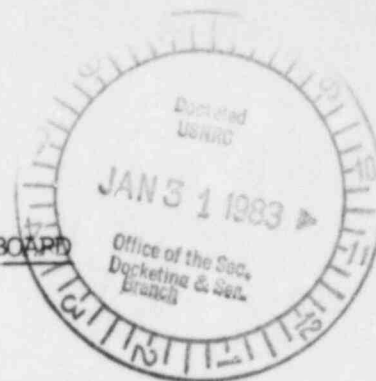


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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. 50-413

50-414

January 28, 1983

PALMETTO ALLIANCE MOTION
TO COMPEL DISCOVERY
AND
SUPPLEMENT TO MOTIONS TO COMPEL DISCOVERY

Pursuant to 10 CFR Sections 2.740(f), 2.744 and the Board's memorandum and Order of December 22, 1982, Intervenor Palmetto Alliance hereby moves to compel discovery from the Applicants with respect to its contentions No. 6, 7, 8, 27 and 44 which have been admitted for litigation in this proceeding, supplements and renews its motions to compel filed October 4 and November 3, 1982. Palmetto Alliance specifically moves for an order overruling objections, denying motions for protective order and compelling discovery from the Applicants regarding their inadequate Responses dated December 31, 1982, to Interrogatories and Requests to Produce on Palmetto Contentions 6, 7 and 44;

As directed by the Board in its December 22, 1982, Memorandum and Order, Slip Op. at pp. 20 and 21, Palmetto Alliance hereby also supplements and renews its Motions to Compel dated October 4, 1982, and November 3, 1982 regarding Applicants' Responses dated September 22, 1982, on Palmetto contentions 8 and 27.

As so directed Palmetto will herein

endeavor to address each interrogatory objected to or to which Applicants were unresponsive, "including consideration of the objection to it, point by tedious point." Id., p.20.

At the outset, however, Palmetto urges upon the Board several general observations. For a non profit citizen's organization such as Palmetto Alliance participation in this licensing proceeding to protect the acknowledged interest of its members requires considerable sacrifice of time and very limited financial resources. While the Board suggests that the retention of experts and the taking of depositions are superior devices to written interrogatories for development of our case, it properly recognizes the additional expense to an intervenor entailed in the use of such litigation tools. Written interrogatories and the production of documents are the least costly and therefore most available means of obtaining evidence known to be in the hands of another party. Here, each of the contentions admitted for litigation questions the design, construction or operation of the Catawba facility by its designer, constructor and operator. In each instance the detailed, complex and highly technical evidence needed to prove or disprove the intervenor's contention is likely to be only in the hands of the Applicants who seek to license the plant or the NRC Staff which bears responsibility for its licensing and regulations and for similar facilities under its jurisdiction. Effectively then, an intervenor in Palmetto's position, must find proof for its case from the "mouths" (or records) of its adversaries if it is permitted to find such proof at all.

In such a posture a natural incentive exists for the party in possession of evidence of use to its adversary to resist its disclosure or production. Here, incentives are present for the Applicants and Staff to resist responsiveness to the intervenor's discovery both because the disclosure of such evidence is against their interest and because the intervenors' lack of resources make them particularly vulnerable to the paper "war of attrition"

waged by interposing myriad objections providing only incomplete or evasive answers, requiring the searching and examination of inaccessible and voluminous documents, and - as here - the burden of seeking responsiveness in costly and time consuming efforts to compel such production "point by tedious point." Palmetto Alliance asks this Board's protection from the undue handicaps of such a posture and disparity of resources between it and its adversaries. Neither fairness to the parties nor the just resolution of these health and safety issues is served by the imposition of such handicaps.

I

APPLICANTS' RESPONSES TO "PALMETTO ALLIANCE
FIRST SET OF INTERROGATORIES AND REQUESTS
TO PRODUCE" AND "PALMETTO ALLIANCE
THIRD SET OF INTERROGATORIES AND
REQUESTS TO PRODUCE" (REGARDING
CONTENTION 44).
December 31, 1982

Palmetto Alliance moves to compel discovery from Applicants, and urges that objections and the Motion for Protective Order served with the above-entitled response, dated December 31, 1982, be overruled. Applicants' Response and Motion for Protective Order relate to Palmetto contentions 6, 7, and 44.

GENERAL INTERROGATORIES

Palmetto poses four general interrogatories to the Applicants prior to setting forth the specific interrogatories on each contention. In order these seek (1) identification of the persons answering each specific interrogatory, (2) witnesses to be called to testify on each contention, (3) the description of any calculations underlying Applicants' position on the contention, and (4) identification of any communication in oral or written form underlying Applicants' position on the contention. These general

interrogatories are identical to the "General Interrogatories" posed by Applicants own discovery to Palmetto and CBSG, but for the editorial modification necessary to address "your position on the contention" in place of "the contention" as originally framed by Applicants. Curiously what is good for the "goose" is apparently not good enough for the "gander." Applicants have failed to respond to General Interrogatories No. 3 and 4.

Asserting that Interrogatory No. 3 is somehow "not applicable," Applicants - not too helpfully - volunteer to respond if Palmetto Alliance identifies "such calculation" buried somewhere "in the appropriate section of Applicants' Application, Final Safety Analysis Report, Environmental Report" etc. If they know of a calculation on which their "position on the contention" is fared, Applicants should provide the information regarding it as sought by their own Interrogatory No. 3.

Applicants object to their own question in General Interrogatory No. 4 seeking identification of oral or written communication on which "your position on the contentions is based." They recast the question as seeking solely records "regarding Applicants' legal position" on the contentions to which they assert an unparticularized and absolute privilege not only from production but also from identification or "itemized listing." While they seem to recognize that the Board obligated Palmetto Alliance - and therefore presumably Applicants as well - to "provide a list of the specific documents, correspondence, and communications as to which a claim of privilege is being asserted, and an explanation of why the privilege applies to each," Response, at p. 13, the decline to do so on the basis of the "attorney work-product doctrine," and "because communications and documents reflecting the bases for their positions on these contentions were ongoing until the time the Response was filed." Offering to file such a list by "February 1, 1983,... if the Board believes that an itemized list is necessary, Applicants force Palmetto "point by tedious point" to compel what they already understand

is a proper and responsive answer or objection to this interrogatory. Palmetto recognizes that the Rules of Produce, 10 CFR Section 2.740(b)(2), and decisional authority, Hickman v. Taylor, 329 U.S. 495 (1945), protect "mental impressions, conclusions, opinions, or legal theories of an attorney" against disclosure, but not facts or evidence which are otherwise discoverable. We ask that the Applicants be compelled to provide a responsive answer and particularized objections.

SPECIFIC INTERROGATORIES

CONTENTION NO.6

As recast in the Board's December 1, 1982, Order Slip Op. at p. 5, Palmetto Contention No. 6 was admitted as follows:

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

The Board went on to characterize the contention as now recast:

The thrust of this Contention is primarily toward alleged company attitudes and practices; proof of this Contention, presumably involving specific instances of misfeasance need not be adduced at this stage.

Id.

Palmetto Alliance originally served interrogatories upon Applicants April 20, 1982, regarding Contention 6 as previously admitted by the Board subject to the condition that it be made more specific through initial discovery. Upon Applicants' request the Board suspended discovery by Order of May 25, 1982, pending their appeal. While Palmetto did respond on April 28, 1982, to Applicants' discovery regarding Palmetto Contention 6, Applicants' response to these interrogatories and requests by Palmetto was

not made until December 31, 1982, as a result of the Board's December 1, 1982, Order admitting Palmetto 6 as recast and directing the resumption of discovery on this subject.

Interrogatory 1.

This question seeks to elicit Applicants' position on the relationship between its Quality Assurance program, Commission GA standards as enunciated in Appendix B to 10 CFR Part 50 and its entitlement to the licenses it seeks in its Application. Of course a quality assurance program is intended to "provide adequate confidence that a structure, system, or component will perform satisfactorily in "service," 10 CFR Part 50, Appendix B.

Through systems of Quality Control, including inspections, audits and approvals of work on the facility the requirements of a GA program provide the necessary link between regulatory requirements and the actual performance of the facility as built. Deficiencies, derelictions and misfeasance by Applicants in their implementation of a quality assurance program potentially impugn the degree of confidence that the plant will operate in a manner adequate to protect the public health and safety.

Applicants object to answering this interrogatory as "irrelevant," serving "no substantial purpose" and calling "for a legal conclusion unrelated to the facts." Response, pp. 14 and 15.

10 CFR Section 2.740 (b) (1) permits parties to obtain discovery through use of written interrogatories and other devices

regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party ...

Interrogatory 1 seeks to elicit Applicants position on this potential claim by Palmetto that compliance with the Commission's 10 CFR Part 50 Appendix B QA criteria is a prerequisite to entitlement to the licenses sought and a responsive answer should therefore be compelled.

Interrogatory 2.

This question follows from a negative answer, in whole or part, to Interrogatory 1, and seeks a description of the respects in which compliance with the Commission's QA criteria is not required, in Applicants view, and the "factual and legal basis" for their position. Applicants' answer: "See response to Interrogatory 1." A responsive answer should be compelled for the same reasons stated above in support of the first question.

Interrogatory 4.

The question seeks identification of the bases for the three preceding responses. Applicants reassert their objections to identifying oral communication as asserted in response to General Interrogatory No. 4, and Palmetto reiterates its argument here as made above. Palmetto asks that Applicants be required to respond to this "basis" question more fully in light of the further answers to be compelled to Interrogatories 1 - 3.

Interrogatory 5.

This question seeks Applicants' position on the relationship between substandard workmanship and plant performance and is objected to: "Applicants are unable to respond." Response, p. 16. They assert that the question "does not seek disclosure of factual matters within their knowledge or control." It remains unclear from Applicants response whether, in truth, they "don't know: the answer, or whether they know but refuse to respond subject to the objection. If they don't know they should say so,

but Palmetto is entitled to elicit Applicants' position on this "claim or defense" for the reasons stated in regard to Interrogatory 1, above. Interrogatory 6.

This question calls for Applicants' position on the relationship between the failure of safety related systems and the risk to the public in the event of accidents. It is objected to for reasons substantially the same as those given with respect to Interrogatory 5, and Palmetto reiterates the arguments made and referenced above. Interrogatory 7.

This question follows and is premised on a negative answer to questions 5 and 6. It should be answered in light of the responses compelled to those questions. Interrogatory 11.

This question calls for the bases for answers to interrogatories 5 - 10. Applicants object to identifying oral communications asserting the grounds set out with response to General Interrogatory No. 4. Palmetto directs the Board attention to its argument on that question above.

Interrogatory 12 and
Interrogatory 13.

These questions seek, respectively, identification and description of 10 CFR Section 50.55 (e) design and construction deficiencies, and identification and description of those deficiencies which represent "a significant breakdown in any portion of the Quality Assurance program."

In response Applicants list only Significant Deficiency Report No. 5 and dates "for construction at the Catawba Nuclear Station," require Palmetto to examine the reports at their offices in Charlotte to ascertain some part of the information sought concerning these deficiencies, object to providing the additional information sought by Palmetto regarding these

deficiencies, and object to providing any identification or description of Quality Assurance program deficiencies at their other facilities or involving their contractors.

With respect to that portion of Interrogatory 13 seeking information regarding Duke experience at its facilities other than Catawba and the experience of Duke's contractors, within the knowledge of Applicants, the question extends only to deficiencies representing a "significant breakdown in any portion of the Quality Assurance program" conducted pursuant to NRC regulations.

As recast by the Board Palmetto contention 6 asserts "systematic deficiencies in plant construction" the thrust of which "is primarily toward alleged company attitudes and practices," and proof of which involves "specific instances of misfeasance," Board Order of December 1, Slip Op. at p. 5. Since it is the effective implementation of a Quality Assurance program which is designed to systematically "provide adequate confidence that a structure, system, or component will perform satisfactorily in service,": 10 CFR Part 50, Appendix B, it is just such significant deficiencies those programs which best evidence company attitudes practices, and instances of misfeasance likely to result in systematic deficiencies in plant construction itself. The experience of Duke at its contractors with significant Quality Assurance program deficiencies both at Catawba and elsewhere is clearly relevant, discoverable and should be compelled.

Applicants object further "to providing the specific information called for ... beyond that listed in the Significant Deficiency Reports themselves," Response at p. 23, as unduly burdensome, without any further particularization of the nature of the information not provided or the basis for the asserted burden, leaving Palmetto to guess at the extent of its

actual knowledge or the degree of burden of production. Applicants should be required to particularize the basis for objection if it is to be credited at all.

Finally, Applicants object to providing any information whatsoever in response to the Interrogatories beyond the listing of reports by number and date. As explained in our general observations made earlier in this pleading every roadblock placed by Applicants in intervenor's path makes participation in this proceeding more difficult and costly and the proof of intervenor's Contentions artificially more burdensome. Applicants blithely assert:

(T)he Burden of deriving that information from the specific reports would be substantially the same for Palmetto Alliance as for Applicants.

Response, at p. 22. Such a claim ignores wholly the disparity of resources between the Duke Power Company and this largely volunteer citizen organization, the superior knowledge of the Applicants regarding their own practices and records, and the difficulty in time, distance, and expense required of Palmetto to search Duke's records for the answers to these questions. Applicants should be required to answer the questions as asked, or at the very least to identify specifically to precise document, or portion thereof, containing each answer and to supply at Applicants' expense a copy of each such document to Palmetto if Applicant chooses to provide a document in lieu of a responsive answer.

Interrogatory 14.

This question relates to the implementation of the audit criterion of the commission rules for quality assurance by Applicants and seeks identification and description of audits which reflected deficiencies. Applicants provide only a list of audits by number, general subject and date, refuse

to provide further information concerning the nature of the deficiencies disclosed, assert that the "major part of the information sought: is in each file without further particularization and assert the same objections as interposed in response to Interrogatory 12 and 13. Applicants should be compelled to respond for the reasons and in the manner asserted as addressed above regarding Interrogatories 12 and 13.

Interrogatory 15.

This question seeks description by Applicants of reviews conducted by the Commission Staff of its Quality Assurance program and that of its principal supplier Westinghouse including a description of a specific review referenced in the CP-SER. Applicants object on the grounds of burden and expense, asserting that they have "no discrete set of records, as it must, only that information known to Applicants through the exercise of some diligence, they should be required to answer if they know and particularize their assertions of burden.

Interrogatory 16.

To this question regarding selection, training and testing of Quality Control Inspectors at Catawba Applicants assert that Palmetto should inspect a Duke document on the subject which will "permit it to locate and identify, as readily as can Applicants, the information sought." Response, at p. 30. Palmetto reasserts the same argument and request made above with respect to Interrogatories 12 and 13.

Interrogatory 17
Interrogatory 18 and
Interrogatory 21.

Applicants identify documents in their possession the inspection of which will permit Palmetto "to locate and identify, as readily as can

Applicants, the information sought." Response at pp. 31 and 36. Palmetto reasserts the same arguments and requests made above with respect to Interrogatories 12 and 13.

Interrogatory 22.

This question seeks identification of persons employed at the facility in the areas of Quality Assurance and Quality Control. Applicants object initially on grounds of relevance, and further on the basis of an asserted company policy of nondisclosure and the need to protect themselves and the subject employees from "embarrassment as well as harassment by Palmetto Alliance." Response, at p. 37. In the alternative Applicants seek an order requiring execution of an agreement of nondisclosure by Palmetto as a condition of release of this information, Id., p. 40.

The discovery rules, of course expressly authorize disclosure of "the identity and location of persons having knowledge of any discoverable matter," 10 CFR Section 2.740 (b) (1).

Clearly where, as here, the contention itself alleges "pressure to approve jointly workmanship by the company, and a part of the basis for the contention is the personal experience of a former Quality Control Inspector at the facility, access to the identities and location of others employed in the company QA/QC programs who likely have had similar experience is of central relevance and must discoverable.

Certainly Palmetto would insist on the opportunity to contact and interview persons likely to have knowledge of significant discoverable matter. Palmetto expressly disclaims any desire to "annoy, embarrass or oppress" any such person. We believe that workers and former workers have been and will continue to be of vital assistance to Palmetto Alliance in protecting the public health and safety from the consequences of faulty workmanship

at the Catawba plant. Palmetto is willing to agree to any reasonable measure to protect such workers and former workers from annoyance, embarrassment and harassment from any source including Duke Power Company.

Interrogatory 23 and
Interrogatory 25.

These questions seek the identification of documents reflecting disputes between Quality Control Inspectors and supervisors, and complaints by workers of substandard workmanship or pressure to perform or approve such workmanship, respectively. Applicants assert that their search for such documents is incomplete and they should be required to supplement their response as needed.

Applicants provide only a listing of the documents by object to answering any specific questions posed. Palmetto reasserts the same arguments and requests made above with respect to Interrogatories 12 and 13.

Interrogatory 25.

Duke objects to providing information it has regarding the basis for the NRC "below average" SALP evaluation and corrective action, if any, taken in response. It suggests that the Staff may know more on the subject while such a suggestion may be accurate, it should not relieve Applicants of the duty to respond within their knowledge, which response should be compelled. Interrogatory 27.

This question seeks the bases for responses to Nos. 16 - 26 and is objected to with respect to oral communication on the grounds given under General Interrogatory No. 4. Palmetto directs the Board's attention to its argument above on that question and asks that Applicants be required to respond further as further answers to Nos. 16 - 26 are compelled.

CONTENTION NO. 7

As finally admitted by the Board in its December 1 Order, Slip Op. at pp. 5 - 6, Palmetto Alliance Contention No. 7 reads as follows:

No reasonable assurance can be had that the facility can be operated without endangering the public health and safety because of Duke's consistent failure to adhere to required Commission operating and administrative procedures provided for in Commission rules and regulations. "The Nuclear Regulatory Commission has the statutory responsibility for prescribing licensing standards to protect public health and safety and for inspecting the industry's activities against these standards. The Commission does not thereby certify to the industry that the industry's designs and procedures are adequate to protect its equipment or operations." Federal Tort Claim of General Public Utilities Corp., et al, CLI-81-10, 13 NRC 773, 775-776 (1981). At both Oconee and Catawba facilities of Duke Power Company the Systematic Assessment of Licensee Performance Review Group found "weaknesses in personnel adherence to operating and administrative procedures" and "failure to follow procedures." NUREG 0834, Licensee Assessments, August 1981, pp. A-3, B-1. As long ago as 1977 Duke, Licensee for the Oconee facility, was assessed civil penalties of \$21,500 where "the history of repetitive and chronic non-compliance, when considered in conjunction with failure to institute effective corrective action and management controls, demonstrates that management is apparently not conducting licensed activities with adequate concern for the health, safety, or interest of its employees or the general public." Ernst Volgennau, Director, Office of Inspection and Enforcement, USNRC, to Carl Horn, Jr., President, Duke Power Company, March 29, 1977, Docket Nos. 50-269, 50-270, 50-287.

The Board observes in admitting Palmetto 7:

This "track record" contention questions the Applicant's managerial and technical competence to operate the Catawba facility safely, based in part upon past performance at other nuclear facilities. Id., p. 6. It is specific evidence of this "track record" which Palmetto seeks in the discovery which is the subject of this motion to compel.

Interrogatory 5, and
Interrogatory 8.

These are both "basic questions to which Applicants assert an objection to identifying oral communications on grounds "given in response to General Interrogatory 4," Response, pp. 47 and 49. Palmetto directs the Board's attention to its argument on that subject above and requests a direction for further response.

Interrogatory 11,
Interrogatory 12,
Interrogatory 13, and
Interrogatory 14

These questions seek to elicit a description of existences of non-compliance by Duke Power Company with NRC operating and administrative procedures and the results of corrective actions, if any, taken by Duke in response. In answer Applicants concede that

Since Oconee began operation, there have been 1203 Incident Reports and 610 Reportable Occurrences. There have been 27 QA Operation and Administration audits which identified deficiencies. There have been 336 NRC Inspection Reports, in which there were 324 violations identified. The total number of documents for Oconee which identify deficiencies is in excess of 2100. Since McGuire I began operation, there have been 298 Incident Reports and 226 Reportable Occurrences. There have been 15 QA Operation and Administration audits which identified deficiencies. There have been 93 NRC Inspection violations identified. The total number of documents for McGuire I which identify deficiencies is in excess of 630. The total number for both stations is more than 2700.

Response, at p. 51.

Applicants object to answering any further questions or providing any further description of these instances of non-compliance or corrective action taken asserting undue burden where

...the burden of deriving it from these documents would be substantially the same for Palmetto Alliance as for Applicants.

Id., at p. 53.

For the reasons there stated Palmetto requests that Board require Applicants to either answer the specific questions posed here or provide copies of the subject documents with specific references noted at no cost to Palmetto in lieu of such answers all as argued above with respect to Interrogatories 12 and 13 regarding contention 6. Interrogatory 16.

This question asks the Applicants to identify Duke Power or contractor employees, known to it, who have been subject to some adverse personnel action as a result of non-compliance with NRC operating and administrative procedures. Applicants object.

This information is necessary and properly discoverable since it is just these persons who themselves have knowledge of the underlying noncompliance. Their "identity and location" is expressly discoverable. 10 CFR Section 2.740 (b) (1). The circumstances and nature of the disciplinary or other actions taken against these persons by Duke fears directly on question by Duke with respect to the noncompliance, and is therefore relevant to either Palmetto's claim or Applicants' defense on Contention 7.

Applicants object on the grounds of burden and relevance, and assert that disclosure would subject Duke and these employees to embarrassment and

Applicants object on the grounds of burden and relevance, and assert that disclosure would subject Duke and these employees to embarrassment and harassment by Palmetto Alliance. As urged with respect to Interrogatory 22 regarding Contention 6, to which the Board's attention is directed, Palmetto agrees that reasonable measures to protect such workers from harassment by Duke Power Company or any other party are appropriate, and asks the Board to direct Applicants to answer this question.

Interrogatory 17.

This question calls for Applicants to identify and describe instances where it has been subject to punitive action for activities under its Commission licenses. Applicants concede that they have been subject notices of violation, civil penalties, an order to show cause and five orders for modification of licenses, but they object to answering any further questions concerning these actions asserting that

(T)he burden of deriving such information from those documents would be substantially the same for Palmetto Alliance as for Applicants.

Response, at p. 62.

Palmetto asks that either the questions be answered or the actual documents with specific references be provided Palmetto at Applicants' expense as argued in regard to Interrogatories 12 and 13 or Contention 6 above.

CONTENTION 44 (CESG 18)

This Board admitted Palmetto Contention 44 in its July 8, 1982 Order, Slip Op. at pp. 12 and 13, which reads as follows:

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

In its December 1 Order the Board lifted the story of discovery on Contention 44, and Applicants thereafter responded to Palmetto outstanding discovery on this subject.

Interrogatory 2.
Interrogatory 3, and
Interrogatory 4.

These questions seek to elicit information concerning Applicants' knowledge of embrittlement problems and planned remedial action at Duke's own Oconee facility and at Carolina Power and Light's H. B. Robinson plant, each of which has experienced the "much more rapid increase in reference temperature than had been anticipated,": according to Palmetto's information, as expressly alleged in the text of the contention. We believe that such evidence of experience from other facilities bears directly either on our claim or on Applicants' potential defense, and to the extent of Applicants' knowledge should be discoverable. Design differences between these facilities and Catawba may distinguish the circumstances at one facility from another, but that fact alone does not make this information non-discoverable.

Interrogatory 11.

Applicants again object to describing the remedial action by then to address the embrittlement problem at their other facilities. Palmetto re-asserts the argument above made with respect to Interrogatories 2, 3, and 4. Interrogatory 15.

Applicants object to providing the results of examinations of its reactor vessels. Palmetto can only guess at the basis for objections, but if, as presumed, Applicants assert the irrelevance of evidence regarding embrittlement at other facilities, Palmetto reiterates the argument advanced above on Interrogatories 2, 3 and 4. Any differences in examinations results may distinguish Catawba, but are not non-discoverable.

Interrogatory 22.

Applicants again object to describing thermal shock studies, tests and experiment results in its possession regarding facilities other than Catawba. Palmetto reiterates its argument above.

Interrogatory 23.

Again, production of fracture toughness test results referenced specifically in Applicants' FSAR is objected to on the same grounds. Palmetto reasserts its argument above.

Interrogatory 25,
Interrogatory 26,
Interrogatory 27,
Interrogatory 28,
Interrogatory 29,
Interrogatory 30,
Interrogatory 31,
Interrogatory 32,
Interrogatory 33,
Interrogatory 34, and
Interrogatory 35.

Applicants reiterate the same objections made previously to providing any information regarding its Oconee facilities on the subject of embrittlement. Palmetto renews its argument to the contrary as advanced with respect to Interrogatories 2,3, and 4, above.

II

SUPPLEMENT TO MOTIONS
TO COMPEL REGARDING

APPLICANTS' RESPONSES TO "PALMETTO
ALLIANCE SECOND SET OF INTERROGATORIES
AND REQUESTS TO PRODUCE,"
DATED SEPTEMBER 22, 1982

AND

APPLICANTS' RESPONSES TO "PALMETTO
ALLIANCE THRID SET OF INTERROGATORIES
AND REQUESTS TO PRODUCE,"
DATED OCTOBER 19, 1982

Pursuant to the Board's direction in its December 22, 1982, Order, Slkp Op. at p. 20, Palmetto Alliance hereby renews and supplements its Motions to Compel dated October 4 and November 3 directed toward Applicants Responses, above-referenced, on the subjects of Palmetto Contentions 8, 27 and 16, respectively.

GENERAL INTERROGATORIES

Applicants take the same position and assert the same objections to these General Interrogatories as they did to the same questions posed with respect to contentions 6, 7 and 44 above. Palmetto urges the Board to require answers for the same reasons advanced above. We add only that here Applicants assert a wholly unparticularized privilege claim without acknowledging any duty whatsoever to provide an itemization and claim regarding specific "work product" documents, a duty which they later recognize (but seek relief from) in their December 31, 1982, Response in light of the Board's express injunction to Palmetto contained in its December 22, 1982 Discovery Order.

SPECIFIC INTERROGATORIES

CONTENTION 8

The contention reads:

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

Interrogatory 2.

The question seeks identification of Communication between Applicants and the NRC on the subject of operator qualifications at each of its facilities including Catawba. Applicants object on relevance and burden grounds to providing any information beyond that

...regarding the direct and related work experience at large PWR's as a component of operator qualification for reactor operators and senior reactors operators for the Catawba Nuclear Station.

Response, at p. 13.

Palmetto submits that all aspects of operator qualifications and evidence on the subject arising from experience at Applicants' other facilities as well as Catawba is discoverable as relevant to the subject matter and bearing on either Palmetto's or the Applicants' potential claims or defenses on contention 8. It is Palmetto's view, as asserted in the contention, that there is no adequate substitute for actual "hands-on operating experience with large pressurized water reactors" to establish sufficient

qualification for RO's and SRO's for safe operation. Palmetto anticipates, however, that Applicants or Staff may assert the defense that sufficient qualification may be established by other means such as classroom or simulator training, testing or operations at other than large PWR's. A responsive answer should be compelled.

Interrogatory 3.

The question calls for description of the selection criteria for all control room personnel. Applicants object to providing any information beyond actual work experience for reactor operators. On the same basis as in its response to interrogatory 2. Again, the general subject matter is qualification for safe operation of the facility. Selection criteria other than work experience bears on potential claims and defenses on this contentions. Palmetto reiterates its argument advanced above on interrogatory 2, above.

Interrogatory 11.

Here Palmetto seeks an explanation of terms employed by Applicants in the FSAR on the subject of operator qualification. Applicants object on same grounds as above and Palmetto reiterates the arguments advanced regarding interrogatory 2.

Interrogatory 15.

This question seeks the bases for previous answers. Applicants object to identifying oral communications on grounds asserted under response to General Interrogatory No. 4. Palmetto reiterates its argument above on the same subject.

Interrogatory 16.

Applicants assert that evidence regarding the details of and differences in design between other reactors on which personnel have experience and

Catawba is not significant because training "take full account of such possible differences," Response, at p. 19. Whether true or not such information is clearly relevant and should be discoverable. The specific character of actual operating experience of Catawba personnel is the very core of contention 8.

Interrogatory 19.

Applicants object to explaining what if any involvement control room personnel have had in Catawba control room design and procedures. The degree to which such design and procedures accommodate personnel qualifications and needs clearly bears on the assurance that the facility will be operated safely.

Interrogatory 24.

See argument on General Interrogatory 4.

Interrogatory 35.

Applicants object on relevance, burden and annoyance grounds to providing test results for its control room personnel. Palmetto asserts that training and testing are components of operator qualification arguably substituting or supplanting inadequate "hands-on experience," and that evidence of Applicants operator test results bears on anticipated claims or defenses on this contention.

Interrogatory 36.

Applicants object to detailing their involvement and position on NRC rule makings on operator qualification. Palmetto believes it relevant to potential claims and defenses on this contention to ascertain positions on this subject taken by Applicants.

CONTENTION 27

This contention reads:

The Applicants should be required to place real time monitors capable of reading gamma radiation levels around the site in order to provide emergency operations personnel with the information required to make decisions necessary to reasonably assure the health and safety of the public under conditions of radiological release to the environment.

Interrogatory 2.

This question seeks a description of the "off site radiological monitoring system to be installed at Catawba." Applicants response is limited by the phrase, "to be used in response to emergency conditions" not included in the question and any further response is objected to on grounds of relevance and undue burden, leaving Palmetto to wonder what information is being withheld.

Interrogatory 4.

This question seeks to elicit any information known to Applicants concerning alternative methods available for meeting regulatory standards available for meeting regulatory standards referred to in answer to Interrogatory 2 with respect to off site radiological monitoring systems. Applicants object on grounds of relevance and undue burden. Central to this contention is the allegation that Applicants should be required to employ an alternative method for off site radiological monitoring and thus their knowledge of alternatives is relevant and discoverable.

Interrogatory 6.

Applicants object on relevance and burden grounds to this question concerning the costs of installation and operation of the monitoring system at Catawba. Palmetto anticipates that the cost of various alternative

monitoring systems will bear on its claim or potential defenses on this contention. For example in NUREG/CR 2644, "An assessment of Off Site, Real-Time Dose Measurement Systems for Emergency Situations" (April 1982) one of the primary items studied was,

5. the availability, cost, and the instrumentation requirements for a system

Id., at V. (emphasis supplied).

The information sought is relevant, discoverable and should be produced. Interrogatory 7, and Interrogatory 8.

Applicants object on relevance and burden grounds to providing any information to describing the process of selection employed in choosing the system of monitoring to be used and the reasons for rejecting other components. Palmetto asserts that the alternative of real time monitors is superior to the system chosen by Applicants and we should be entitled to discover what information if any was known to Applicants upon which it based its decision to select the system to be employed at the facility. Interrogatory 10.

Applicants object to identifying communication with the NRC sought in this question regarding off site monitoring systems at Catawba and Duke's other facilities. Evidence of the regulatory experience of Duke with such monitoring at existing operating facilities clearly bears on the feasibility of systems and procedures to be used at Catawba.

Interrogatory 11,
Interrogatory 12, and
Interrogatory 13.

Again these questions seek information concerning Applicants' experience with off site monitoring systems at its other operating facilities, including descriptions, differences from that at Catawba, NRC evaluations, and problems encountered. This information is clearly relevant to potential claims or defenses on this contention and should be produced.

Interrogatory 17.

Applicants seem to object to providing information regarding standards for the reading of TLD's in "routine situations" since they interpret this contention only to permit discovery of information regarding monitoring under emergency conditions. Clearly, TLD will be read under both routine and emergency conditions and information on both circumstances is relevant for comparative use. In addition Palmetto understands that routine monitoring data is essential in order to effectively baseline data for use in emergency conditions.

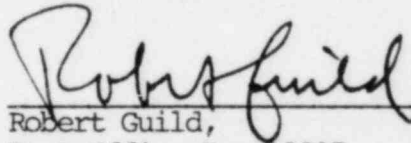
Interrogatory 23, and
Interrogatory 24.

These questions seek to elicit information known to Applicants regarding the description of real-time monitoring systems now available, their costs, and any problems associated with them. Applicants object on the grounds of relevance and burden. Either they know or they don't, but their level of knowledge and the nature of the information known clearly bears on the validity of the choice of systems which they have made for use at this facility.

Interrogatory 25,
Interrogatory 26, and
Interrogatory 27.

These questions ask what Applicants know of real time monitoring systems now in use at other nuclear facilities, including any information sought and received from other operators and any knowledge on the part of Applicants regarding the cost effectiveness of real time monitoring systems. Applicants object and provide no information whatsoever. Either Applicants know or they don't; they did not. The state of their knowledge and the nature of the information known clearly bears on the validity of the choice of system which they have selected for this facility.

January 28, 1983

A handwritten signature in cursive script, reading "Robert Guild", written over a horizontal line.

Robert Guild,
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Attorney for Palmetto Alliance

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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. 50-413
50-414

1/28, 1983

CERTIFICATE OF SERVICE

I hereby certify that copies of
PALMETTO ALLIANCE MOTION TO COMPEL DISCOVERY
AND SUPPLEMENT TO MOTIONS TO COMPEL DISCOVERY
in the above captioned matters, have been served upon the follow-
ing by depositing same in the United States mail, postage prepaid,
on this 28th day of January, 1983.

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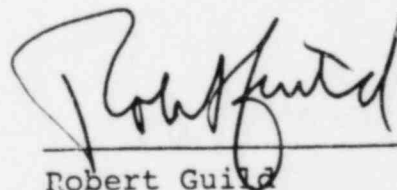
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