

As grounds for its motion, the Staff asserts that the attached affidavits of Gerald E. Simonds and Edward F. Branagan, Jr., together with other papers filed in this proceeding, demonstrate that there is no genuine issue of material fact to be heard with respect to Palmetto Alliance Contention 27 and that the Staff is entitled to a decision in its favor as a matter of law.

II. DISCUSSION

Commission Standards for Summary Disposition

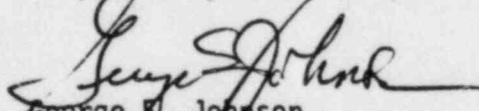
The Commission's Rules of Practice provide that summary disposition of any matter involved in an operating license proceeding shall be granted if the moving papers, together with the other papers filed in the proceeding, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law. 10 CFR 2.749(d). The use of summary disposition has been encouraged by the Commission and the Appeal Board to avoid unnecessary hearings on contentions for which an intervenor has failed to establish the existence of a genuine issue of material fact. E.g., Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 457 (1981); Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 550-551 (1980); and Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 194 (1973); aff'd, CLI-73-12, 6 AEC 241, 242 (1973); aff'd sub nom, BPI v. AEC, 502 F.2d 424 (D.C. Cir. 1974). A material fact is one that may affect the outcome of the litigation. Mutual Fund Investors Inc. v. Putnam Management Co., 553 F.2d 620, 624 (9th Cir. 1977).

When a motion for summary disposition is made and supported by affidavit, a party opposing the motion may not rest upon the mere allegations or denials of his answer but must set forth specific facts such as would be admissible in evidence that show the existence of a genuine issue of material fact. 10 CFR 2.749(b). All material facts set forth in the statement of material facts required to be served by the moving party will be deemed to be admitted unless controverted by the statement of material facts required to be served by the opposing party. 10 CFR 2.749(a). Any answers supporting or opposing a motion for summary disposition must be served within twenty (20) days after service of the motion. Id. If no answer properly showing the existence of a genuine issue of material fact is filed, the decision sought by the moving party, if properly supported, shall be rendered. 10 CFR 2.749(b).

III. CONCLUSION

There being no genuine issue as to any material fact and inasmuch as decision in favor of the Staff's position is required as a matter of law, the Staff requests that Palmetto Alliance Contention 27 be dismissed.

Respectfully submitted,


George B. Johnson
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 8th day of July, 1983

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

STATEMENT OF MATERIAL FACTS AS TO WHICH
THERE IS NO GENUINE ISSUE TO BE HEARD

1. Palmetto Alliance Contention 27 asserts that Applicants' emergency response plan is inadequate because emergency response personnel would not rely upon offsite real-time monitors for information upon which to base protective response in the event of a radiological accident. Affidavit, ¶ 3.
2. Commission requirements for determining appropriate protective response measures based upon monitoring and assessment of onsite and offsite conditions are provided in 10 CFR Part 50, Appendix E, Part IVB and 10 CFR Section 50.47(b)(9), and (b)(10). Affidavit, ¶ 4,5.
3. The Staff's implementing criteria in NUREG-0654, Rev. 1, call for applicant to establish the relationship between effluent monitor readings and onsite and offsite exposure and contamination for various meteorological conditions, and for each emergency response organization to provide methods, equipment and expertise to make rapid assessments of the actual and potential magnitude and location of any radiological hazard and to make arrangements to locate and track the airborne radioactive plume, using either or both Federal and State resources. Affidavit, ¶ 5.

4. The Staff reviewed Revision 2 of Applicants' Radiological Emergency Response Plan (Plan) for Catawba against the criteria of NUREG-0654 and concluded that the Plan is adequate, subject to development or refinement of implementing procedures for use at Catawba. Affidavit, ¶ 6.

5. Under the Plan, protective action recommendations are based upon information provided by in-plant monitors of plant conditions, effluent and perimeter monitor readings and meteorological conditions. Affidavit, ¶ 6.

6. Using monitor readings and control room alarms, which will indicate significant variations in the status of any plant parameter, the plant operator or supervisor will make judgments, based on predetermined Emergency Action Levels as to the overall plant condition, the existence and seriousness of an emergency condition, and the protective actions to recommend to offsite authority. Affidavit, ¶ 6.

7. Plant monitors and computer-assisted trend analysis of prime indicators provide the operator with current (instantaneous) information, so that plant conditions are analyzed, the situation classified, response teams alerted, and protective action recommendations selected in a timely manner. Affidavit, ¶ 7.

8. Under emergency conditions, mobile monitoring teams with real-time monitors, sampling equipment and radios are dispatched offsite to survey and measure the degree and extent of any radioactive plume released from the plant. Affidavit, ¶ 8.

9. Based on reports of location and real-time monitor readings from the mobile monitoring teams traversing the plume, the plant operator will be able to update and refine the plume projections previously made. Affidavit, ¶ 8.

10. Were protective actions recommendations delayed until plume indications appeared on offsite monitors, undue delay would result adversely affecting the ability of offsite authorities to take timely protective actions. Affidavit, ¶ 8.

11. Either thermoluminescent detectors or real-time monitors may be used to satisfy the Staff's requirement for routine continuous measuring and recording of dose rate from direct radiation. Thus, fixed stations with real-time monitors are not required by the Staff. Affidavit, ¶ 10.

12. An NRC-funded study of the usefulness of real-time monitors under accident conditions concluded that there are large uncertainty factors associated with their employment and that "it is highly questionable that a fixed station emergency monitoring system of 16-32 units can provide sufficiently reliable technical information to be of use in a decisionmaking process in the event of an emergency situation." Affidavit, ¶ 12.

13. A study published by the Atomic Industrial Forum concluded that "using data from an environs monitoring system to project dose rates at other locations" accurately would be extremely difficult and in some cases impossible because it would require accurately knowing (a) either plume centerline dose rate or location of the plume centerline relative to the detectors; (b) effective heights of all releases; (c) energy

compositions of releases; (d) shine contributions; (c) meteorological stability class, and (f) local meteorological phenomena. Affidavit, ¶ 13.

14. The Staff agrees with its contractor's evaluation (a) "that the use of a fixed offsite monitoring system to determine the magnitude of an unmonitored release in the presence of a monitored release" would not generally serve a useful function due to high uncertainty factors, and (2) that it is unlikely that a 16-32 unit system of fixed monitor stations "would provide sufficiently reliable technical information to be of use in a decision-making process in the event of an emergency situation." Affidavit, ¶ 14.

15. The Staff concludes that while Applicants' plan for using mobile teams with real-time monitors will assist in updating and refining provisions in plume projections, offsite real-time monitors will not materially assist meeting the regulatory requirement for timely alerting of offsite authorities and recommending initial protective actions. Affidavit, ¶ 15, 16.

16. Applicants' in-plant monitor system and Emergency Action Levels, based on observable and measurable indications in the control room, will, in conformance with 10 CFR Section 50.47, permit forecasting of an unplanned release, determining its isotopic content, projecting the magnitude of release, and, with available meteorological data, permit recommendations on protective actions in advance of radioactive release from the plant site. Affidavit, ¶ 15, 16.