UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	Docket Nos. 50-413
DUKE POWER COMPANY, et al.	)	50-414
	)	
(Catawba Nuclear Station, Units 1 and 2)	)	June 10, 1983

PALMETTO ALLIANCE AND CAROLINA ENVIRONMENTAL STUDY GROUP
RESPONSE TO APPLICANTS MOTION FOR SANCTIONS
REGARDING CONTENTIONS 6,7,8,16 & 44/18
AND RESPONSE TO NRC STAFF MOTION FOR SANCTIONS
REGARDING THE CONTENTIONS 7 & 44.

Intervenors Palmetto Alliance and Carolina Environmental Study Group hereby respond in opposition to "Applicant's Motion for Sanctions Against Intervenors Palmetto Alliance and CESG," dated June 3, 1983, on the grounds that they have fulfilled their obligations under the Commission's discovery rules by disclosing fully the substance of all information in their posession relevent to the subject matter of these Contentions, and that, therefore, the imposition of sanctions against them is unwarranted.

Intervenor Palmetto Alliance and its Counsel received Applicant's motion, a document of some 144 pages endorsed by 5 individually named counsel, on June 7, 1983. The NRC

Staff motion of 12 pages was in Palmetto's hands on June 6, 1983. As directed by the Board in it's May 13, 1983, Memorandum and Order, "any response from Palmetto in opposition shall be in the hands of the Board, Staff and Applicants by Monday, June 13, 1983". Intervenors endeavor herein to meet this obligation.

Palmetto and CESG note that on June 6, 1983, they filed "Palmetto Alliance and Carolina Environmental Study Group Responses to Applicants May 23, 1983 Followup Interrogatories on DES Contentions 11, 17, & 19," some 49 in number, requiring work late into the evening of June 6. Furthermore, work in response to Applicants Motion for Sanctions began immediately upon its receipt by Palmetto on June 7, 1983, continuing through the night of June 8, 1983 and morning of June 9, 1983, when Counsel for Palmetto departed South Carolina for Boston, Massachusetts, to attend a deposition ordered by the South Carolina Public Service Commission in a related proceeding to which Palmetto is a party, involving the proposed sale of the Catawba facility, In Re; Application of Piedmont Municipal Power Agency For Authority to Acquire A Portion of the Catawba Nuclear Station, Docket No. 82-352-E, to be conducted beginning Friday morning June 10, 1983. This response, therefore, is being prepared in some haste in order that it may be written, typed, copied, served and "in the hands" of the parties and Board by Monday June 13, 1983. By telephone conversation of

June 8, 1983, Counsel for Palmetto Alliance was authorized to represent the position of Carolina Environmental Study Group with respect to the sanctions sought against CESG by Applicants.

In its lengthy June 6 motion, Applicants charge Palmetto with a "pattern of behavior" which they characterize generally as "gamesmanship", attempts to practice "trial by surprise", and general failure "to meet its obligations" as a party in discovery, see Applicants Motion, pp. 1-11. The thrust of Applicant's position is to attack Palmetto's motives as a participant in this proceeding by implying bad faith and willful dishonesty in Palmetto's discovery responses:

> in sum, Palmetto Alliance has diligently attempted to keep its contentions broad so that it could be in a position to raise any concern remotely associated with the contention at any time, up to and including the hearing. Such conduct is inconsistant with both the discovery obligations of a party and with the manner with which the Commission conducts its proceedings.

Applicants Motion, p. 7, footnote omitted.

Palmetto Alliance denies (under the assumption that Applicants innuendos call for an explicit response) the implication that Palmetto Alliance is either dishonest or disingenuous in its participation in this proceeding. We, and our members take with the utmost seriousness our obligations as participants in this proceeding both our

obligations under Commission Rules of Practice and our obligation to protect the health and safety of those persons living in proximity to the Catawba Nuclear Station. We are not playing games. Palmetto observes that Applicant's 144 page motion is rife with distortions, misrepresentations and mischaracterizations of Palmetto's positions, motives and actions in this proceeding.

With respect to the NRC Staff Motion for Sanctions, the issues in controversy are at least somewhat less obscured. While the Staff seems drawn to engage in a limited degree of namecalling to embellish its request for sanctions, such as charging a "pattern of dillatory behavior," see Applicants Motion at p. 8, and a "complete disavowal of any obligation with respect to litigating a contention," Ibid at p. 10, the NRC Staff at least seems to concede the honesty of Palmetto's position on its contentions 7 & 44. Palmetto and Staff would seem to hold a basic disagreement on a matter of policy and principal. Palmetto trusts that the Board will conclude; first, that the Staff Motion reflects the true scope of the discovery dispute at hand, and second, that Palmetto's postion on this question of policy and principal is well founded.

Palmetto Alliance and Carolina Environmental Study Group are informed of and accept the Commisssions guidance reflected in its "Statement of Policy on Conduct of Licensing Proceedings"

13 NRC 452 (1981):

> The purpose of discovery is to expedite hearings by the disclosure of information in possession of the parties which is relevant to the subject matter involved in the proceeding so that issues may be narrowed, stipulated, or eliminated and so that evidence to be presented at hearing can be stipulated or otherwise limited to that which is relevant.

Id. at p. 455.

> Fairness to all involved in NRC's adjudicatory procedure requires that every participant fulfill the obligations imposed by and in accordance with applicable law and Commission regulations. While a Board should endeavor to conduct the proceedings in a manner that takes account of the special circumstances faced by any participant, the fact that a party may have personal or other obligations or possess fewer resources than others to devote to a proceeding does not relieve that party of its hearing obligations.

Id. at p. 454.

Fundamentally, Intervenors urge that "tak(ing) account of the special circumstances" they face including their "obligations" and "fewer resources than" Applicants and Staff, they have indeed met their obligations and honored the purpose and spirit of the discovery process in this proceeding. Neither Intervenor has sought nor received any special relief from their obligations as participants in this proceeding. From the outset, Palmetto Alliance has recognized and acknowledged its discovery obligations, see Applicants Motion at p. 5, has met each and every discovery deadline imposed upon it, has attempted to provide honest and complete answers without objection to each discovery

request of it, and has freely and candidly admitted its ignorance or its lack of "further independent knowledge" when appropriate, see Staff Motion at pp. 3 and 9. While admittedly this Board has chastised Palmetto for discovery responses which it judged inadequate, Palmetto has, in each instance, responded to the best of its ability to the Board's further direction. Palmetto Alliance and Carolina Environmental Study Group have fully disclosed the bases for their safety and environmental contentions in this proceeding to Applicants and the NRC Staff and have borne their evidentiary responsibilities to "come forward with evidence sufficient to require reasonable minds to inquire further" such that its contentions should be explored at hearings. Applicants and NRC Staff Motions for Sanctions are unsupported by the record and should be denied. Pennsylvania Power and Light Company (Susquehanna Steam Electric Station, Units 1-2), 12 NRC 317 (1980).

Palmetto Alliance and Carolina Environmental Study Group would urge that if public interest participants are to continue to be permitted to participate as adversary parties in NRC licensing cases for nuclear facilities in their communities, then the standard of participation represented by these intervenors must be judged as exemplary and fully consistent with their obligations as parties. For if the high level of personal and organizational commitment, and enormous investment of time and scarce resources reflected by the efforts of Palmetto and

and CESG to contribute to this process is rejected as inadequate, Intervenors submit that no public interest participant can meet the standard required for participation in NRC licensing proceedings. If exclusion of the public from NRC licensing is the desired policy it should at least be openly acknowledged rather than contrived through such a device as the imposition of "sanctions" for failure to make discovery. Even assuming arguendo, each and every "failure to fulfill discovery obligation" and dishonest motive attributed to Intervenor by the Applicants, none of the existing NRC decisional authority cited by Applicants, see Applicants Motion at pp. 8 and 9, supports the imposition of the sanctions sought by Applicants or NRC Staff under the circumstances alleged by them here.

In its summary of argument, Applicants characterize the sum of what is to follow in the balance of their 144 page pleading as representing a "pattern of behavior," documenting "Palmetto Alliance's attempt to practice the precise activity proscribed by the Appeal Board in Susquehanna, supra, 12 NRC at 338 (i.e., trial by surprise) (Motion at p.6). The transparency of this "trial by surprise" allegation--and the transparency of the mass of charges alleged to support this claim--is best reflected by an examination of the prime example selected by Applicants to prove its point: "For example, with regard to Contention 16, Palmetto Alliance alleges that the failure of one spent fuel pool cooling train could result in the

release of radiation." see Applicants Motion at p. 6. Applicants go on to charge that this failure constitutes a diligent attempt to keep contentions broad so that "it would be in a position to raise any concern remotely associated with the contention at any time, up to and including the hearing", Applicants Motion, p. 7.

First of all, Palmetto Alliance takes its pledge that "the responses given are true and complete to the best of my knowledge" seriously. Palmetto Alliance has not at any time attempted to withhold or be purposely vague in order to gain advantage at a later date. The only signs of duplicity that might be apparent to the Board are found in the misrepresentation and distortions of Palmetto's position by the Applicants. Palmetto Alliance is not interested in conducting trial by surprise. Second, in responding to Applicant's question "state why you contend that each of the NRC requirements (identified in response to Interrogatory 11) has not been met?" Palmetto Alliance stated all our concerns regarding the spent fuel pool cooling system. Palmetto Alliance specifically laid out the reasons for its contention:

> Palmetto Alliance believes that there is an unacceptably high probability that the water in the Catawba spent fuel pool will reach and surpass the 150°F heat limit which could result in ruptures in the pool liner plate, pool water leakage, and boil off. This could in turn result in fuel element degradation, hydrogen gas generation and potential radiation release. Such an occurance is made

> more likely because of the fact that design modifications at Catawba that more than double the number of fuel assemblies to be stored (thereby dramatically increasing the heat load) here significantly reduced the margin for error. In other words, the cooling trains and other "structures systems and components important to safety" -- were designed to operate with respect to a much lower heat load than the subsequent modifications of the cascade plan call for. If the safety related systems were designed so as to prevent water temperatures in the pool from reaching dangerous levels when the pool contained a maximum of 662 fuel assemblies, then expanding the pool to hold 1418 assemblies significantly increases the heat load and reduces the margin for error. Thus it now seems likely that the failure of one of the two cooling trains might well bring the temperatures of the pool to more dangerous levels more quickly than would have been the case before the cascade plan.

Palmetto Alliance response to Interrogatory 13 on Contention 16, p. 25, of May 27, 1983 Response.

Thus, as required by the Board's May 13 Order, Palmetto Alliance stated the nature of the problem with as much detail as possible. How would the Applicants suggest that Palmetto state the "who", "what" and "where" of the spent fuel pool problem (see Applicant's Motion p. 6-7)? Palmetto has provided Applicants with all the information it has, including references to the Duke Power Study. Palmetto fails to see how its responses leave the Applicants unable to prepare its case or subject to "any conceivable thrust". If alleging the defect in the spent fuel cooling system is to be construed as requiring Palmetto to do a technical analysis of the Catawba fuel pool, describing the precise chemical processes that take place as a liner plate

ruptures, then Palmetto Alliance must reject such a burden as patently unfair. To require such technical expertise would be to foreclose any meaningful role in the licensing process for the public or its representatives.

This sort of misreading of Palmetto Alliance's "pattern of behavior" occurs throughout Duke's Motion; honest, responsive replies are consistently misrepresented as constituting deliberate avoidance or willful dishonesty. Again, while a point by point consideration of the Applicant's 144 page broadside is beyond Palmetto's capabilities at this time (and in any case of dubious usefulness), Palmetto feels compelled to briefly note its opposition regarding the contentions addressed by the Applicants.

The Applicants somewhat confusing barrage regarding Contention 6 seems to center on two major points: first, Applicants contend that Palmetto Alliance's responses to Interrogatories require them to "sift through documents...in hopes of guessing what the Intervenors will rely on," see Applicant's Motion at p. 7, second, the Applicant's contend that Messrs. Hoopingarner and McAfee could not state the specifics of so-called "uncorrected" faulty workmanship or poor quality control, and that they had not reviewed documents provided to Palmetto Alliance during discovery (a review which Palmetto asserted to be necessary to refresh Messrs. Hoopingarner and McAfee's recollection in their April 28, 1983 responses).

In Attachment 4 to Palmetto Alliance's May 25, 1983 Motion to Establish Discovery Schedule Regarding Quality Assurance Contention 6, the Intervenor describes in great detail the documents cited. These clearly identified documents (which came from Duke Power Company) are in the possession of and well known to the Applicants, the NRC Staff, and the Board. Palmetto Alliance's clear identification of these documents and the document's accessability to all parties involved constitutes a sufficient response. Palmetto Alliance has conformed to the Appeal Board requirement in the Byron case that "a party must specify precisely which documents cited contain the desired information," (Commonwealth Edison Company, Byron Nuclear Power Station, Units 1 and 2) ALAB-678, 15 NRC 1400 at 1421, (1982), (Appeal Board's own citation omitted). Indeed, the Applicants themselves have shown earlier in the discovery process that they are aware of the precedent provided by the Pilgram case regarding the review of documents.

In objecting to providing more information beyond a large number of Significant Deficiency Reports in response to Palmetto Alliance Interrogatory 2 regarding contention 6, the Applicants write that:

> The issue, then, is who should be obligated to review documents already provided by Applicants and extricate the particular data requested. NRC precedent makes clear that this burden should fall on the party whose "dragnet approach" resulted in the production of the documents. In Boston Edison Company (Pilgram Nuclear Generating, Units 1 and 2) LBP-75-30, 1 NRC 579 (1975), the Board ruled in regard to a similarly broad Interrogatory (which sought to require the pages of Company records and to compile specific information gleened from these numerous documents that to provide "such

a massive volume of information would constitute an undue and unnecessary burden." (1 NRC at 588).

See Applicants Responses to Palmetto Alliance Follow-Up Interrogatories and Requests to Produce Regarding Contentions 6,7,8, 27 and 44, March 15, 1983, p. 7.

Palmetto Alliance believes that having so precisely identified the documents on which it relies, documents known to all, it has fully met its obligation for specificity on this question. Palmetto Alliance believes that extensive quotations from each of these welding inspector complaints would constitute "an undue and unnecessary burden" and simply impede Palmetto's ability to perform its substantive discovery duty, i.e., disclosing information in it's possession on which it relies. However, if the Board so directs Palmetto is prepared to undertake the extensive quotation from the identified welding inspector complaints.

With regard to the deposition of Messrs. Hoopingarner and McAfee, in response to Board directives Palmetto Alliance made Messrs. Poopingarner and McAfee available for Applicants questioning on May 19 and 20, in fact, the depositions extended over many hours and two separate days. Messrs. McAfee and Hoopingarner answered all questions put to them by the Company and detailed exhaustively their specific concerns regarding the likelihood of faulty workmanship on the basis of weaknesses that they identified in the Company's construction practices and Quality Assurance program. They very candidly represented that they didn't know of any specific faulty workmanship or quality

control that had gone uncorrected. The Applicants note that Messrs. Hoopingarner and McAfee could not state specifics of uncorrected faulty workmanship or poor quality control clearly misses the point. What is at issue in contention 6 is not limited to whether or not Duke Power Company quickly corrects identified faults. Instead, contention 6 challenges the adequacy of Duke Power Company's Quality Assurance program in identifying and bringing to light faulty quality control and workmanship. And this point was specifically addressed by Messrs. McAfee and Hoopingarner.

The Applicants charge that Messrs. Hoopingarner and McAfee failed to review documents provided to Palmetto Alliance during discovery. On the contrary, Mr. Hoopingarner repeatedly expressed his interest in fully reviewing documents he brought with him the second day of his deposition to refresh his memory concerning details of his concerns regarding Catawba construction. Counsel for the Applicants repeatedly resisted Mr. Hoopingarner's references to these documents (Palmetto Alliance does not own, and Applicants declined to make available a transcript of these depositions and is therefore unable to give a precise page reference on this point). The record also shows that Mr. Hoopingarner did in fact refer to Company documents that were attached as exhibits to his deposition, including the file memoranda that the Company produced reflecting his concerns. These file memos confirm that

the company took seriously his complaints and acted on them in a number of respects. In addition, the NRC's Inspection Reports confirm that violations were found and infractions levied against Duke Power Company on the basis of Mr. Hoopingarner's charges. The Duke documents confirm that Mr. Hoopingarner was in fact a victim of reprisals as a result of his complaints.

The only document produced by Applicants in discovery at all helpful to refreshing Mr. McAfee's recollection was the Larry Davidson file memo reflecting his exit interview at the time of his departure from Duke employment. Mr. McAfee specifically testified about the inaccuracies of the Davidson memo describing Mr. McAfee's exit interview (a memo composed several months after the actual interview occured). Palmetto notes that the specific evidentiary value of Messrs. Hoopingarner and McAfee's testimony is to be tested independently of this response to this Motion for Sanctions; the sanctions question is addressed to whether or not Palmetto has responded to the Board's discovery direction in making them available for full responses to questions. Palmetto Alliance has clearly done so.

Palmetto Alliance has been candid in explaining the preliminary nature of its analysis of the important Quality Assurance issue at the Catawba plant. First, we have tried to be clear that our concern is not based on knowledge of specific uncorrected faulty workmanship but rather on the likelihood of extensive, as yet unknown, faulty workmanship existing because of

systematic breakdowns in the Quality Assurance program. Palmetto's May 25, 1983 Motion to Establish Discovery Schedule on Quality Assurance Contention 6 documents our review to date and our discovery to date on contention 6 and establishes, in our judgement, good cause for concluding that we have had inadequate discovery to date and that therefore our review is only preliminary, and that we should be entitled to further discovery on this contention.

With respect to Contention 7, the Applicants charge Palmetto with being "irresponsible", and with erecting a "smokescreen" in a last ditch attempt to avoid having Contention 7 dismissed, see Applicant's Motion at p. 66. Again, Palmetto Alliance stands by its Contention and strongly objects to the charge of duplicitous or irresponsible behavior. In its initial responses to the Applicant's Interrogatories (April 28, 1982) Palmetto Alliance reported that it lacked sufficient knowledge to answer many of the Applicant's Interrogatories and was awaiting responses to it's Interrogatories and Requests to Produce. Palmetto Alliance is aware and has identified NRC Staff documents that constitute important evidence in support of Contention 7. Palmetto Alliance's efforts to collect independent information on the facts behind the violations uncovered by the NRC Staff were largely unsuccessful. Palmetto Alliance notes that the Duke Power Company witness who was identified as most knowledgeable on contention 7, Mr. Vaughn, disclaimed knowledge of details of infractions involving plants under construction. As to the

area in which he was informed, that is, operational experience, as the manager for nuclear plants for Duke Power Company he disclaims specific information in response to the questions about the factual basis of the NRC Staff's findings regarding specific violations identified in the SALP reports or the specifics of remedial action taken by Duke Power Company. Subsequently, in a perfectly proper use of the discovery process, Palmetto Alliance adopted a position on contention 7 which reflected its reliance on the track record as found by the NRC Staff, coupled with a disclaimer of lack of independent information as to the facts beyond the record itself. Palmetto Alliance made the one additional point that is noted on page 66 of the Applicants Motion, and that is that the track record as reflected by the NRC's finding of violation does not likely reflect the total compliance history of Duke Power Company. To this the Applicants respond by charging that Palmetto Alliance has "now resorted to a recitation of groundless innuendo in a last ditch attempt to avoid having this contention dismissed," see Applicant's Motion, at p. 6. But Palmetto Alliance has disclosed all of the information it has regarding contention 7 and has candidly admitted that it has no further specific information. However, Palmetto Alliance notes that on page 80 of their Motion, Duke Power Company indicates that after the close of discovery, and one day after the service of its Motion for Sanctions, it will notify the parties of a "recent notice of

proposed civil penalties regarding Oconee." Palmetto Alliance has no independent information about this latest NRC finding of violation except for sketchy information come to its attention in the last few days, but one is left to wonder about the Applicants "gamesmanship" on these important matters when it waits past the close of discovery and past the filing of this Motion to inform the parties of this potentially significant new element on the track record contention. The existence of the track record leading up to the date of regulatory violation underscores the importance of keeping it open, and weighing Duke's track record as framed in contention 7. Palmetto urges that the Applicants and NRC Staff's Motion for Sanctions and Dismissal On Contention 7 be rejected.

With regard to contention 8, Applicants castigate Palmetto at great lengths for refusing to specify a standard for sufficient hands-on operating experience, see Applicants Motion at p. 90. Palmetto Alliance has been candid in responding to the Board's directions and to the Interrogatories of the Applicants by conceding our lack of information sufficient to specify such a standard.

Having truthfully responded that we lack sufficient knowledge to specify a "sufficient" level of experience, Palmetto Alliance, pursuant to the Board's May 13, 1983, Order, further explained its position and provided more

information about what we felt was insufficient hands on experience. Over the course of discovery Palmetto Alliance responses have defined "operators" both in terms of function and job classification, precisely defined hands-on operating experience, given examples of what constitutes hands-on experience, given specific reasons why operator qualifications are crucial to protecting the public health and safety, and cited specific examples of Duke employees who lacked sufficient hands-on operating experience. Palmetto Alliance does acknowledge its inability to specify a standard in years, but notes that this should not be surprising given the fact that the Commission itself has not been able to specify a standard. In fact, this is the fundamental reason why a regulatory gap exists with respect to operator qualifications, supporting the importance of the operator qualification contention. The importance of this issue is further reflected by the Applicants' observations on page 99 of their Motion that in fact Congress has directed the NRC to promulgate standards for operator qualifications, and that there is a pending rulemaking to do just this. The Applicants answer, on page 97 of their Motion, that there is no indication that their operators are not at least as qualified as those at other facilities, begs the question of whether or not Duke's operators are in fact lacking in qualifications due to insufficient hands-on experience. The fact that the problem may be shared by operators at other

nuclear plants does not make it less important here.

Palmetto Alliance's compliance with its responsibilities in discovery on contention 8, and the technical, non-substantive nature of the Applicant's attack is amply illustrated by the Applicants' charges that with regard to Palmetto Alliance's May 27, 1983 Response to Interrogatory 38, Palmetto has "once again totally failed to respond to Applicant question, i.e., what are your basis and support for the concern that presumedly more ("sufficient") operating experience is needed?" See Applicant's Motion at p. 92. On the contrary, Palmetto Alliance has articulated a clear line of reasoning that inexperienced operators are more likely to make mistakes, that mistakes by operators increase the chances of a nuclear accident, that nuclear accidents involve the release of radiation into the environment, and that such a release would have adverse health and safety effects. In support of this commonsense line of reasoning, Palmetto Alliance cited NUREG/CR-1270, "Human Factors Evaluation of Control Design and Operator Performance at TMI-2," a report that not only specifically addresses many points in the above line of reasoning but is in fact premised on the above line of reasoning! If human error did not have an important relationship to public health and safety, why would the NRC devote volumes of study to just this topic? Indeed, the Applicants themselves acknowledge how obvious this link between operator error and the public health and safety is: "Palmetto

Alliance states the obvious, viz., that human errors may potentially cause accidents, and 'increased' operator errors may potentially cause accidents, and 'increased' operator errors could adversely affect the public health and safety," see Applicants Motion at page 92. If this connection is so obvious to the Applicants, Palmetto Alliance wonders why so much of its time and the Board's time has been devoted to answering and evaluating ceaseless, redundant questions regarding this matter. It would seem that it is the Applicants who are engaging in "gamesmanship." If this is not the case, the only possible interpretation of the Applicants' charge that Palmetto's "general note" that there may be adverse consequences of operator error is insufficient, is that Applicants would like the Board to require Palmetto to document the health effects of radiation on plant, marine, and human life. If this is what is required for Palmetto to be specific, an unfair burden is being imposed. If Palmetto Alliance must document and describe health effects and radiation, Palmetto might just as well expect Duke Power Company to defend the record of the entire domestic nuclear power industry since its inception. Palmetto Alliance would be perfectly willing to provide information on the physiological effects of radiation on humans and animals, but it would be impossible to do so and still be able to respond in a timely manner to the important demands of the discovery process.

At bottom, Duke Power Company has been well informed by Palmetto; Palmetto Alliance has provided the Applicants with the "specific pieces of information it intends to rely on" as mandated by the Board in its May 13, 1983 Order. Palmetto Alliance has consistently sought "structure[d] their participation so that it is meaningful, so that it alerts the agency [and the Applicants] to the intervenors position and contentions" as required by Vermont Yankee Nuclear Power Corporation v. NRDC, 435 V.S. 519, 553 (1978), cited in the Applicants' Motion p.2.

It is with respect to contention 16 that the Applicants probably best reveal the insubstantial character of this entire excercise in seeking sanctions. After much smoke and thunder about the inadequacy of Palmetto discovery responses and a ringing call for dismissal of the contentio, they then plead the entitlement to the alternative remedy of a narrowing of the contention to the specifics they concede are asserted in Palmetto discovery responses, see Applicants Motion at pp. 123-125. The Board charged Palmetto with outlining its concerns about the safety of spent fuel storage of non-Catawba spent fuels. Palmetto clearly does so. The Applicants understand this, and they reflect at pages 110-115 of their Motion clear outline of the specific accident scenarios that Palmetto has described in its Contention 16 discovery responses. While we can debate the evidentiary significance of information available with respect to each of these scenarios, this is

not the forum for doing so. The recitation by Applicants clearly reflects that Palmetto has been forthright in disclosing what it knows about the subject and why it is concerned. The fundamental basis for Palmetto's concern is as indicated in our response to Interrogatory 13, quoted above. Basically our concern is that the doubling of capacity of the Catawba spent fuel pools over its original design will significantly increase the heat load, and yet Duke Power Company claims that the original heat removal system need not be modified to handle the additional heat load and that no loss of safety margin follows from doubling the inventory with the same heat removal system. The indications of the increased demands on the heat removal system are founded in Duke's own document, the 1976 Catawba Heat Load Study. Their own study indicates that the pool water temperature control capacity is limited under the assumed heat load increases that were studied. Palmetto stands by the adequacy of its discovery responses on contention 16 and urges that the Applicants Motion For Sanctions be denied.

Contention 27 is not the focus of the Motion for Sanctions by either the NRC Staff or the Applicants, but on Contention 44 the Applicants move for sanctions of dismissal against both Palmetto Alliance and Carolina Environmental Study Group. Apparently, the NRC Staff moves for a sanction of dismisssal only against Palmetto Alliance.

By telephone conversation of June 8, 1983, Jesse Riley,

Authorized Representative of CESG, authorized counsel for Palmetto Alliance to represent in this response the position of CESG with respect to the Applicants' Motion for Sanctions against CESG on its Contention 18 (Palmetto Alliance Contention 44). CESG's representative acknowledged, as indicated by Applicants that his response to their Interrogatories on this contention would be delayed, and that the Applicants consented to such a postponement. Mr. Riley notes that the Applicants' counsel had made no further contact with him with respect to his discovery responses prior to filing this Motion for Sanctions of Dismissal Against CESG; and that he now wishes to inform the Board and parties that he is presently in the process of completing his responses to Applicants' Interrogatories on this contention. Carolina Environmental Study Group opposes Applicants' Motion for the Sanction of Dismissal of its Contention 18.

Palmetto Alliance has filed the identical Contention 44 to CESG's Contention 18, and has disclaimed independent knowledge of the highly technical subject of pressurized thermal shock and reactor vessel embrittlement that is the subject of this contention, and informed the Board and parties of its reliance on the position of CESG with respect to its Contention 44. The Applicants erroneously charge that Palmetto Alliance has "submitted a skeletal contention and then through failures to meet their discovery obligations have kept the details

from disclosure," see Applicants Motion at p. 141, emphasis added. On the contrary, Palmetto Alliance, from the very beginning, has consistently acknowledged that CESG's Jesse Riley, a trained physical chemist, was the principal formulator of Contention 44. Palmetto Alliance has been unerringly straightforward in its acknowledgement that Palmetto possessed no independent information with regard to Contention 44. In light of the Board's May 13, 1983 Order criticizing Palmetto's responses on Contention 44, Palmetto Alliance attempted to be as responsive as possible. Palmetto Alliance acknowledged openly that it had no further information to add regarding Contention 44, and made appropriate cross-references between Applicant Interrogatories directed at Palmetto and the CESG responses to Interrogatories posed by the NRC Staff, as suggested by the Board. The clear position taken by Palmetto was not lost on the NRC Staff or misconstrued as "keeping the details from disclosure." The Staff noted that "...on Contention 44, Palmetto candidly admitted that it had no independent basis for its contention, and was relying completely upon the answers of CESG through earlier Staff interrogatories...," NRC Staff Motion for Sanctions at p. 9.

Palmetto Alliance means what it says when it indicates that it has, and it does rely on the position of CESG with respect to this contention. Palmetto Alliance believes that it should be entitled to take a position on this contention

in litigation, and that the contention is an important safety issue that must be resolved before licensing Catawba. The Applicants and Staff's Motions for Sanctions with respect to contentions 44/18 should be denied.

CONCLUSION

For the foregoing reasons Palmetto Alliance and Carolina Environmental Study Group oppose Applicants and NRC Staff Motions for Sanctions and urge that such motions be denied.

Robert Guild, P.A.

Robert Guild
P.O. Box 12097
Charleston, S.C 29412
Counsel for Palmetto Alliance

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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(Catawba Nuclear Station, Units 1 and 2)	)	June 10, 1983

CERTIFICATE OF SERVICE

I hereby certify that copies of PALMETTO ALLIANCE AND CAROLINA ENVIRONMENTAL STUDY GROUP RESPONSE TO APPLICANTS MOTION FOR SANCTIONS REGARDING CONTENTIONS 6,7,8,16 & 44/18 AND RESPONSE TO NRC STAFF MOTION FOR SANCTIONS REGARDING THE CONTENTIONS 7 & 44 have been served by Express Mail upon the parties denoted by *, on June 10, 1983, and have been served upon the following by depositing same in the United States Mail, postage prepaid, on this 10th day of June, 1983.

*James L. Kelley, Chairman
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

*Dr. A. Dixon Callihan
Union Carbide Corporation
P.O. Box Y
Oak Ridge, Tennessee 37830

* Dr. Richard R. Foster
P.O. Box 4263
Sunriver, Oregon 97701

Chairman
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

*George E. Johnson, Esq.
Office of the Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

William L. Porter, Esq.
Albert V. Carr, Jr., Esq.
Ellen T. Ruff, Esq.
Duke Power Company
P.O. Box 33189
Charlotte, N.C. 28242

Richard P. Wilson, Esq.
Assistant Attorney General
State of South Carolina
P.O. Box 11549
Columbia, S.C. 29211

Chairman
Atomic Safety and Licensing Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Henry A. Presler
Charlotte-Mecklenburg Environmental Coalitic
943 Henley Place
Charlotte, N.C. 28207

*J. Michael McGarry, III, Esq.
Debevoise & Liberman
1200 Seventeenth St., N.W.
Washington, D.C. 20036

Jesse L. Riley
854 Henley Place
Charlotte, N.C. 28207

Scott Stucky
Docketing and Service Station
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Carole F. Kagan, Attorney
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Robert Guild

Robert Guild
Attorney for Palmetto Alliance, Inc.