

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'82 NOV 19 10:57

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In The Matter of)	
)	
DUKE POWER COMPANY, et al.)	Docket No. 50-413
)	50-414
(Catawba Nuclear Station,)	
Units 1 and 2))	

APPLICANTS' ANSWER TO PALMETTO ALLIANCE'S
MOTION TO COMPEL

Duke Power Company, et al., ("Applicants"), pursuant to 10 C.F.R. § 2.730(c), herein submit their response in opposition to Intervenor Palmetto Alliance's Motion to Compel ("Motion"), filed November 3, 1982. Applicants move the Licensing Board ("Board") in this proceeding to issue an order denying the Motion as lacking in merit.

I. BACKGROUND

On September 22, 1982, Palmetto Alliance filed "Palmetto Alliance Third Set of Interrogatories and Requests to Produce" (hereafter cited as "Palmetto Alliance Interrogatories"), which dealt with Palmetto Alliance Contentions 16 (on the storage of spent fuel from other Duke facilities at Catawba) and 44 (on reactor embrittlement). Applicants responded by filing "Applicants' Responses to

'Palmetto Alliance Third Set of Interrogatories and Requests to Produce'" (hereafter cited as "Applicants' Response") on October 19, 1982. In their Response, Applicants set forth full, explicit and responsive answers to each relevant general and specific Interrogatory (or part of such Interrogatory) on Palmetto Alliance Contention 16¹ as to which Applicants possessed the necessary information.² Applicants also indicated the availability for inspection and copying of those documents relating to Contention 16 requested by Palmetto Alliance, except for those which were privileged or subject to other objections. In response to those Interrogatories to which Applicants objected either in part or in full, Applicants set forth with specificity both the reasons and the supporting factual bases for each of their objections.

¹ Applicants did not respond to Palmetto Alliance's discovery requests on its Contention 44 because the Board has not yet permitted discovery on that contention. Memorandum and Order (Overruling Objections Following Prehearing Conference, Denying Requests for Referral to the Appeal Board, and Addressing Certain Related Questions)(July 8 Order) at p. 18. See pp. 47-48 below.

² In those few instances where Applicants were unable to provide the information called for within the time allowed, Applicants indicated that they would supply the answers at a later date. See Applicants' Responses to Interrogatories 14 and 15.

Following receipt of Applicants' Response Palmetto Alliance filed the instant Motion, in which it seeks an order from this Board requiring Applicants to supplement their answers to its Interrogatories on the grounds that Applicants' Responses "assert numerous unsubstantial and unwarranted objections to Palmetto Alliance's interrogatories and requests, and contain numerous evasive and incomplete answers and responses." (Motion at 1).³

In Applicants' view, as will be set forth in detail below, Palmetto Alliance's Motion fails to justify the issuance of such an order. As the proponent of this Motion, Palmetto Alliance clearly has the burden (under 10 C.F.R. § 2.732) of proving that the Responses in question are inadequate and/or improper, not merely alleging that this is the case. However, Palmetto Alliance's Motion is totally devoid of the supporting arguments required by Commission regulations, relying instead upon unsubstantiated and blanket assertions of impropriety and inadequacy.

Specifically, Palmetto Alliance simply alleges, without more, that fifty-two of Applicants' Responses are "evasive" and "incomplete," and that objections made by Applicants are "unsubstantial and unwarranted." This "fundamental lack of responsiveness" flows, Palmetto Alliance maintains, from

³ Applicants will refer to the pages of the Motion by number for the sake of convenience. Page numbers were not supplied.

Applicants' election to "respond in light of their own reading" of Palmetto Alliance's contention. What Palmetto Alliance has failed to do, however, is to offer any alternative interpretation of Contention 16, beyond an assertion that Applicants' answers should be responsive to the contention "as written."

That is exactly the problem here. As this Board is aware (Tr. at 611, 618, 621), at the time Applicants prepared their Responses Palmetto Alliance had failed to provide any substantive information whatsoever on its own contentions "as written." As a result, neither the Board, the Applicants, nor (it seems) Palmetto Alliance itself understand the exact scope of Contention 16. Palmetto Alliance continues to ignore the fact that Applicants were obliged to interpret and clarify Contention 16 because of Palmetto Alliance's refusal or inability to do so itself. Palmetto Alliance's assertions that Applicants' Responses are evasive and incomplete must be read in light of this fact.

If Palmetto Alliance is to prevail on its claim that Applicants' Responses are inadequate, it must specify precisely the focus and scope of its contention, explain why the information which it sought in its Interrogatories is relevant to this contention, and demonstrate how Applicants' Responses are deficient. Such a showing is necessary to

comply with Palmetto Alliance's burden under 10 C.F.R. §2.732 and § 2.740(f)(1). As Palmetto Alliance has failed to meet any of these obligations, this Motion to Compel must be denied. Moreover, it should be noted that Palmetto Alliance has offered no argument as to why the claim of privilege asserted by Applicants should not be honored; thus with respect to that assertion the Motion must be denied as well.

II. ARGUMENT

Palmetto Alliance cites several reasons for its dissatisfaction with Applicants' Interrogatory Responses. It asserts, first, that Applicants' answers to Contention 16 are unresponsive in that they are based upon an improper reading of the contention, and cites various Responses as examples of allegedly inadequate or improper answers. Palmetto Alliance also protests Applicants' decision not to respond to Interrogatories on Contention 44. Finally, it apparently contests Applicants' claim of privilege in regard to the production of certain information.

Applicants will respond to each of these claims below. We submit that Palmetto Alliance has failed in each instance to supplement these bare allegations with any specific arguments (much less sound and convincing arguments) as to why Applicants' Responses, or their objections, are either improper, inadequate or unwarranted. Applicants accordingly

submit that this Motion fails to supply the "arguments in support of the motion" required by 10 C.F.R. § 2.740(f)(1), and that it should therefore be denied.

- A. Applicants' Interrogatory Responses Are Not "Evasive," "Incomplete" or Unresponsive
- 1. Applicants' action in providing definition to Contention 16 was proper.

In regard to its Interrogatories and requests to produce on Contention 16, Palmetto Alliance asserts that Applicants' answers are "evasive" and "incomplete," and that these unresponsive answers stem from Applicants' improper reading of the contention:

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.
(Motion at 2).

In order to assess these allegations fairly and to clarify why Applicants have not responded to all of Palmetto Alliance's Interrogatories "as posed," the circumstances under which Applicants' Responses to Contention 16 were formulated must be considered. As we have explained in

previous pleadings,⁴ the approach which Applicants took in responding to these and to other Palmetto Alliance Interrogatories on other contentions has been governed by the fact that, despite their best efforts since the outset of this proceeding, Applicants have been unable to determine the scope of Palmetto Alliance's Contention 16.

Applicants have attempted through the discovery process to determine the specific concerns, and the bases for those concerns, in Palmetto Alliance's Contention 16.⁵ Specifically, Applicants' discovery requests sought information from Palmetto Alliance as to how it defines the material terms which appear in this contention; the standards which it contends Applicants do not meet; why it contends that Applicants do not meet these standards; what it believes Applicants must do, in light of these contentions, to operate Catawba safely; and the bases (if any) for its contention. Such information is available only to Palmetto Alliance, and Applicants are entitled to that information. Pennsylvania Power and Light Company, et al. (Susquehanna Steam Electric

⁴ "Applicants' Responses to 'Palmetto Alliance Third Set of Interrogatories and Requests to Produce,'" October 19, 1982 (pp. 1-5) and "Applicants' Answer to Palmetto Alliance's Motion to Compel," October 22, 1982 (pp. 4-9).

⁵ "Applicants' Interrogatories to Palmetto Alliance and Requests to Produce Regarding Palmetto Alliance's Contentions 16 and 27," filed August 9, 1982.

Station, Units 1 and 2), ALAB-613, 12 NRC 317, 334-35 (1980); Boston Edison Company (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 579, 582 (1975).

However, as the Board is aware (Tr. at 611, 618, 621), Palmetto Alliance's response (filed August 30, 1982) to Applicants' Interrogatories provided absolutely no substantive information on its contentions. On the contrary, Palmetto Alliance's answers to the most basic inquiries concerning its contentions were limited to representations that it "lacks sufficient knowledge to answer" and bald assertions that the "common meaning" of various material terms is to control.⁶ See "Palmetto Alliance Responses to Applicants' Interrogatories and Requests to Produce Regarding Palmetto Alliance Contentions 8, 16 and 27 and to NRC Staff's Second Set of Interrogatories and Document Production Requests," August 30, 1982.

⁶ After Applicants' Responses were filed, and in response to the Board's order at the prehearing conference (October 8, 1982) that it either file responsive answers or frame proper objections to Applicants' Interrogatories, Palmetto Alliance subsequently filed "Palmetto Alliance Supplementary Responses to Applicants' and Staff's Interrogatories Regarding Palmetto Alliance Contentions 8, 16 and 27" on November 5, 1982. ("Supplementary Responses"). The additional responses provided on Contention 16 consisted of six sketchy definitions of terms used in the contention. (Palmetto Alliance had claimed in its original responses that the "common meaning" controlled). No other information on the contention was provided.

In view of Intervenor's obvious and persistent unwillingness, or inability, to define any of its own contentions, it was not possible for Applicants to respond to Contention 16 "as written and admitted for litigation" (Motion at 1). Rather, in order to develop their Responses to Palmetto Alliance's Interrogatories, Applicants found it necessary to provide definitions of these contentions itself. Our clarification and interpretation of Contention 16 was not (as Palmetto Alliance implies) a cavalier or a whimsical undertaking on the part of the Applicants. On the contrary, this procedure was necessary not only to protect Applicants' right to assert valid objections to interrogatories which go beyond permissible limitations, but also to prevent Palmetto Alliance from using the discovery process to bootstrap its contentions into compliance with NRC regulations--a practice which the Appeal Board has explicitly proscribed. Duke Power Company, et al., (Catawba Nuclear Station, Units 1 and 2), ALAB-687, ___ NRC ___ (August 18, 1982), slip op. at 13. It was also necessary in order to prevent Palmetto Alliance from using discovery procedures to conduct a "fishing expedition" contrary to the provisions of 10 C.F.R. Part 2, Appendix A. IV(a).

Accordingly, Palmetto Alliance's objection to the fact that Applicants' Responses reflected their interpretation of Contention 16, and its related allegations that Applicants' Responses are "evasive" and "incomplete," and their objections "unwarranted," are not well-founded. Its assertion that "Duke's belief regarding the nature of Palmetto Alliance's 'concern' is immaterial and provides no basis for recasting an explicit contention or interrogatory" (Motion at 3) is similarly unconvincing, given Palmetto Alliance's well-documented refusals to provide information on the nature of its concerns in Contention 16. Indeed, since the Applicants were forced by the logistics of the discovery process to respond to extremely broad and unfocused discovery requests without any concrete knowledge as to the concerns underlying these contentions, their undertaking to interpret and clarify these contentions was both reasonable and necessary.

In sum, Applicants submit that Palmetto Alliance's failure in the instant Motion to provide any rationale for the relief it requests reflects its continuing disregard for or misconception of its responsibilities under NRC discovery rules. The U.S. Supreme Court has explicitly ruled that "[i]t is . . . incumbent upon intervenors who wish to participate [in an NRC licensing proceeding] to structure

their participation so that it is meaningful, so that it alerts the agency to the intervenors' position and contentions." Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978). To "permit a party to make skeletal contentions, keep the bases for them secret, then require its adversaries to meet any conceivable thrust at hearing would be patently unfair, and inconsistent with a sound record." Pennsylvania Power & Light Co., et al., supra, 12 NRC at 338, quoting with approval p. 6 of the August 24, 1979 unpublished Memorandum and Order of the Licensing Board in that proceeding.

This, however, is precisely what Palmetto Alliance is attempting to do in in this proceeding. In its responses to Applicants' Interrogatories Palmetto Alliance has not disclosed any information whatsoever as to the bases, the scope, or the underlying concerns of its contentions. Consequently, Applicants' understanding of Contention 16 is based entirely upon their own reading and interpretation of it. Indeed, from the tenor of its interrogatory responses one might reasonably conclude that even Palmetto Alliance lacks a clear understanding of its Contention 16, since it allegedly "lacks sufficient knowledge to answer" the most basic inquiries as to the bases for the contention; the regulatory standards which it believes Applicants do not

meet, and why it contends that Applicants do not meet these standards; or what it believes Applicants should do (in light of these perceived problems) to operate the Catawba plant safely. Yet notwithstanding its failure to provide the information on its contentions necessary to enable Applicants to respond to inquiries on them, Palmetto Alliance continues to complain in this and other similar motions that Applicants' efforts to respond to Palmetto Alliance's Interrogatories are unsatisfactory.

Applicants submit that the position which Palmetto Alliance has adopted in the instant Motion is patently unreasonable and inconsistent with NRC practice. We believe that in order for its Motion to even be entertained by the Board, Palmetto Alliance must first explain, with requisite specificity, the bases for, and the intended scope of, Contention 16; and, in light of that explanation, how and why each contested Interrogatory Response or objection is deficient. In the absence of such a fundamental analysis regarding its own contention, Palmetto Alliance cannot be heard to allege that Applicants' Responses to Contention 16 are "evasive" or "incomplete", or that their objections to the contention are "unwarranted." In view of its failure to provide such information, Palmetto Alliance's Motion should be denied.

2. Palmetto Alliance Has Failed to Demonstrate That Specific Applicant Responses Cited in Motion Are Inadequate, or that Applicants' Objections are "Unwarranted"

On pp. 3-6 of its Motion, Palmetto Alliance cites various Applicant Interrogatory Responses, apparently to support its claim that these Responses are inadequate, or that they reflect "unwarranted" objections. However, the Motion fails totally to demonstrate the alleged impropriety of these Responses and objections. (Palmetto Alliance does assert on p. 4 that "[e]ach of the questions clearly focus on a discoverable spent fuel safety claim or defense." Applicants do not consider this statement a sufficiently illuminating explanation of why its Responses are unsatisfactory). Instead of the evidentiary showing contemplated by 10 C.F.R. § 2.740(f)(1), Palmetto Alliance has provided nothing more than a random, "scattergun" listing of selected Applicant Responses, accompanied by generalized assertions that these Responses are "evasive" and "incomplete," and that the objections cited by Applicants are "unwarranted." Moreover, if Palmetto Alliance disagrees with Applicants' reading of Contention 16, the Motion fails to offer any alternative interpretation.

An examination of the information supplied by Applicants which is alleged to be "evasive" and/or "incomplete" makes one wonder how Palmetto Alliance can justify its

criticism of these Responses. For example, Palmetto Alliance cites Applicants' Response to Interrogatory 44 as an example of an "evasive" and/or "incomplete" answer. Interrogatory 44 inquires whether McGuire spent fuel assemblies are identical in design to those to be used at Catawba, and, if not, what the differences are and the reasons for such differences. In response to this Interrogatory Applicants stated that the outer dimensions of the assemblies are identical but that the design of the two assemblies is not identical. Applicants then referred Palmetto Alliance to FSAR Table 4.1-1, which provides a thorough comparison of these two assemblies.

Applicants submit that Palmetto Alliance's criticism of this Response is entirely baseless, reflecting either a failure to read the FSAR material provided or a failure to comprehend it. In either case, this does not mean that the Response itself should be faulted. A careful review of the information supplied in response to this Interrogatory reveals that it is in no way "evasive" or "incomplete." On the contrary, it constitutes a complete, concise, and responsive answer to a question which Palmetto Alliance would have been able to answer itself if it had taken time to consult the FSAR. All of the information contemplated by

this question was provided in Applicants' Response. On what possible grounds does Palmetto Alliance contend that the Response is inadequate?

Equally unconvincing is Palmetto Alliance's claim that Applicants' Response to Interrogatory 78 is "evasive" and/or "incomplete." This Interrogatory asks Applicants to specify the margin of criticality afforded by the fuel storage rack design, including all assumptions, calculations and computations used. In response, Applicants provided an explanation of how the margin of criticality is determined, and also supplied a reference to FSAR Section 9.1.2.3.1. This section discusses at length the criticality analysis for the spent fuel storage design and sets forth the parameters and assumptions used in evaluating criticality safety (see FSAR at 9.1-7 and 9.1-8).

As in our answer to Interrogatory 44, Applicants submit that the information supplied in this Response constitutes a full, concise and responsive answer to this Interrogatory, and that there is no basis for Palmetto Alliance's objection to this answer. Here, as in other Interrogatories, Palmetto Alliance demanded that Applicants furnish answers which were clearly set forth in the FSAR had Palmetto Alliance bothered

to consult that document. Applicants did furnish such answers. Palmetto Alliance now complains, however, that Applicants' Responses are "incomplete" and/or "evasive."

Applicants are unable to guess what additional information Palmetto Alliance requires to make either of these responses "complete," unless they possibly require instruction on how to interpret the data contained in the FSAR. In the absence of any specific showing in this Motion as to how and why Applicants' answers to Interrogatories 44 and 78 are unsatisfactory, Palmetto Alliance's objections should not be heard.

The remaining Applicant Responses which Palmetto Alliance has singled out in its Motion are addressed below. Applicants submit that they, too, constitute full and responsive answers to Palmetto Alliance's Interrogatories, and that the objections which Applicants asserted are well-founded. In view of Palmetto Alliance's clear failure to supply the requisite "arguments in support of the Motion," this Motion should be denied. 10 C.F.R. § 2.740(f)(1).

Response to Interrogatory 10⁷

Palmetto Alliance first cites Applicants' Response to Interrogatory 10 as an alleged example of an "evasive" and "incomplete" answer. As explained in the preceding section, Applicants were obliged to determine for themselves the primary focus of Palmetto Alliance's contentions. In Applicants' view, the fundamental concern of Contention 16 is whether spent fuel assemblies from the Oconee and McGuire plants can safely be stored in the Catawba spent fuel pool-- assuming, of course, that Applicants choose to store such assemblies at Catawba. Accordingly, in framing Responses to Palmetto Alliance's Interrogatories on Contention 16, Applicants provided only that information which relates to the actual storage, within the Catawba spent fuel pool, of Oconee and McGuire spent fuel assemblies; the physical differences, if any, between Catawba spent fuel assemblies and Oconee and McGuire assemblies; and whether the Catawba spent fuel pool can safely accommodate any such differences. Applicants submit that this is an entirely fair and reasonable interpretation of Contention 16.

⁷ Applicants will discuss the remaining Interrogatory Responses cited by Palmetto Alliance in the order in which they are raised in the Motion.

In response to Interrogatory 10, which asked for a description of the instrumentation used to monitor the water level in the spent fuel pools, Applicants supplied an overview of the equipment used and then referred Palmetto Alliance to FSAR Section 9.1.3.2.6.1, which describes the Spent Fuel Pool Cooling Loop Instrumentation.

As explained in Applicants' Response (pp. 11-12), because Applicants did not consider the information sought in the second sentence of this Interrogatory,--i.e., the "design, manufacturer, model number, operation, function, capabilities, limitations and components of the instrumentation"--to be relevant, given the scope of Contention 16, (i.e., whether Oconee and McGuire spent fuel can be safely stored at Catawba) Applicants did not supply it. If Palmetto Alliance contends that Applicants' answer was not fully responsive, it must explain how and why this additional information on the Catawba spent fuel pool instrumentation is relevant to the question of whether Oconee and McGuire spent fuel can safely be stored at Catawba. No such explanation was provided in the instant Motion.

Response to Interrogatory 11

In Interrogatory 11 Palmetto Alliance asked whether the instrumentation used to monitor the water level in the Catawba spent fuel pool is used or was previously used at

other plants operated by the Applicants. Applicants objected to this Interrogatory as irrelevant. The focus of Contention 16 is whether the Catawba spent fuel pool can safely store irradiated fuel assemblies from Oconee and McGuire. The question of whether the same, or similar, or different spent fuel pool water level monitoring instrumentation is or has been used at nuclear plants other than Catawba is not within the scope of the contention. If Palmetto Alliance disputes this conclusion, Applicants submit that the Intervenor must first demonstrate that such equipment at other facilities is relevant to its contention. Palmetto Alliance fails to do so in its Motion.

Response to Interrogatory 12

In response to this Interrogatory, which requested a description of the instrumentation used to monitor the radiation level in the spent fuel pool area, Applicants provided a reference to FSAR Sections 11.5.1.2.2.4 and 12.3.4.1.1., which discuss the fuel building ventilation monitor and the plant area radiation monitoring system, respectively.

As in our Response to Interrogatory 10, Applicants objected on the grounds of relevance to being asked to supplement this Response with additional specifics as to the "design, manufacturer, model number, functions, capabilities, limitations and components of this instrumentation."

Applicants submit that such data is beyond the scope of Contention 16, which is concerned with whether there are physical differences between the fuel assemblies at Oconee and McGuire and those at Catawba, and whether any such differences can be accommodated in the Catawba spent fuel pool.

If Palmetto Alliance believes that this particular information should have been supplied, it is incumbent upon the Intervenor to show the relevance of this information to the question of whether spent fuel from other plants can safely be stored at Catawba. Intervenor has not done so in its Motion.

Response to Interrogatory 13

This Interrogatory asked whether the radiation level monitoring equipment used in the spent fuel pool area is used or was previously used at other nuclear plants operated by the Applicants. As in our response to Interrogatory 11, Applicants objected to this Interrogatory as beyond the scope of Contention 16. (See discussion of Applicants' Response to Interrogatory 11, p. 18-19 above). If Palmetto Alliance disagrees with this assessment, Applicants submit that Palmetto Alliance must demonstrate that the spent fuel pool

area radiation monitoring instrumentation used at facilities other than Catawba is relevant to its contention. The Intervenor has not done so in the instant Motion.

Response to Interrogatory 17

Palmetto Alliance's Interrogatory 17 requested "all documents, studies, technical reports and treatises which provided Applicant the underlying basis for its criticality analysis of the Catawba spent fuel storage pools." In response to this extremely broad request, Applicants provided a list of all of the salient documents relied upon. Applicants further noted in their Response that an attempt to comply literally with this request would require seeking out a myriad of additional documents, many of which were not necessarily in Applicants' possession or control; and that the attendant burden of researching and compiling a "complete" list would create a substantial and unwarranted burden upon the Applicant.

In general, interrogatories which contain blanket requests for the compilation and production of all documents related to a particular issue are not favored. Illinois Power Company (Clinton Power Station, Units 1 and 2), ALAB-340, 4 NRC 27, 34 (1976). Moreover, a party responding to discovery requests ordinarily will not be required "to make research and compilation of data not readily known to him."

Boston Edison Company, supra, 1 NRC at 584 (citation omitted). Applicants have supplied those documents most relevant to Palmetto Alliance's concern, and submit that in the absence of any showing by the Intervenor that their Response is insufficient, Applicants should not be required to respond further to this burdensome Interrogatory.

Response to Interrogatory 19

This Interrogatory sought a description of "how insertion of fuel in other than designated positions is to be prevented," and asks whether there has ever been such an "improper insertion." In response, Applicants referred Palmetto Alliance to FSAR Volume 13, Response to Q. 410.11, which discusses the measures which will be taken at Catawba to assure that spent fuel assemblies will be inserted only in designated locations.

Palmetto Alliance asserts in its Motion that Applicants improperly objected to providing information on "past experience with improper fuel element insertion." As set forth in Applicants' Response, this area of inquiry is beyond the scope of Contention 16. Because no irradiated assemblies have yet been placed in the Catawba spent fuel pool, there has obviously never been an "improper insertion" in this pool. Applicants accordingly assumed that this part of the Interrogatory was directed at incidents of improper insertion

at any operating nuclear power plant. As noted in the above discussion of our Response to Interrogatory 11 (pp. 18-19), experiences at other plants are not relevant to the subject matter of this contention, which is framed in the context of the operating license proceeding for the Catawba Nuclear Station.

Moreover, to respond to this portion of Interrogatory 19 would require Applicants to obtain information relating to every spent fuel pool at every currently operating nuclear reactor in the country. An inquiry of this scope is clearly not warranted given the specific nature of the concern expressed in Contention 16. Nor, as Palmetto Alliance is aware (having cited this proposition in its Supplementary Responses) are Applicants obligated to undertake such an inquiry, since the Appeal Board has ruled that "[i]n responding to discovery requests, a party is not required to engage in extensive research. It need only reveal information in its possession or control . . ." Pennsylvania Power and Light Company, et al., supra, 12 NRC at 334 (1980).

If Palmetto Alliance disputes the basis for Applicants' objection, it should demonstrate why the information provided is insufficient and how the additional data sought is relevant to its contention. Intervenor has not done so in its Motion.

Response to Interrogatory 23

This Interrogatory asked Applicants to discuss the provisions which have been made to store control rods and burnable poison rods. As Applicants pointed out in their objection to this Interrogatory, such an inquiry is clearly beyond the scope of Contention 16 in that it is unrelated to possible differences between the Oconee and McGuire spent fuel assemblies and the Catawba spent fuel assemblies, and whether any such differences can safely be accommodated in the Catawba spent fuel pool. Because Palmetto Alliance has failed to explain what relevance this information might have to Contention 16, its objection should not be entertained.

Response to Interrogatories 54(b) and 65(i)

Interrogatory 54(b) inquired whether spent fuel pool water purification methods other than those to be used at Catawba are available; and, if so, why these alternative means were not used. Interrogatory 65(i) asks the same question. Accordingly, Applicants' Response to both of these Interrogatories was identical.

In response to related Interrogatories, Applicants explained the spent fuel pool water purification system to be used at Catawba and referred Palmetto Alliance to FSAR references which discuss the operation of this system; even though this area of inquiry is, arguably, only tenuously

related to the concern underlying Contention 16. As stated in our Response to 54(b) and 65(i)(pp. 25-26; 29), however, Applicants submit that whether or not alternative means exist for providing spent fuel pool water purification is totally unrelated to the underlying concern of Contention 16, which focuses on whether there are physical differences between the spent fuel assemblies at Oconee and McGuire and those at Catawba, and whether any such differences can be accommodated in the Catawba spent fuel pool. Palmetto Alliance has offered no explanation of how and why the information sought here on alternative purification systems is relevant to this contention; accordingly, its objections to each of these Responses should be discounted.

Response to Interrogatory 54(c)

As noted in the preceding two paragraphs (p. 24-25), Interrogatory 54(b) inquired whether means of spent fuel pool water purification other than those to be used at Catawaba are available; and, if so, why these alternative means were not used. Applicants objected to this question on alternative purification methods as irrelevant, for the reasons explained in the preceding discussion of Interrogatories 54(b) and 65(i).

Consistent with their objection to Interrogatory 54(b), Applicants also objected to Interrogatory 54(c), which states, referring back to the alternative system referred to in 54(b), "What would be the exposure rate to plant personnel using this system?" As this question again involved consideration of alternatives to systems in use at Catawba, Applicants contended that it was beyond the scope of Contention 16. The estimated exposure rate for plant personnel under a spent fuel pool water purification system which will not be used at Catawba has no bearing upon the concern of this contention, which is whether there are physical differences between fuel assemblies at Oconee and McGuire and those at Catawba, and whether irradiated fuel assemblies from these other nuclear plants can safely be stored in the Catawba spent fuel pool. If Palmetto Alliance disputes this conclusion, it failed to explain in its Motion why the information sought here is relevant to Contention 16.

In addition, Applicants submit that in order to supply Palmetto Alliance with personnel exposure levels resulting from such alternative systems, Applicants would have to first research the existence of such alternatives and then compute attendant radiation exposure levels for each such alternative found. Compliance with such a request would be extremely burdensome to Applicants, and would necessitate the kind of

"extensive research" which the Appeal Board and Licensing Board have held to be beyond the duty of parties responding to discovery requests. See Pennsylvania Power and Light Company, et al., supra, 12 NRC at 334.

Response to Interrogatory 73

This Interrogatory states: "Explain in detail the events that occur when onsite power is lost and offsite power for the diesel generation is lost as well, identifying all health, safety and environmental effects." Applicants objected on grounds of relevance to this question because it bears no relationship that Applicants could discern to the question of storing spent fuel from Oconee and McGuire in the Catawba spent fuel pool. The instant Motion does not adequately demonstrate any such relationship; and Applicants accordingly submit that Palmetto Alliance's objection to this Response should not be heard.

Interrogatory 73 also exhibits other defects. First, it is redundant. In response to Interrogatory 55, Applicants referred Palmetto Alliance to FSAR Section 9.1.3.3.1, which contains a "boil down analysis" explaining what would occur if the spent fuel pool cooling system were inoperable. Moreover, this Interrogatory is also clearly beyond the proper scope of Contention 16 (a safety contention) in its inquiry as to the "environmental effects" of such a loss of

power. Finally, this Interrogatory appears to be unclear, but if its assumption is that a series of critical events (for which no basis is given) occur which totally disable the Catawba Plant, this Interrogatory can be construed as an improper attack on the General Design Criteria set forth in 10 C.F.R. Part 50, Appendix A, which were applied to the Catawba plant.

Response to Interrogatory 75

Applicants provided information on the Catawba Spent Fuel Pool Cooling Loop, Purification Loop, and Skimmer Loop in their Responses to Interrogatories 10, 49, 50, 51, 52, 53, 54, 55, 56, 57, 65, 66, 68, 69, 70, and 74. The focus of Interrogatory 75 is whether the instrumentation in the Catawba Spent Fuel Pool Cooling Loop, Purification Loop, and Skimmer Loop is being used or has been used at other nuclear facilities operated by the Applicant.

As noted in the discussion of our Response to Interrogatory 10, Applicants submit that inquiries which pertain to nuclear facilities other than Catawba are beyond the scope of Contention 16. See discussion at pp. 17-18 above. If Palmetto Alliance believes that such information is relevant to the question of whether Oconee and McGuire spent fuel can safely be stored at Catawba, Palmetto Alliance should so demonstrate. No such showing has been made in this Motion.

Response to Interrogatory 121

This Interrogatory sought information on the type of casks to be used for Oconee and McGuire spent fuel. In response, Applicants reproduced a discussion on this subject contained in a letter from a Duke Power Company official to Harold Denton of the NRC. Applicants submit that Palmetto Alliance has offered no explanation as to why the information supplied is insufficient.

Although Applicants responded to this Interrogatory, we believe that its focus on the safety of the casks used to transport Oconee/McGuire spent fuel is improper. The Licensing Board has clearly ruled that the safety aspects of spent fuel transportation "are controlled by 10 C.F.R. Parts 71 and 73, and by DOT regulations," and are therefore "outside the scope of this hearing." (July 8 Order at 7-8). Applicants thus submit that no complaints as to the adequacy of Applicants' Response to Interrogatory 121 should be entertained.

Responses to Interrogatories 124 and 125

These Interrogatories sought information on the job titles and job requirements for the positions of spent fuel truck driver, cask unloading operator, handling crane operator, and other jobs involved in cask unloading, decontamination and transfer of the fuel to the spent fuel storage

pool. Applicants submit that such inquiries are not within the scope of Contention 16; and so indicated in their Responses by objecting to these Interrogatories. The information sought here is not relevant to the question of whether or not there are physical differences between the fuel assemblies at Oconee and McGuire and those at Catawba, and whether such differences can safely be accommodated in the Catawba spent fuel pool. The instant Motion offers nothing to contradict this conclusion.

Moreover, Applicants' objection is supported by information supplied in Palmetto Alliance's Supplementary Responses on Contention 16, which contain a definition of "storage" ("To put aside, accumulate, safekeep as is reflected by Applicants' plans and application") which appears to be narrower than the concept of storage implied in these Interrogatories. Accordingly, by Palmetto Alliance's own definition some of the information sought here does not relate to spent fuel "storage" and is thus irrelevant. Applicants further note that inquiries as to the qualifications of spent fuel truck drivers constitute inquiries into the safety aspects of spent fuel transportation, which the Licensing Board has ruled to be beyond the scope of this proceeding. (July 8 Order at 7-8).

Response to Interrogatory 149

Interrogatory 149 inquired as to "the maximum impact that the Catawba spent fuel pool structure could withstand at its most vulnerable point," and how dependent its impact resistance is upon "the form of a missile." This Interrogatory is redundant. Applicants indicated in their Responses to earlier Interrogatories that the spent fuel pool building, the spent fuel pool, pool liner and fuel storage racks are all designed and constructed to Seismic Category 1 standards, indicating that these structures are built to withstand design basis missiles. (See Responses to Interrogatories 4, 27, 34, 117, 126, 127, 128, 129, 133).

In addition, as stated in Applicants' Response to this question, Applicants contend that such inquiries are beyond the scope of Contention 16. If Palmetto Alliance believes that such information is relevant to the question of whether there are differences between the fuel assemblies at Oconee and McGuire and those at Catawba, and whether such differences can safely be accommodated in the Catawba spent fuel pool, it has failed to so demonstrate in its Motion.

Response to Interrogatory 140

Interrogatory 140 asked Applicants to specify "the heat removal capacity for which the Catawba spent fuel pool was initially designed." As Palmetto Alliance is surely aware

(see Applicants' Response to Interrogatory 1, and FSAR sections cited therein) the Catawba spent fuel pools are larger than originally planned. Consequently, the heat removal capacity of the spent fuel pools is greater than was originally planned. Applicants are at a loss to understand how the original heat removal capacity of the pools (before they were enlarged) can be relevant to Contention 16. Accordingly, Applicants objected to this Interrogatory as beyond the scope of the contention. Palmetto Alliance offers nothing in its Motion to disprove the validity of Applicants' objection.

Responses to Interrogatories 81 and 91

Interrogatory 81 asked whether any changes in the design of the fuel storage cells will be necessary to accommodate Oconee and McGuire spent fuel, and the attendant costs of such changes. Interrogatory 91 asked Applicants to specify whether any changes would have to be made in the spent fuel pool cooling system to accommodate Oconee and McGuire fuel, and what the costs of such changes would be.

Applicants supplied information on the Catawba fuel storage cells in their Responses to Interrogatories 1 (which references an FSAR description of the spent fuel pools), 42 (which references an FSAR description of the spacers and their function), 43 (which indicates that spacers are not

required to accommodate McGuire fuel assemblies), 44 (which references an FSAR comparison of the design between Catawba and McGuire assemblies) and 79 (which references specifications for the Catawba fuel storage cells). The Catawba spent fuel pool cooling system is discussed in the Response to Interrogatory 53.

In response to Interrogatories 81 and 91, Applicants referred Palmetto Alliance to previous answers because these previous answers provided sufficient information on the changes in storage cell design and spent fuel pool cooling system design which would be necessary to accommodate Oconee and McGuire spent fuel. Applicants submit that these Responses were adequate, and Palmetto Alliance offers no clue in its Motion as to why Applicants' Responses are allegedly insufficient.

Applicants objected on grounds of relevance to providing information on the costs of such changes, as this area of inquiry is clearly beyond the scope of Contention 16. If Palmetto Alliance contends that such information on costs is relevant to the question of whether spent fuel from Oconee and McGuire can safely be stored at Catawba, it has failed to provide any support for such an argument in its Motion.

Response to Interrogatory 38

This Interrogatory sought a definition of, and all documents relating to, the "Cascade Plan." Applicants contend that this Interrogatory is beyond the scope of Contention 16, and so indicated in their Response.

Palmetto Alliance now asserts that this inquiry was proper since

[i]f Duke chooses not to withdraw this unnecessary [operating license] 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.

This assertion is simply incorrect. The focus of the spent fuel contention which has been admitted in this proceeding is not whether there is a "need for the license authority sought," but whether or not there are any physical differences between the spent fuel assemblies at Oconee and McGuire and those at Catawba, and whether any such differences can safely be accommodated in the Catawba spent fuel pool. These are the only relevant areas of inquiry. Palmetto Alliance may not assume by virtue of the fact that a safety contention on spent fuel storage has been admitted that it is therefore free to probe any spent fuel questions which may occur to it.

Response to Interrogatory 39

This Interrogatory requested information on "all available alternatives for storage of Oconee and McGuire fuel in the event storage at those facilities becomes limited." As reflected in Applicants' Response to this Interrogatory and to other Interrogatories which focus on alternative plans, methods or scenarios, Applicants submit that such information is outside of the scope of Contention 16. This contention is concerned with the actual storage of non-Catawba spent fuel at Catawba, the physical differences (if any) between the spent fuel assemblies at Oconee and McGuire and those at Catawba, and whether any such differences can safely be accommodated in the Catawba spent fuel pool. Clearly, the focus of Contention 16 is the safety of a particular plan for spent fuel storage, not alternatives to that storage plan. Palmetto Alliance has failed to demonstrate otherwise in the instant Motion.

Responses to Interrogatories 82-88

Interrogatories 82-88 sought information relating to a possible future re-racking of spent fuel assemblies of Catawba. Applicants objected to each of these Interrogatories on grounds of relevance. While the issues raised in these Interrogatories may be relevant to future license amendments (if such an amendment is ever sought)

Applicants submit that they are clearly beyond the scope of Contention 16 and the scope of this facility licensing proceeding.

Applicants have indicated in their Response that the only areas of inquiry relevant to this contention are facts relating to the actual storage of Oconee and McGuire spent fuel at Catawba, the physical differences (if any) between the fuel assemblies at Catawba and those at the other two facilities, and whether any such differences can safely be accommodated in the Catawba spent fuel pool. If Palmetto Alliance disagrees with the scope of this contention as defined by Applicants, it is incumbent upon Palmetto Alliance to explain the intended scope of Contention 16 and to demonstrate why the details of a re-racking which may never take place are relevant to this contention.

Response to Interrogatory 92

Interrogatory 92 asked for Applicants' estimate as to when the Catawba spent fuel pools will be filled. Applicants objected to this Interrogatory on grounds of relevance, since it has no bearing on the question of whether there are physical differences between Oconee and McGuire spent fuel and Catawba spent fuel, and whether any such differences can

safely be accommodated in the Catawba spent fuel pool. Palmetto Alliance has provided no basis in the instant Motion for questioning the validity of Applicants' objection.

Response to Interrogatories 94, 95, 96, 97 and 98

Interrogatories 94-98 attempt to expand the scope of Contention 16 to include issues concerning the licensing of AFRs and reprocessing facilities, and the effect of such events on the storage of Applicants' spent fuel. Applicants submit that these issues are clearly beyond the scope of Contention 16 as admitted in this proceeding. Accordingly, Applicants objected to each of these Interrogatories as irrelevant. Palmetto Alliance has failed to demonstrate in its Motion how these issues are relevant to the underlying concern of Contention 16, which is whether there are physical differences between Catawba spent fuel assemblies and Oconee and McGuire assemblies, and whether any such differences can be safely accommodated in the Catawba spent fuel pool.

Applicants further submit that these Interrogatories raise issues which are beyond the proper scope of this licensing proceeding. The Licensing Board has previously indicated that it does not intend to consider the question of the development of AFR storage capability in this proceeding. In its July 8, 1982 Order (p.7) the Board struck the words "Away from Reactor" from Palmetto Alliance's Contention 15,

which asserts that the "favorable cost-benefit analysis struck at the construction permit phase" is compromised by expanding the Catawba spent fuel pool to accommodate spent fuel from other Duke facilities, and by the transportation of such fuel. In eliminating this phrase from the contention, the Board stated: "we need also to confine this [spent fuel pool expansion] issue to the action now before us, which is a license to operate the constructed plant." (July 8 Order at 7).

Response to Interrogatories 99 and 100

Interrogatory 99 asked how long spent fuel can safely be stored at Catawba. Applicants stated in response to this Interrogatory that spent fuel can safely be stored at Catawba until the expiration of the facility's operating license. To the extent that this Interrogatory sought information on the storage of spent fuel beyond expiration of the facility's license, Applicants objected to it on grounds that the Licensing Board had expressly excluded that area of inquiry from this proceeding. In an earlier Memorandum and Order (Reflecting Decisions Made Following Prehearing Conference) (March 5, 1982 Order), the Board rejected a Palmetto Alliance contention on this exact issue, stating:

Palmetto 17 would require consideration of the Applicants' provisions for caretaking of the spent fuel following the expiration of any Catawba operating license. This proceeding concerns the operation of the

Catawba Station. This contention lies beyond its scope and is rejected. Moreover, the issue is generic within the nuclear power industry and is currently subject to Commission rulemaking. The Appeal Board has accordingly ruled that litigation of this topic would constitute a collateral attack on the rulemaking. Public Service Electric and Gas Co. (Salem Nuclear Generating Station), 14 NRC 43, 68-69 (1981).

Interrogatory 100 requests that Applicants specify all changes in the spent fuel storage pools necessary for "long term storage," and all attendant costs of such changes. Applicants objected to this question on the same grounds -- i.e., because it appears to seek information on the storage of spent fuel beyond the expiration of Catawba's operating license.

The instant Motion fails to supply any legitimate rationale for overruling Applicants' objections to these two Interrogatories. Indeed, Applicants fail to understand how, in light of the Board's previous ruling on this question, Palmetto Alliance can justify its continuing effort to interject this issue into the Catawba licensing proceeding.

Response To Interrogatory 147

This Interrogatory inquired as to the present status of Applicants' consideration of dry storage at Oconee, McGuire and Catawba. Applicants objected to this question on grounds of relevance, as it has no bearing on the concerns reflected in Contention 16 -- i.e., whether there are physical

differences between Catawba spent fuel assemblies and Oconee and McGuire spent fuel assemblies, and whether any such differences can safely be accommodated in the Catawba spent fuel pool.

Applicants construe this Interrogatory as an attempt to introduce into this licensing proceeding consideration of an extraneous issue (dry spent fuel storage) which is clearly beyond the scope of the spent fuel storage contention which has been admitted. If Palmetto Alliance believes this Interrogatory is relevant to Contention 16 it must so demonstrate.

Response To Interrogatory 148

This Interrogatory requests copies of "any correspondence and/or memoranda relating to transmitting Duke's spent fuel to DOE for possible plutonium recovery." Applicants objected to Interrogatory 148 on grounds of relevance. Clearly, this inquiry has no bearing upon the concerns expressed in Contention 16, which are whether there are any differences between Catawba spent fuel assemblies and Oconee and McGuire assemblies, and whether any such differences can safely be accommodated in the Catawba spent fuel pool. On the contrary, it is (like Interrogatories 94-98 and 147) an attempt to broaden this facility licensing proceeding to encompass an area of inquiry (reprocessing)

which is beyond the scope of Palmetto Alliance's spent fuel storage contention and, in addition, inappropriate for litigation in individual licensing proceedings. If Palmetto Alliance believes that the question of reprocessing is relevant to its contention, it has failed to provide any support for such an assertion in the instant Motion.

Response To Interrogatory 1

This Interrogatory asked Applicants to describe in detail the design of the Catawba spent fuel pools, specify any changes from original design, and discuss in detail the reasons for such changes. In response, Applicants referred Palmetto Alliance to two separate FSAR sections and several FSAR figures which describe in detail the Catawba spent fuel pools. Applicants also identified changes made from the original design and the reasons for these changes. Applicants' Response to Interrogatory 53 discussed changes in the spent fuel pool cooling system and provided a reference to the PSAR section describing the original design of the spent fuel pool.⁸

Palmetto Alliance asserts on p. 5 of its Motion that Applicants' Response "is less than helpful and is certainly incomplete and evasive." This assertion, with its character-

⁸ Applicants would note that, consistent with their position regarding Interrogatory 140, considerations regarding the original design of the Catawba spent fuel pools are irrelevant.

istically unfocused displeasure with Applicants' Responses, is, in Applicants' view, unwarranted. Neither here nor anywhere else in its Motion has Palmetto Alliance set forth a precise explanation of why the Responses provided are allegedly inadequate. It is, therefore, difficult to give credence to Palmetto Alliance's claims of "evasiveness" and "incompleteness."

Responses To Interrogatories 45 and 46

On p. 5 of its Motion, Palmetto Alliance cites Applicants' Responses to Interrogatories 45 and 46 (concerning the number of Ocone and McGuire assemblies to be stored at Catawba, and when Applicants anticipate transporting non-Catawba spent fuel to Catawba), as examples of allegedly "incomplete" and "evasive" answers on the part of the Applicants. Applicants submit that these responses are neither evasive nor incomplete. On the contrary, they reflect the extent of Applicants' knowledge on this particular subject at this particular time. As Palmetto Alliance is aware (see its Supplementary Response), the Appeal Board has held that a lack of knowledge on a particular subject is always an adequate response, assuming the truthfulness of the statement. Pennsylvania Power and Light Company, et al., supra, 12 NRC at 334. Like Palmetto

Alliance, Applicants insist upon our right to say that we have no additional information on this question. (See Supplementary Responses at 1-2).

Response to Interrogatory 36

In Interrogatory 36 Applicants were asked to explain "what would occur if the second trip-off switch on the spent fuel crane failed to operate." Section 9.1.2.3 of the FSAR (from which this question appears to be taken) explains that the spent fuel crane has two switches. The first switch trips at 15 percent above the weight of a fuel assembly. In the event that the first trip fails to operate, the second back-up switch trips at 30 percent above the weight of a fuel assembly. (FSAR p. 9.1-6). As Applicants indicated in their Response, both of the trip-off switches on the spent fuel crane are tested periodically to ensure that they are operational. In any event, the subject matter of this Interrogatory raises an accident scenario that is not contemplated within the scope of Contention 16 and thus the present inquiry is not relevant.

Because Palmetto Alliance has failed to state in its Motion why Applicants' Response is insufficient, its objection to this Response should not be entertained.

Response To Interrogatory 90

In this Interrogatory, Palmetto Alliance sought information on the range of heat loads expected in the spent fuel storage pool when Oconee and McGuire fuels are stored there. Applicants responded with a reference to FSAR Section 9.1.3.1.1, which addresses this question. Palmetto Alliance further requested that Applicants "include all assumptions, calculations and computations utilized," in response to which Applicants stated that they would make such information available for inspection and copying at Duke Power Company's offices after November 1, 1982.

Applicants submit that the information they have supplied, and agreed to supply, in response to this Interrogatory constitutes a full, direct and responsive answer to this question. While Palmetto Alliance characterizes Applicants' Response as "evasive" and/or "incomplete," it has failed to indicate in its Motion the specific basis for its dissatisfaction with the answer provided. In the absence of any such explanation, Palmetto Alliance's objection should be discounted.

Response to Interrogatory 93

Interrogatory 93 asks whether both storage pools at Catawba will be used to store Oconee and McGuire fuel. Applicants indicated in response to Interrogatory 45 that at

this time there are no firm plans to ship spent fuel from Oconee or McGuire to Catawba. That is the extent of Applicant's current knowledge on this particular issue. Therefore, no firm plans have been made as to precisely where in the Catawba fuel pool Oconee and McGuire assemblies would be placed (Interrogatory 40) or whether both Catawba storage pools will be used to store Oconee and McGuire fuel (Interrogatory 93). Accordingly, Applicants stated in answer to Interrogatory 93 that: "If it is determined that Oconee and McGuire spent fuel should be stored at Catawba, either Catawba spent fuel pool could be used."

In light of the fact that Applicants' Response reflects the current extent of Applicants' knowledge on this question, Applicants submit that this Response is neither "evasive" nor "incomplete." The Appeal Board has held that lack of knowledge on a particular issue is always an adequate response, assuming the truthfulness of the statement. Pennsylvania Power and Light Company, et al., supra, 12 NRC at 334. As Palmetto Alliance has provided no specific basis for its dissatisfaction with the information provided, its objection to this Response should not be entertained.

Responses to Interrogatories 106 and 107

These Interrogatories inquired as to the possible effects of dropping a "new spent fuel storage rack" onto an existing rack containing spent fuel, and what procedures and devices would be used to prevent such an occurrence. Applicants responded that there are no plans to move "a new spent fuel storage rack" over a rack containing assemblies. Accordingly, since this situation will not arise, inquiries as to the effects of such an incident, and how it is to be prevented, are irrelevant. The subject matter of these Interrogatories raises an accident scenario that is not contemplated within the scope of Contention 16. If Palmetto Alliance contends that these answers are "evasive" or "incomplete," it has failed to supply a specific factual basis for its objections in the instant Motion.

Response to Interrogatory 112

The focus of this Interrogatory is whether Applicants intend to conduct a handling and loading training course for crane operators. Applicants responded that they do intend to conduct such training courses, which will consist of "both classroom training with a written test and practical training followed by a verification of proficiency on the equipment." Applicants submit that the above is a full, direct and

responsive answer to this Interrogatory. Palmetto Alliance has failed to indicate in the instant Motion why this Response is deficient.

As the preceding discussion makes clear, Applicants supplied full, concise and responsive answers to those of Palmetto Alliance's Interrogatories not subject to privilege or objection. Palmetto Alliance has failed to provide any specific basis or explanation in its Motion for its dissatisfaction with any of Applicants' Responses, nor has it offered any valid criticism of the interpretations of the contentions which underlie Applicants' Responses.

Similarly, with respect to each of Palmetto Alliance's Interrogatories to which Applicants objected either in full or in part, such objections were set forth clearly in each Response, including a specific explanation of the reasons for and grounds supporting such objections. Palmetto Alliance has not addressed a single such objection, other than to assert that Applicants' objections are "unsubstantial and unwarranted."

Applicants accordingly submit that Palmetto Alliance's Motion fails to make the evidentiary showing which is required to justify the issuance of an order compelling further responses to discovery.

B. Discovery Has Not Yet Been Authorized on
Contention 44

Palmetto Alliance asserts on p. 2 of its Motion that "[w]ith 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." This assertion is incorrect. Applicants are aware that Contention 44 was admitted by the Board on p. 12 of its July 8 Order. Applicants' decision not to respond to Interrogatories on this contention is based upon p. 18 of the July 8 Order, wherein the Board ruled as follows:

(1) All mandatory discovery in this proceeding is suspended pending further order of the Board except with respect to Palmetto Contentions 8, 16 and 27. This suspension applies to all pending matters in the discovery process, including, for example, motions to compel, motions for protective order, and the like.

Applicants do not believe that this statement by the Board can reasonably be read to authorize discovery on Contention 44. Indeed, to respond to Palmetto Alliance's discovery requests on this contention would have directly contravened the language of the Order. We accordingly submit that Palmetto Alliance has failed to provide any support for

its assertion that Applicants should be compelled at this time to respond to Interrogatories and requests to produce on Contention 44.

C. Palmetto Alliance's Motion Fails to Refute Applicants' Claim of Privilege

The deficiencies in Palmetto Alliance's Motion are equally apparent in its failure even to address the claim of privilege asserted in Applicants' Response.⁹ Palmetto Alliance's General Interrogatory 4 inquired of Applicants whether "your position on [contention 16 is] based upon conversations, consultations, correspondence or any other type of communications with one or more individuals;" and sought, in addition, information as to the identity and background of such individuals and the nature of any communications between or among such individuals. (Palmetto Alliance Interrogatories at 4). Applicants properly objected to this Interrogatory on the ground that conversations, correspondence, or other types of communications within the scope of Palmetto Alliance's General Interrogatory 4 are privileged, and thus not subject to discovery. See Applicant's Response at pp. 7-9.

⁹ The Motion merely states that "[Applicants] assert that all communications with respect to the contention are privileged and not subject to discovery or even identification as called for by General Interrogatory No. 4." (Motion at 1-2).

As Applicants explained in their Response (pp. 7-9), Palmetto Alliance's General Interrogatory 4 can only be directed either to the position which Applicants have taken before the Licensing Board on Palmetto Alliance's contentions, or to the manner in which Applicants have interpreted and responded to Palmetto Alliance's Interrogatories. In either case, communications between and among individuals are protected under the attorney work-product doctrine.

With respect to the former, the positions which Applicants have taken on Palmetto Alliance's contentions before the Board at various stages of this proceeding are guided solely by legal strategy developed in anticipation of litigation after consultation among Applicants' legal counsel and between such counsel and members of Applicants' staff. Similarly, the positions taken in Applicants' Responses to Palmetto Alliance's Interrogatories were formulated solely on the basis of discussions among Applicants' legal counsel, developed during, and because of, ongoing litigation. These positions were subsequently communicated by Applicants' counsel to Applicants' staff during meetings and telephone conference calls in order to guide staff members in drafting responses, and supplying information to be used in drafting responses, to Palmetto Alliance's Interrogatories.

Applicants' legal positions on Palmetto Alliance's contentions and Interrogatories, and the communications among Applicants' legal counsel and between legal counsel and Applicants' staff which underlie these positions, constitute precisely the type of information which the U.S. Supreme Court has held to be protected under the attorney work-product doctrine. In Hickman v. Taylor, 329 U.S. 495 (1945), the Court ruled that "[p]roper preparation of a client's case demands that [a lawyer] assemble information, sift what he considers to be the relevant from the irrelevant facts, prepare his legal theories and plan his strategy without undue and needless interference." Such preparation, reflected in "interviews, statements, memoranda, correspondence, briefs, mental impressions, personal beliefs, and countless other tangible and intangible ways," 329 U.S. at 511-12 --is entitled to protection from discovery as the work-product of an attorney. See also Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), LBP ___, ___ NRC ___ (Sept. 21, 1982), which holds that the "opinion work product" of an attorney (i.e., his mental impressions, legal theories and opinions, and conclusions) prepared in anticipation of litigation carries an even stronger presumption of non-disclosure than that applicable to his non-opinion "work product" (slip op. at 28-29).

In this regard, Applicants would like to point out that we have not, as Palmetto Alliance claims, asserted that "all communications with respect to the contention are privileged" (Motion at 1-2). As the foregoing discussion makes clear, Applicants have objected to providing Palmetto Alliance with documents and records of other communications regarding Applicants' legal position on Palmetto Alliance's Contention 16. This is, as Applicants have shown, a textbook example of the type of information which the attorney work-product privilege is designed to protect, in that it is a compendium of the mental impressions, views, legal theories and strategy of Applicants' legal counsel, developed solely in anticipation of, and during ongoing, litigation.

The attorney work-product doctrine, codified in Rule 26(b)(3) of the Federal Rules of Civil Procedure and clearly recognized in NRC decisions,¹⁰ does not confer an absolute privilege from disclosure. However, "the general policy against invading the privacy of an attorney's course of preparation is so well recognized and so essential to an orderly working of our system of legal procedure that a burden rests on the one who would invade that privacy to establish adequate reasons to justify production"

¹⁰ Discovery before the NRC is of course governed by provisions based generally on the Federal Rules of Civil Procedure. Boston Edison Co., et al., supra, 1 NRC at 580.

Hickman v. Taylor, 329 U.S. at 512. It is clear that, as a matter of law, Palmetto Alliance has completely failed to meet this burden--or, indeed, to suggest any reason at all why Applicants' claim of privilege should not stand. Accordingly, to the extent that Palmetto Alliance's Motion to Compel is based upon a challenge to Applicants' assertion of privilege, the Motion should be denied.

III. CONCLUSION

In light of the foregoing, Applicants urge that the Board issue an order denying Palmetto Alliance's Motion to Compel.

Respectfully submitted,

J. Michael McGarry, III /*AWC*

J. Michael McGarry, III
Anne W. Cottingham
DEBEVOISE & LIBERMAN
1200 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 857-9833

Attorneys for Duke Power
Company, et al.

William L. Porter
Albert V. Carr, Jr.
Ellen T. Ruff
DUKE POWER COMPANY
Post Office Box 33189
Charlotte, North Carolina 28242
(704) 373-2570

November 18, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
DUKE POWER COMPANY, <u>et al.</u>)	Docket Nos. 50-413
)	50-414
(Catawba Nuclear Station,)	
Units 1 and 2))	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Answer To Palmetto Alliance's Motion To Compel" in the above captioned matter have been served upon the following by deposit in the United States mail this 18th day of November, 1982.

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 F. Foster
P. O. Box 4263
Sunriver, Oregon 97702

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

Albert V. Carr, Jr., Esq.
Assistant General Counsel
Duke Power Company
P.O. Box 33189
Charlotte, North Carolina 28242

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

Robert Guild, Esq.
Attorney-at-Law
P. O. Box 12097
Charleston, South Carolina 29412

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

Jesse L. Riley
854 Henley Place
Charlotte, North Carolina
28207

Henry A. Presler
Charlotte-Mecklenburg
Environmental Coalition
943 Henley Place
Charlotte, North Carolina 28207

Palmetto Alliance
2135 1/2 Devine Street
Columbia, South Carolina 29205

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

J. Michael McGarry, III
J. Michael McGarry, III
AWC