Applicants
June 6, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

APPLICANTS' MOTION FOR SANCTIONS AGAINST INTERVENORS PALMETTO ALLIANCE AND CAROLINA ENVIRONMENTAL STUDY GROUP

J. Michael McGarry, III
Anne W. Cottingham
Malcolm H. Philips, Jr.
DEBEVOISE & LIBERMAN
1200 Seventeenth Street, N.W.
Washington, D.C. 20036

Albert V. Carr, Jr.
Ronald L. Gibson
DUKE POWER COMPANY
P.O. Box 33189
Charlotte, North Carolina 28242

Attorneys for Duke Power Company, et al.

June 6, 1983

TABLE OF CONTENTS

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

APPLICANTS' MOTION FOR SANCTIONS AGAINST INTERVENORS PALMETTO ALLIANCE AND CAROLINA ENVIRONMENTAL STUDY GROUP*

Duke Power Company, et al. ("Applicants"), submit that Intervenor Palmetto Alliance has failed to respond properly to Applicants' long-standing discovery requests despite repeated instructions by this Atomic Safety and Licensing Board ("Board") to do so. Accordingly, Applicants move this Board, pursuant to 10 C.F.R. §2.707 and this Board's May 13, 1983 Memorandum and Order ("May 13, 1983 Order") to issue an order limiting the number and scope of Palmetto Alliance's contentions as proposed herein by Applicants.[1]

---

* Applicants' Motion for Sanctions is principally directed to Palmetto Alliance's failure to fulfill its discovery obligations. Applicants' discussion of Carolina Environmental Group's discovery is limited and addresses only its Contention 18.

1 The Board's Memorandum and Order of February 2, 1983 ("February 2, 1983 Order") calls for the filing of summary disposition motions by June 20, 1983. Given the nature of the instant pleading, specifically its request that five contentions be dismissed, Applicants
(footnote continued)

ARGUMENT

A. Palmetto Alliance's pattern of behavior reflects a failure to fulfill discovery obligations

Discovery in NRC licensing proceedings is intended to insure that "the parties to the proceeding have access to all relevant, unprivileged information prior to the hearing. . . ." Boston Edison Company, et al. (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 579, 582 (1975). Moreover, it is well-established that

> interrogatories seeking specification of the facts upon which a claim or contention is based are wholly proper, and . . . the party may be required to answer questions which attempt to ascertain the basis for his claim or, for example, what deficiencies or defects were claimed to exist with respect to a particular situation or cause. [Id. at 582].

That such an obligation may be imposed on Palmetto Alliance is not surprising. "It is . . . incumbent upon intervenors who wish to participate to structure their participation so that it is meaningful, so that it alerts the agency [and the applicants] to the intervenors' position and contentions." Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978). And, as the Appeal Board recently stated:

(footnote continued from previous page)
maintain that it would not be productive to prepare pleadings that may be unnecessary. Accordingly, Applicants will file a motion for an extension of time to file motions for summary disposition regarding these five contentions. The extension will seek 20 days from the date of the Board's ruling on the instant motion regarding sanctions.

> The Applicants in particular carry an unrelieved burden of proof in Commission proceedings. Unless they can effectively inquire into the position of the intervenors, discharging that burden may be impossible. 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. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 338 (1980), quoting with approval p. 6 of the August 24, 1979 unpublished Memorandum and Order of the Licensing Board in that proceeding].

As set forth in Applicants' recently filed "Response in Opposition to Palmetto Alliance's Motion to Establish Discovery Schedule on Its Quality Assurance Contention 6," (June 2, 1983, at pp. 7-18) Palmetto Alliance's pattern of behavior in this proceeding with regard to its discovery obligations has been totally deficient. Palmetto Alliance has been granted every opportunity by the Board and parties to obtain information necessary to provide responsive answers to discovery requests. It was given more than 10-1/2 months to discover on contentions 8, 16 and 27;[2] it was given more than 6 months to discover on contentions 6, 7 44, and DES 17;[3] it was given 3 months to

---

[2] See Memorandum and Order of July 8, 1982 ("July 8, 1982 Order") at p. 18. It is to be noted that discovery commenced on Contentions 6, 7 and 27 on March 5, 1982. Discovery on Contentions 6 and 7 was stayed by Memorandum and Order of May 25, 1982.

[3] See Memorandum and Order of December 1, 1982 ("December 1, 1982 Order") at p. 29.

conduct discovery on contention DES 19.[4] It was provided timely access to relevant documents and information. It was accorded an unusual "first right of discovery against Applicants and Staff". It was granted multiple extensions of time. However, despite having been extended every conceivable opportunity to pursue discovery, it has not fulfilled its obligations. It has failed to provide responsive answers to basic "boilerplate" questions seeking precise definition of terms used in its contentions, the contention's legal theory, and the underlying bases for the contention.[5]

Palmetto Alliance has gone to lengths to avoid providing information on the specific nature of its contentions. From the outset it has sought to delay providing responses. It has failed to familiarize itself with information provided by Applicants and Staff. It has consistently ignored Board rulings.[6] When it did respond,

---

4 See Memorandum and Order of February 25, 1983, at p. 9, admitting DES 19 in part.

5 Palmetto Alliance "does not dispute the legitimacy" of Applicants' interrogatories. See, i.e., Palmetto Alliance Supplementary Responses of November 5, 1982 at pp. 1-2. The Board also recognized the propriety of our inquiry. See, i.e., Memorandum and Order of December 22, 1982 ("December 22, 1982 Order") at p. 3.

6 See pp. 113-121, infra concerning Palmetto Alliance's attempt to raise accident scenarios of an airplane crash into the spent fuel pool and the loss of onsite/offsite power. As noted therein, this Board had (footnote continued)

its responses were vague and evasive. As long ago as the October 8, 1982 prehearing conference, the Board noted that many of Palmetto Alliance's interrogatory answers were unsatisfactory, stating that the intervenor's answers were not "responses to the questions in any full sense." (Tr. 611). In its December 22, 1982 Order, the Board again noted (p. 3) that "all but a handful of Palmetto's answers to the Applicants were not in fact responsive." Most recently, in its May 13, 1983 Order (pp. 1-2) the Board reiterated:

> Palmetto's responses to many key questions have been vague, evasive, incomplete or nonexistent. This is so despite the fact that Palmetto has been given every reasonable opportunity to develop adequate answers to the Applicants' and Staff's interrogatories.

Such a pattern of behavior is in stark contrast to representation by counsel for Palmetto Alliance that Palmetto Alliance has "committ[ed] itself to abide the spirit of the discovery rules" by "telling [in response to discovery] anything that I know or have in my possession on these subjects" and would not "hide behind unresponsive

---

(footnote continued from previous page)
previously rejected these scenarios. See also pp. 128-130, infra, concerning Palmetto Alliance's attempt to respond to one set of interrogtories by simply referencing a response to another set of interrogatories. This Board had on two occasions proscribed this course of action. Finally, see pp. 88-90, infra, wherein Palmetto Alliance has blatantly disregarded this Board's instruction to define the term "sufficient hands-on operating experience".

answers." See, Palmetto Alliance's August 30, 1982 Motion For Protective Order; Tr. 625 (October 1982 Prehearing Conference).

The above pattern of behavior documents 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). It has failed to specify the "deficiencies or defects" which it alleges exist in Applicants' proposals and the Staff's analyses thereof, as required by Pilgrim, supra, 1 NRC at 582. 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. However, Palmetto Alliance fails to allege the deficiency or defect in Applicants' spent fuel pool cooling system that would give rise to the release of radiation.[7]

This Board put Palmetto Alliance on notice that "factual specifics" were required. May 13, 1983 Order at p. 2. The Board told Palmetto Alliance that in detailing a problem (such as the spent fuel pool cooling system), it "should state the nature of the problem" (i.e., the deficiency or defect in the spent fuel pool cooling

---

[7] Applicants' FSAR at Section 9.1.3 discusses the spent fuel pool cooling system. See also SER Section 9.1.3. Applicants and Staff provided interrogatory responses on this subject. See, i.e., Applicants' Response of October 19, 1982 at pp. 24-31.

system) and provide specific "who," "when" and "where" responses. Id. Palmetto Alliance has totally failed to provide such information. This is the fatal defect that exists with respect to each of the contentions addressed in this pleading.

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 inconsistent with both the discovery obligations of a party and with the manner in which the Commission conducts its proceedings.[8]

B. NRC regulations, case law and policy contemplate the imposition of sanctions upon a party to an NRC proceeding which fails to meet its obligations

This Board in its May 13, 1983 Order informed Palmetto Alliance (p. 4) that

---

8 Applicants have challenged Palmetto Alliance's pattern of behavior in their motions to compel of September 9, 1982, December 20, 1982 and April 29, 1983, as well as Applicants' pleading of December 7, 1982 seeking sanctions. In each instance the Board has recognized that Palmetto Alliance has not been responsive. See Tr. 621, 630, the December 22, 1982 Order at pp. 3 and 4, and May 13, 1983 Order at pp. 1-4. The instant motion makes the point again. What is clear to Applicants is that Palmetto Alliance either simply has no basis to support the challenged contentions or it continues to engage in gamesmanship. In either event, Applicants submit that this Licensing Board, having given Palmetto Alliance ample warning of the consequences if it continued to follow this course of action, must now impose sanctions.

> If responsive answers are not forthcoming now, Palmetto Alliance is put on notice that, upon motion, the Board will consider the following sanctions, among others:
>
> (1) Narrowing a contention to areas where specifics have been given.
>
> (2) Rejecting a contention altogether.

See also 10 C.F.R. §2.707.

There is ample NRC precedent for the issuance of sanctions against intervenors in NRC proceedings who do not comply with their discovery obligations. Such sanctions have included limiting the number of contentions litigated, dismissing of some or all of the intervenor's contentions, and/or dismissing of the party from the proceeding.[9] (Analogous sanctions such as striking all or

---

[9] See Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), ALAB-678, 15 NRC 1400 (1982)(Number of intervenor's contentions reduced to those which the Licensing Board could rule on without unjustifiably delaying operation of the facility); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), LBP-80-17, 11 NRC 893 (1980)(Number of intervenor's contentions dismissed as a result of its failure to comply with discovery requests and with a Licensing Board order compelling discovery); (see also Portland General Electric Company, et al. (Trojan Nuclear Plant), LBP-80-20, 12 NRC 77, 82 (1980)); Northern States Power Company, et al. (Tyrone Energy Park, Unit 1), LBP-77-37, 5 NRC 1298 (1977)(Board granted applicant's and NRC Staff's motions to dismiss three intervenors as parties to the proceeding for failure to respond to discovey requests); Offshore Power Systems (Floating Nuclear Power Plants), LBP-75-67, 2 NRC 813 (1975)(Intervenor dismissed for failure to hire counsel to enable it to meet discovery obligations); Public Service Electric & Gas Co. (Atlantic Nuclear Generating Station, Units 1 and 2), LBP-75-62, 2 NRC 702 (1975)(Intevenor dismissed

(footnote continued)

part of a pleading, dismissing all or part of the action, or rendering a judgment by default, are imposed in the federal courts pursuant to Rule 37(b) of the Federal Rules of Civil Procedure.)

The Commission's Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 454 (1981) emphasizes that "[f]airness to all involved in NRC's adjudicatory procedures requires that every participant fulfill the obligations imposed by and in accordance with applicable law and Commission regulations," and states that "[w]hen a participant fails to meet its obligations, a board should consider the imposition of sanctions against the offending party."[10] In selecting a sanction, the Commission suggests that a licensing board consider:

> the relative importance of the unmet obligation, its potential for harm to other parties or the orderly conduct of the proceeding, whether its occurrence is an isolated incident or a part of a pattern of behavior, the importance of the safety or environmental concerns raised by the party, and all of the circumstances. Boards should attempt to tailor sanctions to mitigate

---

(footnote continued from previous page)
for failure to comply with Licensing Board Order). See also the Commission's Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 454 (1981).

10 The Commission's mandate in the Policy Statement that "all parties" should be made aware of these sanction guidelines at an early stage in the proceeding was fulfilled by the Board in its December 22, 1982 Order at p. 15.

> the harm caused by the failure of a party to fulfill its obligations and bring about improved future compliance. [Id.]

Applicants will address each of these factors in their discussion of the individual contentions, below.

C. Examination of Palmetto Alliance's Responses to Discovery Requests on Contentions 6, 7, 8, 16 and 44 indicates that sanctions are warranted[11]

In its May 13, 1983 Order the Board provided Palmetto Alliance an opportunity to redeem its unsatisfactory pattern of behavior with regard to discovery. To determine whether Palmetto Alliance took advantage of this opportunity it is necessary to examine carefully Palmetto Alliance's May 27, 1983 discovery response.[12] Applicants do so below. However, Applicants maintain that such response cannot be viewed in isolation; rather, Palmetto Alliance's ongoing pattern of behavior throughout this proceeding must be demonstrated. On a contention by contention basis, Applicants have done just that in this document. This motion, though lengthy, is essentially self-contained with references to other documents at an

---

[11] Applicants are not moving for sanctions regarding Contentions 27, DES 17 or DES 19.

[12] Palmetto Alliance Further Supplementary Responses to Applicants Interrogatories Regarding Contentions 6, 7, 8, 16 and 44; to Staff Interrogatories Regarding Contention 7; and Palmetto Alliance Responses to Applicants Follow-up Interrogatories Regarding Contentions 16 and 17; and to Staff Follow-up Interrogatories Regarding Contentions 6, 8, 16, 27 and 44." ("May 27 Responses").

absolute minimum. This document makes it abundantly clear that the sanctions sought by Applicants are reasonable and warranted.[13]

CONTENTION 6

A. Introduction

Palmetto Alliance's Contention 6 as originally proposed in this proceeding read as follows:

> Substandard workmanship and poor quality control strongly suggest that actual plant construction is substantially below NRC standards in many safety related areas. Applicants have failed to provide a Quality Assurance program which meets the requirements of 10 CFR Part 50, App. B, and no reasonable assurance exists that the plant can operate without endangering the health and safety of the public. The Commission has noted that 'the regulated industry...bears the primary responsibility for the proper construction and safe operation of licensed nuclear facilities.' Federal Tort Claim of General Public Utilities Corp., et al., CLI 81-10, 13 NRC 773, 775-776 (1981). The NRC's Systematic Assessment of Licensee Performance Review Group found the Catawba facility 'Below Average' among power reactor facilities under construction particularly 'in the areas of quality assurance including management and training.' NUREG 0834, NRC Licensee Assessments, August 1981, p. B-1. A number of former Duke Power Company construction workers, including a certified Quality Control Inspector, have complained of

---

13 Applicants take the position that Palmetto Alliance's response to this motion must be based on the information now before the Board and the parties in the proceeding. Palmetto Alliance must respond directly to the arguments, based upon its discovery responses, set out in this motion. The Board should not allow Palmetto Alliance to evade the arguments by simply raising new matters. Palmetto Alliance, having been given three separate opportunities to explain its concerns, now is bound by its discovery responses as they stand on May 27, 1983.

> systematic deficiencies in plant construction and company pressure to approve faulty workmanship.

In a Memorandum and Order of March 5, 1982, ("March 5, 1982 Order"), the Board conditionally admitted Contention 6 as proposed but noted that the contention, as drafted, was "at best only marginally acceptable from the standpoint of specificity." Id. at p. 17. The Board further noted that this contention "can be explored in discovery and we expect the Intervenors to make [it] more specific, or to withdraw [it], following discovery." Id.

In its December 1, 1982 Memorandum and Order ("December 1, 1982 Order"), the Board recast Contention 6 and accepted it for litigation in the proceeding.[14] As recast by the Board, Palmetto Alliance's Contention 6 now reads:

> Because of systematic deficiencies in plant construction and company pressure to approve faulty workmanship, no reasonable assurance exists that the plant can operate without endangering the health and safety of the public.

---

[14] In the December 1, 1982 Order, the Board noted (p. 5) that "[m]uch of Palmetto 6, which is concerned with substandard workmanship and poor quality control, lacks sufficient specificity. The last sentence, however, concerns alleged "corner cutting" and does supply a sufficient basis for a contention . . . . The thrust of this contention is primarily toward alleging company attitudes and practices; proof of this contention, presumably involving specific instances of misfeasance, need not be adduced at this stage."

Applicants' efforts to ascertain the sum and substance of Contention 6, culminating in Palmetto Alliance's May 27, 1983 Responses to Applicants' Interrogatories on Contention 6, reflect that Intervenor has fallen far short of fulfilling its discovery obligations. Accordingly, Applicants maintain that sanctions against Palmetto Alliance are both warranted and necessary. Applicants submit that the appropriate sanction that the Board should impose is dismissal of Contention 6. In the alternative, should the Board determine that dismissal of the contention is not appropriate, Applicants submit that the Board should narrow Contention 6 to the areas where Palmetto Alliance has raised specific concerns and has provided specific responses in discovery.

B. Palmetto Alliance's failure to respond to Applicants' Interrogatories as required by the Board's Discovery Order warrants the imposition of sanctions

On April 9, 1982, Applicants served upon Palmetto Alliance "Applicants' First Set of Interrogatories and Request to Produce" ("Applicants' April 9, 1982 Interrogatories"), which dealt, inter alia, with Palmetto Alliance's Contention 6.[15] Applicants' Interrogatories attempted to elicit from Palmetto Alliance the precise

---

15 The Staff filed its First Set of Interrogatories to Palmetto Alliance on May 7, 1982. Palmetto Alliance's response merely referred the Staff to its response to Applicants' interrogatories.

nature of the concerns expressed in its contention, and the bases for those concerns. Specifically, these interrogatories sougnt the most basic information as to the definition of the material terms of the contention, the nature and effect of the "deficiencies," "company pressure" and" faulty workmanship" alleged in the contention; whether Palmetto Alliance contends that the requirements governing these terms are set forth in NRC requirements and, if so, whether Palmetto Alliance contends that Applicants have not satisfied those requirements; and, the technical bases and sources for all of the foregoing information. Applicants also sought production of supporting documents and included some general interrogtories.

On April 28, 1982, Palmetto Alliance filed "Palmetto Alliance's Responses to Applicants' First Set of Interrogatories and Request to Produce" ("April 28, 1982 Responses"). These Responses contained little substantive information. In response to interrogatories regarding the meaning of key terms or allegations in its contention, Palmetto Alliance in several instances replied "common meaning," or "same as meant by NRC," or, as to quoted

phrases, "meaning intended by author." In other instances, it provided only brief and generalized definitions of terms.[16]

Palmetto Alliance's Responses to Interrogatories which sought specific information as to alleged deficiencies in plant construction and examples of alleged "company pressure" to approve "faulty workmanship" were similarly unresponsive. In response to interrogatories directed at its language in its contentions, Palmetto Alliance frequently asserted that "Intervenor at present lacks sufficient knowledge to answer" and stated that it was "awaiting responses [from Applicants] to its Interrogatories and Request to Produce served April 20, 1982 with regard to this subject."[17] In response to a series of interogatories directed to the "number" of former construction workers at Catawba, Palmetto Alliance identified Messrs. McAfee and Hoopingarner and, with respect to each, identified certain concerns. However, Palmetto Alliance professed itself unable to provide specific details respecting their concerns because "access to records in the possession of Duke Power Company sought

---

16 A detailed analysis of Palmetto Alliance's April 28, 1982 Responses is included in Applicants' Motion to Compel or, In The Alternative, Dismiss Contentions, filed on December 20, 1982.

17 Of the 124 interrogatories filed by Applicants, Palmetto Alliance answered 30 with this response.

in discovery requests served April 20. 1982 is necessary to refresh [their] recollection." See Palmetto Alliance's April 28, 1982 Response to Interrogatory No. 80.

On April 20, 1982, before filing its April 29 Responses, Palmetto Alliance served upon Applicants and the Staff interrogatories concerning, inter alia, its Contention 6.[18] Applicants objected to answering these discovery requests pending final resolution of the Applicants' and the NRC Staff's objections to the Board's March 5, 1982 Order. The Board subsequently suspended discovery on Contention 6, among others. On December 1, 1982, the Board ruled that discovery could resume on Contention 6. Applicants filed Responses to Palmetto Alliance's April 20, 1982 interrogatories on December 31, 1982.[19]

---

18 Palmetto Alliances' interrogatories focused on the following areas: Applicability of 10 CFR Part 50, Appendix B to Duke Power Company's Quality Assurance Program; the effect of substandard workmanship on construction; applicable design, fabrication, construction and testing standards; design or construction deficiencies within the meaning of 10 CFR §50.55(e) and any related corrective actions; results of any audits or investigations, including NRC staff inspections; information on Quality Assurance personnel; employee's complaint procedures; and the SALP Report.

19 The Staff filed its responses to Palmetto Alliance's interrogatories on Contention 6 on February 17, 1983.

Applicants have complied fully with all of Palmetto Alliance's discovery requests allowed by the Board. With respect to Contention 6, Applicants as noted, responded to Palmetto Alliance's interrogatories on December 31, 1982. The documents identified in those Responses were available for inspection and copying February 15, 1983. On February 28, 1983 Applicants filed supplemental responses pursuant to the Board's ruling on Palmetto Alliances' Motion to Compel. Documents identified in the supplemental responses were available to Palmetto Alliance when it visited the Document Room at Applicants' offices on March 14, 1983. On March 25, 1983, Applicants filed Responses to Palmetto Alliance's Follow-up Interrogatories. Documents associated with these Responses were available for inspection and copying on March 30, 1983.[20]

On April 19, 1983, Palmetto Alliance filed Supplementary Responses to Applicants' and Staff's interrogatories ("April 19, 1983 Supplemental Responses").[21] These Supplemental Responses stem from the Board's December 22, 1982 Order in which the Board granted

---

20 At the request of Palmetto Alliance, numerous groups of documents, including many of the documents identified in the March 25 Responses, were copied and mailed to Palmetto Alliance without Palmetto Alliance having to make a trip to the Document Room at Applicants' offices to designate specific documents.

21 Applicants supplmented their discovery reponses as detailed infra.

Palmetto Alliance "a right of first discovery" so that it might be in a position to provide adequate and substantive Responses to Applicants' interrogatories. (See December 22, 1982 Order at pp. 10-13).[22] Palmetto Alliance's Supplemental Responses on Contention 6 presumably reflect the sum total of information available to Palmetto Alliance, including that obtained during its 4-1/2 month opportunity for unilateral discovery on Contention 6, as well as the public information available to it from sources independent of the proceeding (for example, information in the Public Document Room such as 50.55(e) Reports and NRC Inspection Reports).

Palmetto Alliance's April 19, 1983 Supplemental Responses, like their earlier Responses, were clearly inadequate. They were characterized by the same vagueness, evasiveness, and overall unresponsiveness. The Supplemental Responses on Contention 6 reflected an inexcusable failure to become familiar with the extensive information made available to Palmetto Alliance during discovery by Applicants and Staff.

---

22 The Board stated that it was allowing Palmetto Alliance a "reasonable opportunity for discovery," which it defined as "enough discovery to enable a diligent party to give a reasonably responsive answer to basic questions about a contention." December 22, 1982 Order, p. 16 n.4.

To be clear, Applicants' approach to discovery on Contention 6 (as well as with the other contentions) has been direct and straightforward. Applicants' interrogatories tracked the language of the contention, and were structured to ascertain (1) the scope of the contention; (2) the specific aspects of the contention; and, (3) the bases supporting each specific allegation. Applicants' approach was to ask a series of questions, concluding with an inquiry as to the specific basis for the positions set forth in response to the series of questions.[23] The Response filed on April 19, 1983 by Palmetto Alliance was simply inadequate.

On April 29, 1983, Applicants filed a Motion to Compel seeking further Responses, inter alia, to Applicants' Interrogatories and Requests to Produce on Contention 6. Applicants maintained in the Motion to Compel that the Supplemental Responses reflected that Palmetto Alliance's disregard of the basic purpose and scope of discovery in NRC proceedings, viz., to narrow and clarify the basic issues, to enable the parties to ascertain what they will face at the hearing and prepare to meet it. Applicants also took the position that the

---

23 As noted, the Board stated in its December 22, 1982 Order (at p. 6) that Applicants' interrogatories "appear to be of a routine boilerplate variety which are usually answered without much objection." Palmetto Alliance has not objected to Applicants' Contention 6 interrogatories.

Responses reflect the fact that Palmetto Alliance failed to read the available documents.)[24] The specific nature of Palmetto Alliance's Contention 6 remained undisclosed after the Supplemental Responses, and Applicants were still in the position of being forced to prepare to meet "any conceivable thrust" Palmetto Alliance might seek to make arising out of the general topic areas of the contention. See Byron, supra, at 338.

In its May 13, 1983 Order, the Board granted Applicants' April 29 motion to compel. Therein, the Board directed Palmetto Alliance to respond to specific interrogatories. Notwithstanding the clear and explicit order of the Board, these responses, discussed in detail below, continue the pattern of behavior followed by Palmetto Alliance and suffer from the same infirmaties as its earlier responses.

---

24 Applicants' detailed analysis of Palmetto Alliance's discovery responses are contained in the motion to compel and the attachment thereto. That analysis is summarized and included in this Motion for Sanctions because the background information on Palmetto Alliance's pattern of behavior during discovery is an important aspect of the Board's consideration of the appropriate sanctions.

1. Interrogatory 35[25]

The Board granted the Applicants' motion to compel with respect to Interrogatory Nos. 28-34.[26] The Board's

---

25 Interrogatory 35 reads as follows:

35. What are your bases for your responses to Interrogatories 25 thru 34? Identify all documents, testimony or or oral statements by any person and legal requirements on which you rely in support of your position.

26 The Board noted that Interrogatory 35 encompasses Interrogatories 25-34. The Board specifically granted the motion to compel with respect to Nos. 28-34, which state:

28. What areas of 'actual plant construction' are the subject of your Contention?

29. For each of the areas identified in your response to Interrogatory 28, please specify each instance of 'substandard workmanship' or 'poor quality control' which you contend has occurred.

30. For each instance identified in your response to Interrogatory 29, please specify the location within the plant at which you contend such workmanship took place.

31. For each of the instances identified in your response to Interrogatory 29 please identify the date and time of occurrence at which you contend such workmanship took place.

32. Have you identified any individuals who you contend performed such poor quality control or substandard workmanship?

33. If so, please identify those individuals by name and current address.

34. Identify the particular occurrence which you contend each individual identified in your response to Interrogatory 33 was involved with.

specific instructions[27] with respect to how these interrogatories should be answered were that:

> Palmetto is to answer these questions and supply specifics about any other areas of the plant which it contends include faulty workmanship, such that the plant cannot operate safely. These should include specific parts of the plant, names, dates, and other information called for by these questions. [May 13, 1983 Order at p. 5].

In spite of the Board's clear directions that Palmetto Alliance "now give complete and detailed answers to those interrogatories as to which we are granting Applicants' Motion," (Id. p. 2), Palmetto Alliance answered interrogatories 28-34 with the same kind of vague, general and conclusory replies characteristic of its earlier interrogatory responses.

Specifically, Palmetto Alliance did not even attempt to answer interrogatories 28-34, as ordered by the Board, but simply set forth a 2-1/2 page discourse, which apparently is to suffice as an answer to Interrogatory 35. The response says that on the basis of "the preliminary analysis and investigation of massive evidence very recently made available to it"

---

27 The Board also stated that the responses with respect to Messrs. Hoopingarner and McAfee were not sufficient, but did not require further interrogatory responses. The Board required that Palmetto Alliance make Messrs. Hoopingarner and McAfee available for depositions, and warned that "[f]ailure on their part to appear and fully respond to the questions could result in exclusion of their testimony in any later hearing." (Id., pp. 5-6). The deposition responses of Hoopingarner and McAfee are discussed infra, p. 39.

- Palmetto Alliance "believes that significant and systematic breakdowns have occurred in the Quality Assurance Program" at Catawba;

- that such a breakdown in Quality Assurance "strongly suggests that the as-built condition of the station . . . is of indeterminate quality inpugning the assurance that it is capable of operation without endangering the public's health and safety"

- that "quality control at Catawba has historically suffered from the fatal flaw of domination by, and therefore lack of required independence stemming from, organization, direction and domination by Duke Power Company Construction Department supervision";

- that Palmetto Alliance believes that "the so-called Catawba Welding Inspector incident which followed a systematic downgrading of pay levels of Quality Control Inspectors endorsed by the highest Duke management reflects disturbing inadequacy in the Quality Control work in all other functional construction areas";

- that as suggested by the affidavit of Billie Garde, "such a downgrading of the Quality Control workers and function produced the deficiencies in QC qualification as has been seen at the Zimmer Plant";

- that many "Catawba Welding Inspectors have raised specific technical concerns regarding the improper processing of non-conforming items reports (NCI's), specifically including the widespread practice of verbal voiding and overturning of non-conforming items by construction supervision";

- that such a practice "bears striking similarities" to the improper practice at the Midland Plant of processing NCIs through informal "IPIN's" which resulted in a civil penalty and a re-inspection requirement;

- that "Palmetto takes the position that the real issue reflected in this series of interrogatories . . . is the systematic inadequacy of the Catawba Quality assurance program to establish the as-built quality of construction and safety-related systems at the Plant" and to "focus on specific

> faulty workmanship only, as has Duke in its "whitewashing" of welding inspector concerns . . . is to miss the 'forest for the trees' and fail to focus on the need to discover and correct the problem;" and
>
> . that it is "these systematic deficiencies . . . which must be the focus of further investigation and analysis through extension of discovery on this Contention." (Supplementary Responses, pp. 4-5).

These arguments and conclusions do not provide the specific information required by the Board order, which required Palmetto Alliance

> to "state factual specifics," and as an example, indicated that where a quality assurance problem is at issue, Palmetto should "state the nature of the problem, where in the plant it was found, when it occurred, and who was involved." May 13, 1983 Order at p. 2.

In direct defiance of the Board's directions, Palmetto Alliance, rather than providing specifics, simply launches into a tirade on quality assurance and Duke Power Company, which in effect simply parrots once again the groundless unsupported allegations raised by Palmetto Alliance in its Motion to extend the time for discovery and Billie Garde's affidavit recently filed with the Board and parties.

With respect to specific evidence of substandard workmanship and specific uncorrected faulty workmanship, the two and one-half page discourse reflects that:

> The specific evidence of substandard workmanship in plant construction and poor Quality Control now known to Palmetto is represented by the complaints of the Catawba Quality Control Welding Inspectors previously identified.

> Palmetto Alliance has no knowledge at this time of specific uncorrected faulty workmanship of safety significance at Catawba; but believes that the existence of such faulty workmanship is strongly indicated by the deficient Quality Assurance Program as herein described.
>
> [Supplementary Responses at p. 5-6.]

This response constitutes a ringing admission that Palmetto Alliance has no basis whatsoever beyond innuendo, to support its claim of deficient workmanship. Accordingly, sanctions should be imposed.

Palmetto Alliance's rambling response to interrogatory 35 continues by referencing two documents: (1) a March 15, 1982 memo from NRC Resident Inspector P.K. Van Doorn to C.E. Alderson which is Attachment 3 to its May 25, 1983 motion to extend discovery;[28] and (2) the "Handwritten Notes From QC And QA Inspectors Which Set Forth Their 'Specific Problems and Concerns," authored by some 19 Catawba Welding Inspectors.

---

28 In its motion to extend discovery, Palmetto Alliance argued that on May 19, 1983, only a day before the close of discovery, it received "97 additional documents' in discovery which required additional time for analysis. Applicants' Response to the motion showed that these documents had been made available to Palmetto Alliance much earlier in discovery. See pp. 29-33 of Applicants' Response. This March 15, 1982 memorandum was cited by Palmetto Alliance in its April 19, 1983 Response to Applicants' interrogatories, yet Palmetto Alliance argued in its Motion to extend discovery that this was part of the "recently revealed evidence." The memo is listed on Appendix B to the FOIA request and was produced to Palmetto Alliance by the Staff in its April 8, 1983 discovery response.

Palmetto Alliance referred to the March 15, 1982 memorandum in its April 19, 1983 Responses. With respect to this memorandum, the Board stated that "[i]f Palmetto is relying on matters described in this Memorandum, the specifics about these matters should be given in their responses to interrogatories 28-34." May 13, 1983 Order, p. 6. Ignoring the Board's explicit directions, Palmetto Alliance simply refers again to the memorandum and provides no specifics. To make the matter worse, Palmett Alliance (simply casting innuendo with no reference to specifics) refers to the welding inspectors' notes in the May 27, 1983 Responses, "as reflecting specific instances of poor quality control, faulty workmanship, falsification of documents, harassment and systematic Quality Assurance Program breakdowns, as well as identifying specific components and systems involved, names of persons involved, dates and places." May 27 Responses at p. 6.

It is clear from the Board's instructions regarding the March 15, 1982 Memorandum that if Palmetto Alliance is relying on matters described in these documents, "the specifics about those matters should be given" (May 13, Order, p. 6), rather than simply referring to a group of documents which have been available in discovery for several months. In one breath Palmetto Alliance says that it has no knowledge of specific uncorrected faulty

workmanship, yet in another breath it refers to the welding inspector's notes "as reflecting specific instances . . . of faulty workmanship." May 27 Responses at p. 6.

Intervenor is engaging in gamesmanship. Despite ample opportunity to examine discovery materials, and despite clear directives from the Board, Palmetto Alliance has refused to provide the specific information requested by the interrogatories and required by the Board. Instead of narrowing and focusing the issues to be litigated, this discovery response, like the previous responses,[29] leaves the issues completely unbounded. Palmetto Alliance's answers at this stage should be complete in themselves, and Applicants should not, after the close of discovery, have to sift through documents which have been available to Palmetto Alliance for months in hopes of guessing what the Intervenors will rely on.

Finally, with respect to Interrogatory 35's request for the legal requirements applicable to responses to Nos. 28-34, the Board stated that "[n]o specific requirements have been given by Palmetto." May 13, 1982 Order at p. 6.

---

29 Similarly, Intervenors April 19, 1983 Responses also provided only a general reference to a list of documents in response to interrogatories which requested specific information. Thirty interrogatories were answered by referring to a previous response (Interrogatory 5) which listed documents. See Applicants' April 29, 1983 motion to compel, Attachment pp. 9-10.

The Board instructed to Palmetto Alliance that "[w]hen regulatory violations are alleged, the specific regulations or criteria must be given." Id. at p. 2. The Board's specific instructions regarding answering Interrogatory 35 provided:

> The NRC's QA requirements are largely set forth in 10 CFR Part 50, Appendix B. We reiterate, however, that it will not suffice to refer generally to Appendix B. Appendix B contains 18 separate criteria. Specific criteria should be cited. Furthermore, many Appendix B criteria are complex and it will be necessary to explain what part of a particular criterion is involved, if that is not self-evident. Beyond that, if a situation or condition is alleged to be dangerous (and therefore to preclude a favorable finding under 10 CFR 50.57(a)(3)) but not violative of a particular regulation, Palmetto must explain what the danger is. [Id. at p. 6. (emphasis added)].

In the face of these clear directions, Palmetto Alliance's response states:

> Palmetto asserts that the Quality Assurance breakdown at Catawba is violative of specific criteria of 10 CFR Part 50, Appendix B. Specific QA criteria believed to be involved on the basis information now known to Palmetto were set forth in cipates that a number of present and former Catawba worke 19, 1983, Answers. [sic][30] [Supplementary Response, p. 6.]

Palmetto Alliance contends that specific criteria of Appendix B are violated, yet apparently refers to the notes of the welding inspectors for specificity. Contrary

---

30 The response is set forth above as it appears in the document received by Applicants. No corrected version has been received by Applicants as of the filing of this Motion for Sanctions.

to the Board's explicit Order, no specific criterion is cited, there is no explanation of what part of a specific crterion is involved, and there is no explanation by Palmetto Alliance of whether any danger is presented and what the danger is. This omission is fatal. Consistent with its previous response to Interrogatory 35, this response by Palmetto Alliance provides no indication of the specific requirements which Palmetto Alliance contends Applicants have failed to meet. This response provides Applicants with little or no information on how to prepare their case in response to the contention.

Interrogatory 52

The Board's May 13, 1983 Order grants Applicants' motion to compel with respect to Interrogatory 43 (encompassing Numbers 41 and 42, 47 and 48).[31] The Board

---

[31] Interrogatories 41-43, 47, 48 and 52 read as follows:

41. What are the 'safety related areas' to which you contend the NRC standards identified in your response to Interrogatory 39 apply?

42. Identify separately each of the safety related areas and the NRC standard which you contend applies to that area.

43. In what ways do you contend the safety related areas identified in your responses to Interrogatory 41 relate to the safe operation of the plant?

47. Do you contend that there are instances of substandard workmanship that have not been corrected? If so, please identify.

(footnote continued)

provided that for Interrogatories 41-43, "it will be sufficient if Palmetto answers the question "What areas do you claim are safety related, and why?" The Order states that Interrogatories Nos. 47 and 48 must be answered with specifics. May 13, 1983 Order at p. 6.

Palmetto Alliance's entire response, despite the Board's order to provide specifics with respect to interrogatories 47 and 48, reads as follows:

> 52. By the term 'safety related' Palmetto means generally those components, systems and areas of the facility identified by the Applicants and NRC Staff as important to the safe operation of the facility. Palmetto understands that many of the technical concerns of the Catawba Welding Inspectors were with respect to the construction and fabrication of systems and components which were 'safety related' including the welding of safety related pipe and pipe hangers. Palmetto, however, is also concerned with other safety related areas such as electrical systems where specific faulty workmanship or quality control defects may yet be undetected.
>
> At present, Palmetto Alliance knows of no specific instances of substandard workmanship that have not been corrected beyond those already identified. Beyond the instances of poor quality control previously identified, Palmetto Alliance knows of no further instances of poor quality control not corrected. [May 27 Responses at p. 7. (emphasis added)].

(footnote continued from previous page)

48. Do you contend that there are instances of poor quality control which Applicants have not corrected? If so, please identify.

52. What are your bases for your responses to Interrogatories 36 through 51? Identify all documents, testimony or oral statements by any person and legal requirements on which you rely on in support of your position.

This response simply fails to answer the question "What areas do you claim are safety related, and why?" The response is a definition of "safety related", which Palmetto Alliance says "means generally those . . . areas . . . identified by the Applicants and NRC Staff as important to the safe operation of the facility." Id. at p. 7.[32] Applicants and the Board are still left to guess what areas Palmetto Alliance claims are safety-related and why it makes such a claim. Palmetto Alliance's gamesmanship becomes even more apparent with its reference to "other safety related areas such as electrical systems" where alleged faulty workmanship "may yet be undetected." (By this means, Palmetto Allinace obviously seeks to expand the scope of this contention to include any conceivable part or system of the plant.) Id. at p. 7.

With respect to the specific instances of uncorrected substandard workmanship and poor quality control which the Board said "must be answered with specifics" (May 13 Order at p. 6), Palmetto Alliance acknowledges that it "knows of no specific instance . . . beyond those already identified." May 27 Responses at p. 7. And where are the specific instances "previously identified"? In response

---

[32] In addition to being unresponsive, this answer is in direct contradiction to the Board's statement that Palmetto Alliance may not define a term by saying that it meant what the Applicants or NRC staff meant when they used that term. May 13, 1983 Order at p. 3.

to Interrogatory 35, Palmetto Alliance says that "specific evidence of substandard workmanship in plant construction and poor quality control now known to Palmetto Alliance is represented by the complaints of the Catawba Quality Control Welding Inspectors previously identified." Id. at pp. 5-6. This kind of unresponsive reference to documents prompted Applicants' April 29 motion to compel which was granted by the Board. Despite the Board's clear directions, Palmetto Alliance fails to provide specific information. Again, this defect is fatal.

Interrogatory 57

The Board granted Applicants' motion to compel on Interrogatory 57, in part, by requiring Palmetto Alliance to answer the question "what specific defects do you claim in the Applicants' quality assurance program that are relevant to your contention?" May 13 Order at p. 7. Palmetto Alliance answers this question as follows:

> 57. The specific defects believed by Palmetto to exist in Applicants' Quality Assurance Program, now known to Palmetto are indicated in the affidavit of Billie Garde. Attachment 2 to Palmetto's May 25, 1983, Motion. [May 27 Responses at p. 7.]

Palmetto Alliance is without question playing "hunt the peanut." Connecticut Light & Power Co. v. NRC, 673 F.2d 525, 530-31 (D.C. Cir. 1982). Where are the

"specific defects" set forth in the Garde affidavit?[33] Applicants submit that even a cursory examination of the Garde affidavit will disclose that there are no specific defects identified. Rather, the Garde affidavit is simply another example of groundless innuendo with no specifics provided. This response is simply not enough at this late stage.

Interrogatory 82

Interrogatory 82 requests:

> 82. Besides the statements of these construction workers or other employees, is there any other information on which you intend to rely in support of their allegations? If so, please identify. [May 27 Responses at p. 7.]

Palmetto Alliance responded to this interrogatory on April 19, 1983 by stating "Yes. Information produced in discovery." Subsequently, the Board granted Applicants' motion to compel, stating:

> Now that discovery is coming to a close, Palmetto is under an obligation to review all of the information that has been provided to it at its request, to decide what specific pieces of information it intends to rely on, and to tell the other parties specifically what is it. Any information not so revealed and which is known or should have been known at this time may be excluded from a later hearing over timely objection. [May 13, 1983 Order at p. 7. emphasis added)].

---

33 The affidavit of Billie Garde is discussed in Applicants' June 2, 1983 Response to Palmetto Alliance's Motion to extend discovery, at pp. 42-43.

Despite the Board's clear, direct and explicit Order directing that Palmetto Alliance decide which specific pieces of information it intends to rely on and notify the other parties, Palmetto Alliance responds as follows:

> 82. As referred to in response to interrogatory 76 of April 19, 1983, Palmetto has identified a number of present and former Catawba workers from whom Palmetto will seek support for its Contention 6. The documentary information produced in discovery regarding the allegations of Catawba Welding Inspectors is believed by Palmetto to support our position on this contention. This documentary information is identified above. [May 27 Responses at pp. 7-8.]

Applicants are left to guess which of the documents Palmetto Alliance relies on, and which of the welding inspector notes are relied on. Are there any other "present and former Catawba workers" who have information on which intervenors might rely? Does Palmetto Alliance intend to limit its universe of documents to the welding inspector notes? And if so, which notes? This response, like many others by Palmetto Alliance, is vague, evasive and calculated to avoid providing specifics. In sum, the response is clearly defective and supports the imposition of sanctions.

Interrogatory 94

Interrogatories 91-94 sought information regarding the concerns expressed by construction workers or other employees, including the nature of each concern and when

it was expressed, the response of the specific individual to whom the concern was expressed, any subsequent actions taken, and identification of any documents and legal rquirements relied on.

The Board's May 13, 1983 Order stated that Applicants should take the depositions of Messrs. Hoopingarner and McAfee,and that "Palmetto should supply specifics as to concerns expressed by any other persons." Id. at p. 7. The "specifics" supplied by Palmetto Alliance are as follows:

> 94. Beyond Messrs. Hoopingarner and McAfee, Palmetto has previously identified the concerns expressed to both Duke Power Company and the Nuclear Regulatory Commission Staff by the Catawba Welding Inspectors. [May 27 Responses at p. 8.]

It is clear from this response that if Palmetto Alliance has decided "what specific pieces of information it intends to rely on," it is refusing to tell the other parties. This response, like others, falls far too short of the requirements set forth in the Board's Order.

Interrogatory 114

Interrogatories 108-114[34] sought specific information

---

34 Interrogatories 108-113 read as follows:

> 108. Please specify each instance of "company pressure" and by whom such "company pressure" was brought.
>
> 109. Please identify each individual on whom you
>
> (footnote continued)

on each instance of "company pressure," including the parties involved, the manner in which pressure was imposed, whether such pressure affected construction, any instances of inadequate construction resulting from the pressure, and the significance of the pressure on construction.

The Board granted Applicants' motion to compel on these questions, stating that interrogatories 108-113 "must be answered." May 13, 1983 Order at p. 7. Palmetto Alliance "answered" these interrogatories with the following:

> 114. At this time Palmetto can identify the documents reflecting complaints by the Catawba Welding Inspectors previously identified as the bases for their evidence regarding Company pressure to approve faulty workmanship. These individual welding inspectors are known to Duke Power Company and the NRC Staff and are identified above. The inspectors generally

---

(footnote continued from previous page)
contend such pressure was brought to bear.

110. In what manner do you contend such pressure was brought?

111. Do you contend that such alleged "pressure" affected ther quality of construction at Catawba?

112. If your response to Interrogatory 111 is in the affirmative, please specify each instance of inadequate construction which you contend resulted from such alleged "pressure."

113. If your response to Interrogatory 111 is in the negative, please specify the significance, if any, which you perceive such alleged pressure has on construction.

> complained of harassment by craft and supervision to approve faulty work as well as Duke Power Company management pressure as reflected in the reclassification of welding inspector pay grade and efforts to downgrade the role of Quality Control Inspectors at the facility. [May 27 Responses at p. 6.

Again, Palmetto Alliance refers to a set of documents in response to interrogatories which request specific information. There is no indication that at this late stage in the proceeding that intervenor has reviewed the information and determined "what specific pieces of information it intends to rely on." May 13, 1983 Order at p. 7. It certainly has not informed the other parties if such a decision has been made. These interrogatories request specific information, and the Board Order requires that specific information be provided; however, Palmetto Alliance again refers generally to a set of documents "as the basis for their evidence." See Byron, supra which states that reliance upon documents in response to an interrogatory requesting specific information is insufficient.

Interrogatory 121

Interrogatories 117-121[35] request specific

---

35 Interrogatories 117-120 read as follows:

> 117. To whom was such approval to be given and how as such approval to be given?
>
> 118. Do you contend that such approval was ever given?

(footnote continued)

information concerning approval of faulty workmanship. The Board granted Applicants' motion to compel, stating that interrogatories 117-120 "must be answered." May 13, 1983 Order at p. 7. Palmetto Alliance "answered" these interrogatories by stating:

> 121. Beyond the statements of Messrs. Hoopingarner and McAfee, the Catawba Welding Inspectors previously identified document the approval of faulty workmanship by themselves and their supervision through the improper signing off of inspection records and the voiding, destruction, and overriding of NCI's. The only instances of such approval known to Palmetto are identified in the welding inspector concerns, Attachment 4 to Palmetto's May 25, 1983, Motion. [May 27 Responses at pp. 8-9.]

This response, like the others, provides no specifics. It simply refers to a set of documents. If Palmetto Alliance has decided what specific information it relies on, it has not told the parties "specifically" what that information is. If Palmetto Alliance has not reviewed the information and decided what information it will rely on, then it has not fulfilled its obligations as

---

(footnote continued from previous page)

> 119. If your response to Interrogatory 118 is in the affirmative, please identify the person who gave such approval.
>
> 120. If your response to Interrogatory 118 is in the affirmative, please identify what approval was given for particular tasks.

a responsible party in this proceeding. In either event, Intervenor's response to these and other interrogatories clearly warrants the imposition of sanctions.

The depositions of Messrs. Hoopingarner and McAfee

The Board's May 13, 1983 Order did not require Palmetto Alliance to provide more specific interrogatory responses with respect to the concerns raised by former Duke Power Company employees Nolan Hoopingarner and Ronald McAfee. The Board stated that Palmetto Alliance's earlier responses to interrogatories 5 and 80 were not sufficiently specific. The Board directed Palmetto "to make Messrs. Hoopingarner and McAfee available for depositions." May 13, 1983 Order at pp. 5-6. The Board warned Palmetto Alliance that "[f]ailure on their part to appear and respond fully to questions could result in an exclusion of their testimony in any later hearing." Id., p. 6. Pursuant to the Board's Order, Messrs. Hoopingarner and McAfee were to provide specific information on interrogatories 28-34 (which sought specific information on alleged substandard workmanship and poor quality control, including the actual areas of the plant and the involvement of specific individuals), and interrogatoires 91-93 (which sought specific information regarding the concerns expressed by construction workers).

The depositions of Messrs. Hoopingarner and McAfee demonstrate that they could not provide the specific information required by the Board, and could not state that there were uncorrected instances of substandard workmanship or poor quality control. For example, Mr. McAfee and Palmetto Alliance have repeatedly raised the matter of improperly installed anchor bolts. Mr. McAfee testified in response to questions during his deposition:

> Q. Do you know as a fact whether there are any improperly installed anchor bolts at Catawba today?
>
> A. Not today. I can't say there are today because I haven't been there. If you improperly install an anchor bolt you can knock out the concrete, fill the hole and start again; so it is not something you can't fix.
> [Deposition of William R. McAfee, May 19, 1983, p. 83.]

Mr. Mcafee testified similarly with respect to other alleged substandard workmanship:

> Q. You say work was not pursuant to the blueprints. You told Bobby Land he had a problem and he corrected it; and then you were satisfied and is that an accurate summation?
>
> A. Yes.
> [Id., 93.]

Mr. McAfee did not identify a single instance of poor quality control or substandard workmanship that he contends remains uncorrected.[36] Mr. Hoopingarner was

---

[36] Mr. McAfee testified that problems he observed in construction or quality control were either corrected (footnote continued)

similarly unable to provide specific information. As an example, he testified during his deposition as follows:

> Q. Do you know as a fact whether those welds are correct welds or incorrect welds?
>
> A. No, sir.
> [Deposition of Nolan R. Hoopingarner, Volume II, May 20, 1983, p. 50-51.
>
> * * *
>
> Q. Do you know for a fact that any of the work that was done on the scaffold was done improperly?
>
> A. No, sir.
> [Id., p. 58.][37]

In addition to this clear inability of Messrs. Hoopingarrer and McAfee to provide specific concerns that should be litigated in this proceeding, the depositions clearly demonstrate, contrary to the repeated assertions of Palmetto Alliance, that Messrs. Hoopingarner and McAfee have not reviewed documents provided to Palmetto Alliance during discovery. Palmetto Alliance asserted at the January 12-13, 1982 pre-hearing conference that Messrs. Hoopingarner and McAfee "are ready and able to testify about personal knowledge with respect to construction deficiencies, and they are chomping at the bit to some degree to explain in detail what their concerns have

---

(footnote continued from previous page)
or he does not know if they remain uncorrected and present a safety hazard. See McAfee deposition at pp. 74, 83, 87, 90, 91, 93.

37 See also pages 58-59, and 71 of Mr. Hoopingarner's deposition for other examples.

been." Tr. p. 120. Palmetto Alliance also asserted in its April 28, 1982 Responses to Applicants' Interrogatory 80 that "[a]ccess to records in the possession of Duke Power Company sought in discovery requests served April 20, 1982, is necessary in order to refresh [Messrs Hoopingarner and McAfee's] recollection." April 28, 1982 Responses at p. 13. However, Mr. Hoopingarner testified as follows during his deposition:

> Q. Did you come down to Duke Power Company and review those documents?
>
> A. No, sir.
>
> Q. Have you seen any copies of those documents?
>
> A. I think I have seen a few.
>
> Q. Let me ask you this question. Has anybody said, "Here's some documents that we got from Duke Power Company, and I would like for you to review them."
>
> A. No, sir.
> [Hoopingarner deposition, Volume II, p. 34.]

In addition, Mr. Hoopingarner testified that he has not seen any Supplemental Responses to interrogatories filed by Applicant (Id., p. 32), that he was not aware of documents sent to Palmetto Alliance on April 12, 14, and 29, 1983 (Id., p. 33), that he did not assist in the preparation of Palmetto Alliance's April 29, 1983 Response to Applicants' Interrogatories (including Interrogatory

80) (Id., pp.30-31),[38] and that he was never asked by Palmetto Alliance whether he had any documents relevant to his concerns (Id., p. 34).

Mr. McAfee testified that he did not assist in the preparation of Palmetto Alliance's April 29, 1983 Responses to Applicants' interrogatories (including Interrogatory 80) (McAfee deposition, p. 44) that he was not aware of Applicants' responses to Palmetto Alliance's Followup interrogatories (Id., p. 50), and that he had not seen the documents provided to Palmetto Alliance during April 1983 (Id.,, pp. 63-64). When asked during his deposition if he could identify the specific documents made available by Applicants to Palmetto Alliance during discovery which support his concerns, Mr. McAfee could not do so. Id., p. 63. Curiously, Mr. Guild, counsel for Mr. McAfee and Palmetto Alliance objected to Applicants' inquiry in this regard, alleging an attorney-client privilege.[39] Id., pp. 57-63. During the colloquy between

---

38 While Mr. Hoopingarner was examined concerning his assistance in preparing additional answers to interrogatories, Mr. Guild responded "If it won't hurt, counsel, I will help respond to the question. Counsel nor Palmetto Alliance neither sought Mr. Hoopingarner's assistance with this set of interrogatories." Id., p. 30.

39 This objection is particularly curious in view of the Board's Order directing Palmetto Alliance "to decide what specific pieces of information it intends to rely on, and to tell the other parties specifically what it is." May 13 Order, p. 7. Mr. McAfee's specific

(footnote continued)

counsel concerning the objection to identifying specific documents, counsel for Mr. McAfee stated:

> Mr. Guild: I think the witness has answered the question, and I have stated my position as a party with respect to the vehicle for providing response to the Board's direction, and that would be in the Answers to Interrogatories that are due the 31st of May. [Id., p. 62-63]).

Palmetto Alliance did not provide the specific identification of documents in the May 27, 1983 Responses as directed by the Board.

Finally with respect to Mr. McAfee's deposition, he indicated that he spent approximately three hours at Duke Power Company's office reviewing documents "shortly after Applicants made them available" (Id., p. 50) and that Palmetto had not received "most of the copies we requested yet" (Id., p. 52). This testimony, considered with the testimony that he was not aware of the documents sent to Palmetto Alliance during April, 1983, clearly reflects that Mr. McAfee's review of documents was only cursory at best[40], and that Palmetto Alliance is not fulfilling its

---

(footnote continued from previous page)
identification of documents consisted of "complaints of welding inspectors to supervision in the form of handwritten complaints" (Id., p. 58) and "several notices of violations which I have read." Id., p. 58.

40 Mr. McAfee testified that he did read Applicants' December 31, 1982 Responses to Palmetto Alliance's interrogatories "once." McAfee deposition, p. 49.

obligation as a party to this proceeding. The deposition of Messrs. Hoopingarner and McAfee support the imposition of sanctions.

C. The appropriate sanction is the dismissal of Contention 6

Review of the five factors provided as guidance to the Board by the Commission in its Statement of Policy on Conduct of Licensing Proceedings, supra, supports imposition of dismissal as the appropriate sanction. Each factor is addressed seriatim:

1. The relative importance of the unmet obligation

Palmetto Alliance's unmet obligation with respect to Contention 6 is striking. It simply has not provided any specific information, despite the Board's repeated clear, explicit and direct order to do so.

2. The potential harm to other parties on the orderly conduct of the proceeding

Applicants maintain that Palmetto Alliance's refusal to comply with its discovery obligations would have a serious adverse impact on Applicants and on the orderly conduct of the proceeding.

Palmetto Alliance has consistently refused to respond to Applicants' interrogatories requesting the most basic of information concerning its contention. As a result, the specific nature of critical elements of Palmetto Alliance's contention and the specific evidence on which

it relies remains undisclosed. Applicants find themselves being forced to prepare to meet "any conceivable thrust" Palmetto Alliance might seek to make regarding Contention 6. This is not only patently unfair, but also inconsistent with basic fundamentals of administrative process and orderly conduct of these proceedings.

This Board recognized the unacceptability of this situation when it advised Palmetto Alliance that at the completion of its "right of first discovery . . . the Applicants, the Staff and the Board had every right to expect that responsive answers to basic interrogatories would be forthcoming." May 13, 1983 Order at p. 2.

Furthermore, the prospect of litigating a vague and evasive contention increases the probability that the adjudicatory process will become the critical path item with respect to the timely operation of Catwaba.

3. Whether its occurrence is an isolated incident or a part of a pattern behavior

It is clear from a review of this entire proceeding that Palmetto Alliance's unmet discovery obligations and refusal to comply with Board's Order are not isolated incidents, or even limited to its responses to Applicants' interrogatories on Contention 6. Rather, as shown in this motion, Palmetto Alliance has consistently failed to meet

its discovery obligations on Contention 6 and failed to comply with Board Orders regarding discovery concerning other contentions.

In sum, this factor weighs heavily in favor of severe sanctions against Palmetto Alliance.

4. The importance of the safety or environmental concerns raised by Palmetto Alliance

Based upon the information supplied by Palmetto Alliance, Applicants maintain that it cannot be said that Palmetto Alliance is raising a significant safety matter. Aside from the concerns of Messrs. McAfee and Hoopingarner, Palmetto Alliance has been unable (or unwilling) to provide any specificity to its broad allegations. With respect to Messrs. McAfee and Hoopingarner, their concerns (as set forth in the depositions conducted by Applicants) were shown to be non-existent - neither could say that matters raised by them were left uncorrected and neither could say that the matters raised by them compromised the safe operation of Catawba.

5. All the circumstances involved

The circumstances involved with Contention 6 clearly support imposition of severe sanctions. The specific nature of the contention remains at this late date essentially undisclosed, and Applicants, despite two

motions to compel (which were granted by the Licensing Board's May 13 Order) and two direct Board orders to Palmetto Alliance, are still forced to prepare to meet "any conceivable thrust" that Palmetto Alliance might seek to make based on its general responses to discovery on Contention 6. Palmetto Alliance's Responses must be read in light of its representations that it has "demonstrated diligence in meeting the reasonable obligations of participation in this proceeding" (April 28, 1982 motion for protective order at p. 2); and that it has committed itself to "abide by the spirit of the discovery rules -- to disclose information known to it which bears on the case and thereby avoid trial by surprise" (Id. at pp. 2-3).

Any reasonable analysis of Palmetto Alliance's May 27 Responses shows that it has not exercised diligence during discovery. A weighing of the factors set forth above demonstrates that dismissal of Contention 6 is the appropriate sanction. Dismissal of Contention 6 is consistent with the Commission's guidance that the Board should "attempt to tailor the sanctions to mitigate the harm caused by the failure of a party to fulfill its obligations and to bring about improved future compliance." 13 NRC at 454. Dismissing the contention will assure that Palmetto Alliance does not benefit from

the fruits of its failure to review discovery documents and to disclose basic information regarding this contention. At the same time, such an action would set standards for Palmetto Alliance's future conduct regarding compliance with the Commission's rules and the Orders of this Board. Further, and perhaps most important, dismissing the contention will mitigate the harm caused by Palmetto Alliance's actions by assuring that fundamental elements of the administrative process and the orderly conduct of this proceeding will not be compromised by forcing Applicants and the Staff to defend against an amorphous contention, the scope and direction of which are not defined and are subject to speculation.

D. Conclusion

Based on the matters set forth above, Applicants maintain that Palmetto Alliance's actions regarding Contention 6 warrant the dismissal of this contention. In the alternative, should the Board determine that dismissal is not appropriate, Applicants maintain that Contention 6 should be narrowed to those areas where Palmetto Alliance has provided specifics. See May 13, 1983 Order at p. 5. Such narrowing would leave only the originally-expressed concerns of Messrs. McAfee and Hoopingarner in the proceeding. These concerns are limited to those set forth in their respective depositions of May 19 and 20, 1983.

CONTENTION 7

A. Introduction

In its December 1, 1982 Order (pp. 5-6), the Board admitted Palmetto Alliance's Contention 7, which reads as follows:

> No reasonable assurance can be had that the facility can be operated without endangering the public health and safety because of Duke's consistent failure to adhere to required Commission operating and administrative procedures provided for in Commission rules and regulations. 'The Nuclear Regulatory Commission has the statutory responsibility for prescribing licensing standards to protect public health and safety and for inspecting the industry's activities against these standards. The Commission does not thereby certify to the industry that the industry's designs and procedures are adequate to protect its equipment or operations.' Federal Tort Claim of General Public Utilities Corp., et al., CLI-81-10, 13 NRC 773, 775-776 (1981). At both Oconee and Catawba facilities of Duke Power Company the Systematic Assessment of Licensee Performance Review Group found 'weaknesses in personnel adherence to operating and administrative procedures' and 'failure to follow procedures.' NUREG 0934, Licensee Assessments, August 1981, pp. A-3, B-1. As long ago as 1977 Duke, Licensee for the Oconee facility, was assessed civil penalties of $21,500 where 'the history of repetitive and chronic non-compliance, when considered in conjunction with failure to institute effective corrective action and management controls, demonstrates that management is apparently not conducting licensed activities with adequate concern for the health, safety or interest of its employees or the general public.' Ernst Volgennau, Director, Office of Inspection and Enforcement, USNRC, to Carl Horn, Jr., President, Duke Power Company, March 19, 1977, Docket Nos. 50-269, 50-270, 50-287.

Applicants believe that two primary concerns are reflected in this contention. The first is that Applicants' "consistent failure to adhere to required Commission operating and administrative procedures provided for in Commission rules and regulations" has led them to violate NRC regulations. The second is that Applicants' "track record" at Oconee and McGuire suggests that there is "no reasonable assurance" Applicants can operate Catawba without endangering the public health and safety. The crucial flaw with respect to these issues is that Palmetto Alliance has failed to demonstrate that any of the "failures" and "weaknesses" which are the subject of the contention suggest that the Catawba plant cannot be operated safely. Indeed, it appears to have no support whatsoever for its allegations except the NRC documents cited in the contention.

In its May 13, 1983 Order, the Board stated that "Palmetto's responses to many key questions have been vague, evasive, incomplete or non-existent." As will be demonstrated below, this description is particularly relevant to Palmetto Alliance's discovery responses on Contention 7, which have been consistently inadequate to satisfy the Intervenor's discovery obligations as a party to the proceeding. Applicants therefore submit that, in accordance with the Board's warning to Palmetto Alliance

in its May 13 Order, sanctions against the Intervenor should be imposed. In view of the fact that virtually no substantive information on Contention 7 has been provided by Palmetto Alliance, Applicants submit that the most appropriate sanction with respect to this contention would be its dismissal from the proceeding.

B. Palmetto Alliance has failed to meet its discovery obligations and to comply with Board Orders with respect to Contention 7, and such action warrants the imposition of sanctions

On April 9, 1982, Applicants served upon Palmetto Alliance "Applicants' First Set of Interrogatories and Requests to Produce," which dealt, inter alia, with Palmetto Alliance Contention 7. Those portions of Applicants' interrogatories which are relevant here attempted to elicit from Palmetto Alliance the precise nature of the concerns expressed in Contention 7, and the bases for those concerns. Specifically, these interrogatories sought only the most basic information as to the definition of the material terms in these contentions; the nature and effect of the alleged "consistent failure to adhere to required Commission operating and administrative procedures" and how these occurrences relate to the future safe operation of Catawba; whether Palmetto Alliance contends that the requirements governing these terms are set forth in NRC

requirements and, if so, whether Palmetto Alliance contends that Applicants have not satisfied those requirements; and the technical bases and sources for all of the foregoing information. In addition, general requests for documents were propounded, along with a series of general interrogatories. In sum, Applicants sought only to learn the legal and factual grounds for the concerns raised in Contention 7 -- areas of inquiry which are clearly proper in NRC proceedings.

On April 28, 1982, Palmetto Alliance filed "Palmetto Alliance Responses to Applicants' First Set of Interrogatories and Requests to Produce." From the answers provided in this document, Applicants could only infer that the Intervenor had virtually no information to support its allegations on this contention. For instance, Palmetto Alliance asserted that it lacked "sufficient knowledge to answer"[41] inquiries as to the specific "operating and administrative procedures" referred to in

---

41 In those responses in which it recited that "Intervenor at present lacks sufficient knowledge to answer," Palmetto Alliance further stated that it was "awaiting responses [from Applicants] to its Interrogatories and Requests to Produce served April 20, 1982 with regard to this subject."

As will be demonstrated below, Applicants submit that the information sought in Applicants' Interrogatories relating to Contention 7 was for the most part not contingent upon any data to be supplied by Applicants.

the contention; the activities which these procedures are intended to govern; and the individuals who are to have developed and implemented the procedures.

Moreover, while Applicants' alleged past and present failure to comply with NRC regulations is central to this contention, Palmetto Alliance could not specify which NRC requirements have been violated, the activities causing the regulatory violations, or the time or circumstances of any violation. Nor, when asked questions designed to relate the SALP Review Group findings to the operation of Catawba, could Palmetto Alliance provide a definition of any particular "weaknesses" or "failures to follow procedures," or specify any personnel involved in these "weaknesses" or "failures to follow procedures." Finally, Palmetto Alliance failed to provide the specific bases for any of its responses.[42]

On April 20, 1982, before filing its Responses, Palmetto Alliance served upon the Applicants and the NRC Staff Intervenor's interrogatories concerning, inter alia, Contention 7.[43] Applicants objected to answering these

---

42 Intervenor claimed that it "lacks sufficient knowledge to answer" 22 out of 55 interrogatories; and also thereby avoided answering other questions which depended on an affirmative or negative response to a preceding question.

43 In its interrogatories, Palmetto Alliance asked, among other things, for a detailed description of Duke Power Company's program and procedures for assuring adherence (footnote continued)

interrogatories pending resolution of the Applicants' and Staff's objections to the March 5, 1982 Order (See Applicants' Objections filed May 10, 1982). The NRC Staff also objected to responding (see Staff pleading of May 7, 1982). On December 20, 1982, Applicants filed a motion seeking to compel further interrogatory responses from Palmetto Alliance on, inter alia, Contention 7; or, in the alternative, to dismiss Contention 7. Applicants contended therein that Palmetto Alliance's failure to identify in detail the nature of the concerns reflected in the contention, or to reveal the legal and factual bases for the contention, indicated either a misconception of the purpose and scope of proper discovery in NRC proceedings or a deliberate and continuing disregard of its discovery obligations under NRC rules of practice. The Board subsequently held in abeyance any ruling on this motion until after Palmetto Alliance had been given its "limited 'right of first discovery'" and, based on the

---

(footnote continued from previous page)
to NRC procedures, rules and regulations; a detailed description of the company's personnel training, selection, evaluation and disciplinary measures; a detailed description of each instance of Duke's noncompliance with NRC required procedures and the corrective actions instituted in response thereto; detailed information on all instances in which Duke employees were "warned, counseled, disciplined, transferred, demoted, penalized, suspended or terminated" for noncompliance with procedures; and details of instances of violations, proposed penalties, orders to show cause, or proceedings to modify, suspend or revoke a license.

information obtained therein, had supplied additonal discovery answers on its contentions. See January 20, 1983 prehearing conference, Tr. 805, reflecting the Board's 12/22/82 Order re discovery.

The NRC Staff's attempts to obtain information on Contention 7 through discovery requests to Palmetto Alliance began on an equally unsuccessful note. On May 7, 1982, the Staff filed its "First Set of Interrogatories and Document Production Requests to Palmetto Alliance," which related, inter alia, to Contention 7. On May 26, 1982, Palmetto Alliance responded to these interrogatories and document production requests. As the NRC Staff has noted,[44] "no substantive responses" were provided in this document. Rather, Palmetto Alliance asserted therein that the Staff's interrogatories on this contention were identical or substantially the same as Applicants, and that "all discoverable information sought now by Staff has already been supplied in response to discovery by Applicants."

After the Board lifted the stay of discovery in its December 1, 1982 Order, the Staff filed a December 16, 1982 motion to compel further interrogatory responses from Palmetto Alliance on Contention 7. At the January 20,

---

44 NRC Staff Motion to Compel Full Responses to NRC Staff's First Set of Interrogaotires and Document Production Requests to Palmetto Alliance on Contention 7." December 16, 1982, pp. 1-2.

1983 prehearing conference, the Board indicated that it wished to hold in abeyance any ruling on this motion -- along with that of Applicants -- pending completion of Palmetto Alliance's "right of first discovery" (Tr. 804-806).

During the 4-1/2 months following the Board's December 22, 1982 Order on discovery matters, Applicants and Staff complied with Palmetto Alliance's request to be provided voluminous amounts of information relating to Contention 7. In particular, on December 31, 1982, Applicants responded to Palmetto Alliance's initial interrogatories on, inter alia, Contention 7. (The documents on Contention 7 identified in those responses have been available for inspection and copying since February 15, 1983).[45] On February 28, 1983 Applicants supplied supplemental responses on Intervenor's first set of interrogatories. On March 17, 1983, Palmetto Alliance filed follow-up interrogatories and on March 25 1983, Applicants responded thereto. During this period, the NRC Staff also supplied Palmetto Alliance with discovery

---

45 The documents produced which related to Contention 7 included Duke's Administrative Policy Manual for Nuclear Stations; Station Directives Manual; Management Procedures Manual; Incident Reports, Reportable Occurrence Reports, Quality Assurance audits and IE Inspection Reports documenting instances of non-compliance with NRC regulations; and documents relating to Duke's civil penalties, show cause orders, and license modification orders.

information relating to Contention 7. See the Staff's Responses to Palmetto Alliance Interrogatories and Production Requests on Contention 6 and 7, filed February 17, 1983 (in which the Staff responded to Intervenor's April 20, 1982 interrogatories). See also "NRC Staff Supplemental Response to Palmetto Alliance First Interrogatories and Production Requests on Contentions 6 and 7 (re: General Interrogatory 4)," filed April 8, 1983.

In short, during its "right of first discovery" Palmetto Alliance received from Applicants full and responsive answers to each of its interrogatories and each of its document production requests -- many of which were extremely broad and far-reaching -- except for those requests to which Applicants successfully objected.

On April 19, 1983, Palmetto Alliance filed its Supplemental Responses on Contention 7. These responses presumably reflected all of the information which Intervenor could have obtained during the year since Applicants filed their first set of interrogatories, including answers and documents provided by Applicants and the NRC Staff during Palmetto Alliance's 4-1/2 month opportunity for unilateral discovery. However, despite the ample time afforded Intervenor to formulate its answers, and despite the Board's admonition to Palmetto Alliance that responsive answers would be required, these

Supplemental Responses on Contention 7 were characterized by the same vagueness, evasiveness and overall unresponsiveness found in the Intervenor's earlier answers to discovery filed months earlier.[46]

As noted above, one of the key issues in Contention 7 is Applicants' alleged "consistent failure to adhere to required Commission operating and administrative procedures provided for in Commission rules and regulations," which has led it to violate "applicable NRC regulations." Palmetto Alliance's April 19 Supplemental Responses on questions dealing with this concern were clearly deficient. Intervenor failed, for example, to specify the exact procedures which are the subject of the contention; whom it believes to have developed and implemented the administrative procedures in question; and when the operating procedures were developed and implemented and where these procedures may be found. Nor could Intervenor specify what activities these operating and administrative procedures are intended to govern.

As noted above, Applicants' interrogatories also asked a number of questions about the NRC regulations with which they have allegedly failed to comply. Intervenor's Supplemental Responses in this area were still incomplete,

---

46 A more detailed discussion of Palmetto Alliance's Supplemental Responses on Contention 7 is set forth in Applicants' April 29, 1983 motion to compel, pp. 17-28 of the Appendix.

evasive and/or unresponsive. In particular, Intervenor failed to pinpoint a single NRC requirement (other than §50.57(a)(3)) which it asserts has been violated, despite Contention 7's assertion that Applicants' "consistent failures" to comply with required procedures led them to violate "applicable NRC regulations " in the past and to "remain in noncompliance with applicable regulations." In response to other interrogatories dealing with the alleged regulatory noncompliance which is a primary concern in this contention, (viz., which regulations provide for the procedures which have allegedly been violated, or which activities or "failures" do not meet regulations) Palmetto Alliance merely stated that the answers are "within the knowledge of Applicants."

The second issue which is central to Contention 7 is the relationship of Applicants' "track record" at Oconee and McGuire to its ability to operate Catawba safely. Here again, Palmetto Alliance's April 19 Supplemental Responses were incomplete and evasive, providing virtually no information as to the bases for this contention. Intervenor failed to list any specific instance of the defects alleged to exist in Applicants' "track record," or to provide any explanation of Applicants' "repetitive and chronic" non-compliance with NRC regulations and how this has affected public health and safety. Nor did its

Supplemental Responses explain satisfactorily how the findings of NUREG-0834 on Oconee are predictive of conditions at Catawba. Intervenor's answer to a question asking for an interpretation of the phrase "weaknesses in personnel adherence to operating and administrative procedures" used in the 1981 SALP Report is merely to state "[m]eaning intended by author." Palmetto Alliance also failed to clarify whether or not it contends that these "weaknesses" apply to Catawba. Equally evasive Supplemental Responses were given to interrogatories which seek clarification of important terms. Palmetto Alliance again fails to indicate which "personnel" have failed to follow procedures, and the particular "failures" and "procedures" it had in mind.

On April 29, 1983, Applicants filed another motion to compel dealing, inter alia, with Contention 7. Similarly, on May 4, 1983, the NRC also renewed its December 1982 motion to compel full responses on Contention 7 interrogatories. The Board ruled on these motions in its May 13, 1983 Order. As noted above (see Section A, supra), the tenor of this Order is quite clear. The Board has given Palmetto Alliance one final opportunity to redeem its "seriously deficient" April 19 Supplemental Responses by giving "complete and detailed answers" to those interrogatories as to which the Board granted

Applicants' motion. The Board also put the Intervenor on notice that if "responsive answers are not forthcoming," the Board will consider the imposition of sanctions, up to and including dismissal of the contentions.

On May 27, 1983, Palmetto Alliance filed "Further Supplemental Responses" on Contention 7. An examination of the May 27 Responses (which are discussed below) reveals that the Intervenor has once again ignored the clear directions and admonitions of the Board and has convincingly demonstrated its failure to fulfill its discovery obligations.

Interrogatory 25

Interrogatory 25 asks Intervenor to "specify the NRC regulations which you contend are not met, the activities which you contend do not meet those requirements and the time of such noncompliance." In granting Applicants' motion to compel a further response on this question, the Board stated in its May 13, 1983 Order (pp. 7-8):

> The gravamen of this contention is the alleged "consistent failure" to adhere to proper procedures . . . . Now that discovery is complete, Palmetto is under an obligation to specify just what regulations the Applicants have consistently failed to meet. Palmetto is apparently relying on incidents at other facilities. Thus it is particularly important that the time and place of such incidents be clearly set forth. General references to NRC documents are insufficient. To the extent that Palmetto relies on "regulatory gaps" and 10 CFR 50.57(a)(3), the specific manner in which the Applicants' alleged shortcoming would make operation of the facility dangerous must be

> spelled out. In sum, the information called for by this question is at the heart of Contention 7. It must be supplied or this Contention may be rejected for failure to make discovery.

In its May 27 Response to this interrogatory, Palmetto Alliance states (p. 12) that:

> the only specific regulatory violations upon which Palmetto relies in support of its track record contention are those documented by the NRC and the AEC in their own reports which have been previously identified. Palmetto believes that these identified reports of the NRC reflect the time, place, and details of the incidents of noncompliance. No further information regarding these incidents is now known to Palmetto Alliance.

This answer directly contradicts the Board's explicit admonition that "[g]eneral references to NRC documents are insufficient," and that the "time and place of such incidents be clearly set forth."

This response also highlights Intervenor's failure to adquately pursue discovery on this contention. In this regard, Applicants note that Palmetto Alliance has stated its intent to rely for support of its contention upon the regulatory violations documented by the NRC in "reports . . . previously identified" (that is, the NRC's SALP Reports). Yet in its discovery efforts on Contention 7, Palmetto Alliance never filed a <u>single</u> interrogatory seeking information on the findings of the 1981 SALP Report (or the 1982 SALP Report) as they relate to this contention.[47]

---

47 Intervenor's Interrogatory 26 on Contention 6 asked (footnote continued)

Given the pivotal role which Palmetto Alliance ascribes these documents in Contention 7, its failure to pursue relevant information from the NRC Staff (which complied the Reports) during the six months provided for discovery is most perplexing.

Nor did Palmetto Alliance take the deposition of the NRC Staff member designated as knowledgeable on Contention 7, even though counsel for the Staff had made available Jack Bryant for this purpose (see May 11, 1983 letter from George Johnson, counsel for NRC Staff, to Robert Guild, counsel for Palmetto Alliance). Palmetto Alliance did take the deposition of Mr. Bryant on May 20, 1983; however, the deposition focused on Mr. Bryant's knowledge on Contention 6, not Contention 7.

In sum, Palmetto Alliance's May 27 Responses confirm that it has made no attempt to obtain from the NRC Staff detailed information on the 1981 and 1982 SALP Reports. Rather, Palmetto Alliance confines itself in its Responses to criticizing Duke Power Company's General Manager of Nuclear Stations Gerald Vaughn for indicating during his

---

(footnote continued from previous page)
Applicants to describe the basis for Catawba's "below average" rating in the 1981 Report, and to explain what specific evidence of "weaknesses" in the area of QA were found. In their December 31, 1982 Responses, Applicants objected to this interrogatory and suggested that this question was better directed to the Staff. The Board concurred in its February 9, 1983 order, and the Staff responded to this interrogatory in its February 17, 1983 Responses.

deposition that detailed information on "the bases for the incidents of noncompliance identified by the NRC Staff in the SALP reports" would be better obtained from the NRC Staff which made the findings. Clearly, this conduct emphasizes once again the Intervenor's irresponsible attitude toward discovery.

Intervenor also asserts in its May 27 Response on Interrogatory 25 (p. 10) that Applicants' NRC "track record" on licensing and enforcement "precludes compliance" with §50.57(a)(3). No support is given for this statement. This aspect of Palmetto Alliance's latest attempt to respond to Interrogatory 25 also reflects Intervenor's disregard of the Board's May 13 Order, which states that to the extent Applicants rely upon §50.57(a)(3), "the specific manner in which the Applicants' alleged shortcoming would make operation of the facility dangerous must be spelled out."

Having finally admitted that it has no factual basis for Contention 7 other than the NRC findings reflected in its 1981 and 1982 SALP Reports (which have been discussed selectively and, thus, inaccurately, in all of Intervenor's responses on this contention), Palmetto Alliance attempts to legitimize its position by resorting to innuendos and totally unsubstantiated allegations of ineptitude on the

part of the NRC and coverup attempts on the part of the Applicants. In this regard, Intervenor states (pp. 10 and 12):

> Palmetto Alliance further believes that Duke Power Company's 'track record' with the Nuclear Regulatory Commission and its predecessor likely represents only the tip of the iceberg of Duke's actual history of regulatory infractions in its construction and operation of nuclear power plants. Given the Commission's modest enforcement resources, coupled with the Commission's own short-comings in effectiveness and zeal and Duke Power Company's understandable efforts to evade detection and enforcement, Palmetto Alliance believes that much significant evidence of non-compliance remains undocumented.
>
> The Catawba Welding Inspector revolt, Duke Power Company's internal 'whitewash,' and the Nuclear Regulatory Commission's ultimate acquiescence provides an apt illustration that the official track record of the Applicants belies a history of much more serious regulatory infraction.

These remarks -- clearly designed to raise the Board's concerns that Applicants' "track record" raises serious public health and safety issues which have not yet been "uncovered" by the Intervenor -- constitute another in an ever-increasing series of examples of this Intervenor's irresponsible behavior in this proceeding. Forced to admit that it has no independent evidence to support Contention 7, and faced with its inability to explain how and why the information it <u>does</u> have supports its allegation, Palmetto Alliance has now resorted to a recitation of groundless innuendo in a last-ditch attempt to avoid having this contention dismissed. If one looks behind this

smokescreen, however, it is clear that (1) these allegations, accusations and innuendos are totally unsupported; and (2) they are simply not responsive to the interogatory. Applicants accordingly submit that this section of the interrogatory response warrants no further consideration.

Interrogatory 27

Interrogatory 27 asks Palmetto Alliance to "specify those failures which cause Applicants to remain in noncompliance with NRC requirements." In granting Applicants' latest motion to compel on this interrogatory, the Board stated that "Palmetto must list specific failures that have not been corrected." Despite these clear instructions, Palmetto Alliance merely reiterates in its May 27 Response (p. 13) that Applicants' "track record" constitutes a violation of §50.57(a)(3), that this is the basis for its view that Applicants are in non-compliance with NRC requirements, and that it "has no other information in response to this interrogatory."

This is not a new question; it has been pending since April 9, 1982. Palmetto could have sought specific information as to the "failures" noted in the 1981 NRC SALP Report for the past year via discovery of the NRC Staff. Instead, we are once again provided with nothing more than Palmetto Alliance's bald assertion that Applicants' track

record should be construed as a violation of §50.57(a)(3). Applicants submit that this response can only be read as Intervenor's failure to meet its discovery obligations and its failure to satisfy the Board's May 13, 1983 Order with respect to interrogatory 27.

Interrogatories 1 and 2; 12 and 14

These four interrogatories ask Intervenor to delineate the operating and administrative procedures which it contends are the subject of Contention 7, and to specify the activities which these operating and administrative procedures are intended to govern. In its May 13 Order, the Board stated with regard to interrogatories 1 and 2: "Palmetto must either particularize the 'operating procedures' which it contends are violated, or face the possibility of dismissal of this contention." A similar ruling was given on interrogatories 12 and 14.

Despite the Board's clear instruction to Palmetto Alliance to explain its use of these key terms if it wished to avoid dismissal of Contention 7, Intervenor merely states in its May 27 Responses that it has "no independent information" regarding these operating and administrative procedures. In other words, although Applicants' alleged failure to adhere to these (unspecified) NRC procedures (and, thus, its failure to satisfy NRC regulations) is the

crux of this contention, Palmetto Alliance professes to have learned absolutely nothing about these procedures through discovery.

This is Palmetto Alliance's contention, not the NRC Staff's. In adopting the Staff's language as part of its contention, Palmetto Alliance is endorsing the substance of such language, and should therefore be prepared to tell the Board and the other parties what it means by the terminology in its own contentions. See the May 13, 1983 Order, pp. 8-9. Its failure to do so at this stage of the proceeding constitutes a failure to meet its discovery obligations and to comply with the Board's May 13, 1983 Order.

Interrogatories 44, 45 and 48

These interrogatories seek information as to what the Intervenor intends by the phrase "weaknesses in personnel adherence to operating and administrative procedures," what particular "weaknesses" are allegedly present at Catawba, and what "personnel" have failed to adhere to procedures.

In granting Applicants' motion to compel on these interrogatories, the Board admonished the Intervenor as to number 44, stating that while the phraseology in question is admittedly the Staff's, Palmetto Alliance has "endorsed its substance" by quoting it, and "must say what it means" by this language. May 13, 1983 Order at p. 8. Applicants

submit that Palmetto Alliance has not provided a full and responsive answer to interrogatory 44, as it merely states that it "understands these terms to represent some level of non-compliance by Duke's employees with certain operating and administrative procedures presumably known to the NRC Staff." May 27 Responses at p. 13. Not a single specific example is given. Nor is Intervenor's remark that "[i]t is the NRC Staff's identification of this non-compliance which is significant . . ." (Id.) responsive to the interrogatory.

Intervenor's response to Interogatory 45 is similarly deficient. The Board has specifically told Palmetto Alliance to "be specific" in answering this question. (May 13, 1983 Order at p. 8). Palmetto's response to this Order is to quote the language of the 1981 SALP Report (with which the parties are already familiar) and to add that it "has no further independent knowledge of this subject." In essence, Palmetto Alliance appears to know nothing more about the NRC's findings now than it did 18 months ago when it filed Contention 7. This represents a clear failure to conduct adequate discovery and to provide adequate discovery responses.

In response to interrogatory 48, the Intervenor again merely cites those portions of the 1981 SALP Report which contain the language in question, and states that "Palmetto

has no independent knowledge of the 'group of personnel' who 'have not adhered to operating and administrative procedures.'" May 27 Responses at p. 14. Applicants maintain that this answer is at best only partially responsive to the Board's instruction in its May 13, 1983 Order (p. 8) that, since this is Palmetto Alliance's contention and not the Staff's, "Palmetto must say what it means by 'personnel,' and what group or groups of personnel was involved."

Interrogatories 49, 50, 52, 28 and 54

Similar to the group just discussed, these interrogatories also seek an explanation of material terms in Contention 7. Interrogatory 49 inquires as to what Palmetto Alliance contends is meant by the term "failure to follow procedures;" Interrogatory 50 asks what specific "procedures" are referred to; and Interrogatory 52 asks what particular "failures" Intervenor relies upon. Here again, Palmetto Alliance was directed by the Board that since this is its own contention, it should be prepared to say what it means by its own terminology, and here again, its answer is not responsive. Palmetto Alliance states:

> As should be clear from the earlier responses, Palmetto has no independent knowledge with respect to use of these terms by the NRC SALP Review Board, the underlying factual bases for the NRC SALP Review Board's findings. For purposes of this contention, Palmetto asserts

> that it is the Staff's findings on these matters which are significant in establishing Duke's track record.

(May 27 Responses at pp. 14-15).

Interrogatory 28 seeks to have the Intervenor specify who in Applicants' organization has "consistently failed to satisfy NRC requirements." Interrogatory 54 is similar, seeking to establish the group of personnel who have "failed to follow procedures." Not surprisingly, Palmetto Alliance's answer to these questions is that it "has no independent information" beyond that in the 1981 SALP Report. Applicants submit that in light of its having been given every reasonable opportunity to conduct discovery in this area, Palmetto Alliance's inability to provide an independent explanation of the key terms in its contention suggests a clear failure to fulfill its discovery obligations as a party to this proceeding and a direct failure to respond to the Board's May 13, 1983 Order.

Palmetto Alliance's May 27, 1983 Responses to the NRC Staff's May 7, 1982 interrogatories on Contention 7 corroborate the conclusion that Intervenor has failed to develop any independent evidence on this contention. Interrogatories 12, 13, 14, and 15 seek information very similar to that sought in Applicants' interrogatories on Contention 7. Specifically, these interrogatories ask Palmetto Alliance to identify (1) information indicating

that Duke Power Company has failed to adhere to operating and administrative procedures; (2) the health and safety significance of any such failures; (3) each specific rule and regulation not adhered to; (4) instances of "weaknesses in adherence" to procedures and how each supports the conclusion that NRC regulations have been violated or that Catawba cannot be operated safely. Palmetto Alliance's responses set forth no new information. Rather, Intervenor reiterates that it has no independent knowledge of Applicants' track record, of the NRC regulations not adhered to, or of the NRC Staff's other findings. See May 27, 1983 Responses at pp. 28-29.

In conclusion, Applicants note that Palmetto Alliance has had a unilateral opportunity for discovery on Contention 7 since the Board's December 22, 1982 Order. During this time Applicants and the NRC Staff have made available all of the documents sought by the Intervenor in discovery on Contention 7. Moreover, the two documents on which Palmetto Alliance relies to support its contention -- the NRC's 1981 and 1982 SALP Reports -- have been available to the Intervenor since their issuance in August 1981 and October 1982, respectively. But though Palmetto Alliance has sought and obtained extensive information from the Applicants and Staff through discovery during the past 6 months, it has apparently failed to develop a single

piece of independent evidence on this contention. (This would appear to be a direct result of the fact that Palmetto Alliance asked no interrogatories dealing with the SALP Reports, nor did it take any depositions of knowledgeable NRC Staff witnesses on this contention.) It has also failed on each of three attempts (April 18, 1982, April 19, 1983, and May 27, 1983) to provide full and responsive interrogatory answers to the most fundamental inquiries from Applicants and Staff on Contention 7, despite the Board's warning in its May 13, 1983 Order that the filing of any more "vague, evasive, incomplete or non-existent" responses could result in the Board's narrowing the contention "to areas where specifics have been given" or rejecting the contention altogther.

In short, Intervenor has raised serious questions about its ability and readiness to make any meaningful contribution at all to this proceeding on Contention 7. Applicants submit that given the series of blatantly deficient responses Intervenor has supplied on this contention, and given its failure to redeem itself by using the "last chance" afforded it by the Board to responsibly fulfill its discovery obligations, the imposition of sanctions against the Intervenor regarding Contention 7 is now appropriate.

C. Applicants maintain that the appropriate sanction is dismissal of Contention 7

As discussed, the Commission has suggested that 5 factors are relevant in a licensing board's determination of what actions constitute appropriate sanctions in any given instance. Each of these criteria, as they relate to Contention 7, is discussed below.

1. The relative importance of the unmet obligation

The proponent of a contention has an obligation to structure its discovery responses so that the other parties to the proceeding can narrow and clarify the basic issues in dispute, thereby enabling them to ascertain what they will face at the hearing, and prepare to meet it. An examination of the interrogatory responses it has provided over the last year on Contention 7 clearly reflect that Palmetto Alliance has failed to satisfy this obligation. Moreover, this pattern of behavior is made even more egregious by the Intervenor's failure to heed several earlier Board admonitions and a clear warning in its May 13, 1983 Order that complete and responsive answers must be provided to avoid the imposition of sanctions. As the Appeal Board has recognized, failure to comply with a discovery order "can wholly prevent a proceeding from getting off the ground." Byron, supra, 15 NRC at 1407. (See also section B, supra). In sum, Intervenor's "unmet

obligation" on Contention 7 is extremely significant in terms of the progress of this proceeding, and merits extreme action by the Board if undue prejudice to other parties is to be avoided.

2. The potential harm to other parties or to the orderly conduct of the proceeding

Intervenor's repeated refusal or inability to meet its discovery responsibilities has adversely affected Applicants' ability to understand the exact focus and scope of Contention 7 and to prepare their position on this contention. Palmetto Alliance's conduct will also have a detrimental effect on the litigation of this contention. Even now, after the close of discovery, Applicants know nothing more about this broadly-based "track record" contention than they did after they first read it 18 months ago. Instead, we find ourselves attempting to prepare to meet "any conceivable thrust" which Palmetto Alliance might choose to make at the hearing regarding any conceivable issue which might arise from the broad language of Contention 7 and the NRC's findings in the 1981 and 1982 SALP Reports. Although this is Palmetto's contention, it disclaims any independent knowledge of the particulars and has taken no position on key terms other than to assert that past events "are predictive" of Applicants' ability to operate Catawba. Clearly, to require Applicants to attempt

to defend against this vague and all-inclusive accusation, as to which no specific facts are known, would be "patently unfair and inconsistent with a sound record." Further, litigation of such a broad issue has the potential for extending the hearing, to the detriment of the timely licensing of Catawba. See discussion infra concerning the potential for this licensing proceeding being the critical path item.

3. Whether its occurrence is an isolated incident or part of a pattern of behavior

As is clear from the detailed discussion of the history of discovery on Contention 7, Palmetto Alliance's consistent failure to meet its discovery obligations -- and to comply with explicit Board directions to do so -- reflects a clear pattern of irresponsible behavior in this proceeding. This factor clearly weighs in favor of dismissal of this contention.

4. The importance of the safety or environmental concern raised by Palmetto Alliance

Contention 7 seeks to put in issue Applicants' ability to operate Catawba based upon their "track record" at the Oconee and McGuire plants and their construction record at Catawba. If one looks behind the unsupported allegations made in this contention to the actual substance of the contention, the gaps in Palmetto Alliance's argument become

apparent. The Intervenor has made abundantly clear in its last round of responses that it has no independent evidence to support any of the concerns raised. Accordingly, Palmetto Alliance's entire case on Contention 7 must rest on the findings in the 1981 and 1982 NRC SALP reports to which Intervenor has referred, and to a March 16, 1977 letter from I&E to Duke Power Company.

As to the findings in the NRC's 1981 SALP Report (NUREG-0834), Intervenor has made much of the Staff's statement therein that at Oconee, "the licensee displayed weaknesses in personnel adherence to operating and administrative procedures . . . ." The Staff further stated, however, that the licensee "was responsive to NRC concerns in this area." Even more significant is the fact that the NRC rated operation at Oconee "above average" in its 1981 and 1982 SALP Reports, and rated operation at McGuire "above average" in its 1982 SALP Report. (Palmetto Alliance has never explained how an "above average" rating by the NRC for Oconee and McGuire supports the assertions made in Contention 7.) With regard to the Intervenor's reliance upon the NRC's "below average"[48] 1981 rating for

---

48 In the forward to the 1981 SALP Report, the NRC Staff states:

> A rating of below average does not mean that a facility was unsafe or that its operation or construction should be stopped. The expected performance level for nuclear facilities is high, as

(footnote continued)

construction at Catawba, Palmetto Alliance has never explained how this construction rating (of 2 years ago) is predictive of Applicants' ability to operate Catawba safely. (Applicants believe that such reliance is totally misplaced). As to the 1982 SALP Report, Applicants note that no specific regulatory requirements are listed therein.

With respect to the letter cited, Applicants would note, first, that the civil penalty proposed by the NRC and cited by Palmetto Alliance was reduced from $21,300 to $16,000, and second, that the NRC subsequently modified (in its letter of June 15, 1977) the language in its Notice of Proposed Imposition of Civil Penalties of March 19, 1977 to excise the language cited by Palmetto Alliance with respect to management concern. It is therefore difficult to see how the letter supports Palmetto Alliance's allegations.

Thus while it may appear that significant safety concerns are raised in Contention 7, Intervenor's discovery repsonses reveal that it has no specific evidence to substantiate these allegations. Accordingly, dismissal of this contention is appropriate.

(footnote continued from previous page)
it should be. A rating of below average means that the facility was not meeting the full measure of these high expectations and that, relative to the population of nuclear facilities, the facility's performance was judged to be less desirable than most other facilities.

5. All of the circumstances involved

Applicants maintain that a weighing of these factors clearly supports dismissal of Contention 7 from this proceeding. The obvious importance of the "unmet obligation" to participate responsibly and responsively in discovery; the potential for delay, inefficiency and undue burden upon the other parties created by the Intervenor's behavior, and the detrimental effect which this behavior has had and will continue to have upon the orderly conduct of this proceeding; the fact that Intervenor's egregious conduct reflects a clear and continuing pattern of behavior; and the lack of substantiated allegations to support this contention all suggest that dismissal of this contention is called for. Applicants further submit that, given the present circumstances, a failure to dismiss this contention will allow Palmetto Alliance to benefit from its irresponsible behavior. Intervenor will take every opportunity at the upcoming hearing to air Applicants' "track record" at length without ever offering any affirmative evidence as to why this record demonstrates Applicants' "inability" to operate Catawba safely. The only foolproof manner of tailoring the sanction on this contention to "mitigate the harm caused" by Palmetto Alliance's behavior is to dismiss Contention 7.[49]

---

[49] By letter of June 7, 1983 Applicants are advising the (footnote continued)

D. Conclusion

Based upon the foregoing, Applicants submit that the Board should dismiss Contention 7.

(footnote continued from previous page)
Board and parties of a recent notice of proposed civil penalty regarding Oconee. This matter is not before the Board. Accordingly, absent Palmetto Alliance action, the Board should evaluate this motion on the basis of the information that has been developed in this proceeding through discovery.

CONTENTION 8

A. Introduction

Palmetto Alliance's Contention 8 was admitted to this proceeding by the Board's July 8, 1982 Order. The contention reads as follows:

> Contention 8
>
> No reasonable assurance can be had that the facility can be operated without endangering the public health and safety because the Applicants' reactor operators and shift supervisors lack sufficient hands-on operating experience with large pressurized water reactors. The resumes of Catawba Plant Supervisors show that only a very few of these individuals who will have primary management responsibility for safe operation of the plant, FSAR, Table 1.9-1, p.2, have experience at large PWR's like Catawba. NUREG 0737, Clarification of TMI Action Plan Requirements, I.C.3. Resumes of Senior Reactor Operators and Reactor Operators show similar lack of experience.[50]

As discussed more fully below, Applicants maintain that with regard to Contention 8, Palmetto Alliance has consistently failed to meet its obligations under the Commission's Rules of Practice regarding discovery and has consistently failed to comply with clear and explicit orders of this Board. Accordingly, Applicants submit that sanctions against Intervenor are both warranted and

---

50 As noted by Applicants in the January, 1982 prehearing conference, Palmetto Alliance's references set forth in the contention (i.e., TMI Action Plan Requirement I.C.3 of NUREG-0737 and Table 1.9-1, p. 2 of Applicants' FSAR) have "absolutely no relationship to the contention." (Tr. 130)

necessary. Further, in view of Palmetto Alliance's actions, Applicants submit that in this instance the appropriate sanction that the Board should impose is dismissal of Contention 8.

B. With regard to Contention 8, Palmetto Alliance has failed to meet its discovery obligations and to comply with Board Orders, and such actions warrant the imposition of sanctions

By interrogatories of August 16, 1982, Applicants sought to ascertain from Palmetto Alliance the legal and factual bases for its concerns raised in Contention 8. These interrogatories requested basic information necessary to prepare Applicants' response to Palmetto Alliance's case regarding contention 8, such as (1) the definitions ascribed by Palmetto Alliance to the material terms used in its contention, (2) the precise regulations or TMI-related requirements with which Palmetto Alliance contends Applicants are not in compliance, and (3) the bases for Palmetto Alliance's allegations. In short, by such interrogatories, Applicants were attempting to determine the specific information upon which Palmetto Alliance's case regarding Contention 8 was based.[51]

---

[51] Applicants note that Palmetto Alliance "does not dispute the legitimacy of these areas of inquiry or that such information is properly discoverable." Palmetto Alliance Supplementary Response to Applicants' and Staff's Interrogatories Regarding Palmetto Alliance Contentions 8, 16 and 27. ("Palmetto Alliance's November 5 Supplementary Response") at p.

(footnote continued)

On August 30, 1982, Palmetto Alliance filed answers to Applicants' interrogatories which were vague, evasive, unresponsive and contained virtually no substantive information as to its contention. For example, in response to 33 of Applicants' interrogatories (e.g., the meaning of "hands-on operating experience" (Interrogatory 1) and what Intervenor contended was "sufficient" hands-on operating experience (Interrogatory 8)) Intervenor responded that it "lacks sufficient knowledge to answer." In addition, Palmetto Alliance failed even to mention an additional 25 interrogatories. Further, where answers were given, they were unresponsive and provided virtually no information regarding the issues to be resolved in this proceeding. In short, Palmetto Alliance's responses constituted a complete and direct violation of its discovery obligations under the Commission's regulations.

On September 9, 1982, Applicants filed a motion to compel responses to its interrogatories regarding, inter alia, Contention 8, or in the alternative to dismiss this contention. In granting Applicants' motion to compel,[52]

(footnote continued from previous page)
1. Also, Intervenor asserts "no objection to any of these questions by Duke Power Company on relevance grounds." Id.

52 The Board held in abeyance Applicants' motion to dismiss the contention. Tr. 628.

at the October 8, 1982 Prehearing Conference the Board noted that "Palmetto's responses to a goodly number of those interrogatories were not really responsive, they weren't answers." Tr. 611. Further, the Board stated that:

> You're at fault for filing these one liners. We think that's a faulty response . . . if you don't answer the question[s] or come in with good objections, you may lose this contention, that's possible . . . . [Tr. 621. See also Tr. 630.]

Responding to the Board Order, on November 5, 1982 Palmetto Alliance filed Supplemental Responses relating to Applicants' interrogatories on, inter alia, contention 8. Significantly, Palmetto Alliance's supplemental answers responded to only 16 of the 84 interrogatories previously propounded. Further, virtually all of those 16 responses were evasive, vague and unresponsive (e.g., in response to a request for Intervenor's meaning of the word "sufficient" to describe the amount of "hands-on operating experience" it believes is required to provide reasonable assurance of public health and safety (Interrogatory 7), intervenor's responded "as much as is needed.") Palmetto Alliance's November 5 Supplemental Response at p. 2. In short, Palmetto Alliance's responses constituted a blatant disregard of the Board's clear, direct and explicit order

that under threat of dismissal of its contention the Intervenor must respond to Applicant's interrogatories or provide objections thereto. Tr. 621, 630

On December 7, 1982, Applicants filed a motion requesting sanctions including, inter alia, dismissal of Palmetto Alliance's Contention 8.[53] The Board denied Applicants' motion, while allowing Palmetto Alliance a "first right" of discovery against Applicants and Staff before it was required to answer their interrogatories. The Board set forth a schedule which called for Palmetto Alliance's responsive answers "around the end of March or beginning of April." December 22, 1982 Order at p. 18. In setting such a schedule, the Board stated that Palmetto Alliance's actions presented a "major potential for delay, and that the Board "will take all necessary steps to avoid undue delay," to include imposing sanctions, as appropriate. Id. at p. 15.

On April 19, 1983, for the third time Intervenor provided responses to Applicants' August 16, 1982 interrogatories regarding contention 8.[54] However, despite the

---

53 "Applicants' Response in Support of 'NRC Staff Motion for Sanctions Against Palmetto Alliance for Its Failure to Comply with Board-Ordered Discovery' and Motion, in the Alternative For Reconsideration and Dismissal of Palmetto Alliance's Contentions 8, 16 and 27," December 7, 1982.

54 "Palmetto Alliance Supplemental Responses to Applicants' and Staff's Interrogatories Regarding Contentions 6, 7, 8, 16, 27 and 44," April 19, 1983.

eight months' time which Intervenor had been given to formulate its responses, despite the two previous Board Orders which compelled specific Intervenor responses under threat of sanctions including dismissal of its Contention 8, and despite of Palmetto Alliance's "first right" of discovery, its answers were still vague, evasive and unresponsive. Specifically, Intervenor again failed to provide answers to the most fundamental inquiries, such as why it alleges that Applicants do not meet NRC requirements; the particular regulatory provisions allegedly violated (Intervenor relied only upon 10 C.F.R. §50.57, the broad public health and safety regulation); what experience would constitute "sufficient hands-on operating experience;" or the precise bases for its responses.

In response to yet another motion to compel by Applicants (April 29, 1983), the Board concurred that "Palmetto's responses to many key questions have been vague, evasive, incomplete or non-existent. This is so despite the fact that Palmetto has been given every reasonable opportunity to develop adequate answers to the Applicants' and Staff's interrogatories." May 13, 1983 Order at pp. 1-2. Further, the Board once again admonished Intervenor for its failure to meet its discovery obligations and again directed Palmetto Alliance

to "give complete and detailed answers" or "face the prospect of sanctions" to include dismissal of its contention. Id. at pp. 2-3.

In response to the Board's third clear and direct Order compelling complete and detailed answers to Applicants' initial interrogatories on Contention 8 filed over nine months ago, Palmetto Alliance, on May 27, 1983, filed further supplementary responses. Applicants maintain that such further responses fail to provide "complete and detailed answers" to Applicants' interrogatories and, as set forth in examples below, on the critical questions noted by the Board are again in direct conflict with the Board's clear and explicit orders.

1. In its May 13, 1983 Order, the Board stated as follows:

> In addition, Palmetto must take a position on what it means by its own contentions. E.g., in Interrogatory 8, contention 8, Palmetto was asked what it contended constitutes "sufficient" hands-on operating experience. Palmetto stated that it was "not prepared to establish at this time a level of sufficient hands-on operating experience needed to assure safe operation of the facility." At this stage, particularly after being allowed first discovery, Palmetto must define terms like "sufficient" or face the prospect that its contention may be dismissed. The Board will not force the opposing parties to go to hearing on a contention whose key terms are undefined. [(emphasis supplied) at pp. 3-4].

* * * * * *

> [Interrogatory] No. 8. The motion is granted. A specific definition from Palmetto of what constitutes "sufficient hands-on operating experience" is overdue. Although discovery in this area could have been helpful in determining its view of the proper experience level, the answer should not have been wholly dependent on discovery, because this is presumably a generic question. The Applicants' operators appear to meet all of the NRC's present requirements, and there seems to be nothing else that sets them apart from operators at other facilities. Therefore, in the absence of a clear definition of "sufficient" e.g., two years, three years -- the opposing parties cannot be expected to defend against this amorphous contention. [(emphasis supplied) at p. 9].

In the face of the Board's crystal clear instructions on what Palmetto Alliance must provide or face the dismissal of its contention, Palmetto Alliance in its response to Interrogatory 8 does not even attempt to define what it means by "sufficient" as it relates to the length of operating experience which it views as acceptable. Rather, Palmetto Alliance states as follows:

> Given the fundamental importance of these positions for the safe operation of the plant, we believe that it is reasonable to expect the Applicants, and not the Palmetto Alliance, to articulate a meaningful definition of nuclear power plant experience and assure the public that it's [sic] personnel are qualified. [May 27 Responses at p. 16.]

* * * * * *

> Palmetto Alliance has no further information at this time as to the adequacy of "two years or three years" [NRC Board's May 13 Memorandum and Order] as an appropriate standard for hands-on operating experience. It is Palmetto Alliance's position that the Applicant has the burden of

> demonstrating the adequacy of their personnel's qualifications for protecting the public health and safety pursuant to 10 CFR §50.57(a)(3). Palmetto Alliance believes that the Applicants have not adequately demonstrated ent responsibility is d [sic] [Id. at p. 19].[55]

Significantly, Palmetto Alliance's refusal to define the term "sufficient operating experience" as used in its contention is fatal to the viability of the contention. This point is underscored by the impact that such response has on responses to numerous other interrogatories, e.g., Interrogatories 68 and 83 (in providing instructions to Palmetto Alliance regarding those interrogatories the Board references Interrogatory 8 (May 13 Order at pp. 10 and 11)), and Interrogatory 82 (in which Palmetto Alliance simply references its response to Interrogatory 8). May 27 Responses at p. 20. In short, Palmetto Alliance's refusal constitutes not only a failure to meet its discovery obligations under the Commission's regulations, but also a total and complete violation of the Board's clear instructions set forth in its May 13 Order.

---

55 The response is set forth above as it appears in the document received by Applicants. No corrected version has been received by Applicants as of the filing of this Motion for Sanctions.

2. In its May 13 Order (p. 10), the Board directed Palmetto Alliance to respond to Applicant's Interrogatory 30. In direct disregard of the Board's Order, Palmetto Alliance's May 27 Response did not even address or mention Applicants' Interrogatory 30.

3. In its May 13 Order, the Board directed Palmetto Alliance to respond to Applicant's Interrogatory 38, which requests the "bases for" and "all documents, testimony or oral statements by any person on which you rely in support of your position" that "sufficient hands-on operating experience" as defined by Intervenor is necessary to assure public health and safety. May 13 Order at p. 9. With regard to this interrogatory, the Board further directed that "Palmetto must set out the specific dangers" arising from the lack of such "hands-on experience." Id. The Board stated that "[I]f Palmetto cannot describe those dangers with reasonable specificity, the contention may, upon motion, be rejected." Id.

In its May 27 response (p. 17) to the interrogatory, Intervenor states that two reports resulting from the Three-Mile Island incident have concluded that human errors could potentially result in reactor accidents. Intervenor then states that "Palmetto Alliance believes that hands-on experience is essential to reducing the type of operator errors evident at Three Mile Island. The

consequences of increased operator errors, that is, the failure to meet challenges to plant safety adequately, are fairly obvious . . . ." (emphasis supplied). Id. at pp. 17-18.

Although Palmetto Alliance's response is approximately one page in length, it has once again totally failed to respond to Applicants' question, i.e., what are your bases and support for the concern that presumably more ("sufficient") operating experience is needed? Instead, Palmetto Alliance states the obvious, viz., that human errors may potentially cause accidents, and "increased" operator errors could adversely affect public health and safety. Id. Then, Palmetto Alliance, without providing any bases or support as requested by the interrogatory, simply restates its contention, i.e., it believes that some undefined level of hand-on operating experience is necessary. Id.

In addition, not only did Intervenor fail to provide a complete and detailed response to Applicants' interrogatory, it also completely disregarded the further instructions of this Board that Palmetto Alliance explain with "reasonable specificity" the "specific dangers" associated with the lack of hands-on operating experience beyond the levels set forth in federal requirements to which

Applicants have committed to comply. Rather, Palmetto Alliance notes generally that there may be adverse consequences if "operator errors" increase. Id.

In short, not only has Palmetto Alliance failed to respond to the interrogatories, but it has also completely disregarded the Board's clear instructions set forth in its May 13, 1983 Order.

In conclusion, Palmetto Alliance has had over 9 months in which to formulate its responses to Applicants' interrogatories on Contention 8. Further, during this period, Intervenor has had access to an enormous amount of information relating to its contention, including Applicants' FSAR, Staff regulatory requirements set forth in its guidance documents as referenced in Applicants' FSAR, Commission papers and studies set forth in Applicants' and Staff's pleadings and responses to two rounds of written discovery from Applicants and Staff[56]

---

56 Such discovery included a total of 85 specific interrogatories and requests to produce propounded on Applicants or Staff. See Palmetto Alliance's Second Set of Interrogatories and Request to Produce (September 3, 1982), responded to by Staff on October 19, 1982 and Applicants on September 22, 1982 and February 28, 1983; Palmetto Alliance's Interrogatories and Request to Produce to NRC Staff (January 10, 1983), responded to by Staff on March 14, 1983; and Palmetto Alliance's Follow-up Interrogatories and Request to Produce to Applicant (March 16, 1983), responded to by Applicants on March 25, 1983. Areas of inquiry within Intervenor's discovery requests include operator training and selection; Staff review of operator qualifications and the selections process; Applicants'

(footnote continued)

and information obtained from depositions taken by Palmetto Alliance of Applicants' employees. During this period, Palmetto Alliance has filed four sets of responses. Following each of the first three sets of responses, this Board ruled that such responses were inadequate, particularly with regard to the critical aspects of its contention (such as Palmetto Alliance's definition of the term "sufficient hands-on experience"). Yet it is against these deficiert responses that Applicants must prepare their case. Following each of the first three sets of responses, this Board ordered Intervenor to meet its discovery obligations under threat of sanctions -- including dismissal of Contention 8. Applicants maintain that Palmetto Alliance's fourth try is equally deficient and is clearly in direct conflict with the Board's clear, explicit instructions as noted above.

Given the obvious deficiencies in Palmetto Alliance's responses and its blatant disregard of the Board's Orders, Applicants maintain that this Board should take actions

---

(footnote continued from previous page)
criteria used in training and selecting operators; selection or rejection of specific operators; definitions of specific terms in Applicants' FSAR; identification and qualifications of specific individuals; evaluation of Applicants' training program; upgrade of training programs due to TMI; upgrade of operator qualification due to TMI; relationship between hands-on operating experience and safe operation of a facility; and simulator training.

consistent with its express warnings in each of its three previous Orders on this contention and impose sanctions against Palmetto Alliance regarding its Contention 8.

C. Applicants maintain that the appropriate sanction in this instance is dismissal of Palmetto Alliance's Contention 8

As previously noted, the Commission's Statement of Policy on Conduct of Licensing Proceedings supra, 13 NRC at 454, provides that five primary factors are to be considered in deciding on the appropriate sanctions to be imposed. These factors are addressed seriatim:

1. The Relative Importance of the Unmet Obligation

Applicants maintain that Palmetto Alliance's unmet obligation, its failure to comply with its discovery obligations and failure to comply with three Board Orders regarding discovery, goes right to the heart of and is vitally important to the orderly and systematic conduct of the licensing process. So postured, the relative importance of Palmetto's unmet obligation justifies the most severe of sanctions.

2. The Potential Harm to Other Parties or the Orderly Conduct of the Proceeding

Applicants maintain that Palmetto Alliance's refusal to comply with its discovery obligations would have a serious adverse impact on Applicants and the orderly conduct of the proceeding. Palmetto Alliance has

consistently refused to respond completely to Applicants' interrogatories regarding the most basic of information concerning its contention. As a result, the specific nature of critical elements of Palmetto Alliance's Contention 8 remains undisclosed and Applicants find themselves being forced to prepare to meet "any conceivable thrust" Palmetto Alliance might seek to make regarding its contention. This is not only patently unfair, but also inconsistent with basic fundamentals of administrative process and orderly conduct of these proceedings. See Susquehanna, supra, 12 NRC at 338.

This Board recognized the unacceptability of this situation when it instructed Palmetto Alliance that "[t]he Board will not force the opposing parties to go to hearing on a contention whose key terms are undefined." May 13, 1983 Order at pp. 3-4. Palmetto Alliance has refused to define those key terms to include its definition of "sufficient" -- despite the Board's statement that "in the absence of a clear definition of 'sufficient' -- e.g., two years, three years -- the opposing parties cannot be expected [to] defend against this amorphous contention." Id. at p. 9.

In sum, Applicants concur with the Board's position that Applicants should not and cannot be expected to "defend against [this] amorphous contention." Accordingly, Applicant maintains that this factor weighs in favor of dismissal of Contention 8.

3. Whether its occurrence is an isolated incident or a part of pattern of behavior

As is clear from this entire pleading, Applicants maintain that Palmetto Alliance's unmet discovery obligations and refusals to comply with Board Orders are not isolated incidents. Nor is Intervenor's behavior confined to its responses to Applicants' interrogatories regarding Contention 8. Rather, as set forth in this motion, Palmetto Alliance has consistently failed to meet its discovery obligations and failed to comply with Board Orders regarding discovery concerning other contentions.

In sum, this factor weighs in favor of dismissal of this contention.

4. The importance of the safety or environmental concerns raised by Palmetto Alliance

Palmetto Alliance's concern regarding this contention revolves around the qualification of Applicants' operators. Significantly, as the Board recognized, Palmetto Alliance does not contend that Applicants are not committed to comply with, or will not meet, all NRC requirements in this area and, in essence, will have

operators as qualified as those at every other facility. May 13, 1983 Order at p. 9. See also Applicants' FSAR at Sections 1.9, 13.1.3 and 13.2 and SER Sections 13.1.3 and 13.2. Further, Palmetto Alliance does not challenge the sufficiency of, or whether Applicants will meet, TMI requirement I.A.2.1 set forth in NUREG-0737 regarding operator or senior reactor operator experience qualifications. Palmetto Alliance's Supplementary Responses of April 19 at p. 46-47 (Response to Staff Interrogatory 6).[57] Since Applicants will be in compliance with such regulatory requirements and since Palmetto Alliance apparently does not challenge their sufficiency, Applicants maintain that the concerns raised by Palmetto Alliance are not of such vital safety significance as to weigh against harsh sanctions.

This is especially the case where, as here, the Commission has extensively reviewed the subject of operator qualification and has not found the area to be of such extreme safety significance as to require emergency

---

[57] Applicants note that in admitting Contention 8 the Board stated that it was a "close question." July 8, 1982 Order at p. 4. However, because the Commission's Policy Statement on litigation of TMI issues authorized litigation of contentions which questioned the sufficiency of NUREG-0737 requirements, Palmetto Alliance's Contention 8 was admitted. Id. at p. 4-5. As noted above, in that now Palmetto Alliance apparently states that it does not contest the sufficiency of such TMI-related requirements, Applications question whether this contention raises a issue subject to litigation in this proceeding.

actions pending completion of its ongoing rulemaking process. (See e.g., SECY 80-491, Proposed Rulemaking, "Qualification of Reactor Operators" (November 4, 1980); SECY-81-34 and 84A, Staff Requirements, Discussion of Revisions to Reactor Operator Qualifications (June 15, 1981)).[58]

5. All the Circumstances Involved

Applicants maintain that the circumstances surrounding this contention warrant severe sanctions. With regard to Contention 8, Intervenor has submitted a skeletal contention and then -- through its failure to meet its discovery obligations -- kept the details and bases of its contention secret. As a result, the critical

---

58 Applicants also note that pursuant to Section 306 of the Nuclear Waste Policy Act of 1982, (Public Law 97-425, 42 U.S.C. 10101) Congress directed that by January 7, 1984, the NRC is to "promulgate regulations, or other appropriate Commission regulatory guidance, for the training and qualifications of civilian nuclear power plant operators, supervisors, technicians and other appropriate operating personnel." Since by mandate of Congress operator qualification, the subject of Palmetto Alliance's Contention 8. is about to become the subject of rulemaking, Applicants maintain that this issue may be appropriate for generic resolution. Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), ALAB-655, 14 NRC 799, 816 (1981); Union Electric Company (Callaway Plant, Units 1 and 2), ALAB-352, 4 NRC 371, 373-4 (1976); Wisconsin Electric Power Company (Point Beach Nuclear Plant, Unit 2), ALAB-78, 5 AEC 319, 325-6 (1972). Since the concerns expressed by Contention 8 are generic in nature, Applicants maintain that they could be appropriately resolved in the upcoming generic rulemaking proceeding. In short, the dismissal of Palmetto Alliance's contention does not appear to leave Intervenor without a forum to air its generic concerns.

issues regarding Contention 8 have not yet been disclosed, much less narrowed and refined as is the purpose of discovery. Such practice is "patently unfair, and inconsistent with a sound record." Byron, supra, 15 NRC at 1417. Accordingly, the circumstances surrounding Palmetto Alliance's actions regarding Contention 8 weigh in favor of dismissal of the contention.

Applicants submit that dismissal of Palmetto Alliance's Contention 8 is consistent with the Commission's guidance that the Board should "attempt to tailor the sanctions to mitigate the harm caused by the failure of a party to fulfill its obligations and to bring about improved future compliance." 13 NRC at 454. Dismissing the contention will assure that Palmetto Alliance does not benefit from its failure to disclose basic information regarding this contention, while at the same time setting standards for Palmetto Alliance's future conduct regarding compliance with the Commission's rules and the Board's Orders. Further, and perhaps most important, dismissing the contention will mitigate the harm caused by Palmetto's actions by assuring that fundamental elements of the administrative process and the orderly conduct of this proceeding will not be compromised by

forcing Applicants and the Staff to defend against an amorphous contention whose scope and direction are ill defined and subject to speculation.

D. Conclusion

From the foregoing, Applicants maintain that Palmetto Alliance's actions regarding Contention 8 warrant the dismissal of this contention.

CONTENTION 16

A. Introduction

Palmetto Alliance's Contention 16, admitted by the Board's July 8, 1982 Order, is as follows:

> 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. [at pp. 7-8].

Applicants interpret the contention to mean that the storage of Oconee and McGuire spent fuel at Catawba poses a threat to public health and safety.[59]

As discussed more fully below, Applicants maintain that with regard to Contention 16, Palmetto Alliance has consistently failed to meet its obligations under the Commission's Rules of Practice regarding discovery and consistently failed to comply with clear and explicit

---

59 See December 22, 1982 Order at p. 22, wherein the Board recognized that "it is not unreasonable for the Applicants to place their own interpretation on the contention." See also p. 19.

orders of this Board. Accordingly Applicants maintain that sanctions against Intervenor are both warranted and necessary. Further in view of Palmetto's actions, Applicants submit that the appropriate sanction in this instance is dismissal of Contention 16.

B. With regard to Contention 16, Palmetto Alliance has failed to meet its discovery obligations and to comply with Board Orders, and such actions warrant the imposition of sanctions

On August 19, 1982, Applicants served interrogatories upon Palmetto Alliance seeking the legal and factual bases for its concerns raised in Contention 16.[60] These interrogatories requested basic information necessary to prepare Applicants' response to Palmetto Alliance's case regarding Contention 16, such as Palmetto Alliance's definitions of key terms (i.e., what is encompassed by "storage," "safe storage," and "have not demonstrated"); why the Intervenor contends that Applicants have not demonstrated their ability to store spent fuel safely; whether it believes that NRC requirements have not been met, and/or that such standards are inadequate; and if Palmetto Alliance believes that other standards should be met. In short, by such interrogatories, Applicants were

60 The Staff served interrogatories on Palmetto Alliance regarding Contention 6 on August 13, 1982.

attempting to determine the specific information upon which Palmetto Alliance's case regarding Contention 16 was based.[61]

On August 30, 1982, Palmetto filed a one page response to Applicants' 48 interrogatories. This response was vague, evasive, unresponsive and contained virtually no substantive information. Specifically, these responses fell into one of four categories:

a. "Common meaning" (in response to a request for definition of fundamental terms used in its contention); or

b. "Intervenor at present lacks sufficient knowledge to answer"; or

c. A general reference to a group of documents identified elsewhere in the response[62]; or

d. "Intervenor believes answer within knowledge of Applicants."

In short, Palmetto Alliance's responses fell far short of the Commissions' discovery requirements.

---

61 Applicants note that Palmetto Alliance "does not dispute the legitimacy of these areas of inquiry or that such information is properly discoverable." Palmetto Alliance Supplementary Response to Applicants' and Staff's Interrogatories Regarding Palmetto Contentions 8, 16 and 27 ("Palmetto's November 5 Supplementary Response") at p. 1. Also, Intervenor asserts "no objection to any of these questions by Duke Power Company on relevance grounds." Id.

62 The Appeal Board has recently ruled that interrogatory answers which respond to a request for specific information by referring to a list of documents will not suffice under NRC discovery rules. Byron, supra, 15 NRC at 1421, n.39 (1982).

On September 9, 1982, Applicants filed a motion to compel responses, inter alia, to its interrogatories regarding Contention 16, or in the alternative to dismiss this contention.[63] In ruling on Applicants' motion at the October 8, 1982 prehearing conference, the Board noted that "Palmetto's responses to a goodly number of those interrogatories were not really responsive, they weren't answers" Tr. 611. In granting Applicants' motion to compel,[64] the Board stated as follows:

> You're at fault for filing these one liners. We think that's a faulty response . . . if you don't answer the question[s] or come in with good objections, you may lose this contention, that's possible . . . . [Tr. 621. See also Tr. 630.]

Responding to the Board Order, on November 5, 1982, Palmetto Alliance filed a 9 line supplemental response regarding Applicants' interrogatories on, inter alia, Contention 16 which consisted of responses to only 6 of the interrogatories previously propounded. These 6 responses simply provided skeletal definitions of terms used by Palmetto Alliance in its contention. No information concerning the bases for the contention or the

---

63 On September 15, 1982 the Staff filed a motion to compel inasmuch as Palmetto Alliance's response to the Staff's interrogatories was to direct the Staff to Palmetto Alliance's responses to Applicants' interrogatories.

64 The Board did not reach Applicants' motion to dismiss the contention. Tr. 628. The Board granted the Staff's motion to compel at Tr. 655.

regulations alleged to be violated was provided. Thus, Palmetto Alliance's November 5 responses constituted its first blatant disregard of the Board's clear, direct and explicit order that under threat of dismissal of its contention, Palmetto Alliance must respond to Applicants' interrogatories or provide objections thereto. Tr. 621.

On September 27, 1982 Palmetto Alliance had filed 151 interrogatories seeking extensive information concerning the spent fuel pool and Applicants' ability to handle and store spent fuel therein.[65] See Palmetto Alliance's third set of Interrogatories to Applicants and Staff, September 27, 1982. On October 19, 1982, Applicants responded to all relevant questions referring Palmetto Alliance to, inter alia, specific sections of the FSAR. In addition,

---

65 Palmetto Alliance's interrogatories inquired into, inter alia, the design of the spent fuel pool, loading conditions and combinations, protection from natural phenomena, support systems such as ventilation, cooling, filtration, and maintaining (radiation and water level), separation of cask storage area from spent fuel pool, pool leak rate, criticality analysis, rack description, insertion of fuel, quantity of fuel to be stored, shielding requirements, regulatory requirements, fuel pool liner, description of fuel handling of Oconee and McGuire spent fuel at Catawba, description of Oconee and McGuire spent fuel and storage characteristics, boration of water, loss of power, heat loads and the impact of Oconee and McGuire spent fuel on such, fuel handling equipment, training, worker protection, groundwater contamination, cask contamination, and seismic considerations. These interrogatories were also served on the Staff.

Applicants made the documents identified in the October 19 Responses available to Palmetto Alliance for inspection and copying on November 1, 1982.[66]

On December 7, 1982, Applicants filed a motion requesting sanctions including dismissal of, among others, Palmetto Alliance's Contention 16 on the basis that the responses received from Palmetto Alliance were so deficient as to warrant the relief sought.[67] The Board denied Applicants' and Staff's motion. It also granted Palmetto Alliance a "first right" of discovery on this contention and set forth a schedule which called for Palmetto Alliance's complete responses to Applicants' and Staff's August 1982 interrogatories "around the end of March or beginning of April [of 1983]." December 22, 1982 Order at p. 18.[68] [69] The Board further stated that

---

66 The Staff responded on December 15, 1982. It is interesting to note that on January 28, 1983, Palmetto Alliance moved to compel responses from Applicants and Staff on all the admitted contentions except Contention 16 -- a clear indication of Palmetto Alliance's acknowledgment of the thoroughness of Applicants' and Staff's responses on this matter.

67 On November 22, 1982 the Staff had also moved for the sanction of dismissal of Contention 16, inasmuch as the Staff had received no response whatsoever to its August 13, 1982 discovery requests on Palmetto Alliance.

68 The Board denied the Staff's motion for sanction "without prejudice to its renewal . . ." Id. at p. 16.

69 In denying Applicants' and Staff's motions the Board acknowledged that their interrogatories were proper

(footnote continued)

"[s]anctions will be imposed here, if warranted and as appropriate. Id. at p. 15.

On March 16, 1983, Palmetto Alliance filed five follow-up interrogatories.[70] On March 25, 1983, Applicants responded to these interrogatories.

As of December 22, 1982, Palmetto Alliance had had since October 19 to review Applicants' responses to its interrogatories, and since November 1 , 1982 to inspect and make copies of all documents identified in those responses. On April 19, 1983, pursuant to the Board's Orders of December 22, 1982, and February 9, 1983 (as modified by the grant of several extensions of time) Intervenor provided responses to Applicants' August 16, 1982 interrogatories regarding Contention 16.[71] However, despite the Board's direct instructions to give responsive answers (see December 22, 1982 Order at p. 16), despite the threat of sanctions (Id. at p. 15), and despite the eight months' time which Intervenor had had to formulate its responses, the responses were still vague, evasive and

---

(footnote continued from previous page)
and that Palmetto Alliance's answers had not been responsive. Id. at pp. 3-4.

70 These interrogatories sought information concerning cask drop, premature removal of spent fuel cask lid, boil off, hydrogen generation and maintenance of boron concentration levels.

71 Palmetto Alliance also purported to respond to outstanding Staff interrogatories in the April 19, 1983 pleading.

unresponsive. Specifically, Intervenor again failed to provide answers to the most fundamental inquiries, such as why Applicants allegedly do not meet NRC requirements; the particular regulatory provisions allegedly violated (Intervenor relied only upon 10 C.F.R. §50.57, the broad public health and safety regulation); why the storage of Oconee and McGuire spent fuel at Catawba poses a threat to public health and safety; or the precise bases for its responses.

Palmetto Alliance's April 19, 1983 responses can be categorized as follows:

a. A general reference to the mass of documents cited in its August 30, 1982 answers plus four additional documents: the SER, Applicants' April 2, 1982 letter to NRC regarding storage of non-Catawba spent fuel at Catawba; Applicants' 1976 heat load analysis; FSAR Part 9.1.2.

b. Concern that the enlarged spent fuel pools at Catawba have not been considered in an adjudicatory proceeding.

c. General reference to 10 C.F.R. §50.57(a)(3)(i.e., the general public health and safety regulation).

d. Allegations that

- radiation will be released due to the inability of cooling trains to operate due to loss of onsite/offsite power;

- a spent fuel cask could be dropped into the spent fuel pool;

- inadvertent removal of unshielded cask lids may occur;

- a spent fuel cask could be dropped in cask handling area; and

- that aircraft crashes pose a threat to the integrity of the spent fuel pool.

e. Definition of terms.

f. Reference to General Design Criteria 2, 4, 44, 60-64.

Each is addressed below:

a. As noted earlier, a mere reference to documents such as those identified in "a" above cannot suffice. See n.13, supra.

b. With respect to the concern that the enlarging of the spent fuel pool requires an adjudicatory proceeding, this Board has already rejected such an argument. See March 5, 1982 Order at pp. 19-20, rejecting Contention 38 as a separate issue. In any event, such an allegation is beyond the scope of this contention, which, as noted, is limited to safety concerns associated with the storage of Oconee and McGuire spent fuel at Catawba. This allegation is not directed to Oconee or McGuire spent fuel; rather, it reflects a general concern over the size of the spent fuel pool, a matter which the contention does not even purport to address.

c. As to Palmetto Alliance's reference to 10 C.F.R. §50.57(a)(3), it is Applicants' position that such simply is insufficient. (See December 22, 1982 Order at pp. 13-14) a point on which the Board agrees. See May 13, 1983 Order at p. 3.

d. As to the specific allegations, such are simply a recitation of accident scenarios (i.e., loss of onsite/offsite power, cask drop, airplane crash). Palmetto Alliance has failed to provide any specificity whatsoever to support these allegations, despite Applicants' specific request for such information. See, i.e., Interrogatory 46, wherein Applicant asked:

> With regard to Interrogatory 45, identify specifically those circumstances which you contend demonstrate Applicants lack of ability to safely store 'irradiated fuel assemblies' from 'other Duke nuclear facilities' at the Catawba spent fuel storage pool. For each such circumstance, explain why you contend it demonstrates Applicants lack the ability to safely store 'irradiated fuel assemblies' from 'other Duke nuclear faciliites' at the Catawba spent fuel storage pool.

Applicants would make the following observations with respect to the accident scenarios advanced:

Loss of onsite/offsite power.

Palmetto Alliance failed to specify why this issue is unique to the storage of Oconee and McGuire spent fuel at Catawba. Absent such a showing, the allegation cannot be said to be within the scope of Contention 16. Further,

Palmetto Alliance has failed to present any specificity whatsoever to support its allegations. Most importantly, in its initial submittal of contentions on December 9, 1981 Palmetto Alliance raised the issue of loss of onsite power with respect to the diesel generators. See p. 13, Contention 18. As with the instant situation, Palmetto Alliance provided no specificity to support such an allegation. As a result, this Board dismissed the allegation of loss of onsite power (i.e., the diesel generators) as "fatally vague." See December 1, 1982 Order at p. 5. Upon reconsideration of the issue, the Board stated:

> In response now to specific objections to our rejections of Palmetto Contention 18 and CESG 17, we have once again (and for the last time) considered these two contentions and we conclude, once again, that they are not sufficiently specific.
>
> Palmetto 18 alleges, in substance, that the plant's diesel generators do not meet sufficiently stringent safety standards, but no particulars are given. One is left to guess about what is allegedly wrong with this equipment. The Applicants' onsite power systems, including the diesel generators, are discussed at some length in Section 8.3 of the FSAR. The contention cites this section, but does not specify any alleged deficiencies in it. [February 2, 1982 Order at p. 2 (emphasis added)].[72]

---

72 In response to a Palmetto Alliance interrogatory (number 73) concerning loss of onsite/offsite power, Applicants objected. See Applicants' Response of October 19, 1982 at pp. 30-31. Palmetto Alliance moved to compel and the Board in general terms denied (footnote continued)

Given the nature of the issue, this Board's rulings must be viewed as controlling.

Dropping of cask into spent fuel pool.

Palmetto Alliance failed to provide any specifics which would support the contention. Nor can it. As Applicants' answers to Palmetto Alliance Interrogatory 1 (March 25, 1983) show (by reference to FSAR Section 9.1.2.3) it is physically impossible for the cask to fall into the spent fuel pool. The NRC Staff has reached a similar conclusion. SER §9.1.5. Palmetto Alliance fails to specify any deficiency in Applicants' FSAR analysis or the NRC Staff's SER analysis. Such failure renders this aspect of the contention fatally vague and demonstrates that there is no basis for this aspect of the contention.

Inadvertent removal of the unshielded cask lid and dropping of cask outside of spent fuel pool.

Again, Palmetto Alliance failed to provide any specificity which would support the contention, despite the fact that Applicants have described the procedures they would utilize in handling the Oconee and McGuire spent fuel. See Applicants' Response (October 19, 1982) regarding Interrogatories 37, 110-113.

(footnoce continued from previous page)
such request. See December 22, 1982 Order at pp. 22-23.

Airplane crash.

Palmetto Alliance failed to set forth a credible accident scenario regarding a airplane crash. Palmetto Alliance previously sought to raise such a contention (see Contention DES 16 filed on September 22, 1982 at pp. 9-10) and it was rejected. See December 1, 1982 Order at pp. 20-21. This Board ruling controls this aspect of this contention and thus it must be rejected.

e. An examination of the definitions provided by Palmetto Alliance fails to disclose the specific nature of the contention.

f. Palmetto Alliance's reference to General Design Criteria 2, 4, 44, 60-64 are mere statements without any explanation whatsoever.

As a result of the paucity of information contained in Palmetto Alliance's April 19, 1983 Responses, Applicants filed a motion to compel on April 29, 1983. In ruling on this motion, the Board concurred that "Palmetto's responses to many key questions have been vague, evasive, incomplete or non-existent. This is so despite the fact that Palmetto has been given every reasonable opportunity to develop adequate answers to the Applicants' and Staff's interrogatories." May 13, 1983 Order at pp. 1-2. Thus, responding to Palmetto Alliance's third bite at the apple, the Board once again admonished

Intervenor for its failure to meet its discovery obligations and again directed Palmetto Alliance to "give complete and detailed answers" or "face the prospect of sanctions" to include dismissal of its contention. Id. at pp. 2-3.

In response to the Board's third clear and direct Order compelling complete and detailed answers to Applicants' initial interrogatories on Contention 16 filed more than nine months ago, Palmetto Alliance, on May 27, 1983, filed further supplementary responses. Applicants maintain that the May 27 Responses fail to provide "complete and detailed answers" to Applicants' interrogatories. Moreover, as set forth in the discussion below, on the critical questions noted by the Board these responses are again in direct conflict with the Board's clear and explicit orders.

1. In its May 13, 1983 Order, the Board directed Palmetto Alliance to

> specifically address in its response each of the design criteria cited in its response to Interrogatory 11. Why does it allege that these design criteria are not being met?

In response, Palmetto Alliance alleges that General Design Criteria 2 and 4 have not been met because the impact of an airplane crash has not been evaluated. As discussed, this allegation has no relationship to the contention as admitted, i.e., storage of Oconee and McGuire spent fuel

at Catawba, and thus must be viewed as non-responsive. More importantly, as noted, this Board has already rejected such an allegation. Palmetto Alliance's continued attempts to reintroduce this allegation into the proceeding in the face of specific Board orders to the contrary must be viewed as a deliberate attempt to flaunt the Board's direction. Sanctions are therefore warranted.

Palmetto Alliance alleges that General Design Criterion 61 has not been met because written procedures do not exist with respect to fuel handling regarding the inadvertent removal of cask lids. As Applicants have stated in response to Palmetto Alliance's Follow-Up Interrogatory 2:" Procedures will be implemented to prevent premature removal of a spent fuel cask lid. Those procedures are not yet completed." Applicants' Responses of March 25, 1983 at p. 34.

Applicants submit that the simple lack of a procedure at this stage in the licensing process does not constitute grounds for a contention (particularly in light of the fact that it will be years, if ever, before fuel from Oconee and McGuire is received at Catawba). See Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2), Memorandum and Order of May 11, 1983, wherein the Licensing Board found that the fact that Applicants had not yet developed a system, but had

committed to comply with the relevant regulatory guidance, warranted the dismissal of a contention. Slip op. at pp. 12-14. The Board appears to have placed emphasis on the fact that "[n]o evidence has been offered to cause the Board to question the credibility of this committment." Id. at p. 14.

This is the precise situation in this case. Applicants are confronted with no more than a bald allegation that procedures do not exist and thus GDC 61 has not been met. This is plainly insufficient Palmetto Alliance was obligated in its response to state why it believes Applicants will be unable to promulgate such procedures, and then relate such flawed or absent procedures to GDC 61. Moreover, Applicants maintain that Palmetto Alliance was further obligated, in its assertion with respect to Applicants' inability to promulgate procedures, to explain why such could not be done at Catawba when similar procedures already exist at Oconee and McGuire. In the absence of such a showing, Palmetto Alliance's contention must be dismissed for failure to make discovery. In the alternative, the most that Palmetto Alliance can hope to salvage from this allegation is that it be narrowed to focus solely on Applicants'

ability to promulgate fuel handling procedures as they relate to the premature removal of the lid of the spent fuel cask.

Palmetto Alliance contends that General Design Criterion 62 has not been satisfied "since the possibility of a cask dropping onto the fuel assemblies is a significant threat to the prevention of criticality in fuel storage and handling."[73] May 27 Responses at p. 24. As noted, Applicants' FSAR analyses demonstrate (FSAR Section 9.1.2.3) that it is physically impossible for the cask to drop into the spent fuel pool, and they have so informed Palmetto Alliance. See Applicants' March 25, 1983 Response at p. 34. The NRC Staff has reached a similar conclusion in its SER at SER Section 9.1.4. The reason for the assertion now advanced by Palmetto Alliance is that cask handling crane rails extend over the spent fuel pool and thus when operational, the crane carrying a cask could traverse the spent fuel pool.[74] As noted in

---

73 Palmetto Alliance has not raised a cask drop in the fuel handling area, although it did in a prior discovery response. See April 19, 1983 Response at p. 52. Accordingly, this scenario must be viewed as waived.

74 Palmetto Alliance's reference to the depositions of Applicants' witnesses on this subject is unclear. It appears that Palmetto Alliance is attempting to convey the impression that uncertainty exists with respect to the range of the cask handling crane. To clear up any confusion, the original design called for the cask handling crane rails to stop short of the spent fuel

(footnote continued)

both in the FSAR (Section 9.1.4.2.3) and the SER (Section 9.1.5), the cask-handling crane will be prevented from traveling over the spent fuel pool by mechanical stops.[75] Given Palmetto Alliance's continuing and total disregard of the facts, coupled with its failure to make any showing that the mechanical stops will not be effective,[76] Palmetto Alliance's position on this matter must be viewed as obstructionist and thereby deserving of the sanction of dismissal for failure to make discovery. In the alternative, the most that Palmetto Alliance can salvage as an issue should be whether the mechanical stops will be effective to prevent the crane from traversing the spent fuel pool.

Palmetto Alliance maintains that General Design Criteria 44, 61 and 62 will not be met because the water temperature of the pool could reach "dangerous levels."

(footnote continued from previous page)
pool area. However, during construction it was determined that the cask handling crane could be used to assist in the construction of the spent fuel pool. Accordingly, the rails were extended over the spent fuel pool area. However, prior to operation, mechanical stops will be in place which will physically prevent the cask from traversing the spent fuel pool area. As noted in the text, Applicants' FSAR reflects this commitment.

75 Applicants informed Palmetto Alliance of this fact in their October 19, 1982 Responses at pp. 42-43.

76 This Board clearly instructed Palmetto Alliance that it "must state factual specifics." May 13, 1983 Order at p. 2.

May 27 Response at p. 25. Palmetto Alliance advances two grounds in support of this ascertion: first, the cooling system cannot accommodate the expanded spent fuel pool; and second, loss of on-site and off-site power will cause the temperature of the water in the spent fuel pool to rise. With respect to the adequacy of the in-place cooling system, Applicants maintain that such is unrelated to the Oconee/McGuire spent fuel storage issue, which of course is the subject of the contention. Rather, the matter relates to the adequacy of the spent fuel pool in general -- a matter not the subject of this proceeding.[77] As such, this allegation should be stricken. In any event, Palmetto Alliance fails to acknowledge that Applicants' FSAR (Section 9.1) sets out in detail a heat load analysis of the Catawba spent fuel pool which

---

77 In response to Applicants' Follow-up Interrogatories (attached to Palmetto Alliance's Supplementary Responses of May 27, 1983 at p. 30), Palmetto Alliance alleges for the first time that

> the probability of this boil-off occurring is greater because of the increased heat load that will prevail at Catawba now that Oconee, McGuire and Catawba spent fuel assemblies will be stored there.

Inasmuch as this matter was not raised in Palmetto Alliance's May 27, 1983 Response to Interrogatory 13, the interrogatory which this Board ordered Palmetto Alliance to respond to, Palmetto Alliance should not be permitted to raise the issue. Alternatively, if the cooling issue is narrowed as suggested by Applicants, only heat loading associated with Oconee and McGuire fuel could be entertained.

demonstrates that the cooling system is fully adequate to handle postulated heat loads under all design basis conditions. The NRC Staff has reached a similar conclusion. SER Section 9.1.3. In light of these analyses, Palmetto Alliance is plainly required to specify what defects it believes are contained therein. Absent such specificity (which is the case), the contention must be dismissed for failure to make discovery. In the alternative, the most that Palmetto Alliance can salvage as an issue is the inadequacy of the cooling system to maintain the water temperature of the spent fuel pool at a level which will not compromise public health and safety.[78]

---

78 This issue should not be broadened to include loss of total cooling; that issue is discussed infra. However,the loss of one cooling train could be included.

In Responses to Applicants' Follow-up Interrogatories (attached to Palmetto Alliance's Supplementary Responses of May 27, 1983 at pp. 30-31), Palmetto Alliance alleges that the liner plate may "buckle and rupture." For support, Palmetto Alliance relies upon the deposition of Applicants' witness Lowell Snow. (Palmetto Alliance is confused. The person answering these questions was Mike Green.) Mr. Green did not say the liner would rupture. What he did say was that if the water in the spent fuel pool exceeded a temperature of 150 degrees F, the liner plate might buckle. However, he did not say that such buckling would lead to rupture of the liner and water leaking from the spent fuel pool. Regardless, the liner plate issue is alleged to arise when water temperature of spent fuel pool exceeds 150 degrees F. Inasmuch as the contention, if discussed, must be narrowed to focus on the cooling capabilities of the system, the

(footnote continued)

As to the second point, (loss of onsite/offsite power) again Palmetto Alliance is raising a matter that has been rejected by the Board. See discussion at pp. __ supra. Palmetto Alliance's continual raising of the matter should not be condoned and this aspect of the contention should be dismissed.

C. Applicants maintain that the appropriate sanction in this instance is dismissal, or alternatively, a narrowing of Palmetto Alliance's Contention 16

As discussed, the Commission's Statement of Policy on Conduct of Licensing Proceedings sets forth several factors to be considered in deciding on the appropriate sanctions to be imposed. Each factor is addressed seriatim:

1. The relative importance of the unmet obligation

Palmetto Alliance has failed to fulfill its discovery obligation and has failed to provide relevant and meaningful information. Without the imposition of sanctions, Applicants face the prospect of litigating issues which (1) this Board has already rejected and (2) are open-ended in scope.

(footnote continued from previous page)
liner issue need not be reached unless it is demonstrated that the 150 degree F. design criteria temperature would be exceeded.

2. The potential harm to other parties or the orderly conduct of the proceeding

Litigation of issues already rejected or which are open-ended will lengthen the adjudicatory process. As this Board has recognized, even under the present hearing schedule "it may not be possible fully to accommodate a substantial acceleration of the completion date" of the construction of the facility. February 2, 1983 Order at p. 9. Accordingly, any delay enhances the already real prospect that the adjudicatory hearing and this Board's initial decision will be the critical path items in the licensing of Catawba. As the Commission has noted, every reasonable effort should be made to avoid such a propsect. See Statement of Policy, supra, 13 NRC at 453.

3. Whether its occurrence is an isolated incident or a part of pattern behavior

Applicants maintain that it is clear from this entire pleading, and the record thus far in this proceeding, that Palmetto Alliance's unmet discovery obligations and refusal to comply with Board Orders are not isolated incidents, or even limited to its responses to Applicants' interrogatories regarding Contention 16. Rather, Palmetto has consistently failed to meet its discovery obligations and consistently failed to comply with Board Orders regarding discovery concerning other contentions.

4. The importance of the safety concerns raised by Palmetto Alliance

Palmetto Alliance's concern reflected in this contention revolves around the impact that the storage of Oconee and McGuire spent fuel at Catawba will have on public health and safety. Palmetto Alliance has failed to articulate why aircraft accidents and loss of onsite/offsite power are the subject of this narrow issue; rather, these accident scenarios would appear to be related to the adequacy of the spent fuel pool in general. More importantly, this Board's past rejection of such issues diminishes their importance in this case. With regard to the loss of cooling, cask drop accidents and inadvertent removal of cask lid (the remaining concerns of Palmetto Alliance), Applicants maintain that Palmetto Alliance's failure to provide any specificity with respect to these matters, despite this Board's instruction to do so, makes it difficult to ascertain their importance with regard to safety. Absent an affirmative showing that important safety matters are at issue, the Board has no basis for concluding that such is the case. Alternatively, Applicants believe that their suggested narrowing of these concerns properly brings into focus the matters at issue.

5. All the circumstances involved

After weighing the factors set forth above, Applicants maintain that Palmetto Alliance's actions warrant the imposition of sanctions. Further, Applicants submit that the sanctions imposed are consistent with the Commission's guidance that the Board should "attempt to tailor the sanctions to mitigate the harm caused by the failure of a party to fulfill its obligations and to bring about improved future compliance." 13 NRC at 454. Dismissal or narrowing of the contention will assure that Palmetto Alliance does not benefit from its less than full faith participation in discovery. Further, and perhaps most important, dismissal or narrowing the contention will mitigate the harm caused by Palmetto Alliance's actions by assuring that fundamental elements of the administrative process and the orderly conduct of this proceeding will not be compromised by forcing Applicants and the Staff to defend against contentions already rejected or against contentions which remain open-ended.

D. Conclusion

From the foregoing, Applicants maintain that Palmetto Alliance's actions regarding Contention 16 warrant the dismissal of this contention. Alternatively, the contention should be narrowed as follows:

> The storage of Oconee and McGuire spent fuel at Catawba will compromise public health and safety because:

1. There is no reasonable assurance that one spent fuel pool cooling train can maintain the water temperature of the spent fuel pool at acceptable levels (i.e., 150 degrees F).

2. Mechanical stops do not provide reasonable assurance that the cask handling crane will be prevented from traversing the spent fuel pool.

3. Applicants cannot promulgate procedures to provide reasonable assurance that the cask lid will not be prematurely removed.

CONTENTION 44, (CESG'S CONTENTION 18)

A. Introduction

Palmetto Alliance's Contention 44 and CESG's Contention 18 ("Contention 44/18") are identical contentions which were admitted to this proceeding by the Board's July 8, 1982 Order:

Contention 44/18

> The license should not issue because reactor degradation in the form of a much more rapid increase in reference temperature than had been anticipated has occurred at a number of PWR's including Applicant's Oconee unit 1. Until and unless the NRC and the industry can avoid reactor embrittlement, Catawba should not be permitted to operate. [79]

---

79 Applicants note that this contention was originally rejected by this Board due to Intervenors' failure to provide the requisite specificity. March 5, 1982 Order at p. 35. However, Intervenors then provided additional information which the Board viewed as acceptable to meet the Commission's "specificity standards." July 8, 1982 Order at p. 12.

As discussed more fully below, Applicants maintain that with regard to Contention 44/18, Palmetto Alliance and CESG have failed to meet their obligations under the Commission's Rules of Practice regarding discovery and have failed to comply with clear and explicit Orders of this Board regarding discovery. Accordingly, Applicants maintain that sanctions against Intervenors are both warranted and necessary. Further, in view of Intervenors' actions, Applicants submit that in this instance the appropriate sanction that the Board should impose is dismissal of Contention 44/18.

B. With regard to Contention 44/18, Intervenors have failed to meet their discovery obligations, and to comply with Board Orders and such actions warrant the imposition of sanctions

By interrogatories and requests to produce of December 3, 1982,[80] Applicants sought to obtain from Palmetto Alliance and CESG the legal and factual bases for their concerns raised in Contention 44/18.[81] These

---

80 Applicants' delay in taking discovery on this contention (from its admittance on July 8, 1982 until December 3, 1982) is explained as follows: in its July 8, 1982 Order (at p. 18), the Board specified the contentions on which it authorized discovery; such did not include Intervenors' Contention 44/18. By its December 1, 1982 Order at p. 28, the Board lifted its stay of discovery on this contention.

81 Applicants' Interrogatories and Requests to Produce to Carolina Environmental Study Group and Palmetto Alliance Regarding Carolina Environmental Study Group Contention 18/Palmetto Alliance Contention 44. December 3, 1982.

interrogatories requested basic information necessary to prepare Applicants' response to Intervenors' case regarding this contention, such as (1) the definitions ascribed by Intervenors to the material terms used in their contention, (2) the precise regulations or regulatory guidelines which Intervenors contend that Applicants have not followed, (3) provisions of Applicants' analyses which Intervenors contend are deficient and (4) the bases for Intervenors' allegations. In short, by such interrogatories, Applicants were attempting to determine the specific information upon which Intervenors' case regarding Contention 44/18 was based.

In its December 22, 1982 Order (at p. 16), the Board ruled that with respect to certain contentions Intervenors had a right of first discovery prior to having to respond to specific discovery requests from other parties. In its Order, the Board set forth a schedule which called for Intervenors' responses to such discovery requests "around the end of March or beginning of April." December 22, 1982 Order at p. 18. This ruling was made applicable to Intervenors' Contention 44/18 at the January 20, 1983 prehearing conference. Tr. 804. In line with the Board's ruling, Applicants responded to Intervenors' discovery requests regarding Contention 44/18 and held in abeyance

any motion to compel responses to their December 3 discovery requests pending the "end of March or beginning of April" timeframe.

During this period Intervenors engaged in extensive discovery on Applicants and Staff.[82] At the conclusion of this period, on April 19, 1983, over four months after Applicants' discovery requests were filed, Palmetto Alliance filed a purported "response." Palmetto Alliance's "response" consisted of two sentences which stated that Palmetto adopted as its responses to

---

82 Intervenors' discovery initiatives on Contention 44/18 included over 106 specific interrogatories and requests to produce. See Palmetto Alliance's Third Set of Interrogatories and Requests to Produce (September 27, 1982), responded to by Staff on December 15, 1982 and by Applicants on December 31, 1982 and February 28, 1983; Palmetto Alliance's Follow-up Interrogatories and Requests to Produce to Applicants (March 16, 1983), responded to by Applicants on March 25, 1983; CESG's Discovery and Document Production Requests to NRC Staff and to Applicants Re CESG Contention 18 and Re DES Contention 17 (April 1, 1983), responded to by Applicants on April 20, 1983 and by Staff on May 10, 1983. Areas of inquiry within Intervenors' discovery requests include reference temperature values; the number and magnitude of heating and cooling cycles expected at Catawba; technical studies regarding reactor embrittlement in general; technical conclusions and the bases therefor regarding specific causation factors regarding reactor embrittlement; precautions taken to prevent reactor embrittlement; training of reactor operators; design and procedure changes regarding this subject; welding used at Catawba; material composition and inspection procedures of welds at Catawba; tests regarding thermal shock and reactor embrittlement; fuel rod placement at Catawba; material used in other reactor vessels and testing of such material; annealing of reactor vessels; projected neutron flux; and crack propagation.

Applicants' interrogatories the responses of another Intervenor (CESG) to the totally different interrogatories of a different party (Staff). Palmetto Alliance's April 19 Response at p. 65.

Significantly, Palmetto Alliance's actions were in violation of this Board's instructions regarding an essentially identical situation, viz., on October 8, 1982 the Board implied in ruling on a Staff motion that in responding to Staff's interrogatories, Palmetto Alliance could not simply reference its entire response to Applicants' interrogatories. Rather, the Board indicated Intervenor must either answer each interrogatory itself or cross reference specific Staff interrogatories to Applicants' interrogatories. Tr. 650-5. By Order of December 22, 1982 (at pp. 3-4), the Board made clear what its intentions with regard to such situations were:

> Unfortunately, [in our prehearing conference rulings] we did not explicitly direct separate answers for the Staff's interrogatories, or at least a clear indication of which answers to the Applicants were thought to be responsive to the Staff. [emphasis supplied].

In that Order, the Board further stated that "We agree with the Staff that it 'is entitled to direct answers or objections to each and every interrogatory posed. 10 C.F.R. §2.740b(b).'" (emphasis supplied). Id. at p. 10.

In short, not only were Palmetto Alliance's alleged "responses" to Applicants' interrogatories in violation of Commission regulations, but they were also directly contrary to the explicit instructions of this Board to Palmetto Alliance on an essentially identical issue.

By April 20, 1983, Applicants had not received any responses to its interrogatories from CESG. While this was clearly in violation of the previously noted Board schedule established by the December 22, 1982 Order (at p. 18), and made applicable to this contention during the January 20, 1983 prehearing conference (Tr. 804), Applicants did not vigorously pursue this issue due to the illness of CESG's principal "responder" (see e.g., CESG's March 17, 1983 response to the NRC Staff's Second Set of Interrogatories and Requests to Produce). However, on or about April 20, 1983, Applicants contacted CESG to determine the status of its response and were informed that it would be forthcoming before the close of discovery. To date, Applicants have received nothing. Accordingly, in that CESG has failed to meet its discovery obligations and has directly violated this Board's Order as noted above, Applicants include them in this motion for sanctions.

On April 29, 1983, Applicants filed a motion to compel responses from Palmetto Alliance regarding its contention. For the reasons set forth above, Applicants did not include CESG in this motion. In ruling on Applicants' motion the Board stated as follows:

> The Board has reviewed the questions and answers involved and has determined that CESG's responses to the Staff do not directly answer the questions posed to Palmetto by Applicants. A similar situation arose previously in this case where Palmetto sought to satisfy certain Staff interrogatories by reference to answers it had given the Applicants to other interrogatories. There we upheld the Staff's objection that it was 'entitled to direct answers or objections to each and every interrogatory posed.' Memorandum and Order of December 22, 1982, p. 10. If a party wishes to provide some answers by cross-reference, at the very least, the questions must be substantially similar and cross-references must be made to specific questions. Neither Applicants nor the Board should be asked to sift through, digest and reformulate responses that Palmetto has the obligation to provide. If Palmetto is unable to fulfill that obligation, the Board can fairly assume that Palmetto has no independent contribution to make on this contention. Thus Palmetto must answer these interrogatories or face the prospect of dismissal of Contention 44. [(Emphasis added). May 13, 1983 at Order p. 11]

On May 27, 1983, almost 6 months after they were originally propounded, Palmetto Alliance filed supplemental responses to Applicants' interrogatories. Significantly, in the face of the Board's previous determination that "CESG's responses to the Staff do not directly answer the questions posed to Palmetto by Applicants" and "Palmetto must answer these

interrogatories or face the prospect of dismissal of Contention 44", Palmetto Alliance's responses once again consisted only of a cross-reference to CESG's responses to Staff's interrogatories. May 27 Response at p. 27. Specifically, these responses consisted of a Table where 21 of Applicants' 48 interrogatories were generally cross-referenced to CESG responses to Staff's interrogatories. Id. With regard to the remaining 27 interrogatories, Palmetto Alliance stated that it "has no further independent information to offer response [sic] to the interrogatories on Contention 44." Id. Further, in only two of those 21 interrogatories where Palmetto did cross-reference was there an attempt to directly correlate one-on-one Applicants' interrogatories with a specific CESG response to Staff's interrogatories. In short, Applicants maintain that Palmetto Alliance's actions constitute a clear violation of the Board's May 13 Order directing Palmetto Alliance to respond to all of Applicants' interrogatories. Further, by not specifically cross-referencing each interrogatory to a specific response, Applicants, Staff and this Board are required to "sift through, digest and reformulate responses that Palmetto has the obligation to provide," contrary to the clear and precise instructions this Board provided to Palmetto Alliance.

In the two instances where Palmetto Alliance did specifically cross-reference (one-on-one) Applicants' interrogatories (i.e., interrogatories 27, 41) with CESG's responses to Staff's interrogatories (i.e., responses 1 and 45, respectively), such responses did not answer Applicants' interrogatories. Specifically, Applicants' Interrogatory 27 requests that Intervenors set forth "each source of 'stress' which you contend might result in brittle fracture of the Catawba reactor vessels." Applicants' Interrogatories and Requests to Produce of December 3, 1982 at p. 10. Palmetto Alliance references CESG's response to Staff's Interrogatory 1, which asks what is meant by reactor degradation. NRC Staff's Interrogatories of December 15, 1982 at p. 4. While CESG's response does mention stress, it does not even attempt to identify specific each source of stress as requested by Applicants. CESG's Response to NRC Staff's Second Set of Interrogatories at pp. 1-2 (March 17, 1983).

With regard to the second instance where Palmetto Alliance attempted to specifically correlate one of Applicants' interrogatories with one of CESG's responses (i.e., Applicants' Interrogatory 41 with CESG's response 45), Applicants maintain such attempt is equally flawed. In Interrogatory 41 Applicants request "the maximum reference temperature which you contend Catawba reactor

vessels could reach?" In response, Palmetto Alliance references CESG's response to Staff's Interrogatory 45 which asks an entirely different question. Thus, the response, quoted below, makes no sense as it applies to Applicants' request ("At a different point than the Staff thinks it will. Consider the cases of Oconee et al.")

Notwithstanding Palmetto Alliance's failure to comply with the Board's Order, Applicants have attempted to sift through the cross-reference matrix provided by Palmetto Alliance to obtain responses to its interrogatories which Palmetto Alliance has characterized as being included in one or more of several of CESG's responses. In such cases, however, most of the information requested by Applicants is not contained in CESG's responses to the Staff. For example, Palmetto Alliance states that the answers to Applicants' Interrogatories 1-9 are contained in CESG's responses to Staff's Interrogatories 12, 31, 32, 34, 35, 36, 37, 38, 39, 40, and 41. Palmetto Alliance's May 27 Responses at p. 27. Applicants' Interrogatories 1-9 in essence ask (1) whether Intervenors contend that reactor materials do not comply with Commission regulations, and, if so, the precise nature of the noncompliance and the bases for Intervenors' position; (2) each regulatory requirement regarding fracture toughness which Intervenors contend is not satisfied by the Catawba

reactor vessels, and, if any, the precise nature of the noncompliance and the bases for Intervenors' positions; and (3) the regulatory guidance provisions regarding fracture toughness which Intervenors contend have not been followed for the Catawba reactor vessels and, if any, the precise nature of the noncompliance and the bases for Intervenors' position. CESG's responses referenced by Palmetto Alliance do not even attempt to address the precise nature of areas of alleged noncompliance with regulations or the supporting bases for such positions, or the areas of regulatory guidance which Intervenors maintain Applicants are not following. Rather, CESG's responses seem to be challenging the adequacy of the Commission's regulations. See e.g., CESG's Response to Staff's Interrogatory 35, wherein to the question "Do you challenge the sufficiency of any standard contained or referenced in Appendix G and H of Part 50," CESG responds "Yes." CESG's March 17 Response at p. 9.[83]

With regard to the 27 interrogatories on which Palmetto Alliance stated it could provide no information, Applicants have attempted to glean such information from

---

83 In view of such a response, Applicants question whether this generic issue raised by Intervenors constitutes a challenge to Commission regulations making it inappropriate for resolution in this proceeding. 10 C.F.R. §2.758.

CESG's responses. Such interrogatories requested important information needed by Applicants to prepare its case against Intervenors' contention, such as

(1) the information in Applicants' FSAR regarding the issue with which Intervenors disagree (Interrogatory 26);

(2) how Intervenors contend the "reference temperature" should be defined for materials used in the Catawba reactor vessel (Interrogatory 21);

(3) whether Intervenors contended that Applicants will be unable to monitor adequately the fracture toughness of the vessels during their operating lives (Interrogatories 11 and 12);

(4) whether Intervenors contended that data from surveillance cannot be used to determine the state of the reactor vessel (Interrogatories 13 and 14); and

(5) how stress modes identified in response to Interrogatory 27 (which as previously noted was unanswered) could lead to brittle failure and a description of such failure mechanisms (Interrogatories 28-32).

However, CESG's responses do not address such important information. Rather, fairly read, CESG's responses reflect that

(1) it does not know if embrittlement will be a major problem at Catawba (CESG's responses to Interrogatories 7, 9, 23, 25. CESG's March 17 Responses to Staff's Interrogatories at p. 4, 7);

(2) if there is a problem at Catawba, it would occur well in the future (CESG's responses to Interrogatories 9, 23 and 31. Id. at pp. 4, 6, 9);

(3) it does not believe, given present day knowledge and the lack of empirical data, that it can be determined if there ever will be a major problem

at Catawba regarding embrittlement (CESG's response to Interrogatory 42. Id. at p. 10); and

(4) because of the situation CESG believes that no nuclear plant should be licensed to operate (CESG's response to interrogatory 36. Id.).

In short, it is clear that the information presented in CESG's responses to Staff's interrogatories not only does not provide responses to Applicant's interrogatories, but also does not provide essential information necessary for Applicants to prepare their case against Intervenors' Contention 44/8.

In conclusion, Intervenors have had almost 6 months in which to formulate their responses to Applicants' interrogatories on Contention 44/18. During this period, Intervenors have had access to a voluminous amount of information relating to their contention, including Applicants' FSAR, Staff regulatory requirements set forth in its guidance documents as referenced in Applicants' FSAR, Commission papers and studies set forth in Applicants' and Staff's pleadings, responses to two rounds of written discovery from Applicants and Staff and information obtained in taking depositions of Applicants' employees. During this period, Palmetto Alliance has filed two sets of "responses", neither of which responded to Applicants' requests but simply referenced responses of another party to an entirely

different set of interrogatories. During this period, CESG did not respond to Applicants' interrogatories. As noted above, such actions are in clear violation of Commission regulations and this Board's previous orders regarding discovery, and warrant sanctions.

C. Applicants maintain that the appropriate sanction in this instance is dismissal of Intervenors' Contention 44/18.

The Commission's Statement of Policy on Conduct of Licensing Proceedings, supra, 13 NRC at 454 provides that five primary factors are to be considered in deciding on the appropriate sanctions to be imposed. Each factor is addressed seriatim:

1. The relative importance of the unmet obligation

Applicants maintain that Intervenors' unmet obligation, failure to comply with their discovery obligations and failure to comply with Board Orders regarding discovery, goes right to the heart of and is vitally important to the orderly and systematic conduct of the licensing process. As such, the relative importance of Intervenors' unmet obligation justifies the most severe of sanctions.

2. The potential harm to other parties or the orderly conduct of the proceeding

Applicants maintain that Intervenors' refusal to comply with their discovery obligations would have a serious adverse impact on Applicants and the orderly conduct of the proceeding. As a result of Intervenors' failure to meet their obligations, the specific nature of critical elements of Intervenors' contention remains undisclosed, e.g.,

(1) the specific calculations and analyses in Applicants' FSAR regarding embrittlement with which Intervenors take issue, and the bases for their positions;

(2) the stress modes and resultant failure mechanisms which Intervenors content will occur with Catawba pressure vessels, and the bases for such positions;

(3) the time frame in which failure is projected to occur, and the bases for this positon; and

(4) Intervenors' position regarding the safety-significance of embrittlement degradation in view of the ability to monitor degradation, and the bases for such position.

Accordingly, Applicants find themselves being forced to prepare to meet "any conceivable thrust" Intervenors might seek to make regarding their contention. This is not only patently unfair, but also inconsistent with basic fundamentals of administrative process and orderly conduct of these proceedings. See Susquehanna, supra, 12 NRC at 338. Thus, Applicants maintain that this factor weighs in favor of dismissal of Contention 44/18.

3. Whether is occurrence is an isolated incident or a part of a pattern of behavior

As is clear from this entire pleading, Applicants maintain that Palmetto Alliance's unmet discovery obligations and refusal to comply with Board Orders are not isolated incidents, nor is this behavior confined to Intervenor's responses to Applicants' interrogatories regarding this contention. Rather, Palmetto Alliance has consistently failed to meet its discovery obligations and has failed to comply with Board Orders regarding discovery concerning other contentions. In sum, with regard to Palmetto Alliance, this factor weighs in favor of dismissal of this contention. In this regard, Applicants note that Palmetto Alliance has also failed to meet its discovery obligations with regard to interrogatories filed by the NRC Staff. See NRC Staff Motion for Sanctions Based On Palmetto Alliance Failure to Make Discovery On Contentions 7 and 44 (June 3, 1983).

4. The importance of the safety or environmental concerns raised by Intervenors

While the Commission's policy statement raises the importance of the safety or environmental concern as a factor in determining the appropriate sanctions to be imposed, in Byron, supra, 15 NRC at 1419, the Appeal Board viewed "this factor [as] of much lesser weight and not at all decisive" where, as here, "there is little but the

bare contentions upon which to rely. . . ." The Appeal Board stated further that this factor would be of some importance "during the later stages of a proceeding when contentions have been fleshed out and the parties have submitted testimony." Id.

With respect to this contention, Intervenors have presented no information which suggests that it is an immediate safety or environmental concern. Rather, as previously noted, CESG's responses to Staff's interrogatories reflect that Intervenors do not know if (or contend) that embrittlement will be a major problem at Catawba. See CESG's March 17 Responses to Staff Interrogatories, at pp. 4 and 7. Further, it is clear that if embrittlement becomes a problem at Catawba, it will not occur until well into the future.

In sum, this factor does not weigh against dismissal of this contention.

5. All the circumstances involved

Applicants maintain that the circumstances surrounding this contention warrant severe sanctions. With regard to this Contention 44/18, Intervenors have submitted a skeletal contention and then through failure to meet their discovery obligations have kept the details and bases of their contentions from dislcosure. As a result, the critical issues regarding this contention have

not been disclosed, much less narrowed and refined, as is the purpose of discovery. Such practice is "patently unfair, and inconsistent with a sound record." Byron, supra, 15 NRC at 1417. Accordingly, Intervenors' actions regarding this contention weigh in favor of dismissal of the contention.[84]

In sum, Applicants maintain that Intervenors' actions warrant the dismissal of Contention 44/18 as the appropriate sanction to be imposed by the Board. Further, Applicants submit that dismissal of Contention 44/18 is consistent with the Commission's guidance that the Board should "attempt to tailor the sanctions to mitigate the harm caused by the failure of a party to fulfill its obligations and to bring about improved future compliance." 13 NRC at 454. Dismissing the contention will assure that Intervenors do not benefit from their failure to dislcose basic information regarding this contention, while at the same time setting standards for Intervenors' future conduct regarding compliance with the Commission's rules and Orders of this Board. Further, and perhaps most important, dismissing the contention will mitigate the harm caused by Intervenors' actions by

---

84 Applicants note that the concerns which Intervenors apparently express in this contention are generic in nature and would be more appropriately resolved in a rulemaking forum available to Intervenors through the Commission's regulations. 10 C.F.R. §2.801.

assuring that fundamental elements of the administrative process and the orderly conduct of this proceeding will not be compromised by forcing Applicants and the Staff to defend against a contention whose scope and direction are ill defined and subject to speculation.

D. Conclusion

From the foregoing, Applicants maintain that Intervenors' actions regarding Contention 44/18 warrant the dismissal of this contention.

CONCLUSION

For the reasons set forth above, Applicants submit that the requested sanctions should be imposed.

Respectfully submitted,

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

Albert V. Carr, Jr.
Ronald L. Gibson
DUKE POWER COMPANY
P.O. Box 33189
Charlotte, North Carolina 28242
(704) 373-2570

Attorneys for Duke Power Company, et al.

June 6, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Motion For Sanctions Against Intervenors Palmetto Alliance And Carolina Environmental Study Group" in the above captioned matter have been served upon the following by deposit in the United States mail this 6th 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 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

Chairman
Atomic Safety and Licensing Appeal Board
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.
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

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

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

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

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

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

J. Michael McGarry, III

* Designates those delivered by hand.

** Designates those delivered by Federal Express.

*** Designates those delivered by Express mail.