

DOCKETED
USNRC

'82 DEC -8 P3:49

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
OF ENERGY & SERVICE

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

APPLICANTS' RESPONSE IN SUPPORT OF "NRC STAFF
MOTION FOR SANCTIONS AGAINST PALMETTO ALLIANCE
FOR ITS FAILURE TO COMPLY WITH BOARD-ORDERED
DISCOVERY" AND MOTION, IN THE ALTERNATIVE,
FOR RECONSIDERATION AND DISMISSAL OF
PALMETTO ALLIANCE'S CONTENTIONS 8, 16 AND 27

Duke Power Company, et al. (Applicants) hereby file their response in support of the NRC Staff's "Motion for Sanctions Against Palmetto Alliance for its Failure to Comply With Board-Ordered Discovery" ("NRC Staff Motion for Sanctions") filed November 22, 1982. Applicants agree with the grounds set forth in the NRC Staff Motion for Sanctions, and concur with the Staff's conclusion that Palmetto Alliance's responses to discovery to date concerning Contentions 8, 16 and 27 constitute a refusal by Palmetto Alliance to comply with discovery orders issued by this Atomic Safety and Licensing Board (Board) and thus warrant dismissal of the contentions as issues in this proceeding.

8212100096 821207
PDR ADOCK 05000413
G PDR

DS03

Applicants also believe that an alternative ground exists for dismissal of Palmetto Alliance's Contentions 8, 16 and 27. As Applicants will set forth in detail below, the discovery which has been had to date demonstrates conclusively that Palmetto Alliance's Contentions 8, 16 and 27 do not meet the requirements of Section 2.714 of the Commission's Rules. In short, Palmetto Alliance can neither specify the concerns expressed in its contentions nor provide the bases for these concerns. Given this situation, it is Applicants' position that the Board must reconsider the admission of these contentions as issues in this proceeding and, upon such reconsideration, dismiss the contentions. To do otherwise would allow Palmetto Alliance to bootstrap its contentions into compliance with 10 CFR 2.714 by virtue of the discovery process. Such a course of conduct has been explicitly proscribed. Duke Power Company, et al. (Catawba Nuclear Station, Units 1 and 2) ALAB-687, ___ NRC ___ (August 19, 1982), slip op. at 13. See also 10 CFR Part 2, Appendix A, Section IV(a).

I. BACKGROUND

On December 9, 1981, Palmetto Alliance filed the contentions which it believed should be considered as issues in the proceeding. Included in this filing were the three contentions at issue here. On March 5, 1982, the Board issued an order in which it admitted Palmetto Alliance's

Contention 27 as an issue in this licensing proceeding. On July 8, 1982, the Board issued an order in which it admitted Palmetto Alliance Contentions 8 and 16 as issues in the proceeding. In that same order the Board authorized discovery to proceed only on Palmetto Alliance's Contentions Nos. 8, 16 and 27. (Order at p. 18).

On August 9, 1982, Applicants served on Palmetto Alliance discovery requests, consisting of interrogatories and requests for documents, with respect to its Contentions Nos. 16 and 27;¹ on August 16 Applicants served a similar request with respect to Palmetto Alliance's Contention No. 8.² On August 13, the NRC Staff served its interrogatories on Palmetto Alliance with respect to Contentions Nos. 8, 16 and 27.³ Applicants' interrogatories were basic in nature (as were those of the NRC Staff) and sought to clarify the legal and factual bases for the contentions, requesting only that Palmetto Alliance specify its concerns and identify the bases for those concerns. More specifically, the interrogatories were designed to enable Applicants to learn

-
- 1 "Applicants' Interrogatories to Palmetto Alliance and Request to Produce Regarding Palmetto Alliance's Contentions 16 and 27."
 - 2 "Applicants' Interrogatories to Palmetto Alliance and Requests to Produce Regarding Palmetto Alliance's Contention 8."
 - 3 "NRC Staff's Second Set of Interrogatories and Document Production Requests to Palmetto Alliance."

the definitions ascribed by Palmetto Alliance to the material terms which it used in its contentions; what areas of safety concern (if any) Palmetto Alliance seeks to raise in its contentions; whether Palmetto Alliance contends that such areas are governed by NRC regulations; if so, whether they contend that Applicants do not comply with those regulations; and, if so, why Palmetto Alliance so contends. The information sought by the interrogatories is solely within the knowledge of Palmetto Alliance, and Applicants are entitled to discover it. Pennsylvania Power & Light Co., et al. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 337-340 (1980); Boston Edison Co. (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 579, 582 (1975).

On August 30, 1982, Palmetto Alliance filed its responses to Applicants' interrogatories.⁴ In its responses, Palmetto Alliance provided no substantive information to shed light on either its concerns or the bases for those concerns. For example, in lieu of providing definitions for the material terms which it had used in its contentions, Palmetto Alliance consistently responded either that

⁴ "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." ("August 30 Responses"). On the same day Palmetto Alliance also filed a Motion for Protective Order.

"Intervenor at present lacks sufficient knowledge to answer" or that the "common meaning" of such term is to control. When asked whether its contentions sought to put in issue whether Applicants fail to comply with NRC regulatory requirements, Palmetto Alliance consistently responded "Intervenor at present lacks sufficient knowledge to answer." Because numerous of Applicants' interrogatories seeking to probe the legal and factual bases for Palmetto Alliance's contentions depended on an affirmative or negative response to the foregoing questions, Palmetto Alliance, by use of this device, avoided having to respond to a significant number of Applicants' interrogatories. Palmetto Alliance answered the Staff's interrogatories by stating that ". . . answers to interrogatories of the NRC Staff are fully provided in the following answers to Applicants' interrogatories." (August 30 Responses at p. 3).

On September 9, 1982, Applicants moved the Board to issue an order compelling Palmetto Alliance to respond fully to its interrogatories or, in the alternative, to dismiss Palmetto Alliance's Contentions 8, 16 and 27.⁵ It was Applicants' view, in light of Palmetto Alliance's responses and the representations of its counsel that it had fully disclosed all the information available to it and

⁵ "Applicants' Motion to Compel, or in the Alternative, to Dismiss Contentions." ("Applicants' Motion to Compel").

had responded to each of Applicants' interrogatories "to the best of its ability,"⁶ that only one of two conclusions could be reached. Applicants took the position that either Palmetto Alliance was dissembling in its responses and thus Applicants' Motion to Compel should be granted, or, if Palmetto Alliance's representations respecting the completeness of its responses were taken at face value, then the Board should reconsider admission of the contentions and, upon such reconsideration, dismiss them. As Applicants pointed out, if Palmetto Alliance was unable to furnish the very basic information underlying the admission of its contentions, then clearly 10 CFR § 2.714 of the Commission's Rules had not been satisfied and the contentions should not be issues in the proceeding. Palmetto Alliance did not respond to Applicants' September 9 Motion.

On September 15, 1982, the NRC Staff also filed a Motion to Compel.⁷ The Staff based its Motion to Compel on the grounds that Palmetto Alliance, by failing either to respond directly or to object to the Staff's interrogatories, had not properly responded to its discovery; that Palmetto Alliance's reliance on its responses to

⁶ See "Palmetto Alliance Motion for Protective Order," August 30, 1982, at p. 1 and Palmetto Alliance's August 30 Responses at p. 2.

⁷ "NRC Staff Motion to Compel Answers to Staff Interrogatories and Response to Palmetto Alliance Motion for Protective Order." ("NRC Staff Motion to Compel").

Applicants' interrogatories was improper in that these did not address at all several of the NRC Staff's interrogatories; and that even if the Staff did rely on Palmetto Alliance's response to Applicants' interrogatories, those responses were evasive. Palmetto Alliance did not respond to the Staff's Motion to Compel.

At the second Prehearing Conference on October 8, the Board denied Palmetto Alliance's Motion for Protective Order (Tr. 611-612), granted Applicants' and Staff's Motions to Compel (Tr. 630, 651-652) and ordered Palmetto Alliance either to file responsive answers to each of Applicants' and Staff's interrogatories or to file objections to each of Applicants' and Staff's interrogatories within 30 days (Tr. 612-613, 618). The Board held in abeyance Applicants' Motion to dismiss the contentions (Tr. 628).

On November 5, Palmetto Alliance filed supplemental responses to Applicants' and Staff's interrogatories⁸ which it contends comply with the Board's Order at the prehearing conference. Notwithstanding the Board's clear, direct and explicit order to Palmetto Alliance, there remain numerous of Applicants' and Staff's interrogatories to which

⁸ "Palmetto Alliance Supplementary Responses to Applicants' and Staff's Interrogatories Regarding Palmetto Contentions 8, 16 and 27." ("Nov. 5 Supplemental Responses").

Palmetto Alliance has neither responded nor objected. While Palmetto concedes that Applicants' interrogatories are proper, and that it is obligated to respond fully to those inquiries, (Nov. 5 Supplemental Responses, p. 1) it has once again failed to provide any substantive information in response to those interrogatories. Palmetto Alliance defends its failure to do so by asserting that it disclosed all the information in its possession on its contentions at the January 1982 Prehearing Conference and in its responses, and that its position that it cannot respond further at this juncture is proper. (Supplemental Responses, pp. 1-2). As will be demonstrated below, this assertion is incorrect.

II. SUMMARY

In Applicants' view, the Board should, in accordance with the NRC Staff's Motion, dismiss Palmetto Alliance's Contentions Nos. 8, 16 and 27 for failure to comply with the Board's discovery order. The August 30 Responses were clearly deficient. The Licensing Board granted Applicants' and Staff's Motions to Compel, and ordered Palmetto Alliance to either file responsive answers to the interrogatories or to file particularized objections. Despite the Board's order, Palmetto Alliance's November 5 Supplemental Responses are clearly deficient. They consist of no more than evasive and incomplete responses to a few of Appli-

cants' and Staff's interrogatories. Palmetto Alliance has not objected to a single interrogatory. Indeed, it concedes that the interrogatories are proper and that it is obligated to respond. Given the obvious deficiencies in Palmetto Alliance's responses to date, its blatant disregard of a direct Board discovery order, and the fact that Palmetto Alliance is engaging in a consistent and deliberate pattern of behavior to avoid disclosure, the Board should find that Palmetto Alliance is in violation of its order compelling discovery and, consistent with its warning to Palmetto Alliance (see Tr. 621), dismiss Contentions 8, 16 and 27 from the proceeding.

Should the Board determine that such action is not justified, then Applicants move, in the alternative, that the Board reconsider its admission of Palmetto Alliance Contentions 8, 16 and 27.⁹ Upon reconsideration, the Board should issue an order dismissing these contentions as issues in the proceeding. Applicants believe that an examination by the Board of Contentions 8, 16 and 27 in light of the discovery conducted to date will demonstrate conclusively that they lack the requisite specificity and bases to meet the requirements of Section 2.714. More

⁹ As noted, (p. 7, supra), Applicants have a similar Motion to Dismiss pending and thus the instant Motion may be viewed as a renewal of Applicants' pending Motion to Dismiss. See "Applicants' Motion to Compel," September 9, 1982; Tr. 628.

specifically, the proponent of these contentions, Palmetto Alliance, is unable either to specify the concerns expressed in its contentions or to provide any bases for those concerns.

Applicants recognize that this appears to be an anomalous situation, in that the Board must, on reconsideration, decide that contentions originally determined to possess adequate specificity and bases do not in fact do so, based upon subsequent events. However, Applicants see no reason why such a finding cannot be made. If Palmetto Alliance does not, for whatever reason, provide on discovery the basic information on its contentions which was necessary for them to gain acceptance as issues in this proceeding, then, as the Board has warned, (Tr. 621) it must be prepared to accept the consequences.

III. ARGUMENT

1. The Commission's Rules Require that Contentions Must Express Specific Factual Concerns and Provide the Bases for Those Concerns.

The Commission's rules governing the conduct of its proceedings are based in large measure on the Federal Rules of Civil Procedure and Evidence. Boston Edison Co., supra, 1 NRC at 581. Nevertheless, they are not totally analogous. There is at least one significant difference, which difference is of particular relevance here. In order to

have an issue admitted to an NRC proceeding, substantially more than the "notice pleading" allowed in Federal court practice is required. (Kansas Gas & Electric Co., et al. (Wolf Creek Generating Station, Unit No. 1), ALAB-279, 1 NRC 579, 575 n. 32 (1975); Allied-General Nuclear Services, et al. (Barnwell Fuel Receiving and Storage Station), LBP-76-12, 3 NRC 277, 285 (1976)). The Commission's rules require, in pertinent part, that in order to be accepted as an issue for litigation in a proceeding, a contention must have its bases stated with reasonable specificity. 10 CFR § 2.714(b). This requirement is absolute, and no exceptions from it are permitted. Duke Power Company, et al., ALAB-687, supra, slip op. at 11.

It is therefore clear that in order for a contention to be admitted, the Licensing Board must find that an Intervenor's concerns, as stated in its contentions, are set out with specificity and that there are bases for those concerns. Consequently, as noted above, substantially more than a mere "notice" of an issue (which essentially does no more than inform the Board and parties to a proceeding of the subject matter in which an Intervenor is interested) is required for a contention to be admitted.

As will be discussed in Section III.3, infra, Palmetto Alliance's responses to discovery demonstrate conclusively that Contentions 8, 16 and 27 lack the requisite specificity and basis.

2. Discovery Into the Factual Bases of
Intervenor's Contentions is Freely Permitted.

The NRC's rules permit "discovery of any matter, not privileged, which is relevant to the subject matter involved in the proceeding." 10 CFR § 2.740(b)(1). Because of the showing required of an Intervenor to get its contentions into the proceedings in the first instance, Applicants are permitted essentially unrestricted discovery into the underpinnings of those contentions. Thus,

...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 were claimed to exist with respect to a particular situation or cause. (Boston Edison Co., supra, 1 NRC at 582).

That Applicants are permitted such discovery is hardly surprising, for

it is...incumbent upon intervenors who wish to participate [in NRC proceedings] to structure their participation so that it is meaningful, so that it alerts the agency to the intervenor's position and contentions." (Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978)).

And, as the Appeal Board has stated:

The Applicants in particular carry an unrelieved burden of proof in Commission proceedings. Unless they can effectively inquire into the position of the intervenors, discharging that burden may be impossible. To permit a party to make skeletal contentions, keep the bases for them secret, then require its adversaries to meet any conceivable thrust at hearing would be patently unfair and inconsistent with a sound record. (Pennsylvania Power & Light Co., et al., supra, 12 NRC at 338 (emphasis added)).

Palmetto Alliance does not take issue with Applicants' inquiries through the discovery process; rather, it maintains that it has complied completely with the discovery rules, and has responded fully to Applicants' and Staff's discovery. Even before the Board granted Applicants' and Staff's Motions to Compel, Palmetto Alliance represented that it "committ[ed] itself to abide the spirit of the discovery rules;"¹⁰ that it has responded to each of Applicants' and Staff's discovery requests "to the best of its ability;"¹¹ and that "virtually all information known to Intervenor [on its own contentions] has already been fully disclosed on the record of the prehearing conference."¹² Motion for Protective Order at p. 1. At the

¹⁰ Palmetto Alliance Motion for Protective Order at p. 1.

¹¹ Intervenor's August 30 Responses at p. 2.

¹² A review of the January Prehearing Conference transcript discloses that in fact no substantive information was offered at that time by Palmetto Alliance in support of its Contentions 8, 16 and 27.
(footnote continued)

October prehearing conference, counsel for Palmetto Alliance renewed his representations that Palmetto Alliance had, in good faith, "responded as best [it] could" to Applicants' discovery requests (Tr. 622); that he was "committed to telling [in response to discovery] anything that I know or have in my possession on these subjects. I'm not holding stuff back, Judge, is the point I'm trying to make;" that he had "tried not to assert objections either, not because I wanted to hide behind unresponsive answers, because I want to tell them everything that I know." (Tr. 625). Moreover, Palmetto Alliance acknowledged that Applicants' interrogatories on its Contentions 8, 16 and 27 are legitimate; that the information sought by such interrogatories is properly discoverable; and again asserted that

...in the body of its contentions, on the record of the Prehearing Conference and in its previous responses [Palmetto Alliance] endeavored to disclose what it knows on the questions asked.¹³

However, in addition to, or in concert with, its representations that it has provided all the information known to it on its Contention 8, 16 and 27, Palmetto Alliance also takes the position that once a contention has

(footnote continued from previous page)

See Tr. pp. 129-130; 170-179; and 251-256. (January 12-13, 1982).

¹³ Nov. 5 Supplemental Responses at pp. 1-2.

been admitted as an issue in the proceeding its proponent may, in response to the most basic question regarding that contention's factual underpinnings, simply state that it does not (yet) know the answer to that question. See, e.g., Tr. 616; Nov. 5 Supplemental Responses at pp. 1-2, wherein Palmetto Alliance states that, though it acknowledges the legitimacy of Applicants' interrogatories, it

...does insist on its right to say 'we don't know' at this stage of litigation and to be free from sheer harassment at the hands of either Duke or the NRC Staff.

In the following section Applicants will examine a number of their interrogatories on these contentions and Palmetto Alliance's responses. That examination will demonstrate clearly that Palmetto Alliance's responses to Applicants' discovery is deficient, particularly in light of the nature of such interrogatories, and that the Board should either impose sanctions and dismiss the contentions for failure to comply with its discovery order, or should reconsider its admission of the contentions and, on reconsideration, dismiss the contentions.

3. Palmetto Alliance's "pattern of behavior"
With regard To Discovery Warrants Board
Action Resulting In Dismissal Of Contentions
8, 16 and 27.

Palmetto Alliance's approach in responding to Applicants' and Staff's discovery is not an "isolated incident."
Commission's Statement of Policy On Conduct of Licensing

Proceedings, CLI-81-8, 13 NRC 452, 454. Rather, the tactical maneuvering of Palmetto Alliance thus far in responding to Applicants' and Staff's discovery establishes a clear "pattern of behavior" on its part. Id. It is obvious that Palmetto Alliance seeks to avoid, by whatever means is available to it, providing any specificity whatsoever with respect to its contentions. If Palmetto Alliance is allowed to continue its course of conduct, it will effectively prevent this proceeding from moving forward.

To carry out this strategy, Palmetto Alliance, while acknowledging the validity of Applicants' and Staff's discovery, asserts that it is permissible for it simply to respond "at this stage of litigation" that it "at present lacks sufficient knowledge to answer" in response to discovery. Nov. 5 Supplemental Responses at pp. 1-2. Palmetto Alliance's argument at first blush appears to have validity, but it will not withstand scrutiny. It is true that, as Palmetto Alliance points out, that the Appeal Board has acknowledged that

In responding to discovery requests, a party is not required to engaged in extensive research. It need only reveal information in its possession or control (although it may be required to perform some investigation to determine what information it actually possesses.) Assuming truthfulness of the statement, lack of knowledge is always an adequate response. (Susquehanna, supra, 12 NRC at 334).

It may perhaps be true that there are in fact some requests to which such a response "at this stage of litigation" may be proper. But surely such a response cannot be deemed proper when the interrogatory is directed at information Palmetto Alliance was required to have in its possession when it proffered the contention as an issue for litigation in the proceeding. After all the Appeal Board has stated that

[A]n intervention petitioner has an ironclad obligation to examine the publicly available documentary material with sufficient care to enable it to uncover any information that could serve as the foundation for a specific contention. Duke Power Co., et al., ALAB-687, supra, slip op. at 13. (emphasis added).

The interrogatories to which Palmetto Alliance has responded "at this stage of litigation" are designed to allow Applicants access to that information. An excellent example is shown in interrogatories which Applicants addressed below to Palmetto Alliance's Contention 16. As will be discussed (see p. 36, infra), Palmetto Alliance cannot now even identify the "other Duke nuclear facilities" whose "irradiated fuel assemblies" it contends cannot be safely stored at Catawba. Surely, Palmetto Alliance must know this fact. Surely, it had some identifiable "other Duke nuclear facilities" in mind when it wrote its contention. In short, the "don't know" answer cannot plausibly suffice as an adequate response to dis-

covery, even "assuming truthfulness of the statement," when the discovery seeks no more than the information required to be available when the contention was filed.

It appears that there may be an alternative reason for the "don't know" response. As Applicants have noted (see p. 5, supra) many of its interrogatories depend on a response to a preceding question. In the example just noted, it is difficult to escape the conclusion that through its "don't know" response to the very basic questions posed, Palmetto Alliance seeks to avoid having to respond to follow up interrogatories on that contention. (see pp. 33-37, infra) For example, those interrogatories asked, for each of the "other Duke nuclear facilities" cited in Palmetto Alliance's Contention 16, whether Palmetto Alliance was contending that their fuel assemblies were somehow defective, or whether it contended that the Catawba spent fuel pools were somehow defective. Thus, by asserting its right to say "don't know," Palmetto Alliance seeks to avoid identifying with specificity its concerns and the bases for those concerns.

In addition, it is clear that Palmetto Alliance believes that its only obligation in this matter is to enter a vague contention. Having done that, it then devotes its energy to refusing to specify its concerns in order to avoid being forced to narrow the issues, while at

the same time attempting to place a burden on Applicants to provide it with any information which might relate, however remotely, to the subject matter of the proceeding.¹⁴

Palmetto Alliance is wrong on two counts here.

Palmetto Alliance cannot, through discovery, breathe life into an otherwise-deficient contention. Such a course of conduct has been explicitly proscribed, in the strongest possible terms, by the Appeal Board:

[N]either Section 189(a) of the [Atomic Energy] Act nor Section 2.714 of the Rules of Practice permits the filing of a vague contention, followed by an endeavor to flesh it out through discovery against the applicant or staff. (Catawba, ALAB-687, supra, slip op. at 13).

Moreover, Palmetto Alliance's attempt to shift the burden to Applicants to provide it with all of the information necessary to litigate its case is also impermissible. Again, the Appeal Board has provided the necessary guidance:

[I]ntervenors also bear evidentiary responsibilities. In a ruling that has received explicit Supreme Court approval, the Commission has stressed that an intervenor must come forward with evidence 'sufficient to require reasonable

¹⁴ Compare, for example, "Palmetto Alliance Third Set of Interrogatories and Requests to Produce" relating to its Contention 16 (see particularly Interrogatories 82-88, relating to a possible reracking of Catawba spent fuel assemblies, and 94-98, which related to the licensing of AFRs and reprocessing facilities and the effect of such events on the storage of Applicants' spent fuel), with its response herein.

minds to inquire further' to insure that its contentions are explored at the hearing. (Pennsylvania Power & Light Co., supra, at 340).

Certainly, in light of the pattern of behavior established by Palmetto Alliance in this proceeding it is appropriate to move the Board to impose sanctions for failure to comply with its discovery order.¹⁵ And, indeed, the NRC Staff has so moved and Applicants support that Motion. However, the Board is faced here with a situation in which Palmetto Alliance represents that it has complied in good faith and to the fullest extent possible with its discovery obligations. Thus, if the Board accepts at face value Palmetto Alliance's representations, to impose discovery sanctions it would have to find that Palmetto Alliance's best efforts constitute grounds for dismissal of its contentions.

¹⁵ To enforce compliance with the provisions of the discovery rules, Boards have available to them a full range of sanctions, up to and including dismissal of a party to a proceeding. 10 CFR §2.718(c); Statement of Policy on Conduct of Licensing Proceedings, supra, 13 NRC at 454 (1981). Thus, for a party to have contentions admitted to the proceeding, then to refuse to comply with discovery procedures, including orders issued by the Board, invites sanctions up to and including dismissal of the contentions by the Board. Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), ALAB-678, 15 NRC 1400, 1416-1417 (1982).

Applicants have therefore moved for dismissal on alternative grounds. For Applicants' part, they are willing to accept, for the sake of argument, Palmetto Alliance's assertions regarding the nature and extent of its compliance with their discovery.¹⁶ In Applicants' view, then, the Board now faces a situation in which it initially admitted contentions, finding that those contentions met the standards set out in the Commission's regulations. It has now been conclusively demonstrated, following discovery, that in fact the contentions do not meet the standards for admission set out in the regulations. Therefore, the Board should reconsider its admission of the contentions.

4. An Examination Of Applicants' Interrogatories and Palmetto Alliance's Responses Show Both That Palmetto Alliance Has Ignored the Board's Discovery Order And That Its Contentions Lack Specificity And Bases.

In this section, Applicants will list certain of its interrogatories which it directed to Palmetto Alliance, and Palmetto Alliance's corresponding August 30 Responses and Nov. 5 Supplemental Responses. Where Palmetto Alliance has not provided a response to a particular question, that is

¹⁶ Applicants are willing to accept Palmetto Alliance's representations at face value, though in truth, given the very basic nature of Applicants' interrogatories, such acceptance strains credulity. After all, Palmetto Alliance must have had something in mind when it framed its contentions.

indicated as well. Applicants explain, for the benefit of the Board, why they asked the interrogatories and why the information sought is necessary. Applicants believe that when the Board reviews their discussion of the issues, their interrogatories, and Palmetto Alliance's Responses, or lack of responses, to those interrogatories, it can only conclude that it must either dismiss the contentions for failure to comply with its discovery order or, upon reconsideration, dismiss the contentions for lack of specificity and bases.

Contention No. 8 reads:

No reasonable assurance can be had that the facility can be operated without endangering the public health and safety because the Applicants' reactor operators and shift supervisors lack sufficient hands-on operating experience with large pressurized water reactors. The resumes of Catawba Plant Supervisors show that only a very few of these individuals who will have primary management responsibility for safe operation of the plant, FSAR, Table 1.9-1, p. 2, have experience at large PWR's like Catawba. NUREG-0737, Clarification of TMI Action Plan Requirements, I.C.3. Resumes of Senior Reactor Operators and Reactor Operators show similar lack of experience.

It is clear that a number of potential issues could be subsumed within this contention, and those issues must be narrowed before the contention goes to hearing. For example, what does Palmetto Alliance mean by "hands-on operating experience"? What does Palmetto Alliance believe would constitute "sufficient" hands-on operating experi-

ence? Does Palmetto Alliance contend that Applicants do not meet applicable NRC requirements governing training, or does Palmetto Alliance contend that, for some reason, training of operators at Catawba should be governed by different standards? If so, what standards does Palmetto Alliance contend should apply? Does Palmetto Alliance believe that the NRC's requirements are inadequate?¹⁷

In addition to confusion over the issues presented, Contention No. 8 is equally unclear as to scope. Do the allegations set forth therein extend equally to reactor operators, shift supervisors, Catawba Plant Supervisors, and/or Senior Reactor Operators? Palmetto Alliance uses

¹⁷ The propriety of such inquiry was clearly recognized in a recent Licensing Board decision. See Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2) ___ NRC ___ (November 17, 1982), slip op. at p. 9, wherein the Board stated:

In conclusion, this Board believes that the basis with reasonable specificity standard requires that an intervenor include in a safety contention a statement of the reason for his contention. This statement must either allege with particularity that an applicant is not complying with a specified regulation, or allege with particularity the existence and detail of a substantial safety issue on which the regulations are silent. In the absence of a 'regulatory gap,' the failure to allege a violation of the regulations or an attempt to advocate stricter requirements than those imposed by the regulations will result in a rejection of the contention, the latter as an impermissible collateral attack on the Commission's rules (10 CFR §2.758).

each of these terms in its contention. If such is its scope, then does Palmetto Alliance contend that each of these individuals must have "sufficient hands-on operating experience"? And does Palmetto Alliance intend "sufficient" experience to depend on whether it is discussing, for example, a reactor operator or a shift supervisor?

These are questions to which Applicants, the Staff, and, indeed, the Board must know the answers in order to proceed with this litigation. Further, these are questions to which only Palmetto Alliance now knows the answers. After all, Palmetto Alliance wrote this contention. It framed its terms, and it must have had something in mind when it used these various terms and raised these allegations.

The series of interrogatories which Applicants propounded to Palmetto Alliance sought only to elicit an explanation of the dimensions and scope for Contention 8, and to discover the legal and factual bases for this contention. For example, with respect to the most basic of the terms used by Palmetto Alliance in its Contention No. 8, Applicants have asked, and Palmetto Alliance has responded:

1. What do you mean by "hands-on operating experience"?

August 30 Response: "Intervenor at present lacks sufficient knowledge to answer."

Nov. 5 Supplemental Response: "Active participation in operation."

2. Specify each activity which you contend constitutes any or all aspects of the term "hands-on operating experience" as you define it.

August 30 Response: "Intervenor at present lacks sufficient knowledge to answer."

Nov. 5 Supplemental Response: No response provided.

3. Do you contend that "hands-on operating experience" is necessary to satisfy applicable NRC requirements?

August 30 Response: "Intervenor at present lacks sufficient knowledge to answer."

Nov. 5 Supplemental Response: No response provided.

4. If your answer to Interrogatory 3 is affirmative, identify those NRC requirements. Provide specific reference to all provisions of statutes, regulations, regulatory guides, or any other NRC regulatory requirement upon which you rely.

No response provided.

5. If your answer to Interrogatory 3 is negative, do you contend that "hands-on operating experience" affects public health and safety? If so, explain why you so contend.

No response provided.

7. What do you mean by "sufficient"?

August 30 Response: "Common meaning."

Nov. 5 Supplemental Response: "As much as is needed."

8. Specifically, what do you contend constitutes "sufficient" hands-on operating experience?

August 30 Response: "Intervenor at present lacks sufficient knowledge to answer."

Nov. 5 Supplemental Response: No response provided.

9. Do you contend that NRC requirements have not been met when you say "sufficient"?

August 30 Response: "Intervenor at present lacks sufficient knowledge to answer."

Nov. 5 Supplemental Response: No response provided.

10. If your answer to Interrogatory 9 is affirmative, identify those NRC requirements. Provide specific reference to all provisions of statutes, regulations, regulatory guides, or any other NRC regulatory requirement upon which you rely.

No response provided.

11. With regard to Interrogatory 10, specify in what manner you contend each of those NRC requirements have not been met.

No response provided.

12. If your answer to Interrogatory 9 is negative, do you contend that "sufficient" has a nexus to the public health and safety? If so, explain why you so contend.

No response provided.

27. What do you mean by the term "can be operated"?

August 30 Response: "Common meaning."

Nov. 5 Supplemental Response: "Capable of functioning."

28. Specify each activity which you contend constitutes any or all aspects of the term "can be operated" as you define it.

August 30 Response: "Intervenor at present lacks sufficient knowledge to answer."

Nov. 5 Supplemental Response: No response provided.

29. Do you contend that the term "can be operated" is defined by certain NRC regulatory requirements? If so, identify those requirements. Provide specific reference to all provisions of statutes, regulations, regulatory guides, or any other NRC regulatory requirement upon which you rely.

August 30 Response: "Intervenor at present lacks sufficient knowledge to answer."

Nov. 5 Supplemental Response: No response provided.

31. Do you contend that "sufficient hands-on operating experience" with "large pressurized water reactors" is necessary to assure the public health and safety?

August 30 Response: "Yes."

Nov. 5 Supplemental Response: No response provided.

32. If your answer to Interrogatory 31 is affirmative, do you contend that NRC requirements mandate that "reactor operators and shift supervisors" have "sufficient hands-on operating experience" with "large pressurized water reactors" to assure the public health and safety? If so, identify those requirements. Provide specific reference to all provisions of statutes, regulations, regulatory guides, or any other NRC regulatory requirement on which you rely.

August 30 Response: "Intervenor at present lacks sufficient knowledge to answer."

Nov. 5 Supplemental Response: No response provided.

33. If your answer to Interrogatory 32 is affirmative, do you contend that Applicants have not met such NRC requirements? If so, identify each such NRC requirement which you contend Applicants have not met, and, with respect to each, explain why you contend Applicants have not met such requirements.

No response provided.

34. If your answer to Interrogatory 32 is negative, do you contend that "sufficient hands-on operating experience" has a nexus to the public health and safety? If so, explain why you so contend.

No response provided.

35. If your answer to Interrogatory 31 is negative, is it because you believe there are means other than "sufficient hands-on operating experience" with a "large" pressurized water reactor to assure the public health and safety?

No response provided.

36. If your answer to Interrogatory 35 is affirmative, specify each of those means. Explain why you believe each of these means is necessary to assure the public health and safety.

No response provided.

37. With regard to Interrogatory 36, do you contend that Applicants do not meet any or all of those means? If so, specify why you contend that Applicants do not meet those means.

No response provided.

The above interrogatory responses are illustrative of Palmetto Alliance's pattern of behavior. In no instance has Palmetto Alliance provided any substantive information as to the definition of material terms in its contention, or what standards, if any, it contends that Applicants violate, and why it so contends. The situation is no different with respect to Applicants' interrogatories directed at the scope of Contention No. 8; that is, to whom does Palmetto Alliance intend its Contention No. 8 to apply, and what standards should apply to them. For example, Applicants have asked, and Palmetto Alliance have responded:

22. What do you mean by "reactor operators"?

August 30 Response: "Common meaning."

Nov. 5 Supplemental Response: "Any individual who either manipulates a control of a reactor or directs another to manipulate a control of a reactor."

23. Do you contend that "reactor operators" is defined by certain NRC regulatory requirements? If so, identify those requirements. Provide specific reference to all provisions of statutes, regulations, regulatory guides, or any other NRC regulatory requirement upon which you rely.

August 30 Response: "Intervenor at present lacks sufficient knowledge to answer."

Nov. 5 Supplemental Response: No response provided.

24. What do you mean by "shift supervisors"?

August 30 Response: "Common meaning."

Nov. 5 Supplemental Response: "Same meaning as employed by Applicants."

25. Do you contend that "shift supervisors" is defined by certain NRC regulatory requirements? If so, identify those requirements. Provide specific reference to all provisions of statutes, regulations, regulatory guides, or any other NRC regulatory requirement upon which you rely.

August 30 Response: "Intervenor at present lacks sufficient knowledge to answer."

Nov. 5 Supplemental Response: No response provided.

26. With regard to Interrogatories 23 and 25, do you contend that Applicants' "reactor operators and shift supervisors" fail to comply with those NRC regulatory requirements? If so, identify each such requirement and, with regard to each, explain why you contend Applicants fail so to comply.

August 30 Response: "Intervenor at present lacks sufficient knowledge to answer."

Nov. 5 Supplemental Response: No response provided.

75. Do you mean by "similar lack of experience" that "Senior Reactor Operators and Reactor Operators" lack the "sufficient hands-on operating experience with large pressurized water reactors" which you contend Applicants' "reactor operators and shift supervisors" lack?

August 30 Response: "No."

Nov. 5 Supplemental Response: No response provided.

77. If the answer to Interrogatory 75 is negative, answer Interrogatories 78 through 83.

78. What do you mean by "similar lack of experience"?

August 30 Response: "Common meaning."

Nov. 5 Supplemental Response: "Nearly but not exactly the same absence of participation."

79. Do you contend that NRC regulatory requirements specify a level of "experience" which must be met by "Senior Reactor Operators" and "Reactor Operators"?

August 30 Response: "Intervenor at present lacks sufficient knowledge to answer."

Nov. 5 Supplemental Response: No response provided.

80. If your answer to Interrogatory 79 is affirmative, identify those requirements. Provide specific reference to all provisions of statutes, regulations, regulatory guides, or any other NRC regulatory requirement on which you rely.

No response provided.

81. Do you contend that Applicants' "Senior Reactor Operators" and "Reactor Operators" do not meet those NRC requirements? If so, state why, with respect to each such individual and each such requirement, you contend those requirements are not met.

August 30 Response: "Intervenor at present lacks sufficient knowledge to answer."

Nov. 5 Supplemental Response: No response provided.

82. If your answer to Interrogatory 79 is negative, state what requirements you believe should be met to provide what you contend to be the requisite level of "experience."

No response provided.

83. Do you contend that Applicants' "Senior Reactor Operators" and "Reactor Operators" do not meet those requirements? If so, state why, with respect to each such individual and each such requirement, you contend those requirements are not met.

No response provided.

Applicants submit that, with respect to Contention 8, Palmetto Alliance's responses demonstrate a clear failure to comply with the Board's discovery order. Despite the Board's explicit instructions, Palmetto Alliance has not filed either responsive answers or objections to each of Applicants' Interrogatories. On the contrary, the examples cited above show that even where Palmetto Alliance has responded, its response has provided no substantive information. That in itself is a direct violation of the Board's order. Moreover, Palmetto Alliance has provided no response to many of Applicants' Interrogatories -- which also constitutes a direct violation of the Board's discovery order. Accordingly, on the grounds outlined above, a Board order dismissing Palmetto Alliance's Contention 8 is warranted.

However, should the Board not agree, Applicants submit that Palmetto Alliance's responses to this discovery warrant a reconsideration by the Board of its admission of Contention 8, a finding that it lacks specificity and basis, and a dismissal of the contention on those grounds.

Palmetto Alliance has failed to provide the most basic information regarding its contention, such as, for example, what it contends is "sufficient hands-on operating experience"; its failure to relate its contention to the regulations is fatal. See Seabrook, supra. Accordingly, Palmetto Alliance Contention 8 does not meet Commission requirements and it should be dismissed.

Contention No. 16 reads:

Applicants have not demonstrated their ability safely to store irradiated fuel assemblies from other Duke nuclear facilities so as to provide reasonable assurance that those activities do not endanger the health and safety of the public.

It is impossible to tell, without discovery, what issues Palmetto Alliance intends to raise in Contention 16 or why it claims Applicants have not demonstrated their ability safely to store at Catawba irradiated fuel assemblies from other Duke facilities. What precisely does Palmetto Alliance mean by "store"? What does it consider to be "safe" storage? Does Palmetto Alliance claim that the fuel assemblies from other facilities to be stored at Catawba are somehow defective? Or that the Catawba storage facilities to be used to store Oconee and McGuire spent fuel are somehow defective? Does Palmetto Alliance contend that Applicants do not meet NRC standards? If so, why? Or does Palmetto Alliance contend that applicable NRC standards are inadequate? If so, why? And, if Palmetto

Alliance contends that applicable NRC standards are inadequate to protect the public health and safety, what standards would Palmetto Alliance have the Applicants meet? This is all information which should have been available to Palmetto Alliance when it drafted its contentions. After all, it chose the words which it used in its contentions, and it must have had something in mind when it used them. If the contention is to have any standing at all in an NRC proceeding, Palmetto Alliance must disclose the meaning of its contention. It appears, however, that Palmetto Alliance is unable to do so. Regarding Contention 16, Applicants have asked, and Palmetto Alliance has responded:

1. What do you mean by "have not demonstrated"?
August 30 Response: "Common meaning."
Nov. 5 Supplemental Response: "Have not shown by reasoning, proved, or made clear."
2. Do you contend by "have not demonstrated" that NRC regulatory requirements have not been adequately complied with?
August 30 Response: "Intervenor at present lacks sufficient knowledge to answer."
Nov. 5 Supplemental Response: No response provided.
3. If your answer to Interrogatory 2 is affirmative, identify those NRC regulatory requirements. Provide specific reference to all provisions of statutes, regulations, regulatory guides, or any other NRC regulatory requirement upon which you rely.

No response provided.

4. With regard to Interrogatory 3, specify in what manner you contend each of those NRC requirements has not been met.

No response provided.

5. If your answer to Interrogatory 2 is negative, state what you believe to be the requisite elements for Applicants to "demonstrate" their ability to store spent fuel safely.

No response provided.

6. With regard to Interrogatory 5, specify in what manner you contend Applicants have not met each of those elements.

No response provided.

17. What do you mean by "safely"?

August 30 Response: "Common meaning."

Nov. 5 Supplemental Response: "So as not to endanger."

18. Specify each activity which you contend constitutes any or all aspects of the term "safely."

August 30 Response: "Intervenor at present lacks sufficient knowledge to answer."

Nov. 5 Supplemental Response: No response provided.

19. Do you contend that NRC requirements have not been met when you say "safely"?

August 30 Response: "Intervenor at present lacks sufficient knowledge to answer."

Nov. 5 Supplemental Response: No response provided.

20. If your answer to Interrogatory 19 is affirmative, identify those NRC regulatory requirements. Provide specific reference to all provisions of statutes, regulations, regulatory guides or any other NRC regulatory requirement on which you rely.

No response provided.

21. With regard to Interrogatory 20, specify in what manner you contend each of those NRC requirements has not been met.

No response provided.

22. If your answer to Interrogatory 19 is negative, state what you believe is necessary for Applicants to store "safely" irradiated fuel assemblies. Identify specifically each element of the storage of such assemblies you contend is necessary to store them "safely."

No response provided.

23. With regard to Interrogatory 22, specify in what manner you contend Applicants will not store irradiated fuel assemblies "safely."

No response provided.

25. What do you mean by the term "store"?

August 30 Response: "Common meaning reflecting Applicants' plans and application."

Nov. 5 Supplemental Response: "To put aside, accumulate, safekeep as is reflected by Applicants' plans and application."

26. Identify specifically each activity which you contend constitutes any or all of the term "store," as you define it.

August 30 Response: "Intervenor believes answer within knowledge of Applicants. Intervenor at present lacks sufficient knowledge to answer."

Nov. 5 Supplemental Response: No response provided.

27. With regard to Interrogatory 26, identify all those NRC regulatory requirements which you contend relate to any or all elements of the term "store" as you use it. Provide specific reference to all provisions of statutes, regulations, regulatory guides or any other NRC regulatory requirement on which you rely.

August 30 Response: "Intervenor at present lacks sufficient knowledge to answer."

Nov. 5 Supplemental Response: No response provided.

38. What do you mean by the phrase "other Duke nuclear facilities"?

August 30 Response: "Common meaning reflecting Applicants' plans and applications."

Nov. 5 Supplemental Response: "Other power reactors owned or operated by Duke Power Company as is reflected by Applicants' plans and application."

39. With regard to Interrogatory 38, identify each of those "other Duke nuclear facilities" which is the subject of this contention.

August 30 Response: "Intervenor believes answer within knowledge of Applicants. Intervenor at present lacks sufficient knowledge to answer."

Nov. 5 Supplemental Response: No response provided.

40. For each of the facilities identified in your response to Interrogatory 39, explain why you contend that their "irradiated fuel assemblies" might not be "safely stored" at the Catawba facility.

No response provided.

41. With regard to Interrogatory 40, do you contend that "irradiated fuel assemblies" cannot be safely stored at Catawba because the Catawba spent fuel pool facility is somehow defective or inadequate?

No response provided.

42. If your answer to Interrogatory 41 is affirmative, do you contend that the Catawba spent fuel pool is somehow defective or inadequate because it does not meet NRC regulatory requirements applicable to the storage of spent fuel?

No response provided.

43. If the answer to Interrogatory 42 is affirmative, identify each of those NRC regulatory requirements. Provide specific reference to provisions of statutes, regulations, regulatory guides, or any other NRC regulatory requirement on which you rely.

No reponse provided.

44. With regard to Interrogatory 43, explain why you contend that the Catawba spent fuel pool fails to meet each of those NRC regulatory requirements.

No response provided.

45. If your answer to Interrogatory 42 is negative, state what you believe should be the criteria to determine whether Catawba has the ability to safely store the "irradiated fuel assemblies" of "other Duke nuclear facilities."

No response provided.

46. With regard to Interrogatory 45, identify specifically those circumstances which you contend demonstrate Applicants lack of ability to safely store "irradiated fuel assemblies" from "other Duke nuclear facilities" at the Catawba spent fuel storage pool. For each such circumstance, explain why you contend it demonstrates Applicants lack the ability to safely store "irradiated fuel assemblies" from "other Duke nuclear facilities" at the Catawba spent fuel storage pool.

No response provided.

47. With regard to Interrogatories 41 and 46, what features of the Catawba spent fuel storage pool do you contend need improvement before it can safely store the "irradiated nuclear fuel assemblies" of "other Duke nuclear facilities"?

No response provided.

Again, as was the case with Contention No. 8, Palmetto Alliance's responses to Applicants' interrogatories on its Contention 16 represent a deliberate noncompliance with the Board's discovery order. The responses to interrogatories 40-47, pp. 36-37, supra, provide an excellent example. Notwithstanding the order of the Board, Palmetto Alliance has provided no response to those interrogatories, which, taken

together, simply ask why Palmetto Alliance is contending that safe storage is not possible. Does Palmetto Alliance contend that there is something about the spent fuel rods to be stored at Catawba which compromises the safety of their storage? Or does Palmetto Alliance contend there is a problem with the spent fuel pool at Catawba? In either event, why does it so contend? Palmetto Alliance does not answer. Its failure to respond to this discovery in the face of the Board's discovery order constitutes good cause for this Board to issue an order dismissing Contention 16 from the proceeding.

Alternatively, the responses to Applicants' interrogatories provide good cause for the Licensing Board to reconsider its admission of Contention 16 as an issue in the proceeding. From its responses it appears that Palmetto Alliance cannot identify the "other Duke nuclear facilities" which are the subject of its Contention 16. Nor can it provide any information with respect to the subject matter of its contention. (Palmetto Alliance does not even know what activities constitute safe storage. See Interrogatories 18 and 26, pp. 34-35, supra) Also, Palmetto Alliance has again failed to relate its contention to the regulations. See Seabrook, supra. Because this is the case, Applicants submit that Palmetto Alliance's responses

demonstrate that Contention 16 lacks the requisite specificity and bases. The Board should reconsider its admission and, on reconsideration, dismiss it.

Contention No. 27 reads:

The Applicants should be required to place real time monitors capable of reading gamma radiation levels around the site in order to provide emergency operations personnel with the information required to make decisions necessary to reasonably assure the health and safety of the public under conditions of radiological release to the environment.

Thermoluminescent dosimeters are only accurate within about + 30% and only provide a post hoc assessment of conditions.

Applicants do not know, and have no way of learning except through discovery, the dimensions of and bases for this contention. For example, Palmetto Alliance apparently believes that, for some unspecified reason, real time monitors "should be required" to protect the health and safety of the public "under conditions of radiological release to the environment." Palmetto Alliance must have had something in mind when it wrote those phrases. What was it? Nor does Intervenor state how many "real time monitors" it believes are necessary and where they should be located, other than to say that they should be "around the site." Palmetto Alliance also appears to contend, for some unspecified reason, that thermoluminescent dosimeters are inadequate. However, it does not tell us the bases for its

assertion, or the purposes for which they are inadequate. Finally, as was the case with Contentions 8 and 16, Applicants are unable to determine whether Palmetto Alliance contends that Applicants do not satisfy NRC requirements (and, if so, what Applicants should do to comply with those requirements); or whether Palmetto Alliance contends that existing NRC requirements are inadequate and, if so, what standards Palmetto Alliance contends Applicants should meet.

Thus, Applicants propounded a series of basic interrogatories to Palmetto Alliance on Contention 27. As will be demonstrated below, Applicants have received no meaningful responses. For example, Applicants have asked, and Palmetto Alliance has answered:

1. What do you mean by the phrase "should be required"?

August 30 Response: "Common meaning."

Nov. 5 Supplemental Response: "Call for as necessary."

2. Specifically, do you contend by "should be required" that regulatory requirements (state or federal) have not been met?

August 30 Response: "Intervenor at present lacks sufficient knowledge to answer."

Nov. 5 Supplemental Reponse: No response provided.

3. If answer to Interrogatory 2 is affirmative, identify those regulatory requirements. Provide specific reference to provisions of statutes, regulations, regulatory guides, or any other regulatory requirement on which you rely.

No response provided.

4. With regard to Interrogatory 3, please explain in what manner you contend that regulatory requirements have gone unmet.

No response provided.

5. If answer to Interrogatory 2 is negative, explain on what criteria you rely in asserting the phrase "should be required," and specify the origin of such criteria.
6. With regard to Interrogatory 5, specify in what manner those criteria have gone unmet.

No response provided.

85. What "conditions of radiological release" do you contemplate in this contention?

August 30 Response: "Intervenor at present lacks sufficient knowledge to answer."

Nov. 5 Supplemental Response: No response provided.

47. What do you mean by the phrase "place...around the site."?

August 30 Response: "Common meaning."

Nov. 5 Supplemental Response: "Position in various places near the location of the facility."

48. With regard to Interrogatory 47, specify how many real time monitors you contend are necessary "to assure public safety and health."

August 30 Response: "Intervenor at present lacks sufficient knowledge to answer."

Nov. 5 Supplemental Response: No response provided.

49. With regard to Interrogatory 48 explain why you contend that that number of monitors is necessary.

August 30 Response: "Intervenor at present lacks sufficient knowledge to answer."

Nov. 5 Supplemental Response: No response provided.

50. In responding to Interrogatory 47-49, identify the regulatory requirements (state or federal) which you rely upon. Provide specific reference to provisions of statutes, regulations, regulatory guides, or any other regulatory requirement on which you rely.

August 30 Response: "Intervenor at present lacks sufficient knowledge to answer."

Nov. 5 Supplemental Response: No response provided.

51. With regard to Interrogatory 47, specify the configuration of real time monitors which you contend is necessary "to assure public safety and health."

August 30 response: "Intervenor at present lacks sufficient knowledge to answer."

Nov. 5 Supplemental Response: No response provided.

52. With regard to Interrogatory 51, explain why you contend that that configuration is necessary.

August 30 Response: "Intervenor at present lacks sufficient knowledge to answer."

Nov. 5 Supplemental Response: No response provided.

53. In responding to Interrogatory 51, specify the locality of and distance at which you contend each unit should be "placed around the site."

August 30 Response: "Intervenors at present lack sufficient knowledge to answer."

Nov. 5 Supplemental Response: No response provided.

54. In responding to Interrogatories 51-53, identify the regulatory requirements (state and federal) on which you rely. Provide specific reference to provisions of statutes, regulations, regulatory guides or any other regulatory requirement on which you rely.

August 30 Response: "Intervenors at present lack sufficient knowledge to answer."

Nov. 5 Supplemental Response: No response provided.

55. What do you mean by "site"?

August 30 Response: "Common meaning."

Nov. 5 Supplemental Response: "The location of the facility."

56. With regard to Interrogatory 55, identify what you contend are the relevant boundaries of the "site" with respect to your Contention 27.

August 30 Response: "Intervenor at present lacks sufficient knowledge to answer."

Nov. 5 Supplemental Response: No response provided.

57. In responding to Interrogatory 56 identify the regulatory requirements (state or federal) upon which you rely. Provide specific reference to provisions of statutes, regulations, regulatory guides, or any other regulatory requirement on which you rely.

August 30 Response: "Intervenor at present lacks sufficient knowledge to answer."

Nov. 5 Supplemental Response: No response provided.

Palmetto Alliance has deliberately ignored the Board's discovery order in its responses to Applicants' interrogatories on its Contention No. 27. It has not provided responsive answers or objections to Applicants' interrogatories and, indeed, with respect to many questions, has provided no response at all. Applicants accordingly submit that this willful violation of the Board's discovery order justifies the issuance of a Board order dismissing Palmetto Alliance's Contention 27 as an issue in this proceeding.

Alternatively, Applicants submit that Palmetto Alliance's responses to discovery warrant the Board's reconsideration of its admission of Contention 27. For example, Palmetto Alliance cannot even tell Applicants what it means by the "conditions of radiological release" it contemplates in this contention (Interrogatory 85, p. 41, supra), or the relevant boundaries of the "site" (Interrogatory 56, p. 43, supra). Nor is Palmetto Alliance able to shed any light whatsoever on whether it contends any NRC requirements govern, and, if so, whether they are or are not met. See Seabrook, supra. If Palmetto Alliance cannot provide this information, then its Contention 27 does not meet the specificity and basis requirements of the Commission's rules. The Board should reconsider its admission of Contention 27 and, upon such reconsideration, dismiss the contention from the proceeding for failure to comply with the regulations.

The result of Palmetto Alliance's failure to respond to discovery on its contentions is that no one in this proceeding -- not the Board, not the Applicants, not the NRC Staff -- knows any more today about Palmetto Alliance Contentions 8, 16 and 27 than they did when Palmetto Alliance filed those contentions on December 9, 1981 -- two days short of one year ago. Palmetto Alliance has willfully violated a Board order on discovery. Moreover,

Palmetto Alliance's responses to Applicants' discovery demonstrate conclusively that it had when it wrote its contentions, and has now, no idea what its concerns were and are.¹⁸

The normal course of action in an instance in which there has been such a complete and obvious failure to meet discovery obligations is to move for sanctions -- such as dismissal of contentions -- under the discovery rules. This has been done, and Applicants submit that grounds exist for dismissing the contentions for that reason alone. However, if one is willing to accept at face value Palmetto Alliance's representations that it has in fact disclosed all information in its possession, only one conclusion can be reached. Since Palmetto Alliance is unable to state specifically the concerns in its contentions, or to provide the bases for those concerns, its Contentions 8, 16 and 27 do not now -- and of course did not on December 9, 1981 -- comply with the requirements of Section 2.714 of the Commission Rules. This proceeding cannot continue in this

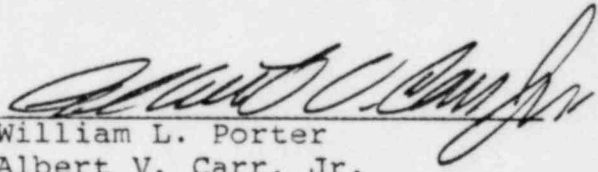
¹⁸ Even after receiving Applicants' discovery responses concerning these contentions (which were available well before Palmetto Alliance filed its Supplemental Responses), Palmetto Alliance was still unable to state the nature of its concerns. This Board pointed out in its March 5 Order that a more stringent standard of specificity should be applied to contentions after discovery has enabled the intervenors to "learn additional factual details about their areas of concern." (p. 13).

fashion. Applicants accordingly believe that the action which the Board should take is clear. The Board should reconsider, in light of the new information presented by discovery, its prior determination that Palmetto Alliance's Contentions 8, 16 and 27 meet the requirements of Section 2.714, and upon such reconsideration should dismiss the contentions.

CONCLUSION

In light of the foregoing, Applicants urge that the Board issue an order dismissing Palmetto Alliance's Contentions 8, 16 and 27 for failure to comply with discovery. Alternatively, Applicants move the Board to reconsider its admission of Palmetto Alliance's Contentions 8, 16 and 27; and, upon reconsideration, issue an order dismissing these three contentions as issues in this proceeding.

Respectfully submitted,



William L. Porter
Albert V. Carr, Jr.
Ellen T. Ruff
DUKE POWER COMPANY
P.O. Box 33189
Charlotte, North Carolina 28242
(704) 373-2570

J. Michael McGarry, III
Anne W. Cottingham
DEBEVOISE & LIBERMAN
1200 Seventeenth Street, N.W.
Washington, D.C. 20036
(.02) 857-9833

Attorneys for Duke Power
Company, et al.

December 7, 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 In Support Of 'NRC Staff Motion For Sanctions Against Palmetto Alliance For Its Failure To Comply With Board-Ordered Discovery' And Motion, In The Alternative, For Reconsideration And Dismissal of Palmetto Alliance's Contentions 8, 16 and 27" in the above captioned matter has been served upon the following by deposit in the United States mail this 7th day of December, 1982.

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

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

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

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

Dr. Richard F. Foster
P.O. Box 4263
Sunriver, Oregon 97702

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

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

Robert Guild, Esq.
Attorney-at-Law
P.O. Box 12097
Charleston, South Carolina 29412

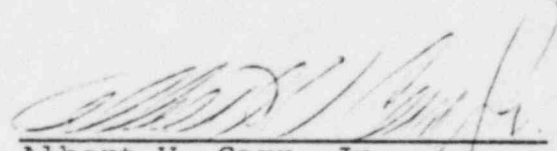
Chairman
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Palmetto Alliance
2135 1/2 Devine Street
Columbia, South Carolina 29205

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

Henry A. Presler
Charlotte-Mecklenburg
Environmental Coalition
943 Henley Place
Charlotte, North Carolina 28207

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



Albert V. Carr, Jr.