

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of

DUKE POWER COMPANY, et al.

(Catawba Nuclear Station,  
Units 1 and 2)

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Docket No. 50-413  
50-414

PALMETTO ALLIANCE RESPONSE TO BOARD  
QUESTIONS AND MOTION REGARDING  
SECURITY CONTENTION NO. 23

In its Order dated April 13, 1982, the Licensing Board noted Palmetto Alliance's expression of desire to further pursue its Contention No. 23 regarding inadequate security planning at the facility.

Palmetto Contention No. 23 reads in full:

Catawba should not be licensed to operate until the Applicants have developed and demonstrated an adequate security plan which complies with 10 CFR 73.55. The FSAR does not give adequate assurance that all regulatory requirements have been or will be met prior to operation. See FSAR, p. 13-61, Regulatory Guide 1.17, Rev. 1.

In its March 5, 1982, Memorandum and Order the Board had properly observed that, "an intervenor cannot reasonably be required to advance specific contentions about a security plan he has never seen," and agreed with the Applicants that "the security plan is protected under the Commission's regulations (10 CFR 2.790), and is not available for inspection." Order at pp. 37-38. The Board then asked Palmetto to inform them of its desire to proceed, "subject to the kinds of conditions we have indicated.

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If it wishes to proceed, we will then hear from the other parties and consider what further procedures are appropriate." Id., pp. 38-39.

Palmetto Alliance responded:

Intervenor Palmetto Alliance informs the Board of its decision to pursue its contention that the Applicants' security plan is inadequate reserving its right to comment on the appropriateness of further procedures.

Palmetto Alliance and Carolina Environmental Study Group Responses and Objections to Order Following Prehearing Conference, p. 20.

The Board now directs Palmetto Alliance to respond to the following questions, failing which its contention is to be dismissed with prejudice:

1. Have you secured the services of a qualified security plan expert? If you have, submit a statement of that person's qualifications and experience to the Board and parties.
2. If you have no expert at this time, when and how do you plan to obtain one?
3. Is the protective order entered in the Diablo Canyon case acceptable to you?

Order of April 13, 1982, pp. 2-3.

By direction of the Licensing Board Chairman, upon the request of counsel for Palmetto Alliance by telephone April 29, 1982, the time for service of responses was extended until May 10, 1982. Palmetto Alliance answers as follows:

- 1 and 2. Yes;

Michael D. Hines  
Rt. 6, Box 612  
Mooresville, N.C. 28115

Employed from December 5, 1978, until December 23, 1981, as Security Specialist, Central and Secondary Access Station Operator and Security Officer by Southern Security Services, Inc., P.O. Box 811, Cornelius, N.C. 28031 at Duke Power Company's McGuire Nuclear Station.

Thomas P. Poole  
Rt. 7, Box 646  
Mooresville, N.C. 28115

Employed from October 20, 1980, until September 8, 1981, as Security Officer or Guard by Southern Security Services, Inc., P.O. Box 811, Cornelius, N.C. 28031 at Duke Power Company's McGuire Nuclear Station.

Messers Hines and Poole have agreed to voluntarily assist the Licensing Board and Palmetto Alliance in the investigation and proof of Contention No. 23 and other concerns regarding deficiencies in Applicants' security planning. As Duke observed in its Response to Contentions Filed by Palmetto Alliance, at p. 78, its experience at its Oconee and McGuire nuclear facilities in security planning is evidence of the adequacy of its planning at Catawba. Intervenor asserts that the personal knowledge, training and experience of these former security workers at Duke's McGuire Nuclear Station provides the appropriate and necessary expertise to assist the Board and this Intervenor in the litigation of Contention 23 or other security issues.

Palmetto Alliance objects to the requirement that it obtain the services of "a qualified security plan expert," Order of March 5, 1982, if that term is understood to require greater qualifications or experience than already secured by Intervenor either through its members, staff and

ccounsel or through Messers Hines and Poole. Palmetto is informed and believes that more "formal" expertise in nuclear power plant security plans is available solely, as a practical matter, to the owners of nuclear plants, by whom they are employed.

3. Palmetto Alliance objects to the terms of the protective order and affidavit of non-disclosure annexed therein as infringing its rights of Free Speech as protected by the First Amendment and constituting an impermissible prior restraint by government on the exercise of such rights, for the reasons stated by Commissioner Bradford, Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2), CLI-80-24, 11 NRC 775 at 779 (1980). As urged by the Commissioner the reach of such a protective order should extend no further than the "protected information gained through participation in this proceeding," Id. at p. 780, and not to "protected information that I receive by any means whatever." Affidavit of Non-disclosure p. 3.

Fundamentally Palmetto Alliance objects to participation in a secret process by an agency of government whose charge is protection of the public. In this party's view the Commission's recently promulgated regulations, Protection of Unclassified Safeguards Information, 46 FR 51718 (October 22, 1981) are impermissably vague and overboard, serve to chill the legitimate exercise of free speech and the right of petition by intervenors and protect the operators of nuclear power plants more from the ire of an informed public which learns of their misdeeds than from any real threats to security. Palmetto Alliance wants no secrets

from Duke Power Company which it would be bound to hide.

The experience of Messers Hines and Poole are illustrative of the role of such "secrecy" rules in protecting Duke more than the public. Tom Poole was declared persona non grata by Duke, and consequently fired by Southern Security, after embarrassing Duke by following the rules while his superiors urged him to ignore them. He complained to the NRC, sought their protection, and was fired the next month. Mike Hines was harassed, demoted and fired when he dared to maintain his friendship with Tom Poole. Each man has knowledge of serious inadequacies in Duke's security plan and its implementation at McGuire but the secrecy rules serve to chill their free discussion of what they know. Each man fears further reprisals and retaliation by Duke against them, their families and other present and former security workers. They ask the protection of this Board so they may speak freely.

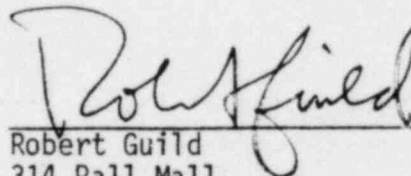
Palmetto Alliance wishes to pursue its claim that Duke's security plan is inadequate. It accepts the obvious observation that it can not frame a specific criticism of a plan which it has not seen. It is prepared to undertake an analysis of Duke's plan for Catawba, with the help of Hines and Poole and the Board's support, in order to narrow and particularize its contentions. However, Palmetto Alliance is not prepared to be sworn to secrecy; and therefore, seeks access only to such "sanitized" portions of the security plan and related materials as contain no "safeguards information" or other information protected against public disclosure. Alternately, or as otherwise necessary, Intervenor asks the Board itself to pursue this security issue pursuant to its general sua



sponte authority, as necessary for a proper decision in the proceeding, by taking such action as hearing testimony in camera from Hines, Poole, and other present and former security workers willing to present evidence of serious inadequacies but whose identities must for now remain confidential, and retaining its own expert security consultants to examine Duke's plan and other security documents as may be needed.

For the foregoing reasons, Intervenor Palmetto Alliance hereby moves the Board enter an order directing further proceedings on Contention 23, as herein described, and an order strictly enjoining Duke Power Company, Southern Security Services, Inc., and any person acting in concert with them, from any and all acts of harassment, intimidation or reprisal directed against Michael D. Hines, Thomas P. Poole or any other person as a result of such person's cooperation in this matter.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Robert Guild", is written over a horizontal line.

Robert Guild  
314 Pall Mall  
Columbia, S.C. 29201

Attorney for Palmetto Alliance

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CERTIFICATE OF SERVICE

I hereby certify that copies of Palmetto Alliance Response

To Board Questions and Motion Regarding Security Contention No. 23

in the above captioned matters, have been served upon the following by  
deposit in the United States mail this 10 th day of May, 1982.

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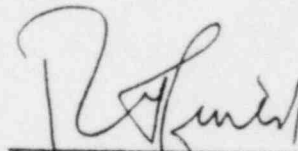
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