

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555DOCKETED
USNRC

September 26, 1984

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCHJames L. Kelley, Chairman
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555Dr. Paul W. Purdom
Administrative Judge
235 Columbia Drive
Decatur, GA 30030Dr. Richard F. Foster
Administrative Judge
P.O. Box 4263
Sunriver, Oregon 97702In the Matter of
DUKE POWER COMPANY, ET AL.
(Catawba Nuclear Station, Units 1 and 2)
Docket Nos. 50-413 and 50-414 OL

Dear Administrative Judges:

In accordance with the direction of the Licensing Board of September 21, 1984, I am herewith forwarding to you complete copies of the documents provided to Intervenors which represent the underlying documentary bases for Staff Inspection Report Nos. 50-413/84-88, 50-414/84-39, and Staff Inspection Report Nos. 50-413/84-31 and 50-414/84-17. (Enclosure A.) These materials were forwarded yesterday to Counsel for Palmetto Alliance and Counsel for Applicants with certain information deleted.

As indicated in the Staff's cover letter to Counsel for Palmetto Alliance, the information deleted was (1) the names of NRC confidential sources, or information which would tend to reveal such individual's identity, and (2) the names of individuals who provided information to Duke Power Company in the course of the Duke Power Company investigation into the Welder B concerns, or information which would tend to reveal such individuals' identity. In the copies provided to the Board, information in the first category is marked in red, while information in the second category is marked in yellow. The last 24 pages were part of Staff Exhibit 27, and were accorded in camera status under the November 1, 1983 Protective Order.

With respect to the information which would directly or indirectly reveal the identity of an NRC confidential source, the Staff believes such information is protected from disclosure, in accordance with 10 C.F.R. § 2.790(a)(7)(iv). Protection of the identity of such sources is of great importance to the NRC's investigative and inspection processes,

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as set forth in the Commission's Statement of Policy; Investigations, Inspections, and Adjudicatory Proceedings. 49 Fed. Reg. 36032-36034, September 13, 1984. Pursuant to 10 C.F.R. § 2.744 and the Policy Statement, the Staff is hereby advising the Board that unrestricted disclosure of the enclosed documents would reveal the identity of NRC confidential sources^{1/} and that the information designated should be disclosed only if the Board determines it to be necessary to a proper decision in this case and not reasonably available from another source, and then only under appropriate protective terms. (The Staff has enclosed a proposed protective order and affidavit of non-disclosure. Enclosure B.) Should the Board determine that the identifying information should be disclosed, even under protective order, the Board is nevertheless required under the Policy Statement to certify its decision to order disclosure of the identity of a confidential source to the Commission. "Only the Commission can order the release of the identify (sic) of a confidential source." 49 Fed. Reg. at 36034.

Although not covered by the Policy Statement, information marked in yellow, which would directly or indirectly reveal the identity of individuals who provided information to Duke on a confidential basis, is also subject to exemption under 10 C.F.R. § 2.790(a)(7)(iii), and should not be disclosed unless, pursuant to 10 C.F.R. § 2.744(d), disclosure is determined to be necessary to a proper decision in the case, and the information is not otherwise available from another source. (And, in fact, all such information is available from Applicants.) However, even if it is determined that such information should be disclosed, the Staff believes that pursuant to 10 C.F.R. § 2.744(e), such disclosure should be subject to the enclosed proposed protective order.

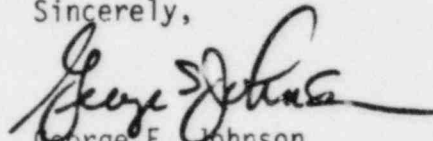
In connection with the proposed protective order, the Staff would note two matters: First, following the Appeal Board's order of April 17, 1984 in Commonwealth Edison Company (Byron Station, Units 1 and 2), unpublished

1/ Five individuals requested confidentiality from the Staff and were orally granted confidentiality by NRC Investigator, Bruno Uryc. In connection with the granting of confidentiality, they were advised of the internal mechanisms that would generally be utilized to protect their identity (i.e., removal of personal identifying data from internal documents, access on an need-to-know basis, etc.). In addition, they were generally advised that their identity would be protected by NRC; however, they were also told there may be situations where the NRC staff could be ordered to reveal their identity by some legal order or through some administrative process. They were told that if the Staff were ordered to reveal their identity, the Staff would notify them immediately.

Contrary to the statement of Counsel for Palmetto Alliance in the September 25, 1984 conference call, the Staff did not disclose the identities of these individuals to Duke Power Company.

order,^{2/} the proposed protective order and affidavit of nondisclosure do not apply to the Staff since it is subject to comparable restrictions under NRC Manual Appendix 2101, Part IV; and second, a provision has been added to the affidavit to require that any individuals contacted as a result of the disclosure of their identities pursuant to protections accorded by the proposed order, be informed that their identities became known to the contacting person pursuant to the order of the Board, and such contacting person is not permitted to disclose the individual's identity to any unauthorized person.

Sincerely,



George E. Johnson
Counsel for NRC Staff

Enclosures: As stated

cc w/ enclosures B & C: Parties

cc w/o enclosures:

Remainder of service list

^{2/} The Appeal Board Order and accompanying Protective Order and Affidavit of Non-disclosure are enclosed as Enclosure C.