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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD
BRANCH

In the Matter of)	
)	Docket Nos. 50-413
DUKE POWER COMPANY, <u>et al.</u>)	50-414
)	
(Catawba Nuclear Station)	August 5, 1983
Units 1 and 2))	

MOTION FOR SANCTIONS AGAINST DUKE POWER COMPANY ET AL.

The Statement of Policy issued by the NRC Commissioners in May 20, 1981 asserts that "fairness to all involved in NRC's adjudicatory procedures requires that every participant fulfill the obligations imposed by and in accordance with applicable law and Commission regulations" and that "when a participant fails to meet its obligations, a Board should consider the imposition of sanctions against the offending party." [See Commissions Statement of Policy on Conduct of Licensing Proceedings, 13 NRC 452, at 454 (1981)].

Intervenors assert that the Applicant's pattern of behavior with respect to discovery and other pre-hearing procedures and on Contentions 16 and DES-19 warrant the imposition of sanctions. The Applicants have consistently attempted to mislead the Board by misrepresenting Palmetto Alliance's position on these

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contentions in a way that abuses licensing process by obfuscating issues and hence diverting the energies of all the parties involved from the serious issues affecting the health and public safety. Some of the more egregious examples of the Applicants efforts to distort Intervenor's attempt to be responsive on the discovery process are reflected in the Applicants' Motion For Sanctions Against Palmetto Alliance and Carolina Environmental Study Group, submitted on June 6, 1983. As noted in PA and CESA's June 10, 1983 Response, Palmetto Alliance and CESA strongly objected to Applicants totally unsubstantiated claim that PA and CESA were deliberately trying to keep our contentions broad. Palmetto Alliance denies (under the assumption that Applicants innuendos call for an explicit response) the implication that Palmetto Alliance is either dishonest or disingenuous in its participation in this proceeding. We, and our members take with the utmost seriousness our obligations under Commission rules of practice and our obligation to protect the health and safety of those persons living in proximity to the Catawba Nuclear Station. We are not playing games. Palmetto observes that Applicants 144 page Motion is rife with distortions, misrepresentations and mischaracterizations of Palmetto's positions, motions and actions in this proceeding.

Palmetto Alliance and CESA Response to Applicants Motion for Sanctions Regarding Contentions 6, 7, 8, 16, and 44/18 and Responses to NRC Staff Motion for Sanctions Regarding Contentions 7 and 44, at pp. 3-4

Specifically with respect to Contention 16, the Applicants in their June 6 Motion accuse Palmetto of conducting "trial by surprise" and engaging in obstructionist tactics. But as

Palmetto noted in its June 10 response

After much smoke and thunder about the inadequacy of Palmetto discovery responses and a ringing call for the dismissal of the contention, they then plead the entitlement to the alternative remedy of a narrowing of the contention to the specifics they concede are asserted in Palmetto discovery responses. See Applicants Motion at pp. 123-125.

PA and CESC Response to Motion p. 21.

On pages 110-115 of their June 6 Motion the Applicants reflect clear outline of the specific accident scenarios that Palmetto had described in its Contention 16 discovery responses. Palmetto Alliance has made its position clear again and again while the Applicants persist in their games. On page 119 of their June 6 Motion the Applicants use a gambit they have continued to employ in summary disposition. The Applicants argue that discussion of their cooling capability with regard to the expanded heat load is "unrelated to the Ocone/McGuire spent fuel storage issue" and hence outside of the scope of Contention 16.

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Not only is this absurd on the face of it¹, but Applicants resort to mischaracterization and deception to buttress their claim. In a footnote to the text, the Applicants argue that it was in its May 27, 1983 Supplementary responses that Palmetto for the first time alleges that " the probability of ... boil-off occurring is

1. An absurdity that the Applicants will later try and refute by deliberately distorting Intervenor responses to discovery questions.

greater because of the increased heat load that will prevail at Catawba now that Oconee, McGuire and Catawba spent fuel assemblies will be stored there" (See Applicants Motion for Sanction June 6, 1983 FN#77 at p. 119). Further "inasmuch as this matter was not raised in Palmetto Alliances May 27, 1983 Response to Interrogatory 13 Palmetto Alliance should not be permitted to raise the issue" (Id. at p. 119 emphasis added). Palmetto's response to interrogatory 13 reads, in part:

Palmetto Alliance believes that there is an unacceptably high probability that the water in the spent fuel pool will reach and surpass the 150 degree F heat limit which could result in ruptures in the pool liner plate, pool water leakage, and boiloff. . . . Such an occurrence is made more likely because of the fact that design modifications at Catawba more than double the number of fuel assemblies to be stored (thereby dramatically increasing the heat load) have significantly reduced the margin for error. In other words, the cooling trains and other "structures, system and components important to safety" were designed to operate with respect to a much lower heat load than the subsequent modifications of the cascade plan called for if the safety related systems were designed so as to prevent water temperature in the pool from water temperature in the pool from reaching dangerous levels when the pool contained a maximum of 662 fuel assemblies, then expanding the heat load to hold 1418 assemblies significantly increases the heat load and reduces the margin for error. (Emphasis added)

PA Further Supplementary Responses to Applicants Interrogatories May 27, 1983, at p. 25.

Palmetto finds it hard to believe that the Applicants have this severe a problem understanding the English language and can only conclude that the Applicants are deliberately

misrepresenting the record in this case. Such a conclusion is strengthened by subsequent arguments made in this same connection in the Applicants Motion for Summary Disposition on Contention 16. Prior to the Applicants Motion for Summary Disposition, Palmetto Alliance had, in response to numerous interrogatories of both Applicants and Staff, made its concerns regarding Contention 16 abundantly clear. The record reflected the following information and clarification provided by Palmetto

*Response to Applicants Interrogatory 6 of April 19, 1983 Supplementary Responses

Palmetto Alliance contends that the design of the enlarged pools has not adequately accommodated the expanded Catawba heat load being experienced from the more than doubling in the number of assemblies to be stored including the Oconee and McGuire spent fuels. . (p. 51).

*Response to Staff Interrogatory 15 of August 13, 1982:

Palmetto Alliance still contends that the added source term, from the additional irradiated spent fuel transshipped in the cascade from Oconee and McGuire represent an additional risk of harm beyond that associated with storing at the Catawba facility only Catawba generated spent fuel.

*Response to Interrogatory 13 of Palmetto Alliance Further Supplementary Responses May 27, 1983

-quoted above- (p. 25)

*Response to Interrogatory 7 of Applicants Follow-Up Interrogatories Regarding Contentions 16 and 17

We contend that the probability of . . . boil-off occurring is greater because of the increased heat load that will prevail at Catawba now that Oconee, McGuire, and Catawba spent fuel assemblies will be stored there

(p. 30).

*Response to Interrogatory 7 of Palmetto Alliance and CESC Responses to Applicants May 23, 1983 Follow-Up Interrogatories On DES Contention 11, 17, 19, June 6, 1983.

PA and CESC do not contend that there is any fundamental difference between Catawba spent fuel and Oconee/McGuire spent fuel such that one results in a greater heat load than the other. We are contending that if Catawba receives spent fuel from Oconee and McGuire as well as its own spent fuel this will result in an expanded heat load and radiation inventory (p.8).

*Response to Interrogatory 11 of PA and CESC Responses to Applicants May 23, 1983 Follow-Up Interrogatories on DES Contentions 11, 17, 19 June 6, 1983.

As with Interrogatories 7, 8, 9 and 10 above, the Applicants seem to attribute to PA and CESC the view that the origin of the spent fuel has an effect on how dangerous to the environment it is or how likely it is to escape into the environment. It is obvious from our previous statements and responses that PA and CESC do not make such an absurd contention. (p.8)

*From Palmetto Alliance and CESC's Response to Applicants Motion for Sanctions, June 10, 1983

Basically, our concern is that the doubling of capacity of the Catawba spent fuel pools over its original design will significantly increase the heat load and yet Duke Power Company claims that the original heat removal system need not be modified The indications of the increased demands on the heat removal system are founded in Duke's own document, The 1976 Catawba Heat Load Study. Their own study indicates that the pool water temperature control capacity is limited under the assumed heat load increases that were studied. Palmetto stands by the adequacy of its discovery responses on Contention 16.

In the face of this clear record the Applicants resort to the sort of gamesmanship that makes a mockery of Duke's commitment to a fair licensing process:

Intervenors assert that the incidental environmental impact associated with the storage of Oconee and McGuire spent fuel at Catawba must be evaluated. However, Intervenors do not contend that there is a relevant difference between Catawba spent fuel and Oconee and McGuire spent fuel. Rather, they allege that storage of Oconee and McGuire spent fuel will result in a greater inventory at Catawba. . . . However, the spent fuel pools of Catawba could be filled entirely with Catawba spent fuel only. In response to a question asking if they "contend that the DES and FES fail to evaluate the possible environmental effects associated with the storage of Catawba spent fuel at Catawba" intervenors responded "No". See Intervenors Responses to Applicants Interrogatories, May 2, 1983 at p. 11. Accordingly, if the Catawba spent fuel pools could be filled with spent fuel from Catawba only (which spent fuel Intervenors interrogatories acknowledge is no different from Oconee and McGuire spent fuel) then Intervenors' concern with the Catawba spent fuel pools being filled up with Oconee and McGuire spent fuel must be viewed as being enveloped by the environmental evaluation of the storage of Catawba spent fuel. In this regard, Intervenors have stated that they do not contest the environmental evaluation conducted on the storage of Catawba spent fuel; therefore, nothing remains to be litigated.

Applicants Motion at p. 6.

It was Duke Power Company who created the so-called cascade plan that called for the storage of Catawba, Oconee, and McGuire spent fuel. Palmetto Alliance made clear that its concerns related to the increased inventory and heat load this plan represented, as the above passages clearly show. In this context Intervenors were asked if we contended that the DES/FES failed to evaluate the storage of Catawba spent fuel. we replied "No", attempting once again to be clear that our concern related to the expanded pool design that would handle Oconee and McGuire

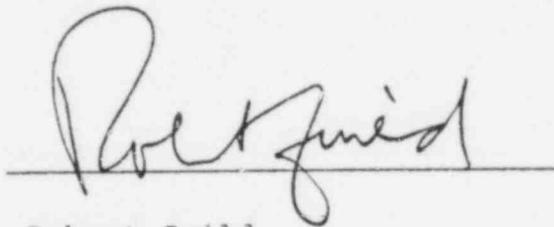
and Catawba spent fuel. The Applicants then seize on this response to deny in the face of explicit responses to interrogatories-- that Intervenors have raised a concern at all. This level of gamesmanship is truly astounding; especially in light of the fact that this instance of obfuscation and bad faith participation (as well as all of the instances noted in this Motion) came on the heels of a specific warning given to the applicants by the Board regarding Contention 16:

On this contention the applicants do appear to have placed a very narrow interpretation--i.e., whether the Catawba spent fuel pool can accomodate physical differences if any, in spent fuel assemblies. We caution the applicants against obstructing the discovery process by placing an unduly narrow interpretation on contentions and questions. We note in this connection that, on the whole, the staff appears to have been more responsive to similar Palmetto interrogatories.

Board Memorandum and Order (Ruling On Various Discovery Disputes), December 22, 1982.

Palmetto Alliance hereby urges the imposition of sanctions upon the Applicants for deliberately confusing issues and misrepresenting Palmetto Alliance's position in a manner that flies in the face of the Commissions mandate to reduce delays and ensure fair and thorough hearing processes. We suggest that the appropriate sanctions include dismissal of the Applicant's Ocone and McGuire spent fuel storage application, dismissal of the Motion for Summary Disposition on Contention 16 and DES-19, as

well as a warning to the applicants that misrepresenting the public record will not be tolerated. Just as the fact that a party may have personal obligations or possess fewer resources than others does not relieve that party of its hearing obligations, an overabundance of resources should not excuse the excesses of 5 lawyers producing 144 page documents filing unsubstantiated charges of dishonesty and misrepresenting the public record.

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

Robert Guild
Post Office Box 12097
Charleston, South Carolina
29412

Counsel for Palmetto Alliance

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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August 6, 1983

OFFICE OF SECRETARY
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CERTIFICATE OF SERVICE

I hereby certify that copies of MOTIONS FOR SANCTIONS
AGAINST DUKE POWER COMPANY ET AL.

in the above captioned matters, have been served upon the follow-
ing by depositing same in the United States mail, postage prepaid,
on this day of August 6, 1983.

James L. Kelley, Chairman
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Chairman
Atomic Safety and Licensing Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. A. Dixon Callihan
Union Carbide Corporation
P.O. Box Y
Oak Ridge, Tennessee 37830

Henry A. Presler
Charlotte-Mecklenburg Environmental Coal
943 Henley Place
Charlotte, N.C. 28207

Dr. Richard R. Foster
P.O. Box 4263
Sunriver, Oregon 97701

J. Michael McGarry, III, Esq.
Debevoise & Liberman
1200 Seventeenth St., N.W.
Washington, D.C. 20036

Chairman
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

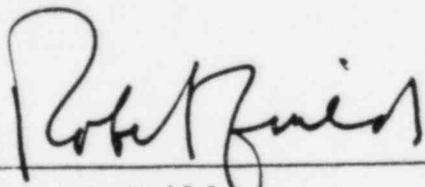
Jesse L. Riley
854 Henley Place
Charlotte, N.C. 28207

George E. Johnson, Esq.
Office of the Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Scott Stucky
Docketing and Service Station
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

William L. Porter, Esq.
Albert V. Carr, Jr., Esq.
Ellen T. Ruff, Esq.
Duke Power Company
P.O. Box 33189
Charlotte, N.C. 28242

Richard P. Wilson, Esq.
Assistant Attorney General
State of South Carolina
P.O. Box 11549
Columbia, S.C. 29211



Robert Guild
Attorney for Palmetto Alliance, Inc.