

DUKE POWER COMPANY

LEGAL DEPARTMENT

P. O. Box 33189

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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

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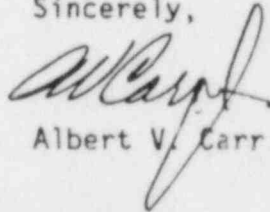
J. M. Felton, Director
U. S. Nuclear REgulatory Commission
August 19, 1985
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record developed before the Atomic Safety and Licensing Board was adequate to support the Board's finding of discrimination.

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

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~~Jul 18~~ 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 fifth 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 document identified on the enclosed Appendix T is being placed in the Public Document Room in Washington, DC, and the NRC Local Public Document Room in South Carolina.

The records identified on the enclosed Appendix U are being denied in their entirety because they contain predecisional information consisting of advice, opinions and recommendation of the staff. Disclosure would inhibit the frank and candid exchange of communications in future deliberations and thus would not be in the public interest. This predecisional information is being withheld pursuant to Exemption (5) of the FOIA (5 U.S.C. 552(b)(5)) and 10 CFR 9.5(a)(5) of the Commission's regulations.

Pursuant to 10 CFR 9.9 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 persons responsible for this denial are the undersigned and Mr. J. Nelson Grace, Regional Administrator, RII.

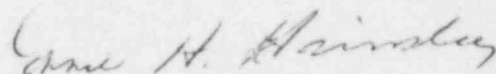
Mr. Albert V. Carr, Jr.

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This denial may be appealed to the NRC's Executive Director for Operations within 30 days from the receipt of this letter. As provided in 10 CFR 9.11, any such appeal must be in writing, addressed to the Executive Director for Operations, 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

APPENDIX T

Released Record

1. 11/28/84 Memorandum from Olshinski to Eisenhut Subject: Status of Atomic Safety and Licensing Board Partial Initial Decision Requirements for Catawba Nuclear Station. (1 page)

APPENDIX U

Records Denied in Entirety - Exemption 5

1. 07/13/84 Memo from O'Reilly to DeYoung, Subject: Section 2.206 Request on Catawba filed by Robert Guild w/enclosure: Changes to letter to Mr. Guild. (2 pages)
2. 09/12/84 Memo from Puckett to Axelrad, Subject: Severity Level III Violation - Duke Power Company (References: ASLBP #81-463-060: NRC OI Case No. 2-83-038; And Inspection Report Nos. 50-413/84-79 and 50-414/84-34). (1 page)
3. 11/05/84 Memo from O'Reilly to DeYoung, Subject: Enforcement Action Request, Duke Power Company (1 page) w/enclosure: Letter to Ms. Garde (5 pages) and Attachment, Appendix A, RIII Communications Concerning Welder "B" Issue. (2 pages)
4. 12/13/84 Memo from O'Reilly to Taylor, Subject: Proposed Catawba Enforcement Action (2 pages) w/enclosures:
 - a. 08/30/83 Evaluation of Violations Involving Escalated Enforcement Action. (3 pages)
 - b. 12/13/84 Memo from Region II to O'Reilly, Subject: Proposed Civil Penalty. (3 pages)
5. 04/26/85 Memo from Grace to Taylor, Subject: Proposed Enforcement Action and 2.206 Response on Harassment at Catawba. (2 pages)
6. Undated Routing slip with attachments:
 - a. Draft memo from Puckett to Axelrad, Subject: Severity Level III Violation - Duke Power Company. (2 pages)
 - b. Draft letter to Duke Power Company, Subject: Notice of Violation Involving Illegal Protected Activity Discrimination. (5 pages)
 - c. Draft Notice of Violation to Duke Power Company. (2 pages)
 - d. Draft Report Nos. 50-413/84-79 and 50-414/84-34 Catawba 1 and 2. (14 pages)