

RELATED CORRESPONDENCE

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USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'83 MAY -2 '11:02

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

APPLICANTS' MOTION TO COMPEL

Duke Power Company, et al. ("Applicants"), pursuant to 10 C.F.R. §2.740(f), hereby move this Board to issue an order compelling Intervenor Palmetto Alliance to respond further to Applicants' Interrogatories and Requests to Produce relating to Palmetto Alliance Contentions 6, 7, 8, 16, and 44.<sup>1</sup> This Motion to Compel is necessary because Palmetto Alliance's responses to Applicants' discovery requests are simply inadequate.

<sup>1</sup> The Board has held in abeyance Applicants' December 20, 1982 Motion to Compel against Palmetto Alliance (dealing with Contentions 6 and 7) until the Intervenor had a "limited 'right of first discovery'" and, based upon the information obtained therein, supplied additional discovery responses on its various contentions (January 20, 1983 prehearing conference. See Tr. 805). Accordingly, with respect to Contentions 6 and 7, the instant pleading should be viewed as a renewal of the outstanding Motion to Compel.

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I. INTRODUCTION<sup>2</sup>

The instant Motion is prompted by the filing of "Palmetto Alliance Supplementary Responses to Applicants' and Staff's Interrogatories Regarding Contentions 6, 7, 8, 16, 27 and 44," April 19, 1983 ("Supplemental Responses").<sup>3</sup> These Supplemental Responses stem, in turn, from the Board's December 22, 1982 Memorandum and Order ("December 22 Order"), in which the Board took the unusual step of granting Palmetto Alliance a "right of first discovery" against Applicants and the NRC Staff before requiring it to provide responsive answers to outstanding discovery requests. See December 22 Order at p. 16. These Supplemental Responses, therefore, presumably reflect the information which Palmetto Alliance has obtained through its 4 1/2 month opportunity for unilateral discovery, as well as the information supplied to the Intervenor by the Applicants and Staff during the months of discovery which preceded the December 22 Order.

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<sup>2</sup> A more detailed description of the events leading to the filing of this Motion to Compel is set forth in "Applicants' Motion to Compel or, in the Alternative, to Dismiss Contentions," filed December 20, 1982. The motion in the alternative applied only to Contention 7.

<sup>3</sup> Applicants have not moved to compel additional Responses with respect to Palmetto Alliance's answers to Interrogatories on Contention 27.

As we will discuss in the attachment to this pleading, Applicants submit that Palmetto Alliance's Supplemental Responses on Contentions 6, 7, 8, 16, and 44 are inadequate. They are characterized by the same vagueness, evasiveness and overall unresponsiveness<sup>4</sup> found in the Intervenor's earlier answers to discovery filed months ago (---in two instances, one year ago).<sup>5</sup> They fail to draw upon the extensive information obtained in Palmetto Alliance's discovery of Applicants and Staff.<sup>6</sup> Moreover,

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<sup>4</sup> Rule 37(a)(3) of the Federal Rules of Civil Procedure provides that "an evasive or incomplete answer is to be treated as a failure to answer."

<sup>5</sup> On April 9, 1982, Applicants filed Interrogatories and requests to produce on Contentions 6 and 7. On August 9 and 16, 1982, Applicants filed Interrogatories and requests to produce on Contentions 16 and 27 and Contention 8, respectively. On December 3, 1982, Applicants filed Interrogatories and Requests to produce on Contention 44.

<sup>6</sup> Applicants have complied fully with all Palmetto Alliance discovery requests. To summarize, on September 22, 1982, Applicants filed their responses to Palmetto Alliance's Interrogatories on Contentions 8 and 27; documents identified in those responses have been available for inspection and copying since October 4, 1982. On October 19, 1982, Applicants responded to Palmetto Alliance's Interrogatories on Contention 16. Documents identified in those responses have been available for inspection and copying since November 1, 1982. On December 31, 1982, Applicants responded to Palmetto Alliance's Interrogatories on Contentions 6 and 7; the documents identified in those responses have been available since February 15, 1983. Following the Board's Order of February 9 on Palmetto Alliance's Motion to Compel, Applicants provided further responses on February 28, 1983. The documents identified in those responses were available for inspection and copying at the Intervenor's March 14, 1983 visit. Finally, Appli-

(footnote continued)

these Supplemental Responses ignore the purpose and scope of discovery in NRC licensing proceedings, (viz., to narrow and clarify the basic issues, thereby enabling the parties to ascertain what they will face at the hearing and prepare to meet it).

Applicants maintain that this matter takes on added significance when viewed in the light of Palmetto Alliance's pattern of behavior throughout this proceeding.<sup>7</sup> Since July, 1981, when its involvement in this licensing proceeding began, Palmetto Alliance's behavior has been characterized by repeated attempts to avoid properly defining the issues prior to their consideration in an adjudicatory hearing setting. Rather, time and again, Palmetto Alliance has provided vague, evasive and unresponsive material in its pleadings so as to afford itself the greatest possible latitude as to the meaning of

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(footnote continued from previous page)

cants on March 25 filed responses to Palmetto Alliance's Follow-up Interrogatories. Documents associated with those responses were available for inspection and copying on March 30, 1983. By letter of April 12, 1983 counsel for Applicants summarized the above and provided in response to a telephone conversation with counsel for Palmetto Alliance certain information respecting discovery already had.

<sup>7</sup> In assessing the significance of a party's unmet obligations in an NRC proceeding in order to determine appropriate sanctions, one of the factors to be considered is "whether its occurrence is an isolated incident or a part of a pattern of behavior." Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 454 (1981).



its contentions. To adopt a phrase coined by the D.C. Circuit, this pattern of behavior amounts to playing "hunt the peanut." Cf, Connecticut Light & Power Company, et al. v. NRC, 673 F.2d 525, 530-531 (D.C. Cir. 1982).

Illustrations of Palmetto Alliance's "hunt the peanut" tactics are seen in the following: (1) the skeletal nature of its initial contentions; (2) the unresponsiveness of its initial answers to Applicants' Interrogatories, which Interrogatories were acknowledged by the Board to be proper<sup>8</sup> (and indeed were not objected to by the Intervenor);<sup>9</sup> the failure of Palmetto Alliance to cooperate with NRC's Office of Investigations with regard to allegations of faulty workmanship;<sup>10</sup> and, (4) the instant responses to

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<sup>8</sup> The Board stated in its December 22 Order (p. 6) that Applicants' Interrogatories "appear to be of a routine, boilerplate variety which are usually answered without much objection."

<sup>9</sup> In its December 22 Order, the Board stated with respect to Palmetto Alliance's "don't know" responses:

Acknowledging the legitimacy of the areas of inquiry [of Applicants' and Staff's Interrogatories], Palmetto also apparently acknowledges their obligation to answer these interrogatories fully prior to hearing. (p. 10).

The Board also pointed out (p. 4) that Palmetto Alliance has not raised objections to Applicants' Interrogatories on Contentions 8, 16 and 27 on grounds of relevance. (Nor has Intervenor done so on Contentions 6 and 7.)

<sup>10</sup> See NRC letter to Board dated November 4, 1982 and attachments thereto. This letter was in response to a concern raised by the Board itself. See Board letter to NRC Staff dated January 26, 1982.

Applicants' long-standing Interrogatories. The net result is that Palmetto Alliance is able to come before this Board in April 1983, with contentions that are no more focused than they were in July of 1981, despite the fact that this Board's manifest intention in giving Palmetto Alliance a limited right of first discovery was to place it in a position to provide adequate and substantive responses to Applicants' Interrogatories. See, December 22 Order at pp. 10-13. As a result, the specific nature of Palmetto Alliance contentions remains undisclosed and Applicants find themselves being forced to prepare to meet "any conceivable thrust" Palmetto Alliance might seek to make arising out of the general topic areas of its contentions. See 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 an August 24, 1979 unpublished Memorandum and Order of the Licensing Board in that proceeding.

Simply put, Palmetto Alliance has taken advantage of the situation and Applicants are suffering the consequences. Unless this Board takes decisive, prompt action, a real potential for delay will exist in that vague contentions will be able to serve as springboards for unbridled inquiry at the adjudicatory hearing. Further, the very filing of this Motion creates the potential for de-

laying the close of discovery on May 20, 1983, which can only work against Applicants. Granting the instant Motion and timely receipt of responsive answers will go a long way to correcting the situation.

Applicants submit that the time is past for Palmetto Alliance to explain its allegations on intervention in this proceeding. Palmetto Alliance, having been given every conceivable opportunity by this Board to satisfy its obligations as a party to this proceeding, is out of excuses. Either Palmetto Alliance has the information sought by Applicants, in which case it must produce it, or it does not. If it does not have this information, then it must now admit this fact. Applicants thus request this Board to rule expeditiously on their Motion to Compel, grant the relief sought, and order Palmetto Alliance to provide responsive and substantive answers by May 20, 1983. Applicants further request this Board to alert Palmetto Alliance that its failure to comply with the Board's discovery order will subject it, upon proper motion, to the potential imposition of sanctions including dismissal of contentions.

## II. ARGUMENT

Applicants' approach to discovery has been straightforward. Applicants drafted their Interrogatories to track the language of the contentions. The Interrogatories were

structured to ascertain (1) the scope of each contention; (2) the specific aspects of the contention; and (3) the basis 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. As noted above, this Board has recognized that these interrogatories were proper and of a routine boilerplate nature. See p. 5, supra. However, despite the straightforward nature of the Interrogatories, Palmetto Alliance has provided defective responses. Applicants submit that the various defects which characterize Palmetto Alliance's Supplemental Responses fall into the following four categories:

- (1) failure to specify bases for Responses;
- (2) failure to specify regulatory requirements;
- (3) Responses which are vague, evasive and unresponsive to Applicants' Interrogatories (i.e., which fail to delineate the precise nature of the contentions);
- (4) failure to respond to at all.

NRC case law is clear that interrogatory responses which fit any of these four categories are unacceptable and warrant a motion to compel by the proponent of the interrogatory. Each of these categories is discussed below.

1. Failure To Specify Bases  
For Responses

A review of those Palmetto Alliance Supplemental Responses which purportedly provide the "bases" for its answers reveals that not one of these Responses specifies precisely which documents cited contain the desired information. For example, in response to Interrogatories on Contention 6, which sought the bases for the Supplemental Responses provided, Palmetto Alliance refers to its original (April 28, 1982) Response in which it recites a long list of documents ranging from the FSAR, SER and unnamed "pleadings" to the U. S. Constitution, the Atomic Energy Act and unspecified NRC regulations. Palmetto Alliance also notes its reliance upon "Applicant's and Staff Responses to Discovery and documents produced in connection with those responses" (Supplemental Responses at p. 6). In response to the same type of Interrogatory on other contentions, Palmetto Alliance again provides only a list of documents, making no effort to specify which Supplemental Interrogatory Responses are based upon which of these documents, much less identifying relevant sections of the documents.

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:

Answers should be complete in themselves; the interrogating party should not need to sift through documents or other materials to obtain a complete answer. 4A Moore's Federal Practice §33.25(1) at 33-129-130 (2d ed. 1981). A broad statement that the information sought by an interrogatory is to be found in a mass of documents is also insufficient. Harlem River Consumers Coop., Inc. v. Associated Grocers of Harlem, Inc., 64 F.R.D. 459, 463 (S.D.N.Y. 1974). Instead, a party must specify precisely which documents cited contain the desired information. Martin v. Easton Publishing Co., 85 F.R.D. 312, 315 (E.D. Pa. 1980). See also Nagler v. Admiral Corp., 167 F. Supp. 413 (S.D.N.Y. 1958). [Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), ALAB-678, 15 NRC 1400, 1421, n.39 (1982)(emphasis added)].

Accordingly, under the Byron standard each of these Responses is deficient in that it has failed to "precisely" identify the sections or portions of the documents relied upon.

## 2. Failure To Specify Regulatory Requirements

Many of Palmetto Alliance's Responses are characterized by an apparent effort to avoid specifying controlling regulatory requirements. For example, when asked to specify "all NRC requirements which you contend have not been satisfied" (Interrogatory 7, Contention 6) Palmetto Alliance simply referenced Appendix A to 10 CFR Part 50. Appendix A consists of 64 criteria, each directed to a discrete aspect of plant design, construction and operation. In numerous other instances Palmetto Alliance relies upon the generic public health and safety require-



ment set forth in 10 CFR §50.57(a)(3),<sup>11</sup> despite the existence of detailed regulations governing the precise matters in issue. An example of this situation is seen in Palmetto Alliance's Responses to Interrogatories concerning Contention 8 (operator qualification). Therein Intervenor, at every juncture, makes reference to 10 CFR §50.57(a)(3); it fails to refer to any aspect of 10 CFR Part 55 (except for definitional purposes), despite its knowledge of the Part, as evidenced by its pleading of March 31, 1982.<sup>12</sup>

Applicants maintain that information concerning regulatory requirements which have purportedly been violated is crucial. See Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2), LBP-82-471-02-OL, \_\_\_ NRC \_\_\_ (November 17, 1982), slip op. at p. 9, wherein the Board stated:

In conclusion, this Board believes that the basis with reasonable specificity standard requires that an intervenor include in a safety contention [<sup>13</sup>] a statement of the

<sup>11</sup> Applicants are cognizant of the Board's statement in its December 22 Order (p. 14) which advised Palmetto Alliance that in some situations reference to 10 CFR §50.57(a)(3) would suffice. This reference addresses those situations wherein a "regulatory gap" exists. Applicants maintain that where regulations exist which pertain to the subject matter no "regulatory gap" is present and thus such a general response is inadequate. Applicants further maintain that with respect to each of these contentions, such regulations exist.

<sup>12</sup> See "Palmetto Alliance/CESG Responses and Objections to Order Following Prehearing Conference," at pp. 11-12.

<sup>13</sup> Applicants submit that this standard also applies to environmental contentions.

reason for his contention. This statement must either allege with particularity that an applicant is not complying with a specified regulation, or allege with particularity the existence and detail of a substantial safety issue on which the regulations are silent. In the absence of a 'regulatory gap,' the failure to allege a violation of the regulations or an attempt to advocate stricter requirements than those imposed by the regulations will result in a rejection of the contention, the latter as an impermissible collateral attack on the Commission's rules (10 C.F.R. §2.758). [emphasis added]

Intervenor's failure to specify with particularity the precise NRC standards and requirements affected by the deficiencies alleged in this contention constitutes a clear violation of the Seabrook rule.

Furthermore, Palmetto Alliance's refusal to provide specific references to the NRC rules and regulations which Applicants have allegedly violated also constitutes a failure of Intervenor's

ironclad obligation to examine the publicly available documentary material with sufficient care to enable it to uncover any information that could serve as the foundation for a specific contention. [Duke Power Co., et al. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, \_\_ NRC \_\_, slip op. at 13].

As the proponent of contentions which specifically allege that Applicants have failed to adhere to various NRC regulations (and that Applicants remain in non-compliance with such regulations), Palmetto Alliance cannot be allowed to provide evasive and unresponsive answers to discovery

when the Interrogatories in question are directed at basic information which, we believe, Palmetto Alliance was required to have when it proffered these contentions as issues for litigation in this proceeding. As this Board has observed:

Furthermore, we have difficulty accepting at face value some disclaimers of knowledge about contentions. While we might accept a 'don't know' response to a question calling for proof of a contention, it is more difficult for us to credit such a response to a question about the legal theory of a contention -- e.g., Which NRC regulation is violated by the contention? The contentions were, after all, formulated with the regulations on the table and with considerable information available to the Intervenor. In those circumstances, Palmetto must have had some legal theory in mind. (On the other hand, it is possible that a better legal theory for a contention will evolve as evidence is acquired through discovery.) [December 22 Order at pp. 12-13].

3. Responses Which Are Vague,  
Evasive And Unresponsive To  
Applicants' Interrogatories

Many of the Interrogatories to which Palmetto Alliance has purportedly "responded" have not, in even the loosest sense of the word, been "answered." For example, when asked (Interrogatory 8, Contention 8) to state what constitutes sufficient hands-on operating experience (the linchpin inquiry with regard to Contention 8) Palmetto Alliance simply responded that:

Palmetto is not prepared to establish at this time a level of 'sufficient' hands-on operating experience needed to assure safe operation of the

facility; but contends that the experience level asserted for Applicants' personnel is clearly inadequate.

As Palmetto Alliance is surely aware, discovery in NRC licensing proceedings is intended to insure that "the parties have access to all relevant, unprivileged information prior to the hearing." Boston Edison Company (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 579, 582 (1975). While intervenors may rely heavily on discovery to obtain evidence to support their contentions, the Licensing Board in this proceeding has expressly noted that "discovery can be equally important to Applicants and the Staff for different purposes -- to assess the intervenor's case and prepare for trial." December 22, 1982 Order at p. 6. Accordingly, NRC regulations contemplate that applicants will be allowed essentially unrestricted discovery into the legal and factual underpinnings of Intervenor's contentions:

[I]nterrogatories 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 to disclose is imposed upon Palmetto Alliance as a party to this proceeding is hardly open to question or controversy, since the U.S. Supreme Court has explicitly ruled that "[i]t is . . . incumbent

upon intervenors who wish to participate [in an NRC licensing proceeding] to structure their participation so that it is meaningful, so that it alerts the agency to the intervenors' position and contentions.<sup>11</sup> Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978). And as the Appeal Board has stated:

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 sound record. [Susquehanna, supra, 12 NRC at 338 (emphasis added)].

These and numerous other pronouncements of the Commission have made it clear that in order to satisfy their obligations as participants in NRC proceedings intervenors must do more than simply raise issues. The Appeal Board has explicitly pointed out that:

[I]ntervenors also bear evidentiary responsibilities. In a ruling that has received explicit Supreme Court approval, the Commission has stressed that an intervenor must come forward with evidence 'sufficient to require reasonable minds to inquire further' to insure that its contentions are explored at the hearing. Obviously, interrogatories designed to discover what (if any) evidence underlies an intervenor's own contentions are not out of order. [Id. at 340 (citations omitted)].

In short, a "litigant may not make serious allegations against another party and then refuse to reveal whether those allegations have any basis." Id. at 339.

Evasive and incomplete discovery responses such as those provided by Palmetto Alliance throughout this proceeding are clearly insufficient to satisfy Intervenor's burden to "come forward with evidence 'sufficient to require reasonable minds to inquire further'" Id. at 340. Applicants acknowledge that in responding to discovery requests, a party "need only reveal information in its possession or control," and that "[a]ssuming the truthfulness of the statement, lack of knowledge is always an adequate response." Id. at 334. At this advanced stage of the proceeding, however, Palmetto Alliance's attempts to avoid providing responsive answers are unacceptable. This is particularly the case since Palmetto Alliance has been given an extremely unusual "right of first discovery" for the past four months, providing it with a more than ample opportunity to take discovery from the Applicants and NRC Staff and thereby "flesh out" its contentions before having to file one single Supplemental Response.



Finally, Palmetto Alliance's recent Responses do almost nothing to further one of the fundamental purposes of discovery, which is to "narrow and clarify the basic issues between the parties."<sup>14</sup> Discovery in adjudicative proceedings is designed to "make a trial less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent."<sup>15</sup> Vague, evasive and unresponsive answers, particularly at this late date, are inconsistent with this recognized discovery objective.

4. Failure To Respond To Interrogatories

In more than a few instances Palmetto Alliance has simply failed to respond. 10-CFR §2.7405(b) clearly states that each interrogatory is to be answered or objected to. Palmetto Alliance's actions, in this regard, are in contradiction of the regulations. Intervenor must be made to comply with its obligations as a party, whether by means of a motion to compel responsive interrogatory answers or by means of other sanctions.<sup>16</sup>

<sup>14</sup> Hickman v. Taylor, 329 U. S. 495, 500-501 (1947).

<sup>15</sup> United States v. Proctor & Gamble Co., 356 U.S. 677 (1958).

<sup>16</sup> To enforce compliance with the provisions of the  
(footnote continued)

Having set forth the four categories which address the defects of Palmetto Alliance's Supplemental Responses, it remains for Applicants to relate such defects to specific Interrogatories so that the Board can determine the propriety of a request to compel an answer. The specific Interrogatory Responses as to which Applicants ask this Board to compel responsive answers are set forth in the Attachment to this Motion and made a part hereof. The Attachment discusses the subject Interrogatories on a contention by contention basis. In such discussion, the Responses are grouped into the categories discussed above, thereby eliminating the need for repetitive legal citation. Applicants are hopeful that such format will enable the Board to promptly resolve the matter.

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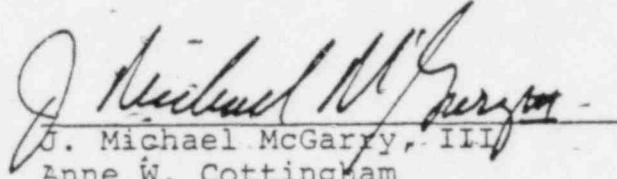
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discovery rules, Boards have available to them a full range of sanctions, up to and including dismissal of a party to a proceeding. 10 CFR §2.718(c); Statement of Policy on Conduct of Licensing Proceedings, supra, 13 NRC at 454 (1981). For a party to have contentions admitted to the proceeding and then to refuse to comply with discovery procedures invites sanctions up to and including dismissal of the contentions by the Board. Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), ALAB-678, 15 NRC 1400, 1416-1417 (1982).

III. CONCLUSION

For the reasons set forth above, and on the basis of the discussion set forth in the Attachment, Applicants respectfully request that their Motion to Compel be granted and that Palmetto Alliance be ordered to file responsive answers prior to the May 20, 1983 close of discovery.

Respectfully submitted,



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April 29, 1983

ATTACHMENT

I. RESPONSES TO INTERROGATORIES ON CONTENTION 6

Applicants' Interrogatories regarding Contention 6 sought information such as (1) the definition of material terms in the contention; (2) the specific instances of faulty workmanship or poor quality control which gave rise to Palmetto Alliance's concerns; (3) the precise regulations with which Palmetto Alliance contends Applicants have not complied, and (4) the bases for Palmetto Alliance's allegations. Applicants' request for such information was consistent with the Board's observation that Intervenor's case regarding Contention 6 would "presumably involv[e] specific instances of misfeasance . . . ." December 1 Order at p. 5.<sup>1</sup> See also the transcript of the prehearing conference of January 12, 1982 wherein Chairman Kelly noted that to prove its case on Contention 6, Palmetto Alliance must "get . . . more specific about quality assurance . . . that is substandard . . . ." (Tr. 119).

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<sup>1</sup> Applicants are aware that the Board stated that such proof "need not be adduced at this stage." December 1 Order at p. 5. However, Applicants interpret this statement as applying to the stage of the proceeding at which the contention was admitted, not to the discovery phase of the proceeding.

Applicants submit that Palmetto's Supplementary Responses are vague, unresponsive and contain little information which was unavailable to Palmetto before its earlier submittal on Contention 6. The specific infirmities are discussed below.

A. Failure to Specify Bases for Responses  
(Interrogatories 9, 19, 24, 35, 52, 57,  
65, 75, 81, 82, 94, 101, 106, 114 and 121)

Palmetto Alliance's answers to those Interrogatories which attempted to establish the bases for or information regarding its Responses are inadequate. In reply to these Interrogatories, Intervenor referred to its April 28, 1982 Response to Interrogatory 9, which states:

Applicants' Application, Final Safety Analysis Report and pleadings; Intervenor's Petitions, Supplements, Affidavits and pleadings; NRC Staff's Safety Evaluation of the Catawba Nuclear Station Unit Nos. 1 and 2, Systematic Assessment of Licensee Performance Review Group; Licensee Assessments, NUREG-0834, and pleadings; oral and written communication by Palmetto Alliance members Nolan R. Hoopingarner, II, and William R. McAfee to counsel; The United States Constitution; The Atomic Energy Act of 1954, as amended, and Title 10 Code of Federal Regulations.

In addition, Palmetto Alliance provides as its bases "documents produced in connection with those [Applicants' and Staff's] Responses [to its discovery requests], particularly documents-reflecting complaints of harassment, threats, pressure to approve faulty workmanship and faulty

workmanship as identified by a number of Catawba Welding Quality Control Inspectors in 1981 and 1982." Supplemental Response at pp. 5-6.<sup>2</sup>

Interrogatory answers which respond to a request for specific information by merely referring to a mass of documents are insufficient. The answers should be complete in themselves, and a party should not need to sift through documents in hopes of guessing what the other party will rely on.

B. Failure To Specify Regulatory Requirements . . .  
(Interrogatories 2, 7, 38, 39, 100)

Applicants' Interrogatories No. 2 and 7 (regarding allegations of substandard workmanship), 38 and 39 (regarding the entire Contention), and 100 (regarding alleged deficiencies) requested that Palmetto Alliance specify "those NRC requirements concerning [a particular alleged deficiency] . . . which you contend are not met." (See Supplemental Responses to Interrogatory 13, at p. 6).

Palmetto Alliance's responses to these Interrogatories were uniformly vague, evasive, and/or unresponsive, and provided no indication of the

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<sup>2</sup> In response to Interrogatory 35 (Supplemental Responses at pp. 9 and 10), Palmetto also refers to other documents "known to Applicants and Staff and produced by them in Response to Palmetto questions in discovery . . . ." A simple reference to such information falls far short of satisfying the Intervenor's obligation to respond to such Interrogatories.



specific requirements which it contended that Applicants had failed to meet. For example, in responding to Applicants' request that it specify the particular NRC requirement associated with alleged deficiencies (Interrogatory 100), Intervenor referred to the response to another Interrogatory (No. 5), which, although containing several paragraphs, fails to mention or refer to any Commission regulation. All other Palmetto Alliance Responses consist of a statement that Applicant has failed to comply with all requirements contained in Appendix A to 10 C.F.R. Part 50. Appendix A to 10 C.F.R. Part 50 contains 64 criteria ranging in scope from general fire protection requirements (Criterion 3) to suppression of reactor power oscillations (Criterion 12). Palmetto Alliance's Contention 6 clearly does not support a position that all such criteria are at issue.

Applicants accordingly submit that Intervenor's Responses to the aforementioned Interrogatories are unacceptably vague and unresponsive, and provide Applicants with little information to prepare their case in response to Palmetto Alliance's contention.

C. Responses Which Are Vague, Evasive  
And Unresponsive To Applicants' Interrogatories (Interrogatories 3, 5,  
8, 14, 28, 29, 30, 31, 33, 34, 40, 41,  
42, 44, 47, 48, 49, 50, 53, 54, 55, 56,  
59, 60, 61, 96, 97, 98, 99, 104, 105, 108,  
109, 110, 112, 116, 119, 120, 122, 123  
and 124)

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The majority of Applicants' April 9, 1982

Interrogatories were designed to determine the specific bases for Palmetto Alliance's Contention 6, viz., the specific instances of alleged substandard workmanship or poor quality control which gave rise to Palmetto Alliance's concerns, and the potential impact of such instances on safe operation of the plant. Such information is crucial to the preparation of Applicants' case in response to Intervenor's contention. Indeed, it is precisely such specific instances which Palmetto maintains will be the focus of litigation with regard to this contention. See Palmetto's Response to Interrogatory 23, wherein it states that what must be litigated with respect to this contention is the "[e]xistence, extent, and relationship among substandard workmanship, poor quality control, actual plant construction and a degree of assurance that the plant can operate without endangering the safety of the public."

The majority of Palmetto's answers to these requests for specific information are vague, evasive and unresponsive. Applicants will address each of Intervenor's deficient responses below.

1. Supplemental Response To Interrogatory 3

Interrogatory 3 requests that Palmetto Alliance state how substandard workmanship at the Catawba station has resulted in the failure to meet specific standards. In response, Intervenor states that:

Palmetto is concerned that deficiencies in Duke Power Company's Quality Assurance program, including company pressure on Quality Assurance Control Inspectors and others to approve faulty workmanship, have allowed substandard workmanship in plant construction to go uncorrected. Palmetto Alliance has not determined and therefore cannot yet contend the specific manner in which resulting workmanship is below standard.

It should be recalled that Palmetto Alliance responded to this Interrogatory on April 28, 1982 by stating that it "lacks sufficient knowledge to answer and is awaiting responses" to its discovery request. Having now obtained such discovery, Intervenor has still not responded to the Interrogatory. Accordingly, Applicants maintain that Intervenor's answer to Interrogatory 3 is deficient.

2. Supplemental Response to Interrogatory 5

Interrogatory 5 requests that Palmetto Alliance "specify the activities and areas of plant construction for which [Intervenor contends] . . . the workmanship is substandard."

The April 28, 1982 Response to No. 5 states that Palmetto "at present lacks sufficient knowledge to answer, and is awaiting response" to its discovery request. Now,

after the discovery material has been made available, Intervenor, in its Supplementary Response, references its April 28, 1982 Response to Interrogatory 80 and implies that, in addition, other examples of substandard workmanship may be found in three groups of documents provided by Applicants in discovery. As to the first group, Palmetto Alliance cites the personnel exit interview and "other records of Mr. Hoopingarner which are believed to reflect further details of substandard workmanship he observed." As to the second group, Palmetto Alliance refers to certain NRC Inspection Reports identified by Applicants during discovery, which arose out of complaints by Mr. Hoopingarner which are believed to reflect his further observations of faulty workmanship." These Inspection Reports reflect the 1979-1980 NRC inquiry and evaluation of the complaints made by Mr. Hoopingarner. As to the third group, Palmetto Alliance refers to an April 12, 1983 letter from Duke Power Co. Attorney, A.V. Carr, Jr., which identifies documents "which may reflect Mr. McAfee's observation of substandard workmanship at Catawba." The referenced letter transmitted to Palmetto Alliance an index to certain documents that Applicants had made available for inspection and copying pursuant to Intervenor's discovery requests.

In its April 28, 1982 Response to Interrogatory 80, referenced in its Supplementary Response to Interrogatory 5, Palmetto Alliance cites as specific activities and areas of construction which it views as involving substandard workmanship (1) improper handling and storage of stainless steel and electrical cable (in an unnamed area or construction activity), (2) improper concrete pours for unspecified parts of the containment during heavy rainfall, (3) improper inspection of anchor bolt installation (in an unnamed area or construction activity), (4) changing of (unidentified) blueprints to reflect (unidentified) construction errors, (5) rainfall leaking onto unspecified electrical equipment in the control room, (6) unspecified inadequate testing training, and (7) unspecified approval of faulty workmanship. In addition, Intervenor stated in its response to Interrogatory 80 that in order to provide more specific information, "access to records . . . sought in discovery requests served on April 20, 1982 is necessary in order to refresh" the memory of Intervenor's members making allegations of substandard workmanship. Applicants have made available to Intervenor the documents requested.

At the January, 1982 prehearing conference, Intervenor characterized its members Mr. McAfee and Mr. Hoopingarner, as "chomping at the bit" to review such documents and to

provide information (Tr. 120). However, Intervenor now states that its members have not had a chance to review such additional material, and implies, therefore, that Intervenor cannot be more specific. Further, Intervenor states that upon review of this material and other "yet unknown" material, other activities or areas of substandard workmanship may be uncovered. Intervenor in effect says that because not everything it hopes to find to support its contention has been found yet, it will tell us nothing. But it must tell us what it has so far, and periodically update its interim responses pursuant to 10 CFR §2.740(e).

In short, despite ample opportunity to examine discovery materials, Intervenor has failed to provide a complete and specific listing of the areas or activities of alleged substandard workmanship on which it so far may rely as requested by Interrogatory 5. Rather, Intervenor has merely provided a discussion of some of its generalized concerns regarding construction activities. Thus, instead of narrowing and focusing the issues, this discovery response has expanded and left unbounded the issues which Applicants must be prepared to litigate.

Palmetto's failure to provide a specific and complete listing of its concerns in this response, is crucial in that its response to 30 other Interrogatories<sup>3</sup> requesting

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<sup>3</sup> Interrogatories Nos. 28, 29, 30, 31, 40, 41, 42, 44,  
(footnote continued)



specific information simply refers to its response to Interrogatory 5.

3. Supplemental Response To Interrogatory 8

Interrogatory 8 requests Palmetto Alliance to describe how the particular aspects of "substandard workmanship" which it alleges have occurred results in the conclusion that NRC requirements have not been satisfied. Applicants note that in Intervenor's April 28, 1982 Response to the Interrogatory, it stated that a complete answer must await responses to its discovery requests. Now, after discovery documents have been made available, Palmetto Alliance states:

[i]t can only relate this [unspecified] substandard workmanship, the full details and extent of which remain undetected, to Duke's failure to satisfy the NRC requirements of 10 CFR Part 50, Appendix B . . .

Palmetto Alliance's failure to identify any specific examples of substandard workmanship, and thus its failure to relate such examples to Commission requirements which it alleges that Applicants have not met, render this answer unresponsive. Palmetto Alliance at this stage of the proceeding must be expected to have identified specific instances of substandard workmanship and to relate such to the specific language of Appendix B.

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(footnote continued from previous page)

47, 48, 49, 50, 63, 80, 81, 97, 98, 99, 100, 104, 105, 108, 109, 110, 112, 119, 120, 122, 123 and 124.

4. Supplemental Response To Interrogatory 14

Interrogatory 14 requests that Palmetto Alliance specify the manner in which NRC requirements noted in Interrogatory 13 have not been met. In response thereto, Intervenor simply references the documents which it identified in its response to Interrogatory 9.

Notwithstanding Applicants' objections to Intervenor's response to Interrogatory 9, supra, Applicants maintain that the Intervenor's response does not even attempt to address the requirements which Palmetto Alliance contends that Applicants have not met, or the manner in which such requirements have not been met. Accordingly, Applicants maintain that Intervenor's answer is totally unresponsive.

5. Supplemental Responses On Interrogatories  
28, 29, 30, 31, 40, 41, 42, 44, 47, 48,  
49, 50, 63, 80, 81, 96, 97, 98, 99, 100,  
119, 120, 122, 123, 124

Palmetto Alliance's Supplemental Responses on these Interrogatories all refer Applicants to Intervenor's Response to Interrogatory 5. (Interrogatory Responses 47, 48 and 49 also refer to the Response to No. 41, which in turn refers to the Response to No. 5. Interrogatory Responses 96, 97, 98, 100, 120, 122, 123 and 124 also refer to Intervenor's Response to No. 80, which in turn refers to the Response to No. 5). For the reasons set forth in the

discussion of the response to Interrogatory 5, supra, Applicants submit that more responsive answers should be compelled.

6. Supplemental Response To Interrogatory 33

Interrogatory 33 requests the identity and current address of individuals which Palmetto Alliance contends have performed poor quality control or substandard workmanship. The names provided by Intervenor are taken verbatim from an index of documents provided to it by Applicants in discovery. The index lists the names of certain Quality Assurance employees who voiced complaints or set forth problems and concerns; it does not state that such individuals performed substandard work. Thus, while it appears that Palmetto Alliance is contending that these persons have performed substandard work, the record does not support this fact. Accordingly, unless Palmetto Alliance comes forward with specific examples that support allegations that the individuals named herein actually performed faulty workmanship, the Response must be viewed as evasive and unresponsive.

7. Supplemental Response To Interrogatory 34

Interrogatory 34 requests that Palmetto Alliance identify the particular acts of poor quality control in which it contends that named individuals were involved. Intervenor's answer is totally unresponsive in that it does

not even attempt to identify particular acts of alleged poor quality control involving named individuals. Indeed, Palmetto Alliance's response does not address any general or specific act of poor quality control; rather, it references individuals who have "complained of quality control and workmanship deficiencies . . . ."

8. Supplemental Responses To Interrogatories 56, 59, 60 and 61

In these Interrogatories, Applicants request that Intervenor explain in detail the substance of its position that Applicants have not developed and implemented an appropriate quality assurance program (Interrogatory 56), provide an explanation of Intervenor's concern regarding any alleged inadequacies in policies implementing Applicants' quality assurance program (Interrogatory 59), provide an explanation of Intervenor's concern regarding the alleged inadequacies of procedures for implementing Applicants' quality assurance program (Interrogatory 60), and provide an explanation regarding Intervenor's concern regarding any alleged inadequacies in instructions for implementing Applicants' quality assurance program (Interrogatory 61).

In response to Applicants' request for a detailed response as to the substance of Palmetto Alliance's concerns regarding Applicants' quality assurance program, Intervenor refers to its Original Response, which states

that "Applicants' quality assurance program fails to provide adequate confidence that a structure, system or component will perform satisfactorily in service."

Intervenor explains that its concern regarding Applicants' policies, procedures and instructions for implementing its program is that "the program does not work." In short, Intervenor does not even attempt to "explain in detail" the substance of its concerns; rather, it presents vague, evasive responses to these Interrogatories. Accordingly, Applicants maintain that such answers to Applicants' Interrogatories are unresponsive.

9. Supplemental Response To Interrogatories 104 and 105

These Interrogatories request that Intervenor specify the particular systems affected by alleged deficiencies and the impact of such deficiencies on plant operation (Interrogatory 104), and state whether such alleged deficiencies are uncorrected and the basis for this response (Interrogatory 105). Applicants note that in Palmetto Alliance's April 28, 1982 Responses to these Interrogatories, it stated that a complete answer must await responses to its discovery requests. Now, after the discovery material has been made available, Palmetto Alliance merely references in its Supplemental Responses its responses to Interrogatories 5 and 80. However, such Responses do not address the particular systems affected by

specific alleged deficiencies, the impact of such alleged deficiencies on plant operation or whether such alleged deficiencies remain uncorrected.

10. Supplemental Response To Interrogatories 108, 109, 110, and 112

In these Interrogatories, Applicants request that Intervenor provide specific instances where "company pressure" was allegedly brought and by whom it was brought (Interrogatory 108), the identity of each individual on whom such alleged pressure was brought to bear (Interrogatory 109), the manner in which such alleged pressure was brought (Interrogatory 110), and every instance of inadequate construction which resulted from such alleged "company pressure" (Interrogatory 112).

Applicants note that in Palmetto Alliance's April 28, 1982 Responses to these Interrogatories, it stated that complete answers must await responses to its discovery requests. Now, after the discovery material has been made available, Intervenor references in its Supplemental Responses its answer to Interrogatories 5 and 80, and relates an instance involving William R. McAfee during which his supervisor allegedly verified the specific length of an anchor bolt within the reactor building. Significantly, Intervenor's Response does not include any specific instances where "company pressure" was brought to require an individual to perform any activity which could have an adverse impact on



plant safety. Rather, Intervenor's Response vaguely states that Intervenor is aware of "pressures and retaliation against those [employees] complaining." Response to Interrogatory 80 at p. 13. Such generalized assertions fall far short of the Applicants' request that Intervenor specify each instance of company pressure, each individual on whom such pressure was brought to bear, the manner in which such pressure was brought, and the effect of such alleged pressure on plant construction.

11. Supplemental Response To Interrogatories 116, 119 and 120

In these Interrogatories, Applicants request that Intervenor state the manner in which approval was given for alleged "faulty workmanship" (Interrogatory 116), the identity of the individual giving such approval (Interrogatory 119), and what approval was given for each particular task alleged (Interrogatory 120). With regard to Applicants' request in Interrogatory 116 that Intervenor provide the manner in which approval was to be given for alleged "faulty workmanship", Intervenor simply responded "by QC inspectors". Significantly, Interrogatory 116 does not request by whom such approval will be given, but rather how such approval will be given. Accordingly, Intervenor was unresponsive to this Interrogatory. With regard to Applicants' request for the identity of individuals giving

such approval and the specification of what approval was given for a particular task, Intervenor references its Responses to Interrogatories 5 and 80. However, neither of these responses address the request of Applicants regarding these issues. Accordingly, Intervenor's responses to Interrogatories 119 and 120 are also vague, evasive and unresponsive.

#### Conclusion

Applicants submit that the Interrogatory answers on Contention 6 that are discussed herein are vague, evasive, incomplete, and/or generally unresponsive. Moreover, Responses to several Interrogatories have been omitted without explanation. Applicants accordingly believe that Palmetto Alliance has failed to comply with its discovery obligation as to these Responses, and urge the Board to compel responsive answers.

#### II. RESPONSES TO INTERROGATORIES ON CONTENTION 7

On April 19, 1982, Applicants filed a series of Interrogatories on Contention 7 which sought basic information as to the definition of material terms in the contentions, the nature and effect of the alleged "consistent failure to adhere to . . . 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 regulations and, if so, whether it contends that Applicants have not satisfied those requirements; and the bases and sources for all of the foregoing information. General requests for documents were also included, along with a series of general Interrogatories.

Palmetto Alliance's Supplemental Responses are predominantly characterized by the same vagueness, evasiveness and general unresponsiveness found in Palmetto Alliance's original responses. The specific deficiencies are discussed below.

However, before beginning a specific discussion of Responses Applicants consider deficient, Applicants would note that Palmetto Alliance's statement (Supplemental Responses at p. 24) that "Applicants have otherwise refused to compile information or otherwise respond to specific questions beyond identifying documents" substantially misrepresents the discovery effort which Applicants have undertaken in response to Palmetto Alliance's Interrogatories. As the Board is aware, Applicants have filed full and responsive answers (identifying and providing documents, where appropriate) to all of those Interrogatories except those to which Applicants have

successfully objected. The record simply does not support Palmetto Alliance's suggestion that Applicants have failed to fulfill their discovery obligation.

A. Failure To Specify Regulatory Requirements (Interrogatories 24, 25, 26, 27, 35, 36, 37, 38)

Contention 7 asserts that Applicants' "consistent failure" to comply with required procedures has led it to violate "applicable NRC regulations" (Interrogatory 24; see Supplementary Responses at p. 29) in the past and to "remain in noncompliance with applicable regulations" (Interrogatory 26; see Supplemental Responses at p. 29). Applicants asked a number of Interrogatories which sought to have Intervenor specify which NRC regulations have allegedly not been complied with. Despite the allegations set forth in its contention, Palmetto Alliance fails to name a single specific NRC requirement which has allegedly been violated. Rather, it states that:

Palmetto Alliance contends that such 'consistent failure' by Applicants represents noncompliance with NRC regulations, most critically 10 CFR 50.57(a)(3). The additional NRC regulations not complied with [and] the activities representing such noncompliance are identified, in part, by the NRC Staff in the reports and documents set forth above in response to interrogatory 11." (Interrogatory 25; see Supplemental Responses at p. 29).

An examination of the documents referenced in the Supplemental Response to Interrogatory 11 reveals that no specific regulatory violations appear to be listed in

either NUREG-0834 or the 1982 SALP Board Report.

Compounding the matter is Palmetto Alliance's vague reference in its Supplemental Response on No. 25, which states that:

[t]he additional NRC regulations not complied with . . . are identified, in part, by the NRC Staff in the reports and documents set forth above in response to interrogatory 11. (emphasis added)

Such a partial reference to a reference which itself is incomplete should not be condoned by this Board.

In addition to its failure to specify which (if any) NRC regulations Applicants have violated, Palmetto Alliance also refuses to indicate which NRC regulations provide for operating and administrative procedures which have allegedly not been followed (Interrogatories 35, 36 and 37; see Supplemental Responses at pp. 30-31); or note any instances of failure to adhere to procedural requirements contained in any Commission regulations (Interrogatory 38; see Supplemental Responses at p. 31); or name any activities or "failures" which do not meet applicable regulations and/or have caused Applicants to remain in noncompliance with applicable regulations (Interrogatories 25 and 27; see Supplemental Responses at p. 29). Although purported incidents of regulatory noncompliance are central to Contention 7, Palmetto Alliance merely states in response to each of these inquiries that the answers

requested are "within the knowledge of Applicants." Applicants submit that if Palmetto Alliance wishes to maintain that Applicants have been and continue to be in violation of NRC regulations, it is incumbent upon the Intervenor to state which regulations have not been complied with.

B. Responses Which Are Vague, Evasive  
and Unresponsive To Applicants'  
Interrogatories

Two topics are central to Contention 7: (1) Palmetto Alliance's allegation of Applicants' "consistent failure to adhere to required Commission operating and administrative procedures provided for in Commission rules and regulations;" and (2) the relationship of Applicants' "track record" at Oconee and McGuire to the ability to operate Catawba safely. Each topic is discussed below.

1. Operating And Administrative Procedures  
(Interrogatories 1, 2, 6, 8, 12, 14, 16, 46)

Applicants asked a number of Interrogatories which sought specific information about these "operating and administrative procedures." For example, Interrogatories 1, 12 and 46 asked which of these procedures Palmetto Alliance contends are the subject of this contention. Such information is key to both Intervenor's case and Applicants' case on this contention. In response to these Interrogatories, Intervenor fails to list a single specific procedure, stating instead that the operating and



administrative procedures identified by the NRC in NUREG-0834<sup>4</sup> are the subject of Contention 7. (See Supplemental Responses at pp. 24, 27 and 32). As to the operating procedures in question, Intervenor also remarks that "[r]eference to [NUREG-0834] or response by NRC Staff would likely particularize the operating procedures which the NRC intended." (Supplemental Responses at p. 24). As to the administrative procedures, Palmetto Alliance suggests that a "more particularized description . . . may be available from the NRC Staff." (Supplemental Responses at p. 27).

Applicants submit that such evasive and unresponsive answers to basic Interrogatories -- i.e., as suggesting that reference to NUREG-0834 or Responses by the Staff "would likely" produce the specific descriptions sought -- are unacceptable. Surely, if Palmetto Alliance has read NUREG-0834 it should be able to state with assurance whether the procedures in question are contained therein; and if it has exercised its "right of first discovery" from the NRC-Staff, Palmetto Alliance should now know whether the Staff had particular procedures in mind.<sup>5</sup>

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<sup>4</sup> NRC Licensee Assessments (Systematic Assessment of Licensee Performance Review Group), August, 1981.

<sup>5</sup> In its April 20, 1982 Interrogatories dealing with Contention 7, Palmetto Alliance asked (in No. 26) Applicants to describe in detail the "below average" rating for Catawba reflected in NUREG-0834. In their December 31, 1982 Responses to this Interrogatory, Applicants indicated that such a question was more  
(footnote continued)

As a matter of fact, an examination of NUREG-0834 reveals that no specific operating and administrative procedures were identified by the Staff in its discussion of the various Duke Power Company plants. Palmetto Alliance's Supplemental Responses on this matter thus leave Applicants with no more information on the "procedures" with which the Intervenor is concerned than was provided in Palmetto Alliance's original Responses, in which it claimed to "lack sufficient knowledge" to answer. Given the fact that Applicants' alleged "consistent failure" to adhere to these procedures is the crux of Contention 7, it seems only reasonable that Palmetto Alliance be required either to name those regulatory procedures which it believes Applicants have violated or to admit that it has no specific procedures in mind.

Other Interrogatory answers concerning these "operating and administrative procedures" are similarly unresponsive, reflecting either a continuing disregard by Palmetto Alliance of its obligation to provide fundamental

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(footnote continued from previous page)

appropriately addressed to the NRC Staff, which performed the SALP evaluation and wrote the NUREG. Applicants further note that the NRC Staff provided the information sought in Interrogatory 26 in its "Supplemental Responses to Palmetto Alliance Interrogatories and Production Requests on Contentions 6 and 7," filed February 17, 1983 (see pp. 10-13). There is, therefore, no reason for Palmetto Alliance to provide such evasive answers in response to these Interrogatories.

information or a pervasive lack of supporting information on this key aspect of its contention. In response, for example, to inquiries as to who developed and implemented the administrative procedures in question (Interrogatories 15 and 16; see Supplemental Responses at p. 28); when the operating procedures were developed and implemented (Interrogatory 8; see Supplemental Responses at p. 25); and where the operating procedures in question are to be found (Interrogatory 6; see Supplemental Responses at p. 25); Palmetto Alliance evasively replies that such information is "within the knowledge of Applicants." That the information may or may not be within Applicants' knowledge is irrelevant. Applicants wish to know what Palmetto Alliance knows about these procedures, so that Applicants can prepare their case.

Similarly, when asked to specify what activities these operating and administrative procedures are intended to govern, Palmetto Alliance replies only that such an inquiry is "more appropriately directed to NRC Staff," and/or that this information is within Applicants' knowledge. (Interrogatories 2 and 14; see Supplemental Responses at pp. 24 and 27). Applicants again submit that this response is grossly inadequate. If Palmetto Alliance plans to support its allegations of Applicants' "consistent failure to adhere to required Commission operating and

administrative procedures," then surely it must have some knowledge of the actual activities to which these procedures apply. If not, how can it gauge the importance of these procedures to public health and safety? How can it verify the occurrence of violations of these procedures absent some knowledge the activities which the procedures govern? Given such a situation, the Board should order full and complete disclosure.

2. Relationship Of Applicants' "Track Record"  
To Its Performance At Catawba (Interrogatories  
10, 44, 45, 48, 49, 50, 52)

Another facet of Contention 7 which is central to Palmetto Alliance's case is how Intervenor proposes to tie Applicants' "track record" at Oconee and McGuire to its ability to operate Catawba safely. Here again, Palmetto Alliance's Supplemental Responses are incomplete and evasive, and provide virtually no information as to the bases for Contention 7. For example, in answer to Interrogatory 10 (see Supplemental Responses at p. 25), which seeks to establish the relationship between Applicants' alleged failure to adhere to operating procedures at Oconee and their ability to operate Catawba safely in the future, Palmetto Alliance's Supplemental Response fails to include a single specific example of the defects alleged to exist in Applicants' "track record," or any explanation of Applicants' "repetitive and chronic"

non-compliance with NRC regulatory procedures and how it has affected public health and safety. Intervenor also fails to explain its implied assertion that the NRC's inspection of Applicants' facilities is inadequate.

Other Interrogatories also seek an explanation of how Palmetto Alliance proposes to relate the findings of NUREG-0834 as to Oconee to conditions at Catawba. Here again, Palmetto Alliance's Supplemental Interrogatory Responses are clearly deficient. For example, when asked its interpretation of the phrase "weaknesses in personnel adherence to operating and administrative procedures" used in the 1981 SALP Report, Palmetto Alliance merely refers to its original (April 28, 1982) response to this question, which stated: "[m]eaning intended by author." (Interrogatory 44; see Supplemental Responses at p. 32). Similarly, when asked to specify the particular "weaknesses" allegedly present at Catawba, Intervenor again refers to its April 28, 1982 Responses, wherein it replied, in direct contrast to the language of Contention 7, "term refers to Oconee." (Interrogatory 45; see Supplemental Responses at p. 32).

Applicants submit, first, that this Supplemental Response deliberately avoids answering an Interrogatory clearly designed to elicit the meaning of the "weaknesses" alleged to have been found. In addition, Palmetto Alliance

is surely obligated in its Supplemental Response on this Interrogatory to clarify the confusion created by its original Response as to whether these "weaknesses" are or are not meant to apply to Catawba.

Nor does Palmetto Alliance specify which "personnel" have allegedly failed to comply with the "operating and administrative procedures" in question, stating instead that: "[t]he term 'personnel' was employed by NRC Staff. Palmetto employs the term as intended by NRC Staff." (Interrogatory 48; see Supplemental Responses at p. 33).

Equally evasive answers appear in response to Interrogatories which attempted to pinpoint the actual "failures to follow procedures" referred to in Contention 7. When asked to specify the "failures" and "procedures" included, Palmetto Alliance replies that it intends to rely upon those "failures" and "procedures" which the NRC Staff had in mind. (Interrogatories 49, 50 and 52; see Supplemental Responses at p. 33). Although the NRC Staff did use these terms, Palmetto Alliance apparently plans to rely upon these alleged "failures" to follow (unspecified)



"procedures," to attempt to prove its contention. Since it has now had the benefit of discovery, Intervenor should either provide responsive answers to these questions or admit that it does not know the answers.

C. Failure To Respond To Interrogatories  
(Interrogatories 17, 28, 54)

Palmetto Alliance has failed to respond to Interrogatories 17, 28 and 54 in derogation of 10 CFR §2.740b(b).

Conclusion

Applicants submit that the Interrogatory answers on Contention 7 that are discussed herein are vague, evasive, incomplete, and/or generally unresponsive. Moreover, Responses to several Interrogatories have been omitted without explanation. Applicants accordingly believe that Palmetto Alliance has failed to comply with its discovery obligations as to these Responses, and urge the Board to compel responsive answers.

III. RESPONSES TO INTERROGATORIES ON CONTENTION 8

On August 16, 1982, Applicants served on Palmetto Alliance Interrogatories and requests for documents relating to Contention 8. These Interrogatories were basic in nature, requesting only that Palmetto Alliance specify its concerns and identify the bases for those concerns. More specifically, the Interrogatories were designed to

enable Applicants to learn the definitions ascribed by Palmetto Alliance to material terms in the contention such as "hands-on operating experience," "sufficient" experience and "similar lack of experience;" the activities which the Intervenor contends constitute "sufficient hands-on operating experience;" whether Palmetto Alliance contends that Applicants do not meet applicable NRC requirements governing operator training; whether it contends such NRC requirements are inadequate; and whether it contends that some other standard should be applied. Applicants' Interrogatories also sought information on the dimensions and scope of Contention 8, such as whether its allegations apply to reactor operators, senior operators, shift supervisors, and/or plant supervisors. Finally, Applicants sought the legal and technical bases for the Interrogatory Responses provided.

In its Supplemental Responses on Contention 8, Intervenor fails 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 relies only upon §50.57, the broad public health and safety regulation); what experience would constitute "sufficient hands-on operating

experience;" instances in which Applicants have failed to provide "primary management responsibilities;" or the precise bases for its Supplemental Responses.<sup>6</sup>

Specific Interrogatory Responses, grouped by category of deficiency as in the preceding two sections, are set forth below.

A. Failure To Specify Bases For Responses (Interrogatories 6, 13, 19, 30, 46, 52, 59, 71 and 84)

In answer to Interrogatory 6, which seeks the bases for previous Responses, Palmetto Alliance refers to (1) its responses to General Interrogatories (see Supplemental Responses at p. 36), and (2) its response to Interrogatory 2. Thereafter, in answer to all subsequent Interrogatories on Contention 8 which ask for the bases for previous Responses, Palmetto Alliance merely refers to its Response to Interrogatory 6 (See Interrogatory Responses 13, 19, 30, 46, 52, 59, 71 and 84). An examination of the content of both Intervenor's answer to the General Interrogatories and its answer to Interrogatory 2 reveals that this mode of responding is inappropriate and inadequate. Specifically,

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<sup>6</sup> Palmetto Alliance's suggestion on p. 36 of its Supplemental Responses that Applicants provided no information on Contention 8 until compelled to do so by the Board is inaccurate. Answers to Palmetto Alliance's September 3, 1982 Interrogatories on Contention 8 were filed by Applicants on September 22, 1982; supplemental answers were provided on March 28, 1983.

the documents referenced in the General Interrogatory Response consist, inter alia, of the Report of the President's Commission on the accident at Three Mile Island, October 1979; NUREG/CR 1270 VII, APP.7; and NUREG-0737, the clarification of the TMI Action Plan requirements. Such a general reference to documents encompassing thousands of pages as a method of responding to specific requests for documents is inappropriate.

Palmetto Alliance's reference to its answer to Interrogatory 2 is similarly unilluminating. In this answer Intervenor merely refers to 10 CFR §55.4's definitions of "operator" and "controls," and lists the 27 "control manipulations" and "plant evolutions" set forth in the ANSI 1981 standard whose actual performance Palmetto Alliance believe constitutes "hands-on operating experience." No effort is made in the subsequent Interrogatory Responses to indicate which aspect of §55.4 and/or the ANSI standard Palmetto Alliance is relying upon in its responses. Such deficiency warrants correction.

B. Failure to Specify Regulatory Requirements (Interrogatories 4, 10, 16, 17, 32, 33, 38 and 67)

Applicants, in an attempt to ascertain the standard by which Intervenor's contention can be measured, have attempted to discover those NRC requirements which Palmetto Alliance considers to be controlling. That such inquiry is

proper is belied by the fact that Palmetto Alliance is fully cognizant of the regulations that pertain to the operator qualification issue. Indeed this matter was thoroughly briefed not only by Applicant and Staff but also by Palmetto Alliance. See Palmetto Alliance's Response of March 31, 1982. Furthermore, through discovery Applicants made available to Palmetto Alliance a copy of the NRC's Standard Review Plan; and, in their August 3, 1982 Response to general Interrogatories, referenced NUREG/CR 1270 and the TMI Action Plan (NUREG-0737). Despite its knowledge of the controlling regulations and its access to NRC information bearing on the subject, Palmetto Alliance has simply relied upon 10 CFR §50.57. Under the circumstances, a mere reference to the generic public health and safety regulation cannot be permitted to suffice. This position applies also to Interrogatories 4, 10, 16, 32, 33, 38 and 67.

Applicants have asked Palmetto Alliance in Interrogatory 17 to explain why it contends Applicants fail to meet NRC requirements. In response, Palmetto Alliance simply states that "lack of sufficient actual experience impunes the reasonable assurance of safe operation." Such an answer should not be viewed as responsive; rather, Palmetto Alliance should explain how the lack of sufficient actual experience impugns the reasonable assurance of safe operation.

C. Responses Which Are Vague, Evasive  
And Unresponsive To Applicants'  
Interrogatories (Interrogatories 8,  
17, 50, 51, 68, 72, 82 and 83)

Applicants maintain that various Responses of Palmetto Alliance are inadequate. Each is addressed below.

1. Supplemental Response To Interrogatory 8

This Interrogatory, which serves as the fundamental inquiry with respect to Contention 8, seeks to ascertain Palmetto Alliance's view as to what constitutes "sufficient hands-on operating experience." In response, Palmetto Alliance simply states that it "is not prepared to establish at this time a level of sufficient hands-on operating experience." Applicants wish to know the precise level of experience Palmetto Alliance considers to be adequate. Without knowledge of such level Applicants are greatly hampered in putting forth a case; rather Applicants find themselves addressing a moving target. Clearly Palmetto Alliance, having had the full benefit of discovery, should be expected at this late date to share with the Board and parties its position with respect to what it views to be adequate hands-on operating experience.

2. Supplemental Response To Interrogatory 51

Applicants have sought identification of each instance wherein they have failed to provide "primary management responsibilities." Palmetto Alliance, in maintaining that Applicants have so failed, simply states: "Yes, NUREG-0737



establishes such requirements." (Supplemental Responses at p. 42). Such a general reference to NUREG-0737 cannot be viewed as supplying information of each instance in which Applicants have failed to provide primary management responsibility. Accordingly, a responsive answer is warranted.

3. Supplemental Response To Interrogatory 68

Interrogatory 68 requests that Palmetto Alliance explain why the requirement of sufficient hands-on operating experience has not been met by various individuals. After listing the amount of experience of various people in its Responses, however, Palmetto Alliance simply states that such experience is "insufficient." (Supplemental Responses at p. 44). Intervenor's total failure to provide any specificity whatsoever necessitates that the Board compel an adequate response.

4. Supplemental Response To Interrogatory 72

In this Interrogatory Applicants have asked for the names of Senior Reactor Operators and Reactor Operators whose resumes Intervenor has examined. In its Response, Palmetto Alliance refers Applicants to its November 5, 1982 supplementary response, which states that "no names of operators are set out in this copy of the FSAR." In response to Palmetto Alliance's Interrogatory 16 on this contention Applicants indicated in their September 22, 1982

response that such names would be made available. Indeed, the names have been available at Applicants' offices since October 4, 1982. Accordingly, Applicants believe that a responsive answer should be forthcoming.

6. Supplemental Response to Interrogatory 82

In response to this Interrogatory's inquiry into the definition of "experience," Palmetto Alliance refers Applicants to its response to Interrogatory 8. For the reasons set forth in the discussion of Intervenor's Interrogatory 8 response, Applicants maintain a further response should be ordered by this Board.

D. Failure to Respond (Interrogatory 50)

An examination of Palmetto Alliance's Responses reveals that it has failed to respond to Interrogatory 50 in contradiction of 10 CFR §2.740b(b).

Conclusion

Applicants submit that the Interrogatory answers on Contention 8 that are discussed herein are vague, evasive, incomplete, and/or generally unresponsive. Moreover, a Response to one Interrogatory has been omitted without explanation. Applicants accordingly believe that Palmetto Alliance has failed to comply with its discovery obligation as to these Responses, and urge the Board to compel responsive answers.

#### IV. RESPONSES TO INTERROGATORIES ON CONTENTION 16

On August 9, 1982, Applicants served on Palmetto Alliance discovery requests relating to Contention 16, which sought, as did Applicants' Interrogatories on other contentions, specific information to clarify the concerns underlying this contention, (i.e., why does Palmetto Alliance contend that Oconee and McGuire spent fuel cannot be safely stored at Catawba?). In particular, these Interrogatories sought 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.

Applicants submit that Intervenor's Supplemental Responses fail to specify the elements of what it considers a "safe" spent fuel storage process, or the details of various concerns stated in the contention. Nor do its answers provide adequately specific reference to the documents in which the bases for its Supplemental Responses are set forth. These deficient Responses are discussed below.

A. Failure To Specify Bases For Responses  
(Interrogatories 7, 16, 24, 28, 37 and 48)

The Interrogatories pertaining to Contention 16 sought information relative to why Palmetto Alliance believes that the storage of Oconee and McGuire spent fuel at the Catawba spent fuel pool will render the Catawba facility unsafe. After a series of questions regarding one aspect of this inquiry, Applicants sought the bases supporting Palmetto Alliance's response to such questions. In each instance Palmetto Alliance refers to its Response to General Interrogatories. Palmetto Alliance's response to General Interrogatories is as follows:

See response of August 30, 1982. In addition Palmetto Alliance has obtained the NPC's safety evaluation report related to the Catawba Station operation, NUREG 0954 which includes an evaluation of the fuel storage facility; Applicants April 2, 1982, letter from W.L. Parker to Elinor Adensam of the NRC Staff transmitting additional information relating to the storage of non-Catawba fuel at Catawba; September 1976 Duke analysis of the 'expanded Catawba heat load on the spent fuel pool;' and FSAR Part 9.1.2 'Spent Fuel Storage,' which in-part form the bases for Palmetto's position on this contention.

Applicants take issue with Intervenor's reference that these documents "in part form the bases for Palmetto's position on this contention." Applicants have asked for the bases, not the partial bases and thus maintain that Intervenor should be compelled to provide a complete response.

Applicants would note that Palmetto Alliance's August 30, 1982 response consists of references to 29 documents, which for the most part appear to be newspaper and magazine articles, and intervenor papers. Such general reference to specific inquiry should not be permitted to suffice.

B. Responses Which Are Vague,  
Evasive And Unresponsive To  
Applicants' Interrogatories  
(Interrogatories 5, 6, 13, 18,  
22, 23, 40, 41, 44 and 46)

Palmetto Alliance has failed to set forth with specificity the precise nature of its spent fuel pool contention, other than to argue that it remains of the view that the Catawba spent fuel pool cannot safely accommodate Oconee and McGuire spent fuel. Specific Interrogatories are addressed below.

1. Supplemental Response To Interrogatory 5

In Interrogatory 5 Applicants sought to determine those factors considered necessary to assure safe storage. Palmetto Alliance's response was simply to state that it was Applicants' burden to prove that the spent-fuel pool could accommodate the spent fuel at Oconee and McGuire, making general reference to 10 CFR §50.57. Such a reply is simply not responsive.

2. Supplemental Response To Interrogatory 6

When asked to provide the details of its concerns in Interrogatories 13, 18, 23, 40, 41, 44 and 46, Palmetto Alliance refers Applicants to its Response to Interrogatory 4, which Applicants note is nonexistent. Applicants assume that Palmetto Alliance meant to refer Applicants to its Response to Interrogatory 6. A examination of Palmetto Alliance's response to Interrogatory 6 does alert Applicants to Palmetto Alliance's general concern over expanded heat load, loss of onsite/offsite power, cask drop accidents, fuel handling accidents, and airplane crashes.<sup>7</sup> However, as to the specifics underlying such concerns (which specifics Applicants have sought in the above referenced Interrogatories), absolutely no detail whatsoever is provided. Clearly, at this advanced stage of the proceeding Applicants' request for specific information should result in more than a mere recital or laundry list of concerns. Applicants' position takes on added significance when one realizes that the specific analysis of the spent fuel pool including, for example heat loading, is set forth in the FSAR and has been available to the Intervenor from the outset of this proceeding. Further,

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<sup>7</sup> Characteristic of Palmetto Alliance, matters raised in this response have been specifically precluded by this Board and yet Palmetto Alliance continues to raise the matter. See, i.e., the Board's December 1, 1982 Order at pp. 20-21, specifically excluding consideration of "aircraft crashes into the spent fuel pool."

this information was specifically identified in Applicants' August 9, 1982 Response to Palmetto Alliance Interrogatories on Contention 16.

3. Supplemental Response To Interrogatory 22

In Interrogatory 22, Applicants again have sought to determine specifically each element of the storage process which Palmetto Alliance maintains is necessary for the protection of the public health and safety. It is only by establishing such a standard that Applicants will be able to determine, first, the validity of such standard, and second, how its spent fuel pool analysis compares to such standard. However, rather than providing the necessary information Palmetto Alliance simply asserts that "Applicants cannot safely store irradiated fuel assemblies." Such a response should not be permitted to stand.

Conclusion

Applicants submit that the Interrogatory answers on Contention 16 that are discussed herein are vague, evasive, incomplete, and/or generally unresponsive. Applicants accordingly believe that Palmetto Alliance has failed to comply with its discovery obligation as to these Responses, and urge the Board to compel responsive answers.



V. RESPONSES TO INTERROGATORIES ON CONTENTION 44

Palmetto Alliance has not responded to Applicants' Interrogatories concerning Contention 44. Rather, it refers to a Response filed by a different party (CESG) to Interrogatories from the NRC Staff and asserts that the answers to Applicants' Interrogatories "are fully provided in answers to NRC Staff Interrogatories provided by CESG."

Such behavior by Palmetto Alliance is simply irresponsible. Leaving aside the fact that Applicants are entitled either to a response to each of their Interrogatories or to an objection,<sup>8</sup> Palmetto Alliance has chosen to disregard a specific Licensing Board order applicable to such instances. To explain, the action taken by Palmetto Alliance is identical to an action taken by it with respect to Interrogatories filed by the NRC Staff. In that instance, Palmetto Alliance had alleged that answers to the Staff's Interrogatories were contained in its answers to Applicants' Interrogatories. The Staff moved to compel responses and the Board granted such motion, ordering that Palmetto Alliance either answer or object to the specific Interrogatory or, if it chose to rely on prior responses, to demonstrate that the Interrogatories were in fact substantively identical. (Tr. 650-655). In a

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<sup>8</sup> See December 22 Order at p. 10. Applicants recognize that where Interrogatories overlap a reference to other responses may be sufficient.

subsequent order the Board noted that a party "is entitled to direct answers to each and every interrogatory posed."

See December 22 Order at p. 10.

Under this ruling Palmetto Alliance should be required to answer the Interrogatories filed by Applicants. Should Palmetto Alliance assert that answers to Staff Interrogatories will suffice, then it is incumbent on Palmetto Alliance to demonstrate that the information has in fact been provided.

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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 To Compel," "Attachment," and "Certification By Counsel" in the above captioned matter have been served upon the following by deposit in the United States mail this 29th day of April, 1983.

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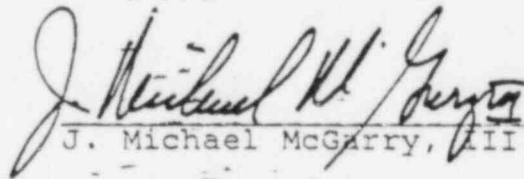
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J. Michael McGarry, III

UNITED STATES OF AMERICA--  
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )

DUKE POWER COMPANY, et al. )

(Catawba Nuclear Station,  
Units 1 and 2) )

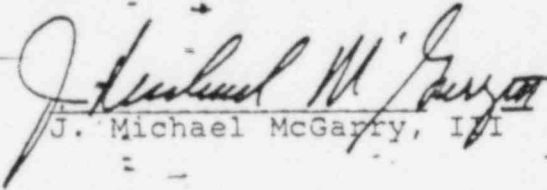
Docket Nos. 50-314  
50-315

CERTIFICATION BY COUNSEL

I, J. Michael McGarry, counsel for Applicants in the  
above referenced proceeding, certify the following:

1. On the afternoon of April 20, 1983 I received a copy of Palmetto Alliance Supplementary Responses.
2. Since that date, I and my co-counsel have devoted significant time and effort to preparing the instant Motion to Compel.
3. That due to the length and nature of the Supplementary Response and its references to other pleadings, Applicants had not finalized their positions until Friday morning, April 29, 1983.
4. Early Friday afternoon (April 29, 1983) I personally telephoned Palmetto Alliance's counsel, Mr. Robert Guild, at both his Charleston and Columbia, South Carolina telephone numbers. In both instances I was answered by a recording. I left a message in both instances to the effect that Applicants were filing a Motion to Compel that day and desired to discuss the matter with Mr. Guild. Mr. Guild did not return my telephone calls.

5. On Friday, April 29, 1983 Applicants filed the instant Motion to Compel pursuant to 10 CFR §2.740(f) which requires such to be filed "within ten (10) days after the date of the response" which in this instance was April 19, 1983. 10 CFR §2.740(f) does not provide five days for service in calculating the filing date.

  
J. Michael McGarry, I/I

April 29, 1983