(1), Palmetto and CESG move for leave to conduct further discovery to the extent necessary to obtain evidence of the basis for the reports by Duke Power Company and the NRC staff, and evidence available to rebut the conclusions reflected in those reports. Further, pursuant to Section 2.743(a), Palmetto and CESG move for the scheduling of further evidentiary hearings in order that we may present rebuttal evidence and conduct cross-examination

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necessary "for a full and true disclosure of the facts" on the issue of whether evidence of "foreman override" represents a "significant breakdown in quality assurance at Catawba" June 22, 1984, Partial Initial Decision (PID) p.272. In support of this motion Palmetto and CESC herewith submit the Affidavit of Howard Samuel Nunn, Jr., a foreman welder at Catawba, previously appearing as a Board witness in this proceeding.

Even as packaged by Applicants, and uncritically accepted by the NRC Staff, Duke's August 3, 1984 Investigation Report acknowledges over 30 new complaints of "foreman override" experiences, an even larger number of new "other safety-related concerns," and an unspecified number of additional "non-safety-related concerns." Id., p. 23. The existence of such widespread complaints of foreman pressure, faulty workmanship and violations of quality assurance procedures not previously identified by the QA program belies Duke's principal conclusions that "(1) quality construction standards at Catawba are being met, and (2) that foreman override is not a problem at the Catawba site." Id., p. 1. The NRC Region II Staff's abdication of responsibility in its delegation to Duke of the duty to investigate the Welder B and other foreman override complaints is troubling indeed and provides no basis for corroboration of Duke's self-serving conclusions. As this Board is well aware, it is only through the public hearing process in this case that the concerns of such conscientious Catawba workers as

Beau Ross and Sam Numm have been aired. Since neither Applicants nor the NRC Staff identified evidence of harassment, intimidation and pressure to approve faulty work or violate QA procedures in the first instance, it should come as no surprise that they minimize this abundant recent evidence, once identified.

Palmetto and CESG urge that the conduct of further proceedings, including an opportunity for specified discovery and the presentation of rebuttal and cross-examination evidence, is required by constitutional due process guarantees, statutory and decisional authority, and the Commission's rules. Moreover, we trust that the Board's own need for a "full and true disclosure of the facts" on this significant safety issue compels such action.

#### BACKGROUND

Palmetto initially raised the precursor to the "foreman override" issue in the form of its broad claim of quality assurance deficiencies in construction founded upon the experience of two former Catawba workers, Ron McAfee and Nolan Hoopingarner. Palmetto Contention 6, as revised by the Board, reads as follows:

Because of systematic deficiencies in plant construction and company pressure to approve faulty workmanship, no reasonable assurance exists that the plant can operate without endangering the health and safety of the public.

Prior to the commencement of the evidentiary hearings on this quality assurance contention Palmetto sought Board relief to counteract "an atmosphere of oppression and chill

upon the potential cooperation of workers at the Catawba plant that prevents their cooperation with this Licensing Board..." Tr. 1738. We based our request for Board intercession upon evidence of a history of harassment and intimidation at the site experienced not only by Palmetto's witnesses but cited as well in the prefiled testimony of several of Duke's own current employees. In recognition of the need to assure that the "reluctance (of workers) to report safety violations or deficiencies" is not a "serious or pervasive problem," at Catawba, see, Union Electric Co. (Calloway Plant, Unit 1), ALAB 740, 18 NRC 343, 366 (1983), the Board established a confidential, in camera, forum to receive evidence of quality assurance or construction defects from present or former Duke Catawba workers. Four workers responded and presented testimony; initially three of them in camera. One of these three was Howard Samuel Nunn, Jr., who later waived confidentiality and presented public testimony. It was former welder Sam Nunn who presented the initial evidence of instances of what was termed "foreman override": pressure by foremen out of production or scheduling considerations on craftsmen to perform faulty work or violate quality assurance procedures. In response to Mr. Nunn's "foreman override" testimony, Applicants asserted that their investigation uncovered no instances where foremen sacrificed quality to schedule pressure. App. Ex. 112, Rogers, et al., p. 5; Wilson; Tr. 12,229-30.

The Region II Staff conducted a limited number of interviews of Cataba workers in its investigation of the "foreman override" issue. The Staff concluded that these interviews indicated that while there had been "isolated incidents between craft and some foremen," PID, p. 236, they did not indicate "a pervasive problem with the issue of foreman override..." Id. The Staff did, however, report an interview with an individual they identified as "Welder B" who presented evidence that his foreman had pressured him on several occasions to violate quality assurance procedures in the fabrication of socket welds without adhering to interpass temperature requirements in order to speed production. The crew's lead man was posted as a lookout to watch for QC inspectors during such improper welding. Welder B understood that such pressure had been applied to other welders on this crew. He described threats of physical violence by his foreman should such practices be reported, and explained that he had not earlier reported such practices to management or the NRC in light of such threats. Inspection Report Nos. 50-413/84-31 and 50-414/84-17 Appendix A, transmitted April 26, 1984 (April Inspection Report). After identification of the "Welder B" concerns the Staff focused its inspection efforts on that specific foreman and his welding crew. Upon the conduct of additional interviews from this crew the Staff noted "information which may potentially involve safety issues requiring

prompt attention, evaluation and corrective action".

Id., at p. 2. Summaries of interviews with ten individuals are appended to these Staff Reports. Six of these individuals provide evidence of "foreman override." Id.

On March 13, 1984, the Region II Staff informed Duke Power Company of this information, provided the identity of the foreman in question, and "advised" Duke "to begin an immediate review of these issues to determine what problems are raised as a result of the issues; the possibility that these activities extended beyond this particular welding crew; and, what corrective action would be required for adequate resolution." Id. at p. 2. In its June 22 Partial Initial Decision the Board retained jurisdiction over the "Welder B" and related "foreman override" issue requiring a demonstration by Applicants that such matters "do not represent a significant breakdown in quality assurance at Catawba." PID, p. 272.

Duke transmitted the results of its self-investigation of the "foreman override" issues identified by the earlier NRC Staff interviews in its August 3, 1984, "Investigation of Issues Raised by the NRC Staff in Inspection Reports 50-413/84-31 and 50-414/84-17." (Duke August 3 Report). Duke acknowledged the following 33 concerns which it characterizes as "foreman override" allegations:

- I, 10 concerns of interpass temperature violations.
- II. 6 concerns of workers acting as lookout for QC during improper work.
- III. 10 concerns of work without proper process control documents.

- IV. 1 concern of work on a nonconformed item.
- V. 3 concerns of misleading QC inspectors.
- VI. 1 concern of improper stenciling of welds.
- VII. 1 concern of improper installation of a concrete anchor.
- VIII. 1 concern of improper welding on containment vertical stiffeners.

Duke's self-investigation identified 37 additional "safety related concerns" which it characterizes as "unrelated to foreman override":

- I. 13 concerns of removal of arc strikes.
- II. 1 concern of sequence of making socket welds.
- III. 3 concerns of coldspringing.
- IV. 5 concerns of vendor weld quality.
- V. 1 concern of system flush.
- VI. 1 concern of weld preheat.
- VII. 1 concern of weld weave width.
- VIII. 1 concern of advance distribution of tests.
- IX. 1 concern of missing nut on structural steel.
- X. 3 concerns of melt through of backing plate.
- XI. 1 concern of welding temperature on plug valves.
- XII. 1 concern of painting on baseplate.
- XIII. 1 concern of excess penetration.
- XIV. 1 concern of use of stainless steel filler material.
- XV. 1 concern of rework after hold point.
- XVI. 1 concern of crack in building wall.
- XVII. 1 concern of defective weld.

Duke also acknowledged a number of workmanship, procedural and supervisory concerns on work it characterizes as non-safety related. Id. at pp. 23 - 24.

Duke determined, "based on technical considerations", that no hardware corrections were required; but that "isolated instances" of "perceived" production pressure had occurred warranting removal of a foreman (individual 142) and his general foreman (individual 184) and the "formal counseling" of the general foreman's supervisor (the welding superintendent) and three other supervisors (individuals 64, 217 and 218). Communications sessions are to be held to re-emphasize Duke's commitment to quality and an individual is to be assigned to Catawba with whom employees may discuss quality concerns. Id., pp. 24 - 27.

The Region II Staff reviewed the Duke self-investigation while in progress and upon its completion, found that the Duke "interviews were conducted in a professional manner" and that the resulting affidavits "were found to be thorough and well written." A severity level IV Notice of Violation was issued for "inadequate implementation of the quality assurance requirements in the welding program, "but no formal response was required in light of the already implemented "corrective actions." On the basis of a telephone poll of 27 of those expressing concerns the NRC Staff concluded that they were "satisfied with the results of the licensee investigations". Inspection Reports 50-413/84-88 and 50-414/84-39, transmitted August 31, 1984.



ARGUMENT

Palmetto Alliance and Carolina Environmental Study Group dispute the apparent conclusions of Applicants and the NRC Staff that "foreman override is not a problem at Catawba" since "an extremely limited number of foremen were involved and the incidents of foreman override were isolated and random in nature." Duke August 3 Report, p. 3. We object to the inclusion in the record of the NRC Staff and Applicants' reports, e.g. PID p. 237, as substantive evidence to be considered by the Board in resolution of the "foreman override" issue and Palmetto Contention 6, absent a meaningful opportunity "to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts," which opportunities are required by the Administrative Procedure Act, 5 USC 556 (d) and the Commission's Rules of Practice, 10 CFR 2.743.

Palmetto and CESG are severely handicapped in their ability to contest the asserted conclusions of Applicants and the NRC Staff through submission of rebuttal evidence or conduct of cross-examination without discovery of the underlying factual bases for these conclusions consisting principally of the "identities and locations of persons having knowledge" of such factual bases, affidavits and other investigative documentation reflecting the relevant concerns and the analysis and technical evaluation of those concerns. Such matter is plainly discoverable pursuant to the Commission's

Rules of Practice, 10 CPR 2.740 (b). A Freedom of Information Act request was submitted to the NRC on Palmetto's behalf on September 5, 1984, seeking documents in the agency's possession reflecting the factual bases for the Staff's "Welder B" conclusions. Staff counsel has kindly agreed to assist in expediting the FOIA response, but he has represented that the critical investigative affidavits likely remain in Duke's possession. Counsel for Applicants has declined to agree to cooperate in the provision of any informal discovery of such underlying evidence at this time.

While we acknowledge that this Board has previously declined to reopen discovery on Contention 6 or on the later in camera issues, e.g. PID pp. 16-19, we believe that under the present circumstances good cause is established for the limited discovery of the underlying evidentiary bases for the Duke and Staff reports. Earlier such requests for formal discovery were refused as "impractical" and "not necessary for an adequate exploration of the concern." Id. However, such materials needed at present are already in existence, were presumably assembled for review by the NRC Staff; and, therefore, should require little if any delay in obtaining their production. Such materials are, indeed, necessary; for, unlike the earlier circumstances involving the in camera witnesses, Palmetto and CESG do not have available the testimony of any Duke or Staff witnesses detailing their investigation of a particular concern nor

do we have any testimony or statements of the particularized concerns themselves or even the names and means of contacting the workers who raise the concerns. In the earlier circumstances the in camera witnesses responded to detailed questioning by Applicants as a discovery vehicle and prior to hearing Applicants and Staff supplied Palmetto with detailed documentary support for their conclusions regarding the concerns by way of informal discovery. Neither of these discovery forms are yet available to us.

Most importantly the production of such evidence is critically necessary "for a fair and thorough hearing process," See, Statement of Policy on Conduct of Licensing Proceedings, 13 NRC 452, 453 (1981), with due regard to the rights of Palmetto and CESG to be heard and in light of the safety significance of the "foreman override" issue which must be decided on the basis of a "full and true disclosure of the facts." 10 CFR 2.743.

Disclosure of strikingly similar underlying factual material was found to be necessary to afford the opportunity to submit rebuttal evidence and conduct cross-examination within the meaning of the Administrative Procedure Act. In Wirtz v. Baldor Electric Company, 170 App. D. C. 278, 337 F.2d 518 (1964), the Court of Appeals for the District of Columbia Circuit reversed the Secretary of Labor's prevailing wage determination which was based upon a summary tabulation of wage questionnaire results, where the Secretary refused to "produce or permit inspection of the answered questionnaires

or to disclose the names of the 216 establishments tabulated.."  
337 F.2d 518 at 525. The Court concluded that access to such  
underlying evidence was necessary in order to afford an  
opportunity to test the weight and authenticity of the  
underlying data and fairness and accuracy of the figures.  
337 F.2d 518 at 526. Disclosure of the identities of the  
reporting businesses was necessary in order to permit the  
identification of possible witnesses for rebuttal evidence  
as provided for under the APA. 337 F.2d 518 at 527.  
Finally, the Court in Wirtz rejected the Secretary's arguments  
that the materials need not be disclosed since obtained under  
a pledge of confidentiality":

The government, in situations of the present sort, has  
an option: it can hold back confidential material, and  
take the risk of not being able to prove its case, or it  
can produce the material and allow it to be the subject  
of direct and cross-examination.

337 F.2d 518 at 528 (1964).

Here, Palmetto and CESG seek to honor the legitimate  
expectations of confidentiality of those at Catawba who  
fear retaliation for their expression of safety concerns.  
However, in many cases the identities of the individuals  
are widely known to Duke supervision, the NRC Staff, and on  
the site. The cloak of confidentiality should not be  
available to shield Duke and the NRC Staff from effective  
adversary party scrutiny; yet, in a number of cases-such  
as for the disciplined supervisors found to have been responsible  
for "foreman override" offenses-it is only the Board and  
intervenors who remain in the dark. In any event Palmetto

and CESH are willing to submit to an order protecting the identities of those requiring confidentiality. Such an order was available to Applicants and the Staff to permit their use of information regarding the in camera witnesses. It should be equally available to us in the present circumstances.

On the face of the NRC and Duke reports even without discovery but in light of the personal knowledge of former Catawba welder Howard Samuel Nunn, Jr., there is substantial basis for impeaching the validity of the Duke and Staff conclusions that "foreman override" is merely a problem isolated to a single foreman and crew. As Sam Nunn's Affidavit reflects, p.4, the source of "foreman override" pressure was the general foreman-believed to be Billy Smith, who supervised many other foremen and crews-15 or 20 crews subject to the same pressure to perform faulty work and violate quality assurance procedures as was the single foreman, believed to be Arlon Moore, who was the central focus of the Duke and Staff investigations. Palmetto and CESH submit that the Duke and Staff investigations have failed to validly demonstrate that "foreman override" does not extend to other welding crews and other crafts, and that it is not a widespread problem at Catawba.

Further, the accuracy of Duke's investigative interviews simply can not be relied upon where a history of harassment, intimidation and discrimination against those who raise safety concerns is evident. Virtually none of the myriad concerns were raised through normal QA channels in a timely fashion. Many of those interviewed acknowledge that fear

of retaliation hampered their expression of concerns to Duke and the NRC. In any event an adequate record for decision requires an opportunity to test the accuracy of Duke's investigative conclusions. The recently published Report of Investigation by the NRC's Office of Investigation of July 11, 1984, on the issue of harassment and intimidation of QC welding inspectors provides further support for the thesis that production pressure extends beyond the welding discipline into other crafts at Catawba. Problems with such production pressure from QA management are stated to extend to other QC inspectors:

ROSS stated that he did not feel that the above issues were limited to welding inspectors. He said he had heard other inspectors from other disciplines complain of similar experiences with QA management. He said specifically two civil inspectors, Jim NORRIS and Wrenn VASSEY, told him they had the same problems with QA management that the welding inspectors had. ROSS stated that he did not know if they wanted to discuss these problems with anyone from NRC.

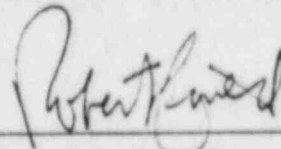
Interview of Gary E. Ross, O.I. Report p. 65. Welding inspectors Bryant and Rockholt express similar concerns of pressure extending to other QC disciplines. O.I. Report, pp. 12 and 15, respectively. No evidence demonstrates that such leads were ever effectively followed by either Duke or the NRC Staff.

The validity of the technical conclusions reached by Duke and the NRC Staff simply cannot be adequately tested without the discovery of the empirical data and methodological assumptions employed. Without the Brookhaven analysis reflecting the detailed metallurgical, chemical and weld

temperature inputs no meaningful testing of the conclusions regarding interpass temperature effects on weld sensitization and inter granular stress corrosion cracking can be accomplished. Similarly, access to work papers supporting Duke and Staff technical resolutions is a prerequisite to an effective opportunity to be heard, and is required for a full disclosure of the facts.

CONCLUSION

While Palmetto and CESC are mindful of the desire by Applicants and Staff to conclude licensing of Catawba for criticality and power operations, the serious and widespread recent evidence of production pressure to violate QA procedures and perform faulty work must be thoroughly considered in order to assure that the plant is safely built. We urge this Board to honor the trust of these concerned workers by insisting that their voices are heard in this proceeding. For the foregoing reasons we request that you provide for the conduct of further proceedings as set forth herein for the consideration of the "foreman override" evidence.



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