

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD '83 FEB 10 A8:22
BEFORE ADMINISTRATIVE JUDGES

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

SERVED FEB 10 1983

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

ASLBP Docket No. 81-463-01 0L

Docket Nos. 50-413
50-414

February 9, 1983

MEMORANDUM AND ORDER
(Ruling on Motions to Compel Discovery)

On September 22 and December 31, 1982, the Applicants' filed certain responses and objections to interrogatories served on them by Palmetto Alliance concerning Palmetto Contentions 6, 7, 44, 8 and 27. On January 28, Palmetto served a "Motion to Compel Discovery and Supplement to Motions to Compel Discovery" in response to our Order of December 22, 1983 and the extensions of time granted by our Order of January 14, 1983. This Memorandum and Order rules on the disputed interrogatories.

Palmetto's introductory comments concern their situation as a party with limited resources versus a well-funded Applicant and NRC Staff in possession of most of the relevant technical information. They ask to be relieved of the handicaps that fall upon them when their adversaries allegedly attempt to wage a "war of attrition" in the discovery process. The Commission has instructed us, on the one hand, to "endeavor to conduct the proceeding in a manner that takes account of the special

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circumstances faced by any participant." Statement of Policy on Conduct of Licensing Proceedings. 13 NRC 452, 454 (1981). But at the same time the Commission has also told us that "the fact that a party may ... possess fewer resources than others to devote to the proceeding does not relieve that party of its hearing obligations." Id. And the only direct way to alleviate an imbalance in financial resources among parties -- financial assistance -- has been proscribed by the Congress. Section 188, P.L. 97-377. As we see it, then, there are severe limits on this Board's ability to alleviate the burdens on a party with limited resources, other than to encourage informal discovery, as we have been doing. Nevertheless, we will bear Palmetto's resource problems in mind, as appropriate, in considering the individual objections and responses.

We have considered each of the Applicants' objections and Palmetto's responses in arriving at our rulings. In the interest of brevity, these objections and responses will not be restated here.

General Interrogatory 4. Objection sustained in part and overruled in part. The question as phrased includes communications with counsel, but is not limited to such communications. Applicants are to provide a list of all communications covered by this question, with particularized justifications where privilege is claimed, except for oral communications with counsel. The list is to include, but is not limited to, communications with outsiders -- i.e., it also includes communications involving only the Applicants' employees -- e.g., a plant worker and his supervisor.

Contention 6

Interrogatory 1. Objection sustained. The question calls for an abstract legal conclusion unrelated to the factual bases of the contention.

Interrogatories 2 and 4. The ruling on interrogatory 1 eliminates these interrogatories.

Interrogatories 5 and 6. Objection overruled. The only possible answer to these abstract questions is "yes." No further answers will be required.

Interrogatory 11. Objection sustained. The Applicants' inclusion of the bases for their answers in the individual answers is appropriate. There is no reason for them to answer this catch-all question separately.

Interrogatories 12-14. Objections sustained. Palmetto could have limited this question substantially, as the Board limited Palmetto's initial Contention 6. Instead, Palmetto is pressing broad interrogatories that speak comprehensively to every problem the Applicants' have experienced in quality control at Catawba and at their other facilities. These questions go far beyond Contention 6 as admitted. In the circumstances, the Applicants' response of making available their significant deficiency and audit reports for Catawba is appropriate. Having chosen this dragnet approach, the burden of digesting those reports must fall on Palmetto, notwithstanding its limited resources. Should Palmetto frame more specific follow-up questions in this area, the Applicants might be required to supply more specific answers. As

illustrated hereafter, we are not ruling out the possibility of considering properly focused evidence from other Duke facilities on this contention, if its probative value and relevance are apparent. But we will not sanction open-ended discovery with respect to Duke's other facilities.

Interrogatory 15. Objection sustained. This interrogatory should be directed to the NRC Staff, leaving to the Staff any objection they may have.

Interrogatory 16. Objection sustained. The Applicants' answer appears to be responsive. If it proves not to be, follow-up questions are available. That a Board and two parties should be writing to each other about this demonstrates the superiority of depositions or informal discovery.

Interrogatories 17, 18 and 21. Objections sustained, substantially for the reasons given by the Applicants. In addition, Interrogatory 21 far exceeds the scope of this contention and therefore no greater specificity is being required of the Applicants.

Interrogatory 22. Objection overruled in part and sustained in part. The Applicants view of Contention 6 as limited to the concerns of Hoopingarner and McAfee is too narrow. Contention 6 extends to discoverable matters relating to any "systematic deficiencies in plant construction and company pressure to approve faulty workmanship."

Palmetto's need for most of the information sought by this interrogatory is apparent. How can it develop evidence for a contention of this kind, except by talking to present and past Duke employees? If some present employees are unwilling to talk voluntarily, Palmetto may

take their depositions and may later seek to subpoena them as witnesses. But Palmetto at least needs to know names and addresses. Whatever rights of privacy Duke's nuclear employees may possess, they do not extend to complete insulation from contact with intervenors in licensing proceedings. Accordingly, the Applicants are to respond fully to the first sentence of this interrogatory, including dates of termination for terminated employees. By "persons employed in QA and C programs," we mean those whose primary responsibilities are in those programs, not every employee who may be affected by those programs.

We are sustaining the Applicants' objections to the second and third sentence of this interrogatory seeking reasons for and circumstances surrounding termination. This is very sensitive information that is normally kept confidential and which, as the question is framed, might have had nothing to do with QA or QC matters. This contrasts with the limited disclosure of termination information we are requiring in response to Contention 7, Interrogatory 16, which relates only to persons terminated for relevant reasons.

Interrogatories 23 and 25. Objections overruled. These questions are reasonably specific and plainly within the scope of Contention 6. The number of documents is apparently not burdensome. Accordingly, Applicants are to answer the question specifically. By the time these answers are due, it should be possible to provide complete answers.

Interrogatories 26. Objection sustained. This should be directed to the NRC Staff.

Interrogatory 27. Objection sustained. See ruling on Interrogatory 4 above.

Contention 7

Interrogatories 5 and 8. Objections sustained. See ruling on Contention 6, Interrogatory 4.

Interrogatories 11-14. Objections sustained. These four questions are about as broad as can readily be conceived of in an NRC proceeding. Although they are arguably within the outer scope of Contention 7, which is itself quite broad, the burdens involved in preparing full responses to these questions would be out of all proportion to the potential benefits to Palmetto. The bulk of the information Palmetto seeks is in the reports the Applicants are making available. Moreover, the details of individual instances of noncompliance are not the focus of this contention. Rather it is the attitudes and practices of the Applicants' management, as evidenced only in part by the ways in which they have dealt with problems, that are most germane to this contention. Depositions of cognizant senior management personnel would appear to be a much more efficient way to explore the most significant aspects of this matter.

In the alternative, Palmetto asks that these reports be furnished to it at no cost. If this were a modest volume of paper in response to a more specific question, we might exercise our discretion to order service of copies on the Intervenor in lieu of a specific answer. But we are dealing here with a sweeping request for a very large volume of paper -- several thousand pages at least. Accordingly, Palmetto will have to bear the expenses of any copying it desires.

Interrogatory 16. The Applicants six pages of objections are overruled, except as noted below. The Board would appreciate more concise statements of objection in the future. Our discussion of Contention 6, Interrogatory 22, above, is partly applicable here. This information is obviously relevant to the contention. For example, if it develops that no one has ever been disciplined or fired at Catawba for violating an NRC regulation, that might be highly relevant to managerial attitudes. We also question the Applicants' claim of burden as to Duke employees. Surely they know or can easily find out the names of people they have disciplined or fired for violating NRC regulations.

As discussed under Contention 6, Interrogatory 22, the reasons for and circumstances surrounding disciplinary actions and firings are sensitive and should be kept confidential, to the extent practicable. Therefore, disclosure of such information will be conditional upon the execution of affidavits by Counsel for Palmetto and no more than one other person working with him that such information will not be disclosed by them to others pending further consideration of the matter by the Board prior to the evidentiary hearing. The Applicants are to submit a proposed form of affidavit with the remainder of their answers to these interrogatories. Upon its possible modification and approval by the Board, and execution and return by Palmetto, the Applicants shall supply the requested information about reasons for disciplinary action or termination.

This question is too broad in two respects. First, it reaches all the way back to the beginning of the Applicants' involvement with nuclear power. Proof of a lax attitude toward safety a decade ago may

take much time and effort to adduce and yet say little about an applicant's present attitudes. We are therefore limiting this question to information about adverse personnel actions taking place since January 1, 1978. Second, we are not requiring the Applicants to assemble information about employees of its contractors and subcontractors at facilities other than Catawba. While possibly of some relevance, such information is relatively remote to the contention and its compilation could be quite burdensome.

Interrogatory 17. Objection overruled. The documents Applicants propose to provide for inspection and copying, in lieu of specific answers to this question, do not appear to be voluminous. Applicants are to either answer these questions specifically or provide copies of the documents to Palmetto.

Contention 44

Interrogatories 2, 3 and 4. Objections overruled. Applicants have simply asserted that the Oconee reactor vessel is "of a different design" from Catawba and therefore "not relevant." They have not offered any technical explanation and support for these claimed design differences. A full answer to Interrogatory 3 demonstrating design differences would obviate an answer to Interrogatory 2. Absent a showing of design differences, these interrogatories may lead to admissible evidence and are therefore permissible. They are not unduly burdensome because they relate to a specific problem at a few

facilities. The showing of design differences may lend itself more readily to the summary disposition procedure.

Interrogatory 11. Objection sustained in part and overruled in part. As to facilities other than Catawba, new material need not be written; production of relevant existing documents will suffice. In the alternative, the Applicants may show that any embrittlement problems at other facilities are irrelevant to Catawba because of design differences.

Interrogatory 15. Objection sustained in part and overruled in part. The requested information is to be provided for inspection and copying as to all Duke reactors, in the absence of a lack of significance showing as previously described.

Interrogatory 22. The interrogatory appears to be redundant to several previous interrogatories and to that extent need not be answered. Any other previously compiled information it encompasses about Duke reactors should be produced, in the absence of a lack of significance showing. The aspect concerning Westinghouse participation is limited to Duke facilities in which Westinghouse was involved.

Interrogatory 23. Objection overruled. The Applicants must have thought that this information had some bearing on the Catawba application or they would not have referenced it in the Catawba FSAR. It appears to be relevant to Contention 44.

Interrogatories 25-35. Objections overruled. These interrogatories seek a variety of data bearing on the possibility of the embrittlement phenomenon at Catawba and Oconee. The Applicants decline to answer as to Oconee. As discussed above, such evidence may indicate an

embrittlement problem at Catawba, in the absence of a showing of design differences such that Oconee's experience is irrelevant to Catawba. As to each of these interrogatories, the Applicants should either produce the requested information or show why it is irrelevant to Catawba.

Contention 8

Interrogatory 2. Objection overruled, substantially for the reasons advanced by Palmetto. While we do not go so far as to endorse a blanket statement that all aspects of operator qualifications and evidence on the the subject at all Duke Power facilities is discoverable, this request is not so burdensome that Applicants should be protected from producing the requested information.

Interrogatory 3. Objection overruled in part, sustained in part. Criteria other than work experience can be relevant to the ability to safely operate a reactor. Applicants should furnish the requested information as it pertains to reactor operators only. The Board sees no reason to extend the scope of the inquiry past those who will be charged with the actual operation of the reactor. Palmetto has not defined the term "all control room personnel."

Interrogatory 11. Objection overruled. Applicants construe the scope of the contention too narrowly. Palmetto is entitled to an explanation of terms used in the Applicants' own FSAR. The information sought is relevant to the safe operation of the reactor and related to "hands on" experience.

Interrogatory 15. Objection sustained. The bases for the Applicants' answers to the referenced interrogatories appear to be adequately stated in those interrogatories.

Interrogatory 16. Objection overruled. The extent and relevance of the prior experience of the Applicants' operators are basic to this contention. This information should be provided along with the operators' resumes. In lieu of providing this written information, the Applicants may make these operators available to Palmetto for an interview, which may be attended by counsel for both parties and be recorded.

Interrogatory 19. Objection overruled. This is a fair question which requires a simple, straightforward answer.

Interrogatory 24. Objection sustained. See our ruling on Interrogatory 15.

Interrogatory 35. Objection overruled. Test results bear on operator competence. To protect the privacy of the operators involved, the Board orders that test results be provided with the names of operators and all identifying features deleted. A lettering system may be used to identify each paper. See Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 1), LBP-81-50, 14 NRC 888, 890 (1981).

Interrogatory 36. Objection sustained. The question is irrelevant to the contention.

Contention 27

Interrogatory 2. Objection sustained. The response provided is adequate.

Interrogatory 4. Objection overruled. The NRC's regulatory standard for emergency offsite monitoring (10 CFR 50.47(b)(9)) does not establish performance criteria. The answer to this question may be useful in assessing the adequacy of Applicants' radiological monitoring system.

Interrogatory 6. Objection sustained. If the Applicants' system is found to be adequate, cost is irrelevant. The Board notes, however, that if the adequacy of the system proves to be a close question, its relative cost may become relevant at a later date. We will reconsider our ruling at that time if necessary.

Interrogatories 7 and 8. Objections sustained in part, overruled in part. We agree with Palmetto that it is entitled to know the bases on which the selection of Applicants' radiological monitoring system was founded. This matter is likely to surface during the proceeding as being directly relevant to Palmetto's allegation that Applicants' system is inadequate without real time monitors. The scope of these interrogatories is, however, too broad. It should not be necessary to require Applicants to detail all manufacturers consulted and components considered. A description of the selection process and principal reasons for rejecting components considered should suffice. This is a matter that would be best probed through a deposition of the Duke employee principally responsible for the selection process.

Interrogatory 10. Objection sustained in part, overruled in part. Applicants shall identify all communications with the NRC concerning the abilities of offsite radiological monitoring systems at other nuclear plants operated by Duke Power to operate during emergency conditions. A comparison with other plants operated by Applicants may aid in evaluating Catawba's capabilities. Since the contention's principal concern is emergency conditions, the scope of the response required is so limited.

Interrogatories 11, 12 and 13. Objections sustained in part, overruled in part. Applicants should confine their responses to emergency conditions only, for the reasons stated in our ruling on Interrogatory 10.

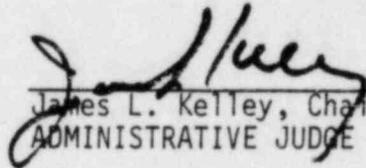
Interrogatories 23 and 24. Objections overruled in part. Applicants are directed to answer, but only to the best of their knowledge. Additional market research is not required.

Interrogatories 25, 26, 27. Objections sustained. These questions are more appropriately directed to the NRC Staff. Applicants should not be asked to serve as gatherers of technical information for Palmetto. "While a party must furnish in his answer to interrogatories whatever information is available to it, ordinarily it will not be required 'to make research and compilation of data not readily known to him.'" Boston Edison Company, et. al. (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 5/9, 584 (1975) (footnote omitted).

Under the schedule established by our order of December 22, 1982, as extended, these rulings are being issued one day late. The

Applicants' time for responding is accordingly extended one working day,
until February 28, 1983.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


James L. Kelley, Chairman
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland,
this 9th day of February, 1983.