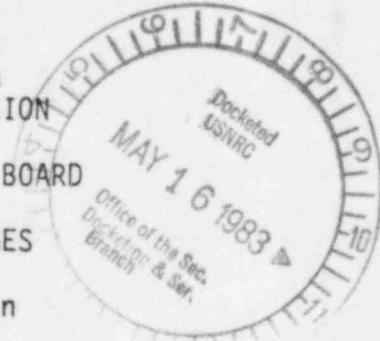


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD
BEFORE ADMINISTRATIVE JUDGES



James L. Kelley, Chairman
Dr. A. Dixon Callihan
Dr. Richard F. Foster

In the Matter of
DUKE POWER COMPANY, ET AL.
(Catawba Nuclear Station,
Units 1 and 2)

SEVERED MAY 16 1983
Docket Nos. 50-413
50-414
ASLBP No. 81-463-010L
May 13, 1983

MEMORANDUM AND ORDER
(Ruling on Applicants' Motion to Compel)

On April 29, 1983, Applicants filed a Motion to Compel Palmetto Alliance to respond further to Applicants' Interrogatories and requests to produce concerning Palmetto Contentions 6, 7, 8, 16 and 44. Applicants alleged that supplementary responses to these Contentions filed April 19, 1983 in response to the Board's Order of December 22, 1982 are inadequate in various respects. Thereafter, the NRC Staff filed a Motion to Compel concerning certain of its interrogatories under Contention 7. The Board's rulings on the Motions to Compel are set forth below. Some preliminary observations will place those rulings in context.

The Palmetto Responses. Palmetto's responses to many key questions have been vague, evasive, incomplete or non-existent. This is so despite the fact that Palmetto has been given every reasonable

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opportunity to develop adequate answers to the Applicants' and Staff's interrogatories. When Palmetto asserted last fall that it would not have sufficient information to answer many basic interrogatories until it had had discovery, we deferred Palmetto's obligation to answer interrogatories until it had first had a "reasonable opportunity" for discovery. We defined that opportunity to mean two rounds on each contention. This "right of first discovery" was exercised over several months' time, and included certain extensions at Palmetto's request. At the completion of that process, the Applicants, the Staff and the Board had every right to expect that responsive answers to basic interrogatories would be forthcoming. Unfortunately, many of Palmetto's supplementary responses are seriously deficient.

Palmetto must now give complete and detailed answers to those interrogatories as to which we are granting the Applicants' motion, or face the prospect of sanctions. As the Appeal Board has said, "To permit a party to make skeletal contentions, keep the bases for them secret, then require its adversaries to meet any conceivable thrust at hearing would be patently unfair and inconsistent with a sound record." Pennsylvania Power and Light Company (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 338 (1980).

Palmetto must state factual specifics. For example, in detailing an alleged quality assurance problem, it should state the nature of the problem, where in the plant it was found, when it occurred and who was involved. Where regulatory violations are alleged, the specific regulation or criteria must be given. It is insufficient to say, for

example, "Appendix A of Part 50;" the specific part of Appendix A being relied on must be cited. Some regulatory criteria are themselves quite complex. Thus it may be necessary to say which part of such a criterion has been violated. See, e.g., criteria in 10 CFR 50, Appendix B. Where no specific regulation is involved, Palmetto may cite the catch-all 10 CFR 50.57(a)(3), as it has done, e.g., in response to Interrogatories 4, 10, 16, 32, 33 and 67 on Contention 8, but it must allege with particularity that there is a regulatory "gap" and specify why that "gap" poses a danger. By and large, it has failed to do so. Interrogatory 16, for example, asks for "specific reference to all provisions of statutes, regulations, regulatory guides, or any other NRC regulatory requirement on which you rely." Palmetto's only response was "10 CFR 50.57(a)(3)." This is unacceptably vague.

In addition, Palmetto must take a position on what it means by its own contentions. E.g., in Interrogatory 8, Contention 8, Palmetto was asked what it contended constitutes "sufficient" hands-on operating experience. Palmetto stated that it was "not prepared to establish at this time a level of 'sufficient' hands-on operating experience needed to assure safe operation of the facility." At this stage, particularly after being allowed first discovery, Palmetto must define terms like "sufficient" or face the prospect that its contention may be dismissed. Nor can Palmetto merely state that it intends the same meaning the Staff meant when the Staff used the same word or phrase in another context. (See, e.g., Palmetto Supplementary Response to Interrogatory 48, Contention 7). These are Palmetto's contentions, not the Staff's. The

Board will not force the opposing parties to go to hearing on a contention whose key terms are undefined.

If responsive answers are not forthcoming now, Palmetto is put on notice that, upon motion, the Board will consider the following sanctions, among others:

- (1) Narrowing a contention to areas where specifics have been given.
- (2) Rejecting a contention altogether.

The Applicants' Interrogatories. Those interrogatories discussed in Applicants' motion under the heading "Failure to Specify Bases for Responses" incorporate by reference virtually every interrogatory directed to the contention in question. We have reviewed all of these interrogatories and have determined that they do not each require a separate response. For example, some request clarification of specific language that was removed from Contention 6, as originally proposed by our December 1, 1982 revision. Others under this and other headings are redundant or largely overlap interrogatories which we have ordered answered. In some cases, we concluded, contrary to the Applicants' position, that Palmetto had given an adequate answer. Aspects of the Applicants' Motion to Compel that are not specifically granted are denied, for one or more of the foregoing reasons. Particularly in view of the many areas of overlapping interrogatories, further specificity is unnecessary. Our specific rulings focus on interrogatories which seek basic information about each contention and which have been answered inadequately or not at all.

Contention 6

No. 35. This interrogatory encompasses interrogatories 25-34. We grant the motion to compel with respect to Nos. 28-34.

Putting to one side matters on which Messrs. Hoopingarner and McAfee may have information (see below), Palmetto is to answer these questions and supply specifics about any other areas of the plant which it contends include faulty workmanship, such that the plant cannot operate safely. These should include specific parts of the plant, names, dates and other information called for by these questions. Any information that Palmetto does not include in its answers to these questions and which it knew or reasonably could have known at this point may, upon a timely objection, be excluded from any later hearing, unless an overriding public interest requires otherwise. If Palmetto does not provide any significant additional information in response to these questions, the Board will entertain a motion to revise Contention 6 to include only the matters on which Messrs. Hoopingarner and McAfee have information and new matters first surfacing at a later date.

Palmetto's responses to those questions, as they relate to Messrs. Hoopingarner and McAfee, are set forth under interrogatory 5 and interrogatory 80 of Palmetto's initial answers. These answers are not sufficiently specific. However, given the prominence of Messrs. Hoopingarner and McAfee in this contention, and present time constraints, we are not directing further interrogatory responses. Instead, we are directing Palmetto to make Messrs. Hoopingarner and McAfee available for

depositions by the Applicants and/or the NRC Staff pursuant to the Applicants' notice of May 4, 1983, and any similar notice from the Staff. Failure on their part to appear and respond fully to questions could result in exclusion of their testimony in any later hearing.

Palmetto refers in its answer to interrogatory 35 to an I&E Memorandum dated 3/15/82 concerning welding. If Palmetto is relying on matters described in this Memorandum, the specifics about these matters should be given in their responses to interrogatories 28-34.

Interrogatory 35 calls for the legal requirements applicable to Palmetto's responses to Nos. 28-34. No specific requirements have been given by Palmetto. The NRC's QA requirements are largely set forth in 10 CFR Part 50, Appendix B. We reiterate, however, that it will not suffice to refer generally to Appendix B. Appendix B contains 18 separate criteria. Specific criteria should be cited. Furthermore, many Appendix B criteria are complex and it will be necessary to explain what part of a particular criterion is involved, if that is not self-evident. Beyond that, if a situation or condition is alleged to be dangerous (and therefore to preclude a favorable finding under 10 CFR 50.57(a)(3)) but not violative of a particular regulation, Palmetto must explain what the danger is.

No. 52. The motion is granted as to Nos. 43 (encompassing Nos. 41 and 42), 47 and 48. For Nos. 41-43, it will be sufficient if Palmetto answers the question "What areas do you claim are safety related, and why?" Nos. 47 and 48 must be answered with specifics.

No. 57. The motion is granted in part. Palmetto is to answer the question: "What specific defects do you claim in the Applicants' quality assurance program that are relevant to your contention?"

No. 82. The motion is granted. Now that discovery is coming to a close, Palmetto is under an obligation to review all of the information that has been provided to it at its request, to decide what specific pieces of information it intends to rely on, and to tell the other parties specifically what it is. Any information not so revealed and which is known or should have been known at this time may be excluded from a later hearing over timely objection.

No. 94. With regard to Nos. 91-93, Applicants should take the depositions of Messrs. Hoopingarner and McAfee. Palmetto should supply specifics as to concerns expressed by any other persons.

No. 106. This question addresses interrogatories which do not exist. Accordingly, it is denied.

No. 114. The motion is granted. Nos. 108-113 must be answered.

No. 121. The motion is granted. Nos. 117-120 must be answered.

Contention 7

No. 25. The motion is granted. The gravamen of this contention is the alleged "consistent failure" to adhere to proper procedures. The rest of the contention merely refers to various NRC documents which appear to have some bearing on management competence. Now that discovery is complete, Palmetto is under an obligation to specify just which regulations the Applicants' have consistently failed to meet. Palmetto

is apparently relying on incidents at other facilities. Thus it is particularly important that the time and place of such incidents be clearly set forth. General references to NRC documents are insufficient. To the extent that Palmetto relies on "regulatory gaps" and 10 CFR 50.57(a)(3), the specific manner in which the Applicants' alleged shortcoming would make operation of the facility dangerous must be spelled out. In sum, the information called for by this question is at the heart of Contention 7. It must be supplied or this Contention may be rejected for failure to make discovery.

No. 27. The motion is granted. Palmetto must list specific failures that have not been corrected.

No. 1 and 2. The motion is granted. Palmetto must either particularize the "operating procedures" which it contends are violated, or face the possibility of dismissal of this contention.

No. 12 and 14. The motion is granted. See our ruling on Nos. 1 and 2.

No. 44. The motion is granted. This is Palmetto's contention. In quoting this phrase from a Staff document, Palmetto is endorsing its substance. Therefore, Palmetto must say what it means by the phrase.

No. 45. The motion is granted. Palmetto is admonished to be specific.

No. 48. The motion is granted. Again, this is Palmetto's contention, not the Staff's. Palmetto must say what it means by "personnel," and what group or groups of personnel are involved. Insofar as

Palmetto relies on the SALP report, it must particularize just what in the report it is relying on.

No. 49, 50 and 52. The motion is granted. See our ruling on No. 48.

No. 28 and 54. The motion is granted. We note, however, that there appears to be considerable overlap between these two interrogatories.

Contention 8

No. 38. The motion is granted as to No. 34. Palmetto must set out the specific dangers it sees posed by the qualifications or lack of hands-on experience of those personnel it has specified in response to interrogatory 68. If Palmetto cannot describe those dangers with reasonable specificity, the contention may, upon motion, be rejected.

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

No. 50. The motion is granted.

No. 51. The motion is granted. Palmetto should provide specific answers.

No. 68. The motion is granted as to those individuals who have any operating experience. As to those persons, Palmetto should explain why it does not consider their level of experience to be sufficient to safely operate the reactor. See our ruling on No. 8.

No. 72. The motion is granted as to those persons not named in Palmetto's Supplementary Response to No. 68. The Applicants state that this information has been available to Palmetto since last fall. We assume that will continue to be true through May 31, 1983. Palmetto must designate now those persons it contends do not have sufficient hands-on experience. Persons not so designated may not be considered at any hearing.

No. 82 and 83. The motion is granted. See our ruling on No. 68.

No. 30. The motion is granted as to No. 20.

No. 52. The motion is granted as to Nos. 50 and 51. See our rulings on those contentions.

Contention 16

No. 13. The motion is granted. Palmetto must specifically address in its response each of the design criteria cited in its response to Interrogatory 11. Why does it allege that these design criteria are not being met?

Contention 44

In its April 19, 1983 Supplementary Responses to Applicants' and Staff's Interrogatories, Palmetto asserted that answers to Applicants' interrogatories on this contention were provided in the answers which CESG had given to the NRC Staff's interrogatories on that contention. This response is unacceptable. The Board has reviewed the questions and answers involved and has determined that CESG's responses to the Staff do not directly answer the questions posed to Palmetto by Applicants. A similar situation arose previously in this case where Palmetto sought to satisfy certain Staff interrogatories by reference to answers it had given the Applicants to other interrogatories. There we upheld the Staff's objection that it was "entitled to direct answers or objections to each and every interrogatory posed." Memorandum and Order of December 22, 1982, p. 10. If a party wishes to provide some answers by cross-reference, at the very least, the questions must be substantially similar and cross-references must be made to specific questions. Neither Applicants nor the Board should be asked to sift through, digest and reformulate responses that Palmetto has the obligation to provide. If Palmetto is unable to fulfill that obligation, the Board can fairly assume that Palmetto has no independent contribution to make on this contention. Thus Palmetto must answer these interrogatories or face the prospect of dismissal of Contention 44.

Filing Dates. Palmetto's responses must be in the hands of the Staff and Applicants by close of business, Tuesday, May 31, 1983. Mail

service on the Board and other parties will suffice. Any motion based on any alleged inadequacy in the Palmetto responses shall be in the hands of the Board and Palmetto by Monday, June 6; any response from Palmetto in opposition shall be in the hands of the Board, Staff and Applicants by Monday, June 13.

Staff Motion to Compel and Follow-Up Interrogatories. On May 4, 1983, the Staff renewed its motion to compel full answers to certain interrogatories under Palmetto Contention 7. We agree with the Staff that Palmetto must provide more specific and complete answers. Accordingly, the Staff's Motion to Compel is granted in its entirety and Palmetto is to respond to Interrogatories 12, 13, 14, 15 and 17 of the Staff's first set of interrogatories on Contention 7 (dated May 7, 1982) not later than May 31, 1983.

On May 2, 1983, the Staff served follow-up interrogatories and related document requests on Palmetto on Contentions 6, 8, 16, 27 and 64. The time for Palmetto to respond is extended from May 20, 1983 to May 31, 1983.

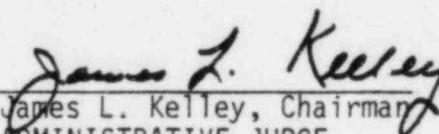
Applicants Follow-Up Interrogatories. On May 4, 1983, Applicants filed follow-up interrogatories to Palmetto on Contentions 6, 7, 8, 16 and 27. Most of these interrogatories cover the same ground as did Applicants' motion to compel. As to those follow-up interrogatories, Applicants must await Palmetto's response to the interrogatories for which this motion to compel is now being granted. We are therefore deferring any obligation on Palmetto's part to answer the Applicants' follow-up interrogatories on Contentions 6, 7, 8 and 16, with the

exception noted below, until after Palmetto's responses of May 31 have been evaluated.

Applicants have elected to file follow-up interrogatories, rather than a motion to compel, on Contention 27. Palmetto is therefore directed to answer those Contention 27 interrogatories by May 31, 1983. In addition, we direct Palmetto to answer follow-up interrogatories 4 through 9 under Contention 16. These appear to be helpful follow-up interrogatories and not duplicative of the motion to compel.

The due dates in this order were set with regard for their potential impact on the previously established schedule in this case. No extensions of time are contemplated.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


James L. Kelley, Chairman
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland,
this 13th day of May, 1983.