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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
DUKE POWER COMPANY, <u>et al.</u>)	Docket Nos. 50-413
)	50-414
(Catawba Nuclear Station,)	
Units 1 and 2))	March 30, 1983

PALMETTO ALLIANCE RESPONSE TO APPLICANTS'
PROPOSED RESTRICTIONS ON CONTACTS WITH WORKERS

--AND--

REQUEST FOR REMEDIAL MEASURES IN LIGHT OF DUKE
POWER COMPANY COMMUNICATION WITH WORKERS

At the request of the Board Chairman during the conference call of March 25, 1983, Palmetto Alliance hereby responds in opposition to Applicants' proposed extension of restrictions on intervenor contact with Catawba workers identified in discovery as well as the more limited applications of such restrictions as originally proposed by Applicants' letter of February 28, 1983.

We assert the need and entitlement to full unhindered access to witnesses and potential witnesses on this important subject of Quality Assurance in the construction of the facility.

Palmetto Alliance further requests this Board direct certain remedial measures in light of the communications

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already made by Duke Power Company with workers on the subject of Palmetto's Quality Assurance claims as described in Applicant's letter report to the Board dated March 22, 1983. Such remedies are needed to undo the "chilling effect" on potential cooperation caused by Duke's contacts and to supply material information on worker rights and responsibilities omitted in Duke's communication.

On the basis of the experience of two former Catawba construction workers, Nolan R. Hoopingarner, II, and William R. (Ron) McAfee, who are members of Palmetto Alliance, Intervenor has claimed and the Board has admitted as Contention 6 for litigation that:

Because of the systematic deficiencies in plant construction and company pressure to approve faulty workmanship, no reasonable assurance exists that the plant can operate without endangering the health and safety of the public.

In discovery filed April 20, 1982, Palmetto sought evidence on this claim including the names, addresses and telephone numbers of present and former Catawba Quality Assurance workers (one of whom was our Mr. McAfee, a former QC Inspector). Such matters reflecting the "identity and location of persons having knowledge of any discoverable matters," is itself clearly obtainable in discovery, 10 CFR §2.740(b)(1).

The Applicants interposed numerous objections to Interrogatory 22 or Contention 6 as well as nearly identical objections to producing similar information sought in Interrogatory 16 on Palmetto's "track record" Contention 7. See Applicants' Responses, dated December 31, 1982. Applicants asserted objections on the grounds of relevance and the need to protect present and former employees from "embarrassment as well as harrassment by Palmetto Alliance." Id. at p. 37 and See p. 58. Applicants' sought, alternately if its objections were not upheld, a direction that upon production of the information, "Palmetto will not contact any identified employee or former employee," Id. at pp. 40 and 60. The asserted basis for this restriction:

Duke's primary concern is that the privacy of the individual is protected so that such person will not be subjected to embarrassment.

On February 24, 1983, reflecting the Board's Order of February 9, 1983, overruling in part Applicants' objections to these questions and directing the production of names and addresses of Quality Assurance workers, Duke caused letters to be sent over the signature of its Corporate QA Manager, G. W. Grier, to "All Quality Assurance Employees - Catawba Nuclear Station." This letter and very similar ones dated March 7 and 17, 1983, to others, demonstrate beyond question

the disingenuous character of Applicants' asserted concern for individual privacy and freedom from harassment for its workers and former workers:

The Intervenors are contending that faulty workmanship has been approved due to Company pressure, providing no assurance that the plant can operate safely. Two former Duke employees, Nolan R. Hoopingarner, II and William R. (Ron) McAfee, are members of the Palmetto Alliance. Each has been identified as a potential witness in this proceeding.

Letter of March 7, 1983, copy attached.

In the absence of any other apparent textual explanation for naming these former workers as Palmetto members and prospective witnesses, one may not exclude the conclusion that embarrassment, harassment and, perhaps, even physical reprisal are the objects or effects of such references. What is a Duke construction worker expected to do with this helpful piece of information concerning the identity and affiliation of these disaffected former co-workers? Duke should be permitted no comfort or absolution from full responsibility for any harm to these courageous men which may result from this, at least, irresponsible action.

Counsel is informed that Mr. McAfee's wife has already received offensive and threatening phone calls following distribution of this Duke letter.

In their February 28, 1983, letter transmitting their proposed Affidavit of Nondisclosure, Applicants explain that their addition of the proposed restrictions on Palmetto contact contained in Paragraph Five (5) is based on "the need to prevent allegations of harrassment from entering into this case."

To date, representatives of Palmetto Alliance have contacted, either in person or by telephone, some Duke Power Company employees at Catawba. We understand that the contacted employees did not appreciate the contact and indeed were bothered by it. The language suggested in the attached affidavit would eliminate this course of conduct and hopefully would dispel claims of harrassment by any party.

Id., at p.3 (sic.). In response to Counsel's question concerning the basis for this statement, Mr. Carr of Duke disclaimed any knowledge or information regarding the persons contacted, or the nature of the contact, and suggested only that this counsel "ask Mr. McAfee."

In its February 24, 1983, and subsequent letters, Duke presents similar statements:

We have learned of at least two instances in the past year where one of these individuals has contacted Duke employees at their homes to try to get information relating to QA/QC and construction practices.

What does all this - the only asserted basis for restricting Palmetto contacts with potential witnesses - amount to? Ron McAfee confesses to a May, 1982, telephone conversation with a former co-worker and theology student friend, one Dan Sipes, cordial in character, lasting about ten minutes. Mr. Sipes, who works for Duke, was apparently not concerned about the safety of the Catawba plant. Mr. McAfee also informs me that he had a very cordial hour long telephone conversation about the same period with his former boss at Catawba, one Jim Algood who is presently a Duke manager and, predictably, reported McAfee's call to the Company. Whether Messrs. Sipes and Algood "appreciated" or were "bothered" by this contact is not known, nor is it material to the request by applicants to restrict Palmetto's ability to gather evidence to support its contention that Company pressure to approve faulty workmanship has produced systematic deficiencies in plant construction.

Palmetto is advised by the staff of the Government Accountability Project that a successful effort to elicit cooperation and evidence from Catawba workers regarding Quality Assurance deficiencies will be greatly hampered by the restrictions on contact proposed by Duke in Paragraph Five (5).

The Government Accountability Project (GAP) of the Institute for Policy Studies, located in Washington, D.C., has broad experience in conducting investigations of QC/QA deficiencies in nuclear power plant construction including work at LaSalle, Midland and at Zimmer. Their work at Zimmer lead the Nuclear Regulatory Commission itself to the conclusion that the Applicants there were responsible for a "widespread breakdown" in the management of the project involving "numerous examples of noncompliance with twelve of the eighteen Quality Assurance Criteria." On the basis of GAP's work there, the Commission issued an unprecedented Order Immediately Suspending Construction. Cincinnati Gas and Electric Company, et al. (William H. Zimmer Station), Docket 50-358, CLI 82-33, __N.R.C.__ (November 12, 1983). GAP has agreed to assist Palmetto in gathering evidence of Quality Assurance problems at Catawba material to Palmetto Contention 6.

Palmetto Alliance opposes any of the restrictions on contacts with workers, either present or former, proposed by Applicants in their Affidavit of Nondisclosure, Paragraph Five (5). Such measures as restricting the persons contacting to two only - this counsel and one other person; prior approval of the text by Duke and notice of addresses

of a single form letter contact without right to telephone, written contact follow up or face to face communication, are wholly unwarranted and unjustified by Applicants. Such restrictions on contact proposed for Palmetto contrast strikingly with the measures already employed by Duke, without any prior notice or Board approval, as described in its March 22, 1983, letter report. Such measures already include unapproved - and we believe misleading - letters to all present and former QA workers and other potential witnesses soliciting telephone "questions" to a C.N. Anderson, Jr. or "your supervisor," and in detailed "discussions" with Catawba workers on the subject of Palmetto's Quality Assurance contentions and discovery of evidence regarding it. At a bare minimum, Palmetto should be assured the same means and freedom of contact as Duke has already employed to protect its interests in defending against this contention.

Adoption of Applicants' proposed restrictions will only serve to hinder Palmetto's efforts to conduct orderly discovery on this important issue; and, perhaps for a time at least will shield serious Quality Assurance deficiencies of Catawba from public disclosure.

Palmetto Alliance further requests the Board provide for the following measures in light of the contacts and communication already had by Duke with the potential witnesses as described above in order to cure the "chilling effect" on potential cooperation by Catawba workers and to supply material information regarding their rights and responsibilities omitted in Duke's communications:

1. Provide by Board Order for an opportunity for representatives of Palmetto Alliance and the Government Accountability Project to meet with those same Catawba Quality Assurance and other personnel contacted by Duke as described in Applicants' letter report of March 22, 1983, for the purpose of discussing Palmetto Alliance's Quality Assurance contention and discovery related thereto.

2. Provide by Board Order and by agreement of the NRC Staff for an on-site meeting between Catawba construction workers including Quality Assurance personnel and a senior NRC official, such as the Region III Administrator, for the purpose of briefing these workers on their rights and responsibilities with respect to giving evidence in this licensing case, reporting defects in Quality Assurance as known to them, and assuring confidentiality in providing information to the NRC. Such order should provide for attendance by Palmetto Alliance and GAP at such a meeting.

3. Provide for an official notice from the Board to be mailed at Applicants' expense to all persons who were contacted by Duke as reflected in the March 22, 1983, letter report, which notice would explain in concise terms the workers' rights and responsibilities with respect to giving evidence in this licensing case, reporting defects in Quality Assurance known to them and protecting confidentiality in providing information to the NRC.

In the absence of such remedial measures, the written communications reported to have been sent by Duke to present and former workers will serve to "chill" and discourage their reporting of known Quality Assurance defects at Catawba, and cooperation with the NRC Staff and Intervenors. While Duke's letters are drafted with a lawyer's precision, they clearly communicate Duke's discouragement of cooperation and displeasure with those former workers who have "blown the whistle" on Catawba defects.

By serious omissions the letters fail to provide a complete picture of worker rights and responsibilities. No basis exists for supposing that Duke's oral "discussions" with active workers were any different or more complete. Any communication on this subject is seriously incomplete, and

therefore misleading without explaining provisions of 10 CFR Part 19, "Notices, Instructions to Workers and Inspections;" Part 21, "Reporting of Defects and Noncompliance"; part 50 Appendix B, Quality Assurance Criterion XVI regarding identification and reporting of conditions adverse to quality; NRC I & E policy and practice with respect to protecting confidentiality of worker identity and complaints; and the employee protection provision of 42 USC § 5851 adopted as part of the 1979 NRC Authorization Act, Pub L. 95-209.

Palmetto is informed that NRC Region III Administrator Keppler has presented a site briefing for Zimmer personnel similar to this proposal by Palmetto Alliance, and that NRC Inspection and Enforcement head Richard DeYoung is considering support for GAP participation in such an on-site worker briefings.

Palmetto Alliance respectfully requests that Applicants' proposed restrictions on discovery be rejected and that these proposed remedial measures be adopted.



Robert Guild
Post Office Box 12097
Charleston, SC 29412

Attorney for Palmetto Alliance

March 30, 1983

Active EMPLOYEES AT CATAWBA
February 24, 1983

ATTACHMENT

To: All Quality Assurance Employees
Catawba Nuclear Station

Re: Discovery in the Catawba Operating License Proceeding

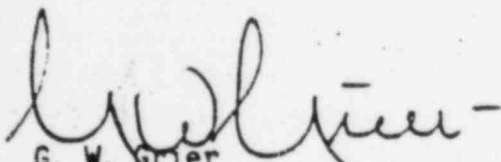
Duke currently has an application for an operating license for Catawba pending before the Nuclear Regulatory Commission. Three groups (Palmetto Alliance, Carolina Environmental Study Group (CESG), and the Charlotte-Mecklenburg Environmental Coalition) have intervened and therefore a hearing must be held before the operating license is issued. The proceeding is now before an NRC Licensing Board.

One of the issues, and a most important one, is that of Quality Assurance. The Intervenorers are contending that faulty workmanship has been approved due Company pressure, providing no assurance that the plant can operate safely. Two former Duke employees, Nolan R. Hoopingarner, II and William R. (Ron) McAfee, are members of the Palmetto Alliance. Each has been identified as a potential witness in this proceeding. We have learned of at least two instances in the past year where one of these individuals has contacted Duke employees at their homes to try to get information relating to Quality Assurance and construction practices.

We are now at the stage in the proceeding where we are required to furnish information to Intervenorers. As a part of this process, Duke, over its objection, has been required by the Licensing Board to turn over to the Intervenorers the names, addresses, titles, telephone numbers, and dates of employment for all Quality Assurance personnel employed in the Catawba Projects Division. The Licensing Board has ordered this done so that Intervenorers may contact Quality Assurance employees.

This memorandum is to inform you that your name has been disclosed to, and that you may be contacted by, Intervenorers. Whether you do or do not talk to Intervenorers is solely your own business. However, you should understand that you are under no obligation whatsoever to talk with Intervenorers, and you are completely within your rights to refuse to talk with the Intervenorers in this proceeding.

If you have any questions, contact your supervisor.


G. W. Grier
Corporate QA Manager

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,) December 30, 1981
Units 1 and 2)

CERTIFICATE OF SERVICE

I hereby certify that copies of "PALMETTO ALLIANCE RESPONSE TO APPLICANTS' PROPOSED RESTRICTIONS ON CONTACTS WITH WORKERS AND REQUEST FOR REMEDIAL MEASURES IN LIGHT OF DUKE POWER COMPANY COMMUNICATION WITH WORKERS" dated March 30, 1983, in the above-captioned proceeding, have been served on the following by deposit in the United States mail this 30th day of March, 1983:

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Certificate of Service

March 30, 1983

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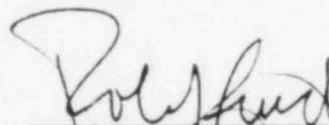
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