

# DUKE POWER COMPANY

LEGAL DEPARTMENT

P. O. Box 33189

CHARLOTTE, N. C. 28242

STEVE C. GRIFFITH, JR.  
GEORGE W. FERGUSON, JR.  
LEWIS F. CAMP, JR.  
WILLIAM T. WARD, JR.  
RAYMOND A. JOLLY, JR.  
WILLIAM LARRY PORTER  
W. WALLACE GREGORY, JR.  
JOHN E. LANSCH  
RONALD V. SHEARIN  
W. EDWARD POE, JR.  
ELLEN T. RUFF  
ALBERT V. CARR, JR.  
ROBERT M. BISANAR  
WILLIAM J. BOWMAN, JR.  
RONALD L. GIBSON

(704) 373-2570

August 19, 1985

FREEDOM OF INFORMATION  
ACT REQUEST

*FOIA-85-584*

*Rec'd 8-20-85*

J. M. Felton, Director  
Division of Rules and Records  
Office of Administration  
U. S. Nuclear Regulatory Commission  
Washington, D. C. 20555

Re: Freedom of Information Act Request  
Regarding Enforcement Action EA 84-93

Dear Mr. Felton:

Pursuant to the Freedom of Information Act (5 USC §552) and the NRC's implementing regulations thereunder (10 CFR §9.3 et seq.) I hereby request on behalf of Duke Power Company all documents related to and underlying Enforcement Action No. EA 84-93 being taken against Duke Power Company. This enforcement action is reflected in the Notice of Violation and Proposed Imposition of Civil Penalty issued August 13, 1985.

This request extends not only to all relevant documents at NRC Headquarters relating to the enforcement action and the events surrounding Mr. Gary E. "Beau" Ross, but also to all such documents within NRC Region II including any such documents reflecting any communications between Region II and NRC Headquarters. This request includes, but is not limited to, all documents reflecting, underlying, or otherwise relevant to:

1. Any communications between NRC employees and/or representatives and members and/or representatives of Palmetto Alliance, the Government Accountability Project and/or any other outside group or individual concerning possible enforcement action based on the events surrounding Mr. Ross and/or the concerns expressed by the welding inspectors at Catawba Nuclear Station, and/or alleged harassment and/or intimidation of any quality control/quality assurance inspector at the Catawba Nuclear Station.
2. The June 4, 1985 Director's Decision (DD-85-9), including alternative drafts or proposals, and including all documents reflecting any independent fact-finding investigation conducted by NRC in connection with the enforcement action or concerning Mr. Ross.
3. Any decision to engage or not to engage in any independent fact-finding in connection with the enforcement action and Mr. Ross.
4. Deliberations regarding whether the record developed before the Atomic Safety and Licensing Board was adequate to support a finding of discrimination within the meaning of 42 USC §5851 and/or 10 CFR §50.7. This request also extends to any documents reflecting deliberations whether the

8603040563 860107  
PDR FOIA  
CARR85-584 PDR

~~8511220038~~ zpp.

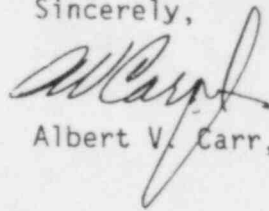
J. M. Felton, Director  
U. S. Nuclear Regulatory Commission  
August 19, 1985  
Page two

record developed before the Atomic Safety and Licensing Board was adequate to support the Board's finding of discrimination.

5. Deliberations regarding the appropriate severity level to be assigned the alleged violation.
6. Any communications between representatives of the NRC and representatives of the Department of Labor relating to this enforcement action or the events surrounding Mr. Ross.
7. The Commission's decision not to review DD-85-9, including documents underlying and reflecting the majority votes of Chairman Palladino and Commissioners Bernthal and Asselstine, and documents underlying and reflecting the dissenting views of Commissioners Roberts and Zech.
8. The August 13, 1985 Notice of Violation including alternative drafts or proposals.
9. The August 13, 1985 Proposed Imposition of Civil Penalty, including alternative drafts or proposals.

I would appreciate your prompt response to this request within the ten working day period provided in 10 CFR §9.9. Duke Power Company's deadline for responding to the Notice of Violation and Proposed Imposition of Civil Penalty is September 12, 1985. The documents I am requesting could well prove to be significant to that response. Accordingly, I hope that this request will be met as expeditiously as possible. If you cannot meet this request within the period set out in the regulations, please notify me as soon as possible, and tell me when you will be able to respond.

Sincerely,



Albert V. Carr, Jr.

c: James N. Taylor  
Jane A. Axelrad



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

PDR-016

JAN 07 1985

Docket No. 50-413/50-414

Mr. Albert V. Carr, Jr.  
Duke Power Company  
Legal Department  
P.O. Box 33189  
Charlotte, NC 28242

IN RESPONSE REFER  
TO FOIA-85-584

Dear Mr. Carr:

This is the fourth partial response to your letter dated August 19, 1985, in which you requested, pursuant to the Freedom of Information Act (FOIA), copies of all records related to and underlying Enforcement Action No. EA-84-93 regarding the Catawba Nuclear Station.

The documents identified on the enclosed Appendices N, O, P, and Q are being denied in their entirety for reasons noted below. The applicable FOIA exemptions are noted on the appendices. The NRC has previously made the documents identified on the enclosed Appendix R available for public inspection and copying in the NRC Public Document Room (PDR). The PDR accession number is noted next to the description of each document. The documents identified on the enclosed Appendix S are being placed in the PDR in Washington, DC and in the NRC Local Public Document Room in South Carolina.

The information withheld pursuant to Exemption (5) is predecisional information which constitutes advice, opinions and recommendations of the staff and the predecisional legal analyses, opinions and recommendations of the Office of the General Counsel (OGC) for the Commissioners' consideration of the developments in the Catawba operating license adjudicatory proceeding. Because the documents reflect the predecisional process between OGC and the Commissioners, and among the staff, the documents are exempt from mandatory disclosure pursuant to Exemption (5) of the FOIA (5 U.S.C. 552(b)(5)) and the Commission's regulations, 10 CFR 9.5(a)(5). Release of the documents would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. There are no reasonably segregable factual portions.

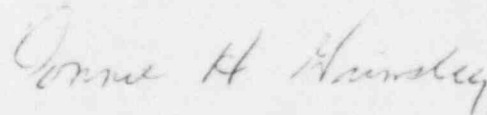
Information withheld pursuant to Exemption (7)(E) is an investigatory record compiled for law enforcement purposes which is being withheld from public disclosure pursuant to Exemption (7)(E) of the FOIA (5 U.S.C. 552(b)(7)(E)) and 10 CFR 9.5(a)(7)(v) of the Commission's regulations because disclosure of the information would disclose investigative techniques and procedures.

Pursuant to 10 CFR 9.15 of the NRC's regulations, it has been determined that the information withheld is exempt from production or disclosure, and that its production or disclosure is contrary to the public interest. The person responsible for the denial of the document identified on Appendix N is Ms. Sharon R. Connelly, Director, Office of Inspector and Auditor. The person responsible for the denial of documents identified on Appendix O is Mr. John C. Hoyle, Assistant Secretary of the Commission. The person responsible for the denial of the documents identified on Appendix P is Mr. John E. Zerbe, Director, Office of Policy Evaluation. The person responsible for the denial of documents identified on Appendix Q is Mr. James A. Fitzgerald, Assistant General Counsel.

This denial may be appealed to the Secretary of the Commission within 30 days from the receipt of this letter. Any such appeal must be in writing, addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should clearly state on the envelope and in the letter that it is an "Appeal from an Initial FOIA Decision."

We will communicate with you further regarding additional records related to your FOIA request.

Sincerely,



Donnie H. Grimsley, Director  
Division of Rules and Records  
Office of Administration

Enclosures: As stated

Re: FOIA-85-584  
(Fourth Response)

APPENDIX N

RECORDS WITHHELD IN ENTIRETY  
Exemptions (5) and (7)(E)

1. Investigative Plan - Catawba Allegations. (4 pages)

Re: FOIA-85-584  
(Fourth Response)

APPENDIX 0

RECORDS WITHHELD IN ENTIRETY  
EXEMPTION 5

1. 12/17/85 Vote Sheet of Zech on SECY-84-467, "Director Denial of 2.206 Petition (In the Matter of Duke Power Company)," (1 page)
2. 12/19/85 Vote Sheet of Palladino on SECY-84-467 (1 page)
3. 12/21/85 Vote Sheet of Bernthal on SECY-84-467 (1 page)
4. 12/21/85 Vote Sheet of Roberts on SECY-84-467 (1 page)
5. 01/03/85 Memo from Hoyle to Commissioners forwarding draft Staff Requirements Memorandum on SECY-84-467 (1 page)
6. Undated Memo from Chilk to Commissioners forwarding draft Staff Requirements Memorandum from 1/17/85 Commission meeting on Catawba.

Re: FOIA-85-584  
(Fourth Response)

APPENDIX P

RECORDS WITHHELD IN ENTIRETY  
Exemption (5)

1. 12/03/84 Memo for the Commission from Zerbe, Director, Office of Policy Evaluation, Subject: Catawba Nuclear Stations Units 1 and 2: June 22, 1984 and November 27, 1984 Partial Initial Decisions on Safety and Environmental Issues other than Emergency Planning; and September 18, 1984 Partial Initial Decision on Off-Site Emergency Preparedness (with enclosures) (62 pages)
2. 12/06/84 Catawba Summary (a summary "speech" prepared for John Zerbe to the Commission (Draft; never presented)) (4 pages)

APPENDIX Q

RECORDS DENIED IN ENTIRETY - EXEMPTION (5)  
DESCRIPTION

<u>DATE</u>	<u>DESCRIPTION</u>
1. March 14, 1984	SECY-84-114, Memorandum from J. Fitzgerald, Assistant General Counsel, OGC, to the Commissioners, Subject: Response to GAP/Palmetto/CESG Request for Commission Intervention in <u>Catawba</u> Operating License Proceeding, (2 pages)
2. Attachment to SECY-84-114	Undated draft letter from S. Chilk, Secretary, to McAfee, et al., re: response to 1/26/84 letter
3. December 13, 1984	SECY-84-467, Memorandum from J. Fitzgerald, Assistant General Counsel, OGC, to the Commissioners, Subject: Director's Denial of 2.206 Petition (In the Matter of Duke Power Co.) (6 pages)
4. Attachment to SECY-84-467	Undated draft paper entitled "Summary of Issues," re: GAP allegations, (5 pages)
5. January 31, 1985	Memorandum from J. Fitzgerald, Assistant General Counsel, to the Commissioners, Subject: ALAB-794 (In the Matter of Duke Power Co., et al. (3 pages)
6. June 25, 1985	SECY-85-226, Memorandum from J. Fitzgerald, Assistant General Counsel, OGC, to the Commissioners, Subject: DD-85-9: Review of Director's Decision in the Matter of Duke Power Co. (5 pages)



APPENDIX R

## Records Available in PDR

<u>DATE</u>	<u>DESCRIPTION</u>
1. attachment to SECY-84-114	January 26, 1984 Letter from B. Garde, et al., to the Commissioners ACN: 8401310287
2. attachment to SECY-84-114	November 23, 1983 Letter from Wm. Dircks, EDO, to B. Garde, GAP ACN: 8312120171
3. attachment to SECY-84-114	October 28, 1983 Letter from B. Garde, GAP, to Wm. Dircks, EDO, ACN: 8507200536
4. Attachment I to SECY-85-35	December 24, 1984 MEMORANDUM AND ORDER by Atomic Safety and Licensing Appeal Board, re: Catawba ACN: 8412270001
5.	OI Report 2-83-038-Expurgated version. ACN: 8408020068

Re: FOIA-85-584  
(Fourth Response)

APPENDIX S

RELEASED RECORDS

1. 12/10/84 Case Summary Brown & Root, Inc. vs. Donovan No. 83-4486  
Attachments A to SECY 85-33.  
Note: SECY-85-33 was addressed in Mr. Felton's letter dated  
12/10/85, Appendix G-1.
2. Undated Extract Pages 163, 164 and 165, Attachment C to SECY-85-33.
3. 07/11/84 Memo from Hayes to O'Reilly subject: Catawba Nuclear Station:  
Alleged Harrassment and Intimidation of QC Welding Inspectors  
(2-83-038)