

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

APPLICANTS' MEMORANDUM ON NEED FOR  
CLEAR DELINEATION ON MANNER OF INTERVENOR  
CONTACT WITH CURRENT AND FORMER  
DUKE POWER COMPANY EMPLOYEES

During the March 25, 1983 conference call (in which all parties participated) Applicants requested an opportunity to be heard concerning the necessity for paragraph 5 to the proposed Affidavit of Non-disclosure, which was attached to Applicants' letter of February 28, 1983. Applicants expressed their desire to address the need for clear delineation on the manner of Intervenor contact with, not only those current and former Duke Power Company employees who had been disciplined for noncompliance with NRC operating and administrative procedures (the subject of the proposed Affidavit of Non-disclosure), but also, any current and former Duke Power Company employee whose name was disclosed to Intervenor during discovery. The Board granted Applicants' request and also provided Palmetto Alliance a similar opportunity. The following will explain Applicants' position on the question.

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DISCUSSION

Paragraph 5 of the proposed Affidavit of Non-disclosure is designed to structure the nature and frequency of contacts by representatives of the Palmetto Alliance with current and former Duke employees whose names, addresses and phone numbers were directed by the Board to be provided as a part of discovery. See Memorandum and Order of February 9, 1983. Persons receiving such protected information would be required to make the following commitments under paragraph 5:

5. I will not contact, or cause to be contacted, any of the employees or former employees identified in the protected information except as follows:

(a) I will prepare a letter to be used to contact any such employee and/or former employee, to be reviewed and agreed to by Duke Power Company. If such an agreement cannot be reached, such letter and Duke Power Company's objections will be submitted to the Board for resolution.

(b) I will send the approved letter to such employees or former employees identified in the protected information as I choose, and will provide counsel for Duke Power Company with a copy of such letter.

(c) If any of the subject employees or former employees respond to my letter and indicate a willingness to discuss with me matters relevant to Palmetto Alliance Contention 7, I will contact such persons and pursue the subject. All contacts with such employees or former employees will only be made by me and/or the one other person who has executed an identical affidavit.

(d) I will not send follow-up letters to any employee or former employee who did not respond to my letter; I will not telephone or in any other way contact any employee or former employee who did not respond to my letter.

As noted, by its terms, this proposed affidavit would have applied only to those current and former employees who have been disciplined by the Applicants for noncompliance with NRC operating and administrative procedures. However, Applicants have concluded that similar protections are necessary for all current and former employees whose names are disclosed to Palmetto Alliance in discovery. 1/

It is Applicants' position that the process by which the named individuals are contacted is a part of discovery and thus the Board has and retains jurisdiction to regulate contact, as appropriate. 2/ Applicants are cognizant that

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1/ Applicants' request for guidelines as to the manner of Intervenor contact thus pertains to all three categories of employees or former employees whose identity will have been disclosed in discovery:

1. Present and former quality assurance employees employed at Catawba.
2. Any Duke Power Company employees, who raised disagreements or disputes as to the workmanship of Catawba.
3. Present and former Duke Power Company employees who have been disciplined for noncompliance with NRC operating and administrative procedures.

2/ See Krause v. Rhodes, 535 F. Supp. 338, 347 (N.D. Ohio 1979), aff'd 671 F.2d 212 (6th Cir.), cert. denied 103 S. Ct. 54 (1982), wherein the district court stated:

(footnote continued on next page)

the question of such regulation usually does not arise, and a protective order is not sought under 10 CFR §2.740(c), until problems have already surfaced, e.g., until actual harassment is shown. Applicants are not advancing such a case at this time. However, even prior to the release of relevant discovery information, a number of Duke employees were contacted by the Palmetto Alliance, either in person or by telephone. Applicants' request is prompted by the fact that some of those employees did not appreciate the contact, were bothered by it and have expressed concern to Duke. Inasmuch as the potential for abuse is heightened by the release of information about employees, Applicants maintain that establishment of guidelines at this time is appropriate and reasonable.

Applicants maintain that given the fact that hundreds of names have already been given to Intervenorors and given Intervenorors' announced desire to contact such individuals, it would be prudent at this time to establish some guidelines.

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(footnote continued from previous page)

[T]his court construed Rule 26(c) to give a district court authority to issue a protective order controlling the disposition of discovery materials after a party has acquired the materials, as well as fixing and controlling the conditions under which discovery may be obtained in the first instance.

In any event, this Board, pursuant to 10 CFR §2.718, is charged with regulating the conduct of the proceeding as it sees fit, consistent with basic fairness.

Further, given the past history of this case, and the need to timely complete discovery, Applicants maintain that now is the time to resolve the matter of contact.

In addition, the interests of the Palmetto Alliance will also be advanced if the Board sets parameters at this time. By following pre-established guidelines, Palmetto Alliance would be able to conduct its inquiries without interruption, because it will be unnecessary for the Applicants to ask for a suspension of contacts if problems arise and a protective order is needed to prevent harassment or other abuses.

Applicants' request for a clear delineation, at this time, of the manner of contact finds support in the case law. The federal courts have recognized that issuance of a protective order is appropriate to control anticipated discovery. In Dudo v. Schaffer, 93 F.R.D. 524 (E.D. Pa. 1982), the district court found that a protective order was proper to limit contacts by counsel with the putative class members he sought to represent. Contacts were limited to sending the class members a questionnaire. Further contacts were prohibited to prevent conscious or unconscious suggestion or misrepresentation of the questionnaire to the recipients. Id. at 534-35. In Hecht v. Pro-Football, Inc., 46 F.R.D. 605 (D.D.C. 1969), the court took an action that is analogous to issuance of a protective order; it granted a motion to



limit a subpoena so as to avoid disclosure of financial information by a non-party. The court explained the need to balance the need for discovery with the right to privacy:

Modern civil procedure in the Federal courts contemplates liberal disclosure. Discovery is in the interest of justice. Nevertheless, discovery is not unbridled and not unlimited. There must be restrictions to protect individuals in their natural privacy.

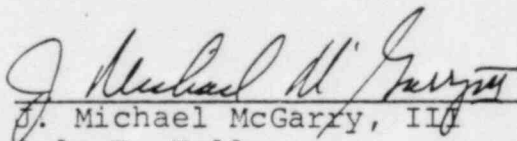
Id. at 607. See also Krause v. Rhodes, 671 F.2d 212 (6th Cir.), cert. denied 103 S. Ct. 54 (1982) (upholding a protective order requiring redaction of names of persons from documents obtained during discovery); Balistrieri v. Holtzman, 52 F.R.D. 23 (E.D. Wis. 1971) (protective order granted to prevent defendant from interrogating plaintiff's prospective witnesses and avoid likelihood of harassment).

#### CONCLUSION

In sum, Applicants believe that issuance of guidelines consistent with paragraph 5 of the subject proposed Affidavit of Non-disclosure would represent a reasonable balance between the competing interests of the parties involved. On the one hand, Palmetto Alliance asserts the need to attempt to obtain information from Duke's employees. On the other hand, Applicants are concerned that uncontrolled contacts from Palmetto Alliance will violate current and former

employees' right to privacy and lead to instances of harassment. The instant pleading does not seek to preclude all contacts, but merely to set guidelines at the outset which permit Palmetto Alliance to make reasonable contacts without unduly impinging the employees' rights. Any employee who wishes to come forward with information would be afforded an ample opportunity to do so. Further, Palmetto Alliance retains the right to seek subpoenas for the deposition of any employee whom it may have reason to believe has relevant information, but who does not wish to voluntarily cooperate by consenting to be interviewed.

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March 30, 1983

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Memorandum on Need for Clear Delineation on Manner of Intervenor Contact With Current and Former Duke Power Company Employees" in the above captioned matter have been served upon the following by deposit in the United States mail this 30th day of March, 1983.

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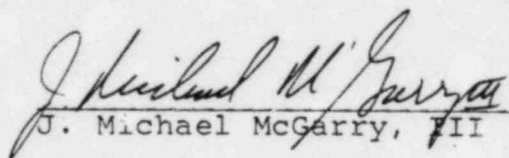
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