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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BRANCH

ATOMIC SAFETY AND LICENSING BOARD

BEFORE ADMINISTRATIVE JUDGES

SERVED JAN 10 1983

James L. Kelley, Chairman
Dr. A. Dixon Callihan
Dr. Richard F. Foster

In the Matter of
DUKE POWER COMPANY, ET AL.
(Catawba Nuclear Station,
Units 1 and 2)

ASLBP Docket No. 81-463-010L

Docket Nos. 50-413
50-414

January 7, 1983

MEMORANDUM AND ORDER
(Denying Motion for Postponement of Discovery)

The Board's Memorandum and Order of December 22, 1982 set a series of deadlines designed to expedite discovery and scheduled another prehearing conference for January 20-21, 1983 to discuss scheduling and discovery matters. On December 23, 1982, the Commission issued an Order calling for review of two questions growing out of the Appeal Board's ALAB-687 decision. Initial briefs to the Commission are due on January 24, 1983.

In these circumstances, Palmetto Alliance has made an oral motion to postpone further formal discovery on the presently admitted contentions until after the Commission decides the issues before it. The Board and parties participated in a telephone conference call on January 6, 1983 in which the viewpoints of the parties were heard at some length.* For the reasons summarized hereafter, the Board has decided to deny Palmetto's motion and to adhere to the schedule previously established.

Palmetto advanced two principal arguments in support of its motion. First, Palmetto contended that the Commission's pending review of ALAB-687 portends significant changes in the ground rules on admissibility of contentions. Such changes, it was suggested, could result in admission of previously rejected contentions that are more central to Palmetto's concerns than its presently admitted contentions. And, if that were to happen, Palmetto argued that going ahead with discovery now could be counterproductive because some of those less significant contentions might later be negotiated out of the case.

The Staff and the Applicants disagreed, arguing that any Commission decisions on the pending ALAB-687 issues would be largely prospective in effect, with little or no impact on presently admitted or previously rejected contentions.

The Board generally agrees with the Staff and the Applicants about the likely impact of the pending Commission review. Of course there is a large

* All parties participated except CMEC. Their representative, Mr. Presler, was unavailable but he had agreed in an earlier discussion with the Chairman that the conference was unlikely to affect CMEC's interests and that it could appropriately proceed without him.

element of speculation in predicting how those issues will be decided. Nevertheless, the Commission's selective framing of issues for review tells us something. For one thing, the Commission's clearly expressed decision not to review the Appeal Board's rulings on conditional admission indicates that the contentions we first admitted on that basis, and have now rejected for lack of specificity, are not going to be affected. The specificity standard is not up for review. Conversely, the issues before the Commission appear to have no bearing on the contentions that have been admitted. Under our analysis, then, there is little risk of wasted motion in going ahead with discovery pending the Commission's decision.

We might be more sympathetic to a brief postponement of definite duration, but this postponement motion is open-ended -- until the Commission renders its decision. Given the briefing schedule and allowing time for collegial adjudication, a Commission decision before mid-March seems unlikely. We note in this connection that ALAB-687 was rendered in August 1982 and the Commission's review order came down more than four months later. Thus it appears that the Palmetto motion would probably entail a delay of three months or more.

Palmetto's other argument in support of its motion concerns the burdens its counsel is presently bearing in this and other cases. While we have some sympathy for this workload problem, counsel are nevertheless under an obligation to adjust their workloads in order to meet their responsibilities in this case in a timely fashion. The discovery obligations falling on Palmetto in the next few months should come as no surprise. Indeed, Palmetto's immediate obligations arise principally from the second chance the Board is giving it to advance more precise statements

of their grounds for certain motions to compel; thus Palmetto should already be familiar with this material.

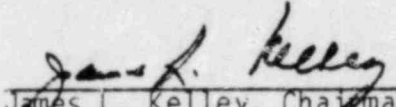
Palmetto argued in conclusion that since the Board suspended discovery at the Applicants' and Staff's behest last summer, it should do the same for Palmetto now. Parties should be treated equally, but only when the relevant circumstances are similar. Here they are not. When we suspended discovery last summer, it appeared that the questions certified to the Appeal Board could have a major effect on the admitted contentions. That proved to be true. As we have explained, however, we do not expect a similar effect from the pending Commission review. Last summer, the Applicants had just announced a postponement in their construction schedule and the schedules for Staff documents were adjusted correspondingly. There was then no pressing need to get on with discovery. It now appears, however, that discovery must go forward if we realistically expect to commence an evidentiary hearing next fall.

What we said in our December 22 Memorandum and Order bears repeating here: "We will take all necessary steps to avoid undue delay in this case." From our present perspective, Palmetto's motion would virtually guarantee a substantial and unnecessary delay, one that could postpone this Board's decision beyond the Applicants' presently expected fuel loading date of October 1984. The Palmetto motion is denied.

In our December 22 Order, we tentatively scheduled a third prehearing conference for January 20-21. It was suggested on the telephone that a conference was unnecessary and that the pertinent items could be adequately discussed by telephone conference call. The Board believes that

fact-to-face discussions would be more effective, but that one day should suffice. The conference is scheduled for Thursday, January 20, 1983 in Charlotte, N.C. You will be notified shortly of the exact time and place.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


James L. Kelley, Chairman
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland,
this 7th day of January, 1983.