

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
DUKE POWER COMPANY, et al. ) Docket Nos. 50-413  
(Catawba Nuclear Station, ) 50-414  
Units 1 and 2) )

APPLICANTS' RESPONSE TO "PALMETTO ALLIANCE RESPONSE  
TO BOARD QUESTIONS AND MOTION REGARDING SECURITY  
CONTENTION NO. 23" AND MOTION TO DISMISS CONTENTION

Duke Power Company, et al. (Applicants) hereby respond to Palmetto Alliance's "Response to Board Questions and Motion Regarding Security Contention No. 23" (Response), served by Palmetto Alliance on May 10, 1982, and move that the Licensing Board dismiss Palmetto Alliance Contention 23.

As will be set forth in detail below, Applicants' motion is based on three grounds. First, Palmetto Alliance's Contention 23 does not meet the requirements imposed by the Commission's case law and regulations to admit security plan issues as issues in a proceeding. Second, Palmetto Alliance has stated affirmatively that it will not execute an affidavit of nondisclosure, nor will it agree to be bound by any protective order issued by the Licensing Board. Third, Palmetto Alliance has failed to identify an expert witness who is qualified to evaluate Applicants' security plan. For the foregoing reasons, Palmetto Alliance Contention 23 should be

dismissed from the proceeding. 1/

Background

In its contentions filed with the Board on December 9, 1981, Palmetto Alliance advanced a security plan contention (Contention No. 23) which reads:

Catawba should not be licensed to operate until Applicants have developed and demonstrated an adequate security plan which complies with 10 CFR 73.55. The FSAR does not give adequate assurance that all regulatory requirements have been or will be met prior to operation. See FSAR, p. 13-61, Regulatory Guide 1.17, Rev. 1.

Applicants, in their December 31, 1981 "Response to Contentions Filed by Palmetto Alliance," took the position (at pp. 77-79) that it was incumbent on Palmetto Alliance to specify why it believed that Applicants would be unable to develop an adequate security plan, and provide a basis for that belief. The discussion of the contentions at the pre-hearing conference did not serve to specify further the concerns of Palmetto Alliance. Tr. 224-232. In its March 5 Order (Order), the Licensing Board ruled that:

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1/ Applicants have limited their response to the issues raised by Palmetto Alliance's Response. Thus, in this pleading Applicants do not address other issues, such as the terms and conditions to be imposed by any protective order, limitations on time and place of disclosure, copying, notes and the like, which will have to be faced should the Catawba necessity plan become an issue in this proceeding.

Because an intervenor cannot reasonably be required to advance specific contentions about a security plan he has never seen, and because Palmetto has expressed a formal interest in the Catawba plan, we believe we could at this juncture order the Applicants to grant Palmetto access to that plan. We could now find that disclosure of the plan is "necessary to a proper decision in the proceeding." 10 CFR 2.744(e), as recently amended, 46 Fed. Reg. 51718, 51723. Order, p. 38.

However, the Board was unsure whether Palmetto fully appreciated the procedural complexities and costs inherent in pursuing security plan issues under the Commission's regulations and case law. The Licensing Board noted that it would, for example, condition disclosure of the security plan upon Palmetto Alliance obtaining the services of a qualified security plan expert, and access to the security plan would be conditioned in a number of respects. Order, p. 38. The Board furnished Palmetto Alliance with some materials (relevant Commission regulations, a protective order, an affidavit of non-disclosure, and a copy of the Commission's Diablo Canyon decision 2/) illustrating the complexities associated with pursuing a security plan contention, and asked Palmetto to inform it whether it wished to proceed. Specifically, the Board asked Palmetto "whether it wishes to gain access to the Catawba security plan, subject to the kinds of conditions

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2/ Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-80-24, 11 NRC 775 (1980).

we have indicated." Order, pp. 38-39.

Subsequently, the Board addressed specific questions to Palmetto Alliance (Order, April 13, 1982) and on May 10, 1982 Palmetto Alliance served the instant pleading.

The Palmetto Alliance Response

In its Order of April 13, the Licensing Board required Palmetto Alliance to address three specific security plan questions:

1. Have you secured the services of a qualified security plan expert? If you have, submit a statement of that person's qualifications and experience to the Board and parties.
2. If you have no expert at this time, when and how do you plan to obtain one?
3. Is the protective order entered in the Diablo Canyon case acceptable to you?

Palmetto Alliance's Response clearly indicates that the conditions to be imposed by the Licensing Board are not acceptable to it.

In response to questions 1 and 2, Palmetto Alliance submitted the names of two former security guards from McGuire Nuclear Station. 3/ Beyond representing a purported period of employment and job description for each, Palmetto Alliance is silent as to their qualifications. Rather, it is simply

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3/ Michael D. Hines and Thomas P. Poole.

asserted that these former security guards at the McGuire plant possess "the appropriate and necessary expertise to assist the Board and this Intervenor in the litigation of Contention 23 or other security issues," regarding the Catawba security plan. With respect to obtaining a witness with qualifications or experience beyond those of "its members, staff and counsel or...Messrs. Hines and Poole" Palmetto objects, on the grounds that anyone with qualifications beyond those is "available solely...to the owners of nuclear plants..." Response, pp. 3-4.

In response to question 3, Palmetto Alliance objects to the terms of the protective order and the affidavit of non-disclosure. Palmetto Alliance avers that any such affidavit or order infringes upon "its rights of Free Speech...and constitute[s] an impermissible prior restraint by government on the exercise of such rights." It further states that the reach of such an order should extend only to "protected information gained through participation in this proceeding." Response, p. 4.

Palmetto Alliance voices its objection to participation "in a secret process" and expresses its views on the Commission's rules which protect from unrestricted public disclosure security plans for nuclear power plants, among other things. Palmetto Alliance characterizes these rules as "impermissibly vague and overbroad, serv[ing] to chill the legitimate exercise

of free speech and the right of petition by intervenors and protect[ing] the operators of nuclear power plants more from the ire of an informed public which learns of their misdeeds than from any real threats to security." Response, p. 4.

Stating that it "wants no secrets from Duke Power Company which it would be bound to hide" (Response, pp. 4-5), Palmetto Alliance, having rejected the conditions which the Commission places on pursuit of security plan issue (as expressed in the Licensing Board's order) goes on to inform the Licensing Board of the conditions under which it will agree to participate in the litigation of its Contention 23. Thus, Palmetto Alliance states that it is prepared to "undertake an analysis of Duke's [security] plan for Catawba, with the help of Hines and Poole and the Board's support, in order to narrow and particularize its contentions." (Response, p. 5.) However, because Palmetto Alliance refuses to be bound by any protective order which the Board might issue and refuses to execute an affidavit of non-disclosure ("Palmetto Alliance is not prepared to be sworn to secrecy"), it therefore informs the Licensing Board that it "seeks access only to such 'sanitized' portions of the security plan and related materials as contain no 'safeguards information' or other information protected against public disclosure." (Response, p. 5.) Alternatively, Palmetto Alliance requests the Board to pursue the security issue sua sponte. This



procedure, according to Palmetto Alliance, would include hearing testimony in camera from Hines and Poole, and "other present and former security workers willing to present evidence of serious inadequacies but whose identities must for now remain confidential." (Response, p. 6.)

Finally, Palmetto Alliance asks the Licensing Board issue an

order strictly enjoining Duke Power Company, Southern Security Services, Inc., and any person acting in concert with them, from any and all acts of harassment, intimidation or reprisal directed against Michael D. Hines, Thomas P. Poole or any other person as a result of such person's cooperation in this matter. (Response, p. 6).

#### Argument

Palmetto Alliance's security plan contention (Contention 23) should be dismissed by the Licensing Board. 4/

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4/ Applicants would point out that Palmetto Alliance has had almost one year to formulate an adequate security plan contention. (The Notice of Hearing in this proceeding was published June 25, 1981, 46 Fed. Reg. 32974.) In addition, the Licensing Board has given it three separate opportunities to express its concern. (In filing its initial contentions, in response to the March 5 order, and in response to the April 13 Order.) By this time it should be clear to all concerned that Palmetto Alliance has no basis for its Contention 23, and it should be dismissed.

Any security plan contention which Palmetto Alliance seeks to raise after its Contention 23 is dismissed must not only be based on "new information" e.g., information which Palmetto Alliance is able to show was unavailable to it when it filed its contentions in December (Louisiana Power and Light Company (Waterford Steam Electric Station, Unit 3), LBP-73-31, 6 AEC 717 (1973)), but also must meet the remainder of the Commission's requirements for late-filed contentions. 10 CFR §2.714(a)(1). Any order issued by the Licensing Board dismissing Contention 23 should so direct.

First, Palmetto Alliance has not presented a security plan contention which complies with the Commission's regulations; its Contention 23 lacks the specificity and bases necessary for admission to the proceeding. Moreover, the contention lacks the particular specificity required of security plan contentions by the Commission's case law. That is, Palmetto Alliance has failed to demonstrate the relevance of its contention to the specific part of the Catawba security plan it intends to address. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-410, 5 NRC 1398, 1404 (1977).

Second, Palmetto Alliance has stated that it will not accept the conditions placed upon litigation of security plan issues by the Commission's regulations and case law. Palmetto Alliance has stated that it will not execute an affidavit of nondisclosure nor will it be bound by any protective order which the Licensing Board issues. Thus, Palmetto Alliance has affirmatively demonstrated that it is unwilling to abide by the conditions that the Commission has established for litigation of security plan contentions in its licensing proceedings. Palmetto Alliance's statement of the conditions under which it will participate in the trial of the security contention which it has raised is simply at odds with the Commission's regulations and case law and indeed is a challenge thereto.



Third, Palmetto Alliance has not secured the services of a qualified security plan expert. Palmetto Alliance has not demonstrated that the two former McGuire security guards are qualified to evaluate the Catawba security plan and assist the Licensing Board in reaching a decision on the plan. Thus, as Palmetto Alliance has not demonstrated compliance with the conditions the Board--and the Commission--places on litigation of security plan issues, its Contention 23 should be dismissed.

With respect to Palmetto Alliance's request to the Licensing Board to enjoin Duke from "any and all acts of harassment, intimidation or reprisal," such a request is totally without foundation and moreover is not cognizable under the Commission's case law. Palmetto Alliance, by dropping groundless inuendos, and proffering motions based upon those inuendos, is simply attempting to divert the attention of the Licensing Board from the fact that its security plan contention is without basis and should be dismissed.

1. Palmetto Alliance's Contention Is Not Sufficient To Put The Catawba Security Plan In Issue

Security plan contentions are treated differently than other contentions in Commission proceedings. The security plan for a nuclear power plant describes how certain features at the plant are constructed and certain parts of the plant are manned to protect against sabotage of vital features

of the plant or theft of the nuclear materials stored or used therein. Consequently, the security plans for a nuclear power plant are highly sensitive information which is closely protected and not made available to the public at large. See, e.g., 10 CFR Part 73. The reason for this is quite simple. The fewer the number of persons who have access to the plans, the less likely the plan is to be compromised. Diablo Canyon, ALAB-410, 5 NRC at 1403-1404 (1977); Proposed Rules, Protection of Unclassified Safeguards Information, "Supplementary Information," 45 Fed. Reg. 85459, 85460 (December 29, 1980). Thus, the Commission's rules and the applicable case law lay down strict guidance governing admission of security plan contentions to licensing proceedings in the first instance, and disclosure of those plans during litigation in NRC proceedings.

a. Admission of the Plan to the Proceeding

In their Motion for Reconsideration, Applicants set out their position that Palmetto Alliance had not made a showing adequate to justify admission of its security plan to the proceeding. Applicants further suggested that the Licensing Board had applied the wrong standard for determining whether and to what extent the security plan should be disclosed. Motion, pp. 43-47. Applicants will not repeat those arguments

in their entirety here, as that Motion is still pending before the Licensing Board. However, certain salient points are relevant to this discussion.

Palmetto Alliance is obligated to put forth a contention which, as a threshold matter, provides not only the requisite specificity and bases (10 CFR §2.714) but also demonstrates the relevancy of certain portions of the plan to its contention. Only those portions of the plan which Palmetto Alliance can demonstrate are relevant to its contention are to be disclosed to it. Diablo Canyon, ALAB-410, 5 NRC 1404. Therefore, it clearly is not proper for the Licensing Board to determine, based upon Intervenor's mere expression of "a formal interest" in the security plan, that a security plan contention is valid, and that thus disclosure of the security plan is "necessary to a proper decision in the proceeding." 10 CFR §2.744(e).

Under the standard adopted by the Licensing Board it is impossible for it to determine what parts of the security plan are relevant to the contention. The Licensing Board clearly has not required, as it must, Palmetto Alliance to "validate...the merit of [its] contentions." Diablo Canyon, ALAB-410, 5 NRC at 1404; Final Rules, Protection of Unclassified Safeguards Information, "Supplementary Information," 46 Fed. Reg. 51718, 51720 (October 22, 1981). Thus, on these grounds alone, Palmetto Alliance's Contention 23 should not be admitted to the proceeding.

a. Palmetto Alliance's Position Regarding Imposition Of Conditions In The Litigation Of Security Plan Issues Is Erroneous

Palmetto Alliance's Contention 23 should be dismissed because it has affirmatively stated that it will not abide by the requirements which govern litigation of security plan issues in NRC proceedings.

On October 22, 1981, the Commission promulgated new rules dealing with protection of "Unclassified Safeguards Information." 5/ 46 Fed. Reg. 51718. Those rules authorize disclosure of a facility's security plan (which is also protected under 10 CFR §2.790) in one of the Commission's licensing proceedings only upon a finding by the presiding officer that disclosure of the plan is "necessary to a proper decision in the proceeding." The presiding officer is authorized to condition any such disclosure by such appropriate protective order, to include affidavits of nondisclosure, as he finds necessary to limit disclosure of the security plan to parties in the proceeding, more specifically, "to their qualified witnesses and counsel." 10 CFR §2.744(e).

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5/ "Safeguards Information" is defined as, among other things, information not otherwise classified which specifically identifies a licensee's or applicant's detailed "security measures for the physical protection and location of certain plant equipment vital to the safety of production or utilization facilities." 10 CFR §73.2 (jj). In short, the security plan for a nuclear power plant.

The Commission stated, in the "Supplementary Information" provided with its amended rules, that it regarded its new rule as the "minimum restriction" consistent with balancing the protection of the public health and safety (through restricting disclosure of security plans only to those who had demonstrated a clear need to see a portion of the plans and only under limiting conditions) against impairment of procedural rights of parties in the context of pursuit of security plan issues in its adjudicatory proceedings. 6/ 46 Fed. Reg.

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6/ Palmetto Alliance directly attacks the Commission's Regulations with respect to protection of unclassified safeguards information, alleging that those regulations infringe somehow upon its constitutional rights. Response, p. 4. See, pp. 5-6, supra.

Leaving aside the fact that Palmetto Alliance is expressing its displeasure to the wrong body (if Palmetto Alliance wishes to challenge the Commission's regulations it must address the complaint to the Commission), and that it has not made the proper showing warranting waiver of those regulations (10 CFR §2.758), Palmetto Alliance's complaints are without merit.

First, the Commission did not conceive and promulgate these regulations out of thin air. Instead, they were published in response to the recently-enacted Section 147 of the Atomic Energy Act. 42 U.S.C. 2167. Thus, it is the Congress, and not the Commission, which directed that such information as security plans for nuclear power plants be protected. Second, as noted, the Commission, in promulgating its rules, balanced the protection necessary for safeguards information against the right of intervenors to have access to that information.

Thus, the considerations raised by Palmetto Alliance have no place before this Licensing Board. In fact, Applicants submit that the complaints raised by Palmetto Alliance in this respect are simply another attempt to divert the attention of the Licensing Board from the fact that its contention has no merit.

51719. Licensing boards have the discretion to impose restrictions on disclosure of the security plans. The Commission further noted that, though it will at a later date issue further guidance to its licensing boards with respect to any additional protection required, for purposes of defining the terms and conditions of the protection required, licensing boards are to look to its opinion, and the various opinions of the Appeal Board, in Diablo Canyon. 7/ 46 Fed. Reg. 51720. A review of those opinions and decisions leads one to the following conclusions with respect to the litigation of security plan issues in Commission proceedings:

First, though security plans are proper subjects for adjudication, this does not mean that they are to be released in their entirety to anyone selected by intervenors without protective safeguards. To the contrary, once an intervenor is able to demonstrate the relevance of his contention to a specific portion of a facility's security plan (see discussion at pp. 10-12, supra), the intervenor must then demonstrate affirmatively that it has a qualified witness to evaluate that portion of the security plan. Only after this

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7/ Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-80-24, 11 NRC 775 (1980); ALAB-410, 5 NRC 398 (1977); ALAB-580, 11 NRC 227 (1980); ALAB-592, 11 NRC 744 (1980); and ALAB-600, 12 NRC 3 (1980).



showing are the qualified witness and his counsel (and no other member of intervenor's organization or of the public) authorized to view a "sanitized" version of the particular part of the security plan under consideration. However, such an examination may take place only under the terms of a protective order issued by the licensing board and only after intervenor's witness and its counsel have executed an affidavit of nondisclosure. 8/ Diablo Canyon, ALAB-410, 5 NRC 1398 at 1404-1406; ALAB-592, 11 NRC 746 at 748-749, 752-753. The entire procedure discussed above has been specifically addressed and approved by the Commission on two separate occasions. Diablo Canyon, CLI-80-24, 11 NRC 775, 777 ("We believe that the [Appeal] Board has done a commendable job of interpreting the law and balancing competing policy interests, and has handled the sensitive issues raised by requests for access to the Diablo Canyon physical security plan wisely.") and 46 Fed. Reg. 51720.

Palmetto Alliance has stated that the terms and conditions established by the Commission, and followed by the

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8/ Applicants would note that it is "a material consideration" whether those receiving information under the terms of a protective order are likely to comply with such an order. ALAB-410, 5 NRC at 1404. Should the security plan issue reach the point where the Board orders disclosure of the security plan and representatives of Palmetto Alliance execute affidavits of nondisclosure, Applicants reserve the right to show that the Palmetto Alliance is not likely to honor either the affidavits or the protective order. See, e.g., Diablo Canyon, ALAB-410, 5 NRC 1398 at 1406; ALAB-504, 8 NRC 406, 411; ALAB-592, 11 NRC 746, 751-752; CLI-80-24, 11 NRC 775, 777-778.

Licensing Board, are not acceptable to it. 9/ In response to the Licensing Board's question whether Palmetto Alliance wished to gain access to the security plan, "subject to the kinds of conditions we have indicated." (March 5 Order, pp. 38-39) Palmetto Alliance has made it clear that it does not view the Commission's regulations and case law as conditions which are binding on its pursuit of the security plan issue in this proceeding. Response, pp. 3-4. Rather, Palmetto Alliance apparently views such conditions, expressed in the Licensing Board's Order, as no more than the opening stages of negotiations to arrive at a set of conditions suitable to it, and challenges directly the Commission's case law and regulations.

In lieu of following Commission procedures, Palmetto Alliance suggests an alternative which will be satisfactory to it in "pursuing its claim that Duke's security plan is inadequate." Thus, it "is prepared to undertake" a review of the Catawba security plan "in order to narrow and particularize its contentions." However, because Palmetto Alliance refuses either to execute an affidavit of nondisclosure or to be

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9/ As noted (p 3, supra) the Licensing Board stated, among other things, that disclosure would be conditioned upon Palmetto having obtained the services of a qualified security plan expert. And after that, access would be conditioned as to time, notetaking and the like. March 5 Order, p. 38.

bound by the terms of a protective order 10/ ("Palmetto Alliance is not prepared to be sworn to secrecy") it does not seek access to protected information. Instead, Palmetto Alliance suggests that it be allowed access to a "sanitized" version of the plan which does not contain safeguards information to allow it to "narrow and particularize" its contention. Response, p. 5.

Palmetto Alliance's suggestion makes no sense. 11/  
A "sanitized" security plan which contains no "Safeguards Information" would serve no useful purpose. Because the security plan itself is "safeguards information" (10 CFR §73.2(jj)), essentially such a version would do no more than reference the Commission's regulatory requirements and Applicants' commitment to meet those requirements. 12/

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10/ Palmetto Alliance avers that any such protective order should extend only to "protected information gained through participation in this proceeding" and not to "protected information...receive[d] by any means whatever." Response, p. 4. Applicants recognize that in at least one instance the former test controlled. Diablo Canyon, ALAB-600, 12 NRC 3 (1980). However, should the actual terms of a protective order become an issue, Applicants serve notice that they intend to show that the latter test should control in this proceeding, and reserve the right to make such a showing. ALAB-600, 12 NRC at 6, and n. 4.

11/ In any event, as has been shown above, a pre-condition to access to a "sanitized" version of a security plan is execution of an affidavit of nondisclosure and issuance of a protective order.

12/ Palmetto Alliance suggests, as an alternative, that the Licensing Board pursue the issue sua sponte.

(Footnote continued on next page.)

3. Palmetto Alliance Has Not Identified  
A Qualified Security Plan Expert

Palmetto Alliance's Contention 23 should be dismissed because it has failed to demonstrate that it has obtained the services of a qualified security plan expert. The Licensing Board informed Palmetto Alliance that it would condition disclosure of the security plan on Palmetto Alliance obtaining the services of a qualified security plan expert. March 5 Order, p. 38. Such a condition is required, and the burden is upon Palmetto Alliance to demonstrate, on challenge, that its proposed witness is indeed a qualified security plan expert. Diablo Canyon, ALAB-410, 5 NRC 1398, 1405-1406. Applicants maintain that Palmetto Alliance has failed to make the proper showing.

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Response, pp. 5-6. This suggestion should be rejected. The Licensing Board's authority to raise an issue sua sponte comes into play only when the Board makes an affirmative finding that a serious safety, environmental or "common defense and security matter exists." Texas Utilities Generating Company, et al. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-81-36, 14 NRC 1111 (1981). There is no basis for such a finding, and Palmetto Alliance has certainly failed to provide any such basis. Palmetto Alliance makes a number of allegations, totally without support in its pleading, with respect to the existence of "present and former [McGuire] security workers" willing to present evidence of "serious inadequacies" in the McGuire security program but whose identities must "for now" remain confidential. Response, p. 6. It appears that Palmetto Alliance is once again engaging in "gamesmanship" (Tr. 121-122) this time by putting forth unsupported allegations in an attempt to push the Licensing Board into unwarranted action.

The Licensing Board, in its April 13 Order, directed Palmetto Alliance to identify its qualified security plan expert and submit a statement of that person's qualifications. In response to that request, Palmetto Alliance has submitted the names of two former employees of Southern Security Services, Inc. who were assigned as guards at the McGuire Nuclear Station. After doing no more than representing the length of time each was employed, and the particular positions which each held, 13/ Palmetto Alliance simply asserts that their "personal knowledge, training and experience" provide "the appropriate and necessary expertise to assist the Board... in the litigation of Contention 23 or other security issues." Response, p. 3. 14/

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13/ Palmetto Alliance represents that Michael D. Hines was employed by Southern Security Services at McGuire as "Security Specialist, Central and Secondary Access Station Operator and Security Officer" from December 5, 1978 until December 23, 1981, and that Thomas P. Poole was employed by Southern Security Services at McGuire as "Security Officer or Guard" from October 20, 1980 until September 8, 1981. Response, pp.2-3.

14/ Palmetto Alliance objects to the requirement that, as a precondition to litigation of its Contention 23, it obtain the services of a qualified security plan expert

if that term is understood to require greater qualifications or experience than already secured either through its members, staff and counsel or through Messrs. Hines and Poole. Palmetto is informed and believes that more 'formal' expertise in nuclear power plant security plans is available solely, as a practical matter, to the owners of nuclear power plants, by whom they are employed. (Response, pp. 3-4).

(Footnote continued on next page.)



The role of an expert in a particular subject in NRC licensing proceedings is set out in Rule 702 of the Federal Rules of Evidence, viz., such an expert is one who possesses "scientific, technical, or other specialized knowledge [which] will assist the trier of fact to understand the evidence or to determine a fact in issue." See Duke Power Company (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-669, \_\_\_\_\_ NRC \_\_\_\_\_, slip op. at 37-42 (March 30, 1982). To enable the trier to determine that a proffered expert possesses the requisite "specialized knowledge" it is necessary for the expert's sponsor to demonstrate that he has education and experience in the relevant subject matter. Hill v. Gonzales, 454 F.2d 1201, 1203 (8th Cir. 1972), 11 Moore's Federal Practice, §702.10[2]. In short, an expert on a subject for

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This is simply another attempt by Palmetto Alliance to beg the question. Of course, it has made no showing that "its members, staff and counsel" have any expertise whatsoever with respect to security plans for nuclear power plants. (However, that statement should serve as additional notice as to what is likely to occur with respect to compliance with any protective order issued by the Licensing Board.) Hines and Poole are not experts, as discussed above (pp. 20-23, infra). Palmetto Alliance's allegations that it is precluded from obtaining the services of a "qualified security plan expert" because anyone with qualifications beyond its "members, staff, counsel, or Hines and Poole" works for a utility are absurd. (see, p. 23, n. 17, supra). Palmetto Alliance has not complied with the Board's order and its Contention 23 should be dismissed.



these purposes is one who possesses formal academic training and actual practical knowledge and experience, or some combination of the two. McGuire, ALAB-669, slip op. at \_\_\_ ; Diablo Canyon, LBP-78-36, 8 NRC 567, 568-569; see also Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397, 409 (1976). In a close situation regarding an expert's qualifications, it appears that the determining factor "is to be determined on the basis of assisting the trier." McGuire, ALAB-669, supra, slip op. at 41, citing Advisory Committee notes to Rule 702.

With respect to "qualified security plan experts," one licensing board has held that such a person ideally should possess the "technical competence" to evaluate the plan; that is, a practical knowledge resulting from actual "nuts and bolts" assembly of a security plan. The sponsor of such a witness will not have met its burden unless it can demonstrate "evidence of actual practical knowledge" or its equivalent of the "assembly" of a facility's security plan. Diablo Canyon, LBP-78-36, 8 NRC 567, 569.

To meet the relevant criteria in this instance, Palmetto Alliance must secure the services of an expert which it can demonstrate 15/ is qualified to review and evaluate the parts of

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15/ As noted, the burden is on Palmetto to demonstrate affirmatively to the Licensing Board that its witness as are "qualified security plan experts." p. 18, supra.

the Catawba security plan in issue and the applicable NRC regulatory requirements, identify alleged deficiencies, and assist the Licensing Board in resolving those deficiencies.

Palmetto Alliance can not make the necessary showing. Its Reponse is silent with respect to the formal academic training which Hines and Poole possess. We assume, therefore, that Hines and Poole simply lack the formal academic training necessary to qualify them as "experts." Moreover, Hines and Poole, on the face of Palmetto Alliance's Response, do not possess either actual practical knowledge of, or experience in, evaluating security plans at nuclear power plants. Duke's training program for security guards (and indeed the actual job itself) does not require security guards to have knowledge of the entire security plan. Far less is a security guard required, as a normal job duty, to evaluate a facility's security plan either for deficiencies in that plan or for compliance of that plan with NRC regulatory requirements nor, of course, does Duke's training plan address any such function. 16/

More specifically, training and employment as a security guard demands only a working knowledge of, and familiarity with, the specific procedures developed from the security plan.

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16/ It is doubtful, for example, that either Hines or Poole has ever read the McGuire security plan in its entirety, though even if one of them has, it by no means qualifies him as an "expert."

See, e.g., 10 CFR §73.55(b)(3). Such training and experience does not qualify one to evaluate a security plan itself. In short, the most the former McGuire security guards can be (at least on the face of what we have before us from Palmetto Alliance) is technicians with respect to the procedures adopted from the McGuire security plan, not experts who can evaluate the Catawba security plan and be of assistance to the Licensing Board in reaching a decision on an issue. 17/ Thus, Palmetto Alliance has failed to identify qualified security experts and its Contention 23 should be dismissed.

4. Palmetto Alliance's Motion For The Board To Issue An Order Should be Denied

Palmetto Alliance asserts that each of its identified "experts" "fears further reprisals and retaliation by Duke

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17/ Applicants would note that intervenors' expert witness in Diablo Canyon was one Jeramiah P. Taylor, a retired Deputy Police Chief of San Francisco.

According to the resume' presented by intervenor, Chief Taylor's professional background include[d] experience in building and site security; protection from explosives; riot and crowd control; anti-sniper measures; protecting important individuals; hostage negotiations; intelligence; and disaster and security coordination. Diablo Canyon, ALAB-592, 11 NRC at 752.

Hines and Poole (and indeed, Palmetto Alliance's "members, staff and counsel" so far as we know) fall far short of any such combination of experience and education. Applicants would note that the existence of a witness possessing these qualifications belies Palmetto Alliance's allegation that all "qualified security plan experts" work for owners of nuclear power plants. (see pp. 19-20, supra., n. 14).

against them, their families and other present and former security workers. They ask the protection of this Board so that they may speak freely." Palmetto Alliance further alleges that it knows of "other present and former security workers willing to present evidence of serious inadequacies but whose identities must for now remain confidential."

Response, pp. 5-6. Palmetto Alliance moves the Board to issue an:

order strictly enjoining Duke Power Company, Southern Security Services, Inc., and any person acting in concert with them, from any and all acts of harassment, intimidation or reprisal directed against Michael D. Hines, Thomas P. Poole or any other person as a result of such person's cooperation in this matter."  
Id. p. 6.

At the outset, Applicants deny Palmetto Alliance's wholly unsubstantiated allegations that they have, are now, or will in the future engage in such activities. Palmetto Alliance's allegations in this regard amount to nothing more than a flamboyant attempt to divert the Licensing Board's attention from the fact that its Contention 23 (obviously fabricated from thin air) has no substance to it.

In any event, Palmetto Alliance's unsubstantiated assertions cannot support its request, and its plea for injunctive relief should be rejected on its face. See Matter of Toledo Edison Company et al. (Davis-Besse Nuclear Power Station, Units 1, 2 and 3), LBP-77-7, 5 NRC 452, 461,

aff'd., ALAB-385, 5 NRC 621, 625 (Stay will not be granted "against something merely feared as liable to incur at some indefinite time in the future," citing Eastern Greyhound Line v. Fusco, 310 F.2d 632, 634 (6th Cir. 1962)).

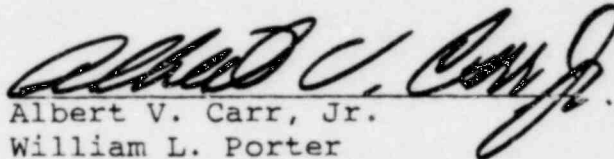
Applicants further note that insofar as intervenors request general injunctive relief, their request is directed to the wrong entity. When informants or witnesses anticipate harm or reprisals should they participate in NRC proceedings, the Board may take certain actions incidental to its general authority to require the course of the hear. For example, it may issue protective orders to limit distribution of information submitted to it by individuals fearing reprisals or harassment. See, e.g., Matter of Houston Lighting and Power Company, et al. (South Texas Project, Units 1 and 2), LPB-80-11, 11 NRC 477, 480 (1980). However, the Board may not reach beyond the hearing process to enjoin alleged activity which may take place outside of that process and which, if proven, could be remedied in the state and federal courts. Accordingly, the Board should deny Intervenor's request for injunctive relief.

#### CONCLUSION

For the reasons set forth above, Applicants respectfully request the Licensing Board enter an order (1) dismissing Palmetto Alliance's Contention 23 as an issue in this proceeding,

(2) providing that any subsequent Contention which Palmetto Alliance seeks to raise regarding the Catawba Security plan be subject to the requirements of 10 CFR §2.714 regarding late-filed contentions, and (3) denying Palmetto Alliance's Motion for injunctive relief.

Respectfully submitted,



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June 11, 1982



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 )  
DUKE POWER COMPANY, et al. ) Docket Nos. 50-413  
 ) 50-414  
(Catawba Nuclear Station, )  
Units 1 and 2) )

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Response To 'Palmetto Alliance Response To Board Questions And Motion Regarding Security Contention No. 23' And Motion To Dismiss Contention" in the above captioned matter, has been served upon the following by deposit in the United States mail this 11th day of June, 1982.

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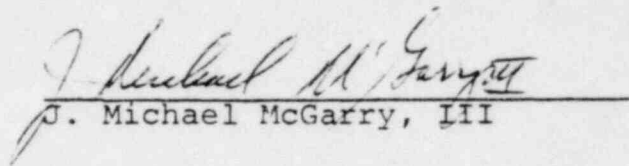
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