

RELATED CORRESPONDENCE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD 11:31

In the Matter of)
)
DUKE POWER COMPANY, et al.)
)
(Catawba Nuclear Station,)
Units 1 and 2)

OFFICE OF SECRETARY
Docket No. 50-413
BRANCH 50-414

November 3, 1982

PALMETTO ALLIANCE MOTION TO COMPEL DISCOVERY
FROM APPLICANTS WITH RESPECT TO
PALMETTO ALLIANCE CONTENTIONS 16 AND 44

Pursuant to 10 CFR Section 2.740(f), Palmetto Alliance hereby moves for an order compelling the Applicants, Duke Power Company, et al., to respond fully to "Palmetto Alliance Third Set of Interrogatories and Requests to Produce" filed September 27, 1982, which dealt with Palmetto Alliance's Contentions No. 16 and 44 on the subjects of spent fuel storage and reactor vessel embrittlement, respectively.

Applicant's Motion for Protective Order and Responses dated October 19, 1982, assert numerous unsubstantial and unwarranted objections to Palmetto Alliance's interrogatories and requests, and contain numerous evasive and incomplete answers and responses. Duke objected to answering 44 of 151 specific interrogatories on Palmetto Alliance's spent fuel storage contention No.16 and all of the 36 specific interrogatories on Palmetto Alliance's

reactor vessel embrittlement contention No. 44. Applicants assert that the information sought is not relevant to the subject matter of the contention as they choose to read it and not as written and admitted for litigation, and that responsive answers would cause them annoyance, oppression, undue burden and expense. They assert that all communications with respect to the contention are

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privileged and not subject to discovery or even identification as called for by General Interrogatory No. 4.

With respect to discovery on Palmetto Alliance contentions No. 44 on reactor vessel embrittlement Applicants have chosen not to respond at all on the authority of the Board's stay of discovery with respect to conditionally admitted contentions subject to the then-pending interlocutory appeal. Palmetto Alliance contention No. 44 on embrittlement was admitted, as clarified, by the Board's Order of July 8, 1982 at pp. 12 and 13 and is now an appropriate subject for discovery. Applicants should be compelled to respond to Palmetto Alliance's interrogatories and requests for production on this subject.

With respect to discovery regarding Palmetto Alliance's spent fuel storage Contention No. 16 Applicant's fundamental lack of responsiveness flows from their election to "respond in light of their own reading" of the contention, Applicant's Responses at p. 5, instead of responding to the interrogatory as posed by this Intervenor. No rule of practice authorizes Duke Power Company to recast either Palmetto Alliance's discovery questions or Palmetto Alliance's contentions to their liking, and therefore responses to the discovery, as posed, should be compelled.

Palmetto Contention No. 16, as admitted, reads in full:

Applicants have not demonstrated their ability safely to store irradiated fuel assemblies from other Duke nuclear facilities so as to provide reasonable assurance that those activities do not endanger the health and safety of the public.

See Applicant's Responses at p. 5. Without authority Duke has chosen to provide "only that information which relates to the safety of the actual storage, within the Catawba spent fuel pool, of Oconee and McGuire spent fuel assemblies, and whether those

spent fuel pools can accomodate the physical differences, if any, in those assemblies." Applicant's Responses at p.5. Thus Duke characterizes Palmetto Alliance's 'concern' as relating "solely to the differences, if any, between the spent fuel assemblies from Catawba and those from Oconee and McGuire and whether those differences, if any, can be accomodated in the Catawba spent fuel pool." Id. Duke's belief regarding the nature of Palmetto Alliance's "concern" is immaterial and provides no basis for recasting an explicit contention or interrogatory. None of the restrictions imposed by Duke on the subject of Palmetto Alliance's contention or the terms of its discovery are a proper basis for its objections or its evasive and incomplete responses.

Discovery in NRC licensing proceedings is available to a party "regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, whether it relates to a claim or defense of the party seeking discovery or to the claim or defense of any other party... reasonably calculated to lead to the discovery of admissible evidence." 10 CFR Section 2.740 (b)(1).

Duke asserts objections on relevance grounds to answering numerous specific interrogatories on subjects such as water level monitoring instrumentation, Nos. 10 and 11, spent fuel area radiation monitoring, Nos. 12 and 13, studies and technical sources underlying its criticality analysis, No. 17, past experience with improper fuel element insertion, No. 19, and any provisions for storing control and burnable poison rods in the spent fuel pools, No. 23. Duke objects on relevance grounds to questions dealing with the selection and operation corrosion and fission products removal components, No. 65(i), demineralizers and fil-

ters, No. 54(b) and (c), loss of on site and off site power to the fuel pools, No. 73, spent fuel pool instrumentation used by Duke at other facilities, No. 75, spent fuel cask specifications No. 121, the job titles and requirements for workers responsible for fuel storage-related activities, Nos. 124 and 125, and the impact resistance of the Catawba spent fuel pool structure, No. 149. Each of the questions clearly focus on a discoverable spent fuel safety claim or defense. Duke asserts objections to answering nearly all interrogatories dealing with the extensive modifications made to the original fuel pool design which are allegedly adequate to accomodate the proposed increases and alterations in inventory. Duke objects to furnishing information concerning the original design heat removal capacity, No. 140, changes in storage cell design and cooling system design and the costs of such changes , Nos. 81 and 91.

While Duke continues to maintain that it has no present intention to store Oconee and McGuire spent fuel at Catawba it continues to press this application for authority to do so. Palmetto Alliance maintains that such authority is unnecessary and that such activity can not be safely conducted. If Duke chooses not to withdraw this unnecessary application it must be open to Palmetto Alliance to probe the Applicant's intentions, plans, need for the license authority sought and the costs and availability of alternatives to Duke's proposal. Duke objects to interrogatories regarding its "Cascade Plan", No. 38, spent fuel storage alternatives to use of Catawba, No. 39, capacity increases from re-racking, Nos. 82, 83, 84, 85, 86, 87, and 88, estimated time for pool capacity filling at Catawba, No. 92, the adequacy

of Catawba capacity for its own fuel as well as that from other plants, No. 94, and the impact of the availability of other dispositions of spent reactor fuel on the plan for Catawba, Nos. 94, 95, 96, 97, 98, 99, 100, 147, and 148. Such discovery must be available to Palmetto Alliance if it is to be able to fairly formulate its defense to Duke's application and to anticipate and respond to the claims and defenses of the other parties to this proceeding. Most of Duke's incomplete and evasive answers can only be cured with a clear and general direction to respond to the questions as asked regarding the contention as admitted. Contention No. 1, however, is exemplary of an obviously incomplete response. "Specify any changes from original design. Discuss in detail the reasons for such changes." Duke's answer:

Smaller spent fuel pools were originally planned. However, when a potential need for additional storage capacity was identified, the length of the pools was increased.

Applicant's Responses at p. 9. Such an answer is less than helpful and is certainly incomplete and evasive.

A further example:

45. How many assemblies from Oconee and McGuire does the Applicant contemplate storing at Catawba? Give the quantity from each facility.

There are no firm plans at this time to ship spent fuel from Oconee or McGuire to Catawba.

46. When does the Applicant anticipate transporting assemblies from either facility to the Catawba facility?

See response to Interrogatory 45 Applicants Responses at p. 24.

In response to interrogatories No. 14 and 15 on the subject of "pool leakage rate" Duke baldly states, without explanation:

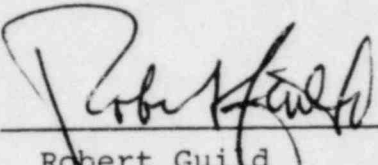
the response to this Interrogatory will be provided at a later date.

Applicants Responses at pp. 14 and 15. Why and when one might

ask, with the hope that some response may be compelled.

Additional incomplete or evasive responses appear in answer to Nos. 36, 44, 78, 90, 93, 106, 107, and 112. Palmetto Alliance respectfully urges the Board to compel Applicants to fully respond in order that it may "ascertain the facts" in this complex litigation, "refine the issues, and prepare adequately for a more expeditious hearing or trial." Pennsylvania Power and Light Company, (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-G13, 12 NRC 317 at 322 (1980).

November 3, 1982



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CERTIFICATE OF SERVICE

I hereby certify that copies of PALMETTO ALLIANCE MOTION TO COMPEL DISCOVERY FROM APPLICANTS WITH RESPECT TO PALMETTO ALLIANCE CONTENTIONS 16 AND 44 in the above captioned matter, has been served upon the following by deposit in the United States Mail this 3rd day of November, 1982.

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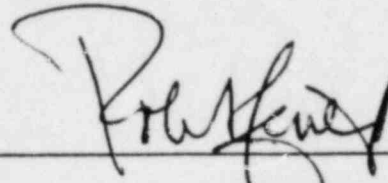
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DONE this 3rd Day of
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