

Enforcement Staff in Region II. Palmetto's Motion also seeks other delays, including postponement of any hearing on Contention 6 until December 5, 1983. (See Attachment 3 to Motion.)

The principal ground for Palmetto's request is its assertion that "[d]irect evidence from numerous Catawba Quality Control inspectors of systematic quality assurance deficiencies ... has come to the attention of Palmetto Alliance only in mid-April 1983" (Motion at 1-2), and that document production is still incomplete. Specifically, Palmetto states:

- (1) Applicants' initial responses to Palmetto's first interrogatories and document requests, concerning the quality assurance contention, made on December 31, 1982 "contained virtually no substantive information." Motion at 7.
- (2) The Staff's initial response to Palmetto's first interrogatories, made May 7, 1982 was to object to such discovery. Id.
- (3) Applicants' first substantive response to Palmetto's first interrogatories was made February 28, 1983, with documents made available March 14, 1983. Id.
- (4) Staff's first substantive response to Palmetto's first interrogatories was made February 17, 1983, addressed only eight of the interrogatories, excluded responses to interrogatories 23 and 25, and noted that a supplemental response was contemplated. Id. at 8.
- (5) Applicants' response to Palmetto supplemental interrogatories on Contention 6 was on March 25, 1983, making documents available on March 30, 1983. Id.

- (6) Documents identified on March 25, 1983 were made available April 7, 1983, with the index provided subsequently. Id.
- (7) Staff supplemented its February 17, 1983 response by producing documents on April 8, 1983, but withheld certain information in order to protect confidential informants, noting that the same substantive information had been provided, in any event, as Applicants' responses. Id.
- (8) Further supplementation of Staff's documentary response was made only at the commencement of Staff deposition, on May 19, 1983, consisting of 97 documents from a "partial response" to a Freedom of Information Act request filed by the Government Accountability Project (GAP). Id. at 2, 7, 8.
- (9) Upon questioning by Palmetto, Applicants expanded their document search, and made additional documents on Catawba welding inspector concerns available by letters of April 12 and 14, 1983. Id. at 9-10.
- (10) Counsel for Palmetto Alliance did not actually receive Applicants' April 14, 1983 letter for two weeks because the letter was not sent to counsel's address in Charleston, S.C. Id. at 11.
- (11) The documents identified and made available pursuant to the April 14, 1983 letter were transmitted under cover letter of April 29, 1983. Among the documents transmitted was a Staff document which had not been provided in the Staff's April 8 document response. Id.

- (12) On May 6, 1983, the parties met to discuss the discovery schedule for Contention 6. Id. at 13.
- (13) The parties agreed to taking of depositions, including depositions on Contention 6, to take place during the weeks of May 9 and 16. Id.
- (14) Depositions of Staff Inspectors Bryant and Van Doorn, and of Palmetto members Hoopingarner and McAfee were held May 19-20.
- (15) Palmetto "elected to defer its earlier noted depositions of construction/quality assurance personnel and to seek this relief from the Board." Id. at 14.
- (16) Palmetto asserts the above "demonstrated due diligence in pursuing ... this complex and fast unraveling issue ... " Id.

Based on the foregoing Palmetto concludes "full and complete development of these issues" and "fair appraisal by Palmetto of evidence ... requires the relief sought." Id. It further asserts that the discovery to date is merely a "first wave" and the material regarding the "transactions" germane to the Contention "only now" addressed is "yet to be thoroughly analyzed" and "discovery yet remains to be accomplished." Id. at 16. See also, Affidavit of Billie Pirner Garde, at 16.

In offering its "Proposed Plan and Schedule for Discovery" extending discovery beyond the date now scheduled for hearings on Contention 6, Palmetto asserts that over 60 individual depositions "need to be taken" but does not identify the individuals to be deposed or present a schedule therefor. The additional five months of discovery apparently would be used by Palmetto for "significant documentary analyses as well as the critical field work with present and former Catawba workers only now beginning." Id.

Under the Commission's Rules of Practice, 10 CFR Section 2.711(a), the Licensing Board may extend the period allowed for discovery on Contention 6 only "for good cause." However, Palmetto's Motion fails to demonstrate good cause for extending discovery. In fact, Palmetto's lengthy review of discovery on Contention 6, set forth in its motion, shows quite persuasively that Palmetto has been provided extensive discovery by Applicants and the Staff, and has had adequate time, which it "elected" not to use, to conduct depositions of specific Catawba quality assurance employees. Palmetto has incorrectly represented the facts as to when it first had direct notice of the allegations of Catawba welding inspectors, and provides no explanation why it waited until the last moment of a 6-month discovery period (in which it had virtually one-way discovery) to seek deposition testimony, and even then "elected" not to conduct any depositions at all. Even accepting Palmetto's inaccurate statement that it first learned of the welding inspection complaints in mid-April, Palmetto still had a full month in which to take depositions. Palmetto's asserted lack of notice as to this subject is therefore not good cause to extend discovery. The fact that the extensive information furnished by the parties has not been reviewed or digested by Palmetto is not cause to extend discovery or to alter the prehearing schedule established four months ago. Palmetto's own actions in not fully taking advantage of its extended "right of first discovery" are not grounds for allowing still more time for discovery. Finally, the Staff believes that a full and fair adjudication of Contention 6 is possible with material now available. Therefore, the Staff opposes Palmetto's Motion.

II. DISCUSSION

A. Palmetto Alliance Has Had a Reasonable Opportunity to Obtain Discovery, and Extensive Discovery of Applicants and Staff Has Been Provided

Discovery on Contention 6 has been open since the Licensing Board's Memorandum and Order of December 1, 1982, after being suspended by the Board on May 25, 1982. During the ensuing period of five and one-half months, until May 20, 1983, Palmetto Alliance has had the opportunity to conduct discovery of Applicants and Staff. Pursuant to the Board's Memorandum and Order of December 22, 1982, and the Board's discovery policies adopted at the January 20, 1983 prehearing conference (Record Transcript at 804), Palmetto Alliance had a right of first discovery of Applicants and Staff, until March 25, 1983. As acknowledged in Palmetto's Motion (and summarized in Part I, above), extensive and voluminous materials have been made available by Applicants and Staff. A May 24, 1983 letter of Applicants to counsel for Palmetto Alliance indicates at least 3517 pages of documents have been copied by Palmetto Alliance. Most of these materials are detailed complaints, worksheets, notes, draft reports, reports, analyses, and correspondence relating to the Catawba quality control inspector concerns. As Palmetto notes, the Staff has provided hundreds of pages of documentary materials from its files in response to Palmetto's discovery request. No motion to compel further responses of either Applicants or Staff is pending. Thus, while Palmetto asserts that certain "material evidence bearing on significant Quality Assurance program breakdowns at Catawba [is] not yet available to it," Motion at 1, Palmetto has followed up on its earlier requests and obtained follow-up document discovery responses from both Applicants and Staff. While Palmetto

insinuates that document production has been incomplete, it presents no evidence that any relevant materials have not been produced or otherwise identified. The fact that no motion to compel further document production has to date been filed serves to underscore how thorough and far-reaching document production has been.^{1/}

Both Applicants and Staff have also been accommodating with respect to making deponents available. Not until May 2, 1983, was any discussion commenced concerning depositions of any Staff or Applicant witnesses. See letter from M. McGarry to R. Guild, May 2, 1983. Indeed, though such witnesses were made available, no depositions were ever formally noticed by Palmetto Alliance. Applicants agreed to make the Duke Corporate Quality Assurance Manager available on May 16, 1983, and to make those Catawba Construction/Quality Assurance employees identified in prior interrogatory responses available from May 17 to May 20, 1983. Id. Without explanation, or apparent justification, Palmetto "elected" not to depose any Duke witnesses on Contention 6 despite their availability and the lack of conflict with other scheduled depositions. Such depositions could have started any time after the identification of these individuals, which came, at the latest, on March 14, 1983.

^{1/} Thus, Palmetto's observation that the Staff answered only eight of Palmetto's first interrogatories, and did not answer Interrogatories 23 and 25 thereof, is irrelevant. Moreover, as noted in the Staff's February 17, 1983 response, the Staff answered those interrogatories which it believed the Staff could have been compelled to answer, had a proper showing been made. The remaining interrogatories were objectionable on a variety of grounds, including those set forth in 10 CFR Section 2.720(h)(2)(ii), since the answers were readily available from Applicants.

Thus, extensive written and documentary discovery has been provided to Palmetto Alliance, and the opportunity to conduct depositions of any or all of those employees identified by Duke, though not exercised, has also been accorded.

B. Palmetto Has Not Shown Good Cause to Extend Discovery on Contention 6

Palmetto argues that "[d]irect evidence from numerous Catawba Quality Control inspectors of systematic quality assurance deficiencies including falsification of documents, harassment, intimidation and a 'whitewash' investigation by Duke Power Company, all known to the Nuclear Regulatory Commission Staff, has come to the attention of Palmetto Alliance only in mid-April 1983." Motion at 2. Palmetto places heavy reliance on this assertion to support its need for more time to conduct further discovery. However, Palmetto's assertion is simply not true.

On September 14, 1982, counsel for the Staff served the Board and all parties with several memoranda and attachments responding to a January 26, 1982 letter from the Board Chairman to the Staff requesting to be kept advised on information developed by the Staff relating to the subject matter of Contention 6. Pages 11 and 12 of the last enclosure to the September 14 letter contain the following information:

III. Current Investigation of QC Inspector Allegations

During the fall of 1981, QC welding inspectors at Catawba expressed technical and nontechnical concerns to Duke management. These concerns were expressed during a review of employee recourse action being taken by the inspectors as a result of a negative pay adjustment. On January 29, 1982,

Duke informed Region II that concerns had been expressed and that a task force composed of Duke personnel from other sites and of outside consultant services had been formed to investigate the concerns. Duke requested that the company be allowed to pursue the investigation on their own for the time being. Region II agreed, but it was understood that the Senior Resident Inspector (SRI) would keep abreast of the findings.

On February 1, 1982 three QC welding inspectors expressed their concerns to the SRI. They told the SRI that Duke had been informed of each item. Each QC inspector was concerned that Duke would "white wash" the problems as being the result of the recent pay adjustment. The QC inspectors were content that Region II take no action as long as Duke was actively pursuing the complaints.

The three stated that a lack of support for implementation of the welding QA program had existed for years and that they were expressing their concerns strongly now that they had the attention of off site management for the first time.

On May 25, 1982, Duke presented to Region II a status report of the investigation, including a description of how the investigation was conducted and a summary of the concerns. Since Duke appeared to be conducting a thorough unbiased review, Region II decided to withhold its own investigation until Duke had finished.

Duke reported that fourteen inspectors had expressed 129 technical concerns, and 11 inspectors had expressed 19 non-technical concerns. The non-technical concerns were those which could not be tied to specific hardware.

As of May 25, 1982 Duke had substantiated 75 technical concerns of which 42 involved QA procedure violations. No hardware inadequacies had been identified; however, 23 potential technical inadequacies had been found. Most of the review, and implementation of corrective actions, are scheduled for completion by July 1, 1982.

Region II will perform a detailed inspection of each concern and of task force actions, independent review of the more important concerns, interviews of QC inspectors, examination of hardware where indicated, and involvement of investigation personnel where necessary.

Palmetto Alliance was therefore directly informed as of September 14, 1982, that numerous Applicant inspectors had made quality assurance

complaints, and that numerous concerns had been substantiated by Duke. Similarly, Palmetto was on notice that, on May 25, 1982, Duke had made a status report to the Staff on the QC inspector allegations. When discovery resumed on Contention 6 on December 1, 1982, Palmetto was free to serve specific interrogatories or to notice depositions on these matters. It did not. As of March 14, 1983, Palmetto had all the names of Duke's present and former Quality Assurance employees. It could have noticed depositions and asked questions concerning the QC welding inspectors' concerns at that time. It did not. Palmetto's claim that the QC welding inspector allegations came to its attention only in mid-April is therefore incorrect, and cannot serve as cause for extending discovery.

Palmetto Alliance would appear to be placing substantial reliance upon a so-called "Affidavit" of Billie Pirner Garde, of the Government Accountability Project, noted to be "Attachment 2," to Palmetto's Motion, but referred to as "under separate cover." This "affidavit," however, has not been served on the Staff by Palmetto Alliance. The Staff obtained a copy thereof from Applicants' local counsel on May 31, 1983, five days after receiving the Motion. Though styled as an affidavit, the document is more in the nature of a separate amicus curiae brief by Government Accountability Project, an organization not a party to this proceeding. However, for all the accusations contained in this document, most of which may be characterized as speculation, based, if at all, on other people's knowledge, rather than facts within the personal knowledge of the affiant, there is nothing in this "affidavit" which provides good cause to extend discovery of Contention 6.

It is clearly irrelevant that GAP's "work has only begun." Affidavit at 16. GAP, to the extent it is acting on behalf of Palmetto Alliance, is charged with the same notice as is Palmetto Alliance. Yet there is no explanation as to why GAP, having become "aware of the problems at Catawba" in March 1982, id. at 3-4, may commence its own "discovery" in April 1983, when the parties were given only from December 1, 1982 until May 20, 1983. The question which the Licensing Board must address in the context of Palmetto's motion is not whether on the merits of Contention 6, there are failures in the quality assurance program at Catawba, but whether there has been adequate opportunity for discovery. The Garde affidavit is not helpful in this respect, not addressing the question at all. Palmetto Alliance has failed to put forward facts which adequately explain why it has waited until the last minute to press further discovery on the QC welding inspector concerns, when the request for more discovery is almost sure to significantly delay this proceeding, in order to pursue information which has been readily available to Intervenor starting as early as September 1982.^{2/}

Equally as important, Palmetto has not demonstrated it is lacking any relevant document. The material in Palmetto's possession documents,

^{2/} Garde's assertion that there "were significant gaps" in the discovery documents provided Palmetto Alliance from both the NRC and the applicant" is not substantiated. Affidavit at 5. In addition, further discovery was provided after the time frame referenced in the affidavit. Finally, such elusive allegations cannot serve as a basis for extending discovery, particularly when Palmetto Alliance has not asserted that document production is incomplete by means available to it -- through a timely motion to compel.

in detail, in the words of the complaining inspectors, and otherwise, each of the allegations which were made by the Catawba QC welding inspectors. The notes and reports of Duke supervision and management consultants have been provided. As noted above, Palmetto has lodged no motion to compel based on the incompleteness of documentary discovery. Thus, Palmetto has not shown good cause for extending discovery based upon the completeness of the discovery provided by Applicants and Staff.^{3/}

Finally, Palmetto has not demonstrated that it was not afforded adequate opportunity to take depositions of Catawba Quality Assurance employees, a primary purpose of the lengthy extension sought by Palmetto. Motion at 16. As noted above, Palmetto completed its "first wave" discovery by March 14, 1983 -- the date on which Palmetto had available to it the names of all the Catawba employees it only now proposes to depose. Even if one were to accept at face value Palmetto's argument that it first had notice of the welding inspectors' allegations only in mid-April (Motion at 2), Palmetto still had at least a month to notice and conduct depositions -- a course which Palmetto inexplicably "elected" not to follow.

^{3/} In its May 27, 1983 supplemental responses to Applicant interrogatories on Contention 6, Palmetto Alliance acknowledged that it "has no knowledge at this time of specific uncorrected faulty workmanship of safety significance at Catawba"; and "[b]eyond the instances of poor quality control previously identified, Palmetto Alliance knows of no further instances of poor quality control not corrected." "Palmetto Alliance Further Supplementary Responses to Applicants' Interrogatories" dated May 27, 1983, at 6, 7. (Emphasis added.) Thus, even Palmetto Alliance concedes that it has no basis for widening its inquiry on Contention 6 beyond the scope of materials already provided through discovery.

It is clear that Palmetto has failed to pursue its opportunity to obtain deposition discovery with due diligence. Palmetto cannot justify an extension of discovery based on its own delay. Despite efforts by Applicant to make the subject Catawba employees available during the period May 16-20, 1983, Palmetto elected not to conduct any depositions of these employees during this time. Nor did Palmetto Alliance use the depositions it did conduct to probe the merits of the QC welding inspectors' concerns. Although the deposition transcripts are not yet available, they will show that no questions were asked by Palmetto Alliance, during two full days of depositions on Contention 6, on whether the allegations investigated by Duke and by the Staff were substantiated, whether they in fact reflected "systematic deficiencies in plant construction and company pressure to approve faulty workmanship." Rather, the lengthy and repetitive questioning focussed on irrelevant and peripheral matters such as when the Staff first learned of the QC welding inspector concerns, what steps the Staff took in forwarding the information through NRC channels, if and when investigators became involved, the contents of discussions and other communications between and among NRC employees concerning the course of action the NRC determined to take in response to the allegations, and similar matters. In fact, counsel for Palmetto did not begin questioning the Staff deponent on the inspector allegations until the second day of his deposition.

The Staff believes the foregoing illustrates a lack of diligence and concern with the merits of the admitted contention, and a willingness to use up the valuable time of counsel and deponents with

irrelevant matters.^{4/} Palmetto Alliance should not be rewarded for its lack of diligence by an extension of time to conduct more such depositions.

Moreover, Palmetto's arguments (Motion at 15) that the present schedule can accommodate delay of the hearing on Contention 6 until December are not supported. Based on the attention Palmetto is giving Contention 6, should it go to hearing, the hearing and subsequent phases of the proceeding relating thereto are likely to be extended. Moving the hearing back by two months would very likely impact on the present schedule for completion of this Board's consideration of this license application. Thus, the extension sought is not only unjustified, but could very well have substantial adverse impact upon the current schedule for completion of this proceeding. Given this likely impact, Palmetto's insubstantial arguments for delay of the hearing should be rejected.

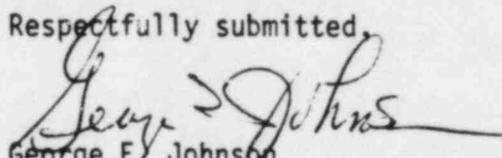
III. CONCLUSION

Based on the foregoing, the Staff urges the Licensing Board to deny Palmetto's Motion. Palmetto has had a reasonable opportunity to conduct discovery on Contention 6. It has, in fact, obtained voluminous and full documentation on matters as to which it has expressed interest, and has

^{4/} Though Counsel for Staff informed Mr. Guild that both Messrs. Van Doorn and Bryant would be available for deposition together for one day only, Mr. Guild informed counsel for the Staff for the first time at 10:00 a.m. on May 19, 1983 that he wished to depose Messrs. Van Doorn and Bryant separately. Counsel for Staff accommodated Mr. Guild on this matter, as well as making Staff deponents available for a second day, which resulted in Mr. Bryant waiting until 3:42 p.m. the next day, Friday May 20, 1983, to be deposed.

had more than two months to conduct depositions of Catawba employees on this contention which Palmetto has not diligently pursued. Palmetto Alliance's assertion that the Catawba QC welding inspectors concerns have only recently come to light is totally unfounded, and does not provide good cause to extend discovery. Palmetto's request should therefore be rejected.

Respectfully submitted,



George E. Johnson
Counsel for NRC Staff

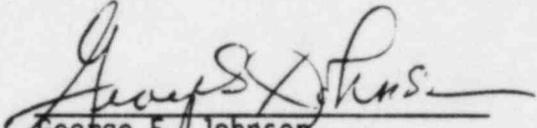
Dated at Bethesda, Maryland
this 2nd day of June, 1983

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

*Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

*Atomic Safety and Licensing Appeal
Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

*Docketing & Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555


George E. Johnson
Counsel for NRC Staff