

9/15/82

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

NRC STAFF MOTION TO COMPEL ANSWERS  
TO STAFF INTERROGATORIES AND RESPONSE TO  
PALMETTO ALLIANCE MOTION FOR PROTECTIVE ORDER

I. INTRODUCTION

The NRC Staff hereby moves, pursuant to 10 CFR Section 2.740(f), the Licensing Board to compel Palmetto Alliance to directly and completely respond to "NRC Staff's Second Set of Interrogatories and Document Production Requests to Palmetto Alliance" ("Staff's Second Interrogatories"), dated August 13, 1982, addressing Palmetto contentions 8, 16, and 27. The Staff recently received "Palmetto Alliance Responses to Applicants' Interrogatories and Requests to Produce Regarding Palmetto Alliance Contentions 8, 16 and 27 and to NRC Staff's Second Set of Interrogatories and Document Production Requests", ("Palmetto Responses"), dated August 30, 1982. This document was served together with "Palmetto Alliance Motion for Protective Order" ("Palmetto's Motion"). Both Palmetto's Responses and Palmetto's Motion assert objection to production of certain communications and trial preparation materials. For the reasons discussed below, the Staff requests that (1) Palmetto's objections to answering fully the Staff's

DESIGNATED ORIGINAL

Certified By

*DSO [Signature]*

interrogatories be overruled, (2) its request for protective order with respect thereto be denied, and (3) Palmetto Alliance be required to specify the documents and bases upon which it relies to support its documentary objections.

## II. DISCUSSION

### A. Palmetto Alliance Has Failed To Respond Adequately To The Staff's Second Set of Interrogatories and Has Provided No Creditable Basis For Objection Thereto

In Staff's Second Interrogatories the Staff propounds a limited number of straightforward interrogatories and requests for related information and documents on Palmetto Alliance Contention 8 (operator qualifications), Contention 16 (spent fuel storage) and Contention 27 (real-time monitors).<sup>1/</sup> These interrogatories generally request Palmetto Alliance to explain the meaning of key terms in its contentions,<sup>2/</sup> what it is that Palmetto Alliance is contending<sup>3/</sup> and the factual bases for its contentions.<sup>4/</sup>

Despite the limited, direct and basic nature of these requests, Palmetto Alliance characterizes this discovery as causing it "annoyance,

---

<sup>1/</sup> The Staff has submitted 10 interrogatories on Contention 8, 9 interrogatories on Contention 16, and 9 interrogatories on Contention 27.

<sup>2/</sup> E.g., "sufficient hands on experience" (Int. 1 and 5); "real-time monitors" (Int. 20).

<sup>3/</sup> E.g., the particular aspects of Applicants' reactor operators' experience (Int. 2-8, 10); fuel storage plans (Int. 11-12, 14-19); or radiological monitoring systems (Int. 21-25) which are asserted to fall short of regulatory requirements or other guidance.

<sup>4/</sup> E.g., the employees lacking "sufficient" experience (Int. 9); any deficient aspects of spent fuel storage (Int. 13, 16); why real-time monitors are the best or only means of monitoring radiation releases to the environment (Int. 24-26, 28).

embarrassment, oppression, undue burden and expense," and objects to providing answers "beyond the responses made herein." Palmetto Responses at second unnumbered page. Palmetto further states its belief "that, to the extent it presently has sufficient knowledge to answer, answers to Interrogatories of the NRC Staff are fully provided in the following answers to Applicant's interrogatories." Id. at third unnumbered page. Yet Palmetto Alliance has made no attempt to identify which of its purported answers to Applicants' interrogatories responds to particular Staff interrogatories despite an express request to that effect. Staff's Second Interrogatories, at 3. In any event, the Staff is entitled to direct answers or objections to each and every interrogatory posed. 10 CFR Section 2.740b(b). Moreover, although there is some overlap between Applicant's and Staff's interrogatories on these contentions, there are several Staff interrogatories which are clearly not included in Applicants' interrogatories (e.g. -- Int. 6, 10, 14), and as to which there is no response whatsoever.

Finally, the answers which Palmetto Alliance asserts are responsive to both the Staff and Applicants' interrogatories are evasive. Thus, in response to interrogatories which seek to elicit information on Palmetto Alliance's position on specific matters, such as the meaning of key terms in Palmetto Alliance's contentions, what regulatory provisions are asserted not to be met, and the facts which underlie those assertions, Palmetto Alliance consistently has responded with the answer, "Intervenor at present lacks sufficient knowledge to answer." (Palmetto Responses, unnumbered pages 9-15). Such interrogatories seek information which clearly should be within the knowledge of the party who sponsored the

contentions. There can be no doubt that such "interrogatories seeking specification of the facts upon which a claim or contention is based are wholly proper, and the party may be required to answer questions which attempt to ascertain the basis for his claim or, for example, what deficiencies or defects [are] claimed to exist. . ." Boston Edison Co. (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 579, 582, 586 (1975); see also, Pennsylvania Power & Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 331 (1980). In short, these interrogatories are both proper and call for information which Palmetto should have now. Palmetto's evasive answers are inappropriate. The Staff believes that Palmetto Alliance has two choices. It must provide the parties with its positions or if, indeed, it does not have legal and factual predicates for its contentions, face the consequence that its contentions will be dismissed.

Palmetto Alliance has asserted no creditable objection to answering the Staff's interrogatories, either directly or through answers to similar Applicant interrogatories. Palmetto Alliance's "objection to Applicants' and Staff's efforts to cause it annoyance, embarrassment, oppression, undue burden and expense in discovery beyond the responses made herein," is not an acceptable means of objection to interrogatories nor a proper foundation for issuing a protective order. As has been noted in Pilgrim, supra, 1 NRC at 583,

the authorities hold that objections should be plain enough and specific enough so that the court can understand in what way the interrogatories are claimed to be objectionable [citing to Moore, Federal Practice, Section 33.27]. The courts have held that general objections are insufficient, and that the burden of persuasion is in the objecting party to show that the interrogatory should not be answered -- that the information called for is privileged, not relevant, or in some other way not the proper subject of an interrogatory [citation omitted].

Palmetto Alliance's "objection" falls short of this standard. Further, to the extent Palmetto Alliance seeks protection from the "burden" of providing the Staff with its positions and the bases therefor, such vague and conclusory statements fail to provide "good cause" needed to support its motion. 10 CFR Section 2.740(e). Susquehanna, supra, ALAB-613, 12 NRC at 323 (1980). The Licensing Board should reject Palmetto's answers, objections and motion, and require full and complete answers to the Staff's interrogatories.

B. Palmetto Alliance Has Not Properly Raised Objections To Discovery Of Privileged Attorney-Client Communications Or Attorney Work Product

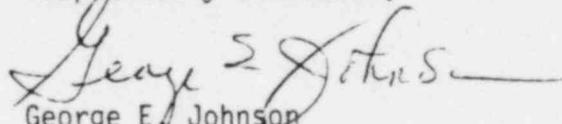
In both Palmetto's Motion for Protective Order and its Responses, Palmetto Alliance has raised objection to and requested protection from providing "privileged communications between counsel and Palmetto Alliance and trial preparation materials including counsel's confidential work product. . ." Palmetto's Motion, at second unnumbered page; Palmetto's Responses, at third unnumbered page. While Palmetto Alliance has asserted that it desires the protection of such privileged communication and trial preparation materials, it has done so in conclusory fashion, without attempting to identify such communications or materials. Such identification is contemplated under Rule 34(b) of the Federal Rules of Civil Procedure, and, given the patterning of Commission procedural rules on the Federal Rules, such practice may be deemed applicable to this proceeding. See, Pilgrim, supra, 1 NRC at 581. In order to permit these assertions to be tested, Palmetto Alliance must at minimum identify with particularity the communications and materials sought to be protected, and show that such documents qualify for the protection sought. See,

4 Moore, Federal Practice, Section 34.05[3], and 26.26[3], (2d ed., 1981-2 supp.), U.S. v. O'Neill, 619 F. 2d 222, (3d Cir. 1980); Coastal States Gas Corp. v. DOE, 617 F. 2d 854, 864-6 (D.C. Cir. 1980), citing Fisher v. U.S., 425 U.S. 391 (1970). Otherwise, a party simply could assert such privilege or immunity and the parties and the board would have to take the asserting party's word for it. As a result, the Licensing Board should direct Palmetto Alliance to carry its burden of showing that these protections apply to particular documents.

### III. CONCLUSION

In light of the foregoing considerations, the Licensing Board should (1) direct Palmetto Alliance to provide full and complete answers to each of the Staff's interrogatories, (2) overrule all objections or request for protection with respect thereto, and (3) direct Palmetto Alliance to identify all responsive documents and communications, whether or not Palmetto Alliance claims privilege or immunity from production thereof. With respect to documents and communications for which such privilege or immunity is claimed, Palmetto Alliance should be required to make a showing that the particular documents and communications qualify for such protection from disclosure.

Respectfully submitted,

  
George E. Johnson  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 15th day of September, 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  
(Catawba Nuclear Station, ) 50-414  
Units 1 and 2) )

CERTIFICATE OF SERVICE

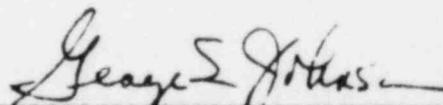
I hereby certify that copies of "NRC STAFF MOTION TO COMPEL ANSWERS TO STAFF INTERROGATORIES AND RESPONSE TO PALMETTO ALLIANCE MOTION FOR PROTECTIVE ORDER" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, this 15th day of September, 1982:

*James L. Kelley, Chairman Administrative Judge Atomic Safety and Licensing Board Panel U.S. Nuclear Regulatory Commission Washington, DC 20555	Michael McGarry, III, Esq. Debevoise and Liberman 1200 17th Street, NW Washington, DC 20036
Dr. Dixon Callihan Administrative Judge Union Carbide Corporation P.O. Box Y Oak Ridge, TN 37830	Robert Guild, Esq. Attorney for the Palmetto Alliance 314 Pall Mall Columbia, South Carolina 29201
Dr. Richard F. Foster Administrative Judge P.O. Box 4263 Sunriver, Oregon 97702	Palmetto Alliance 2135½ Devine Street Columbia, South Carolina 29205
Richard P. Wilson, Esq. Assistant Attorney General P.O. Box 11549 Columbia, South Carolina 29211	*Atomic Safety & Licensing Board Panel U.S. Nuclear Regulatory Commission Washington, DC 20555
*Atomic Safety & Licensing Appeal Panel U.S. Nuclear Regulatory Commission Washington, DC 20555	*Docket and Service Section U.S. Nuclear Regulatory Commission Washington, DC 20555

Henry Presler, Chairman  
Charlotte-Mecklenburg Environmental Coalition  
942 Henley Place  
Charlotte, North Carolina 28207

Jesse L. Riley  
Carolina Environmental Study Group  
854 Henley Place  
Charlotte, North Carolina 28207

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



---

George E. Johnson  
Counsel for NRC Staff