UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

BEFORE ADMINISTRATIVE JUDGES

James L. Kelley, Chairman
Dr. James H. Carpenter
Glenn O. Bright

SERVED MAR 11 1983

In the Matter of	ASLBP No. 82-468-01OL
CAROLINA POWER & LIGHT COMPANY AND NORTH CAROLINA EASTERN MUNICIPAL POWER AGENCY	Docket Nos. 50-400 50-401
(Shearon Harris Nuclear Power Plant, Units 1 and 2)	March 10, 1983

MEMORANDUM AND ORDER
(Reflecting Decisions Made Following Second Prehearing Conference)

On February 24, 1983, the Board conducted a second prehearing conference with the parties in Raleigh, North Carolina. Participating in the conference were: Charles A. Barth, Esq., Stuart Treby, Esq. (Assistant Chief Hearing Counsel), Prasad Kadambi (Project Manager), and Bradley Jones, Esq., (Regional Counsel), for the NRC Staff; Thomas A. Baxter, Esq., John H. O'Neill, Jr., Esq., Samantha Francis Flynn, Esq., for the Applicants; Daniel F. Read for Chapel Hill Anti-Nuclear Group Effort (CHANGE); Wells Eddleman, Pro Se; John D. Runkle, Esq., for Conservation Council of North Carolina (CCNC); M. Travis Payne, Esq., for Kudzu Alliance; and Dr. Richard Wilson, Pro Se. Deborah Greenblatt, Esq., appeared and participated for Intervenors Eddleman, CHANGE and

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Kudzu Alliance with respect to security issues.[1/] This order memorializes the stipulations and rulings made at the conference and sets forth (1) a comprehensive schedule for the remainder of the proceedings, (2) guidelines for discovery, and (3) rulings on related matters.

I. Schedule.

In our January 21, 1983 conference call and our January 25, 1983 memorandum (Memorializing Conference Call of January 21, 1983) we invited parties to submit proposed schedules for the remainder of the proceedings. We enclosed with that memorandum the Commission's Statement of Policy on Conduct of Licensing Procedures. This statement sets forth the NRC's policy of attempting to complete licensing proceedings prior to the time the plant is ready to operate, if that can be done consistent with a fair hearing. In accordance with that policy, we are adopting the Applicants' projected fuel loading date for Unit 1 of June 1985 as a target date by which the licensing review should be completed, with the possible exception of off-site emergency planning issues (resolution of which should be well along by that time).

1/ Ms. Patricia Newman of Citizens Against Nuclear Power (CANP) attended the conference as an observer, but did not participate. Dr. Phyllis Lotchin, a petitioner for intervention to whom notice of the conference had been sent, did not attend.

Both Applicants and Intervenors CHANGE, CCNC, Eddleman, and Kudzu Alliance submitted proposed schedules which were used as a basis for negotiation prior to the commencement of the conference. In addition, Applicants submitted a separate proposed schedule for physical security plan issues. The parties agreed to the concept of two parallel schedules -- one for environmental, safety, and emergency planning issues and the other for physical security plan issues. Therefore, we discuss and set forth these schedules separately in this order. We have attempted to reflect in the schedules all areas of agreement among the parties, which we describe in the following propositions:

1. that as issues become ripe they shall be tried in a convenient group and decided by the Licensing Board (Tr. 473);

2. that the admitted contentions will be litigated as grouped in the Applicants' proposed schedule (Tr. 475-6);[2/]

3. that there will be a two-phase safety hearing -- the first phase consisting of management capability issues and the second phase consisting of all other safety issues. Discovery shall be

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2/ Mr. Runkle stated that he might wish to request that a contention now scheduled for the environmental hearings be rescheduled for the safety hearing. The Board indicated that there is often no sharp line between "safety" and "environmental" issues, that the scheduling of an issue for one hearing or another is usually more a matter of convenience than the issue's inherent nature. Should a party discover a problem in litigating a contention at the environmental hearing, it should attempt to get agreement from the other parties to reschedule it for the safety hearing. If unsuccessful in this attempt, the party may file a motion with the Board (Tr. 494-6).

completed and testimony filed on all safety issues prior to the commencement of the first phase. However, there shall be a break of 2-4 weeks between the two phases to allow the parties to prepare their cross-examination for the second phase (Tr. 474 and 484);

4. that the last date for filing discovery requests for safety contentions will be 65 days following completion of the environmental hearing (Tr. 475, 498);

5. that the date for responding to discovery requests on all safety contentions other than those on which Applicants might seek summary disposition will be deferred until after the completion of the environmental hearing. Specifically, the safety issues to which answers to discovery requests may be deferred are the management issues: Joint Contention 1 (adopted by CANP as their Number 3), Wilson III, Joint Contention VII, and Eddleman Contentions 9, 11, and 16 (Tr. 476-8);[3/]

6. that the time for filing responses to discovery requests will be tolled whenever the parties are in a hearing session until completion of that hearing (Tr. 478-9, 494);

7. that with respect to additional contentions that might arise from the DES, discovery requests will be submitted within 90 days of the date of the order admitting the contentions, and responses to the

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3/ Staff suggested that Eddleman Contention 41 also be treated as a management capability contention and Mr. Eddleman had no objection (Tr. 497). The Board agrees.

discovery requests will be due within 120 days of the date of that order (Tr. 479, 483); and

8. that emergency planning contentions will be served within 30 days after the emergency plan has been made available (Tr. 485).

By incorporating these agreements into the schedules, we note that the schedules will be subject to any changes that these agreements might mandate , a rolling deadline for responding to discovery during a hearing. We note in addition that certain Intervenors questioned the likelihood that Applicants would meet their projected June 1985 fuel loading date. We directed the Staff and Applicants to notify us promptly of any significant change in Applicants' projected fuel load date. If that happens, we can re-examine the schedule and make any appropriate changes (Tr. 469). Finally, we have no doubt that there could conceivably be an even better schedule than the one we are now adopting. Should any party discover a date that seems contrary to an agreement of the parties or objectionable for some other reason, please file an objection and a suggested correction by March 25, 1983. We received earlier today a "Revised Proposed Schedule" from the Applicants dated March 8, 1983. This document was unexpected and came too late for consideration in development of the Board's schedule. However, we will treat any differences it reflects as early objections to our schedule and the Applicants may, of course, file additional objections by the deadline.

A. Schedule on Environmental, Safety, and Emergency Planning Issues.

1. Environmental Contentions.

- Joint Contention II (CANP 5)

- CCNC 4, 12 and 14

- CHANGE 9 and 79 (c)

- Wilson Ia-d, I(e)-(f4), I(g), and IVC

- Eddleman 15, 22A & B, 29 & 30 (CANP 6), 37B (CANP 5), 75, 80, 83 and 84

The foregoing contentions, and any other environmental contentions subsequently admitted, shall be adjudicated after completion of the NRC Staff's environmental review on the following schedule:

June 30, 1983	Last day for filing discovery requests on contentions currently admitted by ASLB.
July 29, 1983	Last day for filing responses to discovery on contentions currently admitted by ASLB.
90 days after relevant ASLB order admitting contentions	Last day for filing discovery requests on new/deferred contentions based on NRC Staff's draft environmental statement.
120 days after relevant ASLB order admitting contentions	Last day for filing responses to discovery on new/deferred contentions based on NRC Staff's draft environmental statement.4/
September 1, 1983	Last day for filing motions for summary disposition.

4/ The Final Environmental Statement may moot some previously admitted contentions and provide a basis for new contentions. However, we are not providing separate dates for those possibilities. We will deal with them as they arise, case-by-case.

September 26, 1983	Last day to answer any motions for summary disposition.
October 24, 1983	Board ruling on any motions for summary disposition.
December 9, 1983	Filing of direct written testimony.
January 4, 1984	Commencement of hearing.

2. Safety Contentions.

- Joint Contentions I (CANP 3), IV, V, VI, and VII (CANP 2 -- part (2) only)
- CHANGE 44
- Wilson III
- Eddleman 9, 11, 41 (CANP 4), 45, 64(f), 65, 67, 116 and 132

The foregoing admitted contentions and any subsequently admitted safety contentions shall be adjudicated on the following schedule:

March 15, 1984	Last day for filing discovery requests.
April 16, 1984	Last day for filing responses to discovery requests.
May 16, 1984	Last day for filing motions for summary disposition.
June 11, 1984	Last day to answer any motions for summary disposition.
July 11, 1984	Board ruling on any motions for summary disposition.
August 9, 1984	Filing of direct written testimony.
September 5, 1984	Commencement of Phase I hearing (management capability issues).

October 10, 1984 — Commencement of Phase II hearing (remaining safety issues).5/

3. Emergency Preparedness Contentions.

There are currently no admitted emergency preparedness contentions. Applicants have indicated that the draft off-site plans should be available in December 1983. Assuming that both the on-site plan and the off-site plans are available by that date, emergency planning contentions shall be litigated according to the following schedule:

March 1, 1984	Filing of proposed emergency preparedness contentions.
March 19, 1984	Filing of responses by Applicants and Staff to Intervenors' proposed contentions.
April 16, 1984	Board ruling on proposed contentions; discovery begins.
July 16, 1984	Last day for filing discovery requests.
August 20, 1984	Last day for filing responses to discovery requests.
November 1, 1984	Last day for filing any motion for summary disposition.
November 19, 1984	Last day to answer any motion for summary disposition.
December 19, 1984	Board ruling on any motion for summary disposition.
January 14, 1985	Filing of direct written testimony.
February 4, 1985	Commencement of hearing.

5/ A 3-week break between the completion of Phase I hearings and the commencement of Phase II hearings has been factored in.

B. Schedule for Physical Security Plans Issues.

Applicants distributed at the prehearing conference a proposed schedule for physical security plan issues which served as the basis for discussion. Applicants indicated that the security plan should be ready for access in time for Intervenors' experts to examine it and file contentions on it by August 1, 1983 (Tr. 521). In light of the comments at the conference we have revised Applicants' proposed schedule, and adopted it, as follows:

March 18, 1983	Intervenors file with Applicants and Staff a resume for each proferred expert and a brief statement of the area of expertise for which the expert is being offered.
April 18, 1983	Depositions of Intervenors' proposed experts.
May 10, 1983	Staff and Applicants briefs on qualifications of Intervenors' proposed experts.
May 23, 1983	Intervenors file reply brief on qualifications of their proposed experts.
June 10, 1983	Board ruling on qualifications of Intervenors' proposed experts.

(Remainder of schedule assumes Board has qualified an intervenor expert; following such a ruling, a protective order would be entered and the expert(s) would review designated portion(s) of the plan.)

August 10, 1983	Intervenors file proposed contentions.
September 1, 1983	Applicants and Staff file responses to proposed contentions.
September 12, 1983	Prehearing conference.
October 3, 1983	Board ruling on proposed contentions.

(Remainder of schedule assumes one or more contentions admitted.)

December 12, 1983	Last day for filing discovery requests.
January 12, 1984	Last day for responding to discovery requests.
February 23, 1984	Filing of direct, written testimony.
March 15, 1984	Hearing begins.

C. Miscellaneous Due Dates.

In our February 10, 1983 Memorandum and Order (Concerning Prehearing Conference of February 24, 1983) we suspended the due dates for responding to outstanding discovery requests and stated that we would set new deadlines after the conference. We set forth at the conference and repeat herein those new deadlines, as well as (1) the date for Applicants and Staff to respond to Mr. Eddleman's revised, amended and additional contentions, (2) the date for Mr. Eddleman to file any petition for waiver of the need for power rule, and (3) an approximate date for the next prehearing conference (probably including a site visit).

March 10, 1983	Last day for all parties except Mr. Eddleman to respond to interrogatories suspended by the Board's Order of February 10, 1983.
March 11, 1983	Applicants and Staff to respond to Mr. Eddleman's revised, amended and additional contentions dated February 11, 1983, based on Eddleman 15.
March 21, 1983	Last day for Mr. Eddleman to respond to interrogatories suspended by the Board's Order of February 10, 1983.
June 30, 1983	Last day for Mr. Eddleman to file petition on waiver of the need for power rule.
June, 1983	Prehearing Conference to consider new contentions, and site visit.

II. Discovery.

The conference included a general discussion of the timing and mechanics of interrogatories among parties and the Board's enforcement role (Tr. 543-580). We will not recapitulate all of the matters touched upon in that discussion. However, we discuss certain points briefly below because they may appear to reflect departures from the letter of the rules or because we are elaborating on the discussion at the conference.

Informal Discovery. The Board encourages the parties to resolve discovery disputes informally through negotiation and reasonable compromise, without invoking formal Board processes by a motion to compel or answer thereto. To that end, a party is required to consult informally with its adversary party and seek to resolve any discovery differences before filing a formal objection pursuant to 10 CFR 2.740b(b), a motion to compel pursuant to 10 CFR 2.740(f), or an answer to a motion to compel pursuant to 10 CFR 2.730(h). Any such formal filings shall certify and briefly describe the filing party's efforts to resolve the dispute informally. A sample copy of such a certification is attached for your information. Repeated efforts at negotiation should be undertaken at each of these pleading stages in order to consider changed circumstances and new arguments, unless it is obvious that further negotiations would be futile.

Motions for Protective Order (10 CFR 2.740(c)). As reflected in the discussion, the Board does not believe that these "motions" serve

any useful purpose. Insofar as they might contain reasons why a Board should not enforce particular discovery, those reasons should be set forth in timely objections to interrogatories. If they are viewed as a substitute for an objection, they merely slow a process that is slow enough already. No party will be prejudiced by any failure to file a motion for protective order.

Motions to Compel. The rule (10 CFR 2.740(f)) requires that these motions be filed within ten days following the date of the adversary's responses or objections, plus five days if mail service is used. If a timely motion to compel is not served, the adversary's objections and the sufficiency of his answers will be deemed automatically sustained by virtue of the rule alone. No Board ruling will issue. The Board recognizes, however, that we are also requiring negotiation as a precondition to filing a motion to compel, and that ten days may not be enough time for that purpose. Accordingly, if negotiations are ongoing but a motion to compel may eventually be necessary, the party seeking to preserve its right to move to compel should, by the motion filing deadline, write a brief letter to the Board (copy to his adversary) stating that (1) negotiations are ongoing and (2) if negotiations are unsuccessful, that party will serve a formal motion to compel within ten days following the termination of negotiations.

Answers to Motions to Compel. These pleadings are authorized by 10 CFR 2.730(h), but they are never required. Generally speaking, the Board regards these pleadings as unnecessary because parties can usually state their objections fully in response to the original interrogatory.

This is particularly true where, as here, the parties are being required to negotiate before filing formal objections. Moreover, like motions for protective orders, "answers" to motions to compel make a time-consuming process slower still, by adding two to three weeks to the pleading cycle. This Board does not intend to employ the optional procedure in the rule of receiving these pleadings on the telephone and thereafter summarizing the "views presented by the parties." In sum, this Board does not, as a general proposition, view answers to motions to compel with favor. Should a party nevertheless feel constrained to exercise its right to file such an answer, it should advise the Board Chairman of its intention to do so within two days following its receipt of the motion to compel. The Board Chairman may, if circumstances warrant, exercise his authority under 10 CFR 2.711(a) to shorten the time otherwise available to file an answer. As noted previously, a further attempt to negotiate is also a prerequisite to filing an answer to a motion to compel.

Regulatory Basis for Contentions. The Chairman's comments on this subject at the conference (Tr. 564) were unclear. Rather than to attempt to convey the "regulatory basis" concept by editing the transcript, it seems preferable to supply you with a xerox copy of a portion of a recent written order from the pending Catawba case, where this concept is discussed in greater detail. This material is Attachment 1.

Rounds of Discovery. At the prehearing conference, Intervenors CHANGE, CCNC, and Kudzu Alliance and Applicants indicated that they had agreed to limit discovery with respect to interrogatories and requests

for production of documents to two rounds. They also concurred with the Chairman's understanding that under their agreement parties would have an opportunity for more discovery upon a showing of good cause. Intervenor Eddleman and the NRC Staff stated that they were opposed to a rounds limitation (Tr. 562).

We find that the agreement between Intervenors CHANGE, CCNC, and Kudzu Alliance and Applicants provides for a fair and manageable process for discovery. Therefore, discovery shall be limited to two rounds, with the opportunity for more discovery upon a showing of good cause.

Service of Documents. We discussed at the prehearing conference the possibility of cutting back on the number of copies of interrogatories and responses to interrogatories served. The parties indicated that with respect to joint contentions they had agreed that one set of interrogatories and responses to interrogatories would be filed on behalf of all the Intervenors on that contention (Tr. 572-3). We commend that arrangement. In the interest of cutting back even further on unnecessary expenditures by all the parties, we are waiving our right to individual copies of interrogatories and responses to interrogatories for each Board member, plus a copy for the Licensing Board Docket. One copy of these documents served on the Chairman will suffice for our purposes. In addition, we are ordering that only the original of these documents be served on the Secretary of the Commission pursuant to 10 CFR 2.708(d). Similarly, no party shall be entitled to service of more than one copy of these documents, even though several representatives of that party may appear on the service list. Finally, we encourage

parties other than the server and recipient of interrogatories to waive service of interrogatory documents on contentions other than their own. Under this system, we envision that, ideally, it will only be necessary to serve one copy each of these documents on the Intervenor-sponsor of the contention, the Applicants, the Staff and the Board.

Recent Catawba Rulings. Mr. Runkle expressed an interest in certain discovery rulings the Chairman referred to in passing (Tr. 567). As promised, a copy of those rulings from the Catawba case (dated February 9, 1983) is attached hereto. This document assumes knowledge of the associated pleadings and is difficult to read without them. Nevertheless, it may give you some helpful appreciation of one other Board's approach to some typical NRC discovery problems.

III. Related Matters.

Deferred and New Contentions. In our September 22, 1982 Memorandum and Order we deferred consideration of certain contentions until relevant documents become available. We stated that once a document becomes available to Intervenors, they shall have 30 days in which to review it and notify the Board as to whether they intended to (1) stand on the contention as previously filed, (2) withdraw the contention, or (3) revise the contention in light of new information. In addition, the Intervenors have a right to file new contentions based on new information in the document. Taking mailing time into account, we have decided that Intervenors shall have 35 days from the service date of the

relevant document in which to serve such filings. We explained at the prehearing conference that, with respect to new or revised contentions, the Intervenors are required to explain briefly "what's new" in the relevant document; i.e, explain why the contention is dependent upon the new information in the document and could not have been advanced earlier. In addition, they should cite the section in the document where the new information is found (Tr. 538-9, 542). A portion of another recent Catawba ruling applying the "what's new" principle is attached for your information.

Mr. Eddleman's Request for Retroactive Service of Documents. Mr. Eddleman requested that our Order of January 11, 1983 -- directing the Applicants to serve on all six Intervenors copies of any documents they generate for review by the Staff -- be applied retroactively to May 1982, the time when contentions were filed. In the alternative, he requested that all Intervenors be served with the documents that were served on the two lead Intervenors during the period from September 22, 1982 to January 11, 1983. We indicated at the conference that we were not inclined to order service of all the documents generated since May because an intervenor's rights to service normally do not begin until admission as a party. We adhere to that view. After balancing the costs and benefits to all parties, we have also decided to deny Mr. Eddleman's more limited request.

Our Order of January 11, 1983 was intended to be prospective in application. There do not appear to be substantial financial costs involved in this request for retroactivity, for the Applicants or the

Intervenors. Nevertheless, there is a difference in burden between serving a few extra copies of a document at the same time you are serving others, on the one hand, and, on the other hand, searching back through the files for documents served in the past and serving them anew on other parties. Moreover, Mr. Eddleman did not make a showing of a need for a personal copy of particular documents. As we stated in our September 22, 1982 Order, one of the primary reasons for our requiring service of these documents on lead Intervenors was for them to be informed rapidly of any new information. This purpose would not be furthered by retroactive service of those documents now.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

James L. Kelley, Chairman
ADMINISTRATIVE JUDGE

James H. Carpenter
ADMINISTRATIVE JUDGE

Glenn O. Bright
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland,
this 10th day of March, 1983.

ATTACHMENT 1

Attachment 1

more difficult for us to credit such a response to a question about the legal theory of a contention -- e.g., Which NRC regulation is violated by the contention? The contentions were, after all, formulated with the regulations on the table and with considerable information available to the Intervenors. In those circumstances, Palmetto must have had some legal theory in mind. (On the other hand, it is possible that a better legal theory for a contention will evolve as evidence is acquired through discovery.) With these considerations in mind, we could go through the interrogatories and responses and order further answers on certain ones, or perhaps impose some sanction for failing to respond. But that approach is impractical -- as our order at the prehearing conference and Palmetto's response to it have shown -- where an intervenor claims a pervasive lack of knowledge on standard interrogatories.

8. Regulatory Basis for Contentions.

Both the Applicants and the Staff have served interrogatories to determine the "regulatory basis" or "legal theory" for a contention. Such interrogatories are appropriate and important. We say a word on the subject, however, because we disagree to some extent with the Staff's discussion at p. 5 of its November 27, 1982 filing. We agree that there are more-or-less specific NRC rules applicable to most safety aspects of reactors. And it is often said in a general sense (unrelated to technical pleading requirements) that a showing of compliance with the rules entitles an applicant to a license. See Power Reactor Development Corp. v. Electrical Union, 367 U.S. 396, 404 (1961). Thus many safety contentions

are properly phrased in terms of an alleged noncompliance with a rule, which that is always open to challenge. But contrary to the apparent implication of the Staff's discussion, it is not true that all valid safety contentions invariably involve alleged noncompliance with a specific safety rule. In some areas, there is no specific rule but only a Staff regulatory guide; such guides are open to challenge in litigation. Moreover, there are some "gaps" in the regulatory scheme which must be addressed case-by-case because of unique features in the facility or pending development of some generic solution. See generally, Virginia Electric Power Co. (North Anna Station), 8 NRC 245 (1978). A contention about a matter not covered by a specific rule need only allege that it poses a significant safety problem. That would be enough to raise an issue under the general requirement for operating licenses (10 CFR 50.57(a)(3)) for a finding of "reasonable assurance" of operation "without endangering the health and safety of the public."

In this regard, the general rule for alleging an environmental contention is the converse of a safety contention. Unlike the safety area, most environmental issues do not implicate specific environmental standards, but rather involve a balancing of comparative impacts. Thus it is usually legally sufficient to allege that a particular envrionmental impact will have a significant adverse effect on the cost/benefit balance.

9. Sanctions.

The Commission has given Licensing Boards the following guidance on sanctions --

ATTACHMENT 2

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

BEFORE ADMINISTRATIVE JUDGES

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

SERVED FEB 10 1983

In the Matter of	ASLBP Docket No. 81-463-01 OL
DUKE POWER COMPANY, ET AL.	Docket Nos. 50-413 50-414
(Catawba Nuclear Station, Units 1 and 2)	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

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 579, 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.

ATTACHMENT 3

Attachment 3

DES Contentions Rejected As Untimely. Palmetto asks us to reconsider our rulings that the joint DES Contentions 2, 3, 5, 14 and 20 were untimely.[2] The basis of those untimeliness rulings was that all of the essential facts on which the proposed DES contentions were based could have been derived from documents, notably the FSAR and ER, that were available before the initial deadline for contentions. For example, as we noted with respect to DES Contention 2 concerning sulphuric acid drift: "The ER and DES do not differ in material respects in their discussion of this topic." Order at 12. Since we found nothing new on this topic in the DES, and the Intervenors pointed to nothing new, we concluded that DES 2 had to be rejected as untimely. It could not be said in any realistic sense that this contention was, in the words of ALAB-687, "wholly dependent" on the DES, or that it "could not ... [have been] advanced with any degree of specificity ... in advance of the public availability of" the DES. Slip op. at 16.

Palmetto still does not point to any new information in the DES that might justify consideration of these contentions without reference to the lateness factors in 10 CFR 2.714(a)(1). Rather, as we understand the argument, the very fact that Palmetto is seeking to challenge the adequacy of the Staff's draft environmental impact statement in certain respects is enough to make any proposed contentions on the DES timely. We reject this argument. Of course it is true that the adequacy of the

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2 This request also covers DES 21. However, that contention was rejected for lack of specificity, not untimeliness. Order of December 1 at 22.

Staff's NEPA analysis in its impact statement cannot be determined in advance of its availability on the basis of earlier filings by the Applicant. The Commission cannot delegate its NEPA responsibilities to a private party. But this does not mean that an intervenor cannot and should not be held to an "ironclad obligation to examine [on a timely basis] 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." ALAB-687, slip op. at 13. If we were to accept Palmetto's broad contention to the contrary, the so-called "ironclad obligation" would be a shadow without substance, at least with respect to environmental contentions, resulting in an unnecessary prolongation of the time for determining those contentions.

Possibly later in this case, or in other cases, application of the ALAB-687 principles to particular contentions may present some close questions. For example, the basic information underlying a contention might have been available in earlier documents, but the Staff analytical approach, or simply the weight the Staff attached to a particular environmental value, might be "new" (or at least unexpected). Whether a contention based on such elements should be considered "wholly dependent" on the DES would raise issues the Commission may well consider in its pending review of ALAB-687. We mention them here only to underline that the rulings we are now being asked to reconsider did not present these more difficult issues. On the contrary, as we view the present record, if ALAB-687's "ironclad obligation" means anything it clearly requires rejection of these contentions for untimeliness.

ATTACHMENT 4

Attachment 4

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)	)	

CERTIFICATION BY COUNSEL

I, George E. Johnson, Counsel for the NRC Staff in this proceeding, certify that I have made the following efforts to resolve objections the Staff has to certain of Palmetto Alliance First Set of Interrogatories and Requests to Produce, dated April 20, 1982:

1. During the first week of February, 1983, I spoke to Mr. Robert Guild, Counsel for Palmetto Alliance concerning the Staff's objection to interrogatories 3, 4, 8, 10, 15, 26 and 27 on Contention 6, as they relate to quality assurance for the design and operation of the Catawba facility. Mr. Guild indicated that Palmetto Alliance's allegations concerning changes in blue prints to conform with asserted construction errors involved plant design, but that plant operations were further from Intervenor's concerns. I said I would call Mr. Guild later that day after considering his response.

2. Later that day, and on February 9 and 14, I was unable to reach Mr. Guild. He returned one of my calls on February 11, while I was not in the office.

3. In response to Mr. Guild's concerns, the Staff has expanded its responses to cover quality assurance for design change control, but has maintained its objection to responding with respect to quality assurance for design generally, or quality assurance for plant operations.

4. On February 15, 1983, I had further discussions with Mr. Guild, in which he indicated he wanted to see the Staff's responses before taking a position on them. He also wished to see the Staff answer to General Interrogatory 4 for the same reason.

George E. Johnson

Subscribed and sworn to before me
this 17th day of February, 1983

Notary Public

My commission expires: July 1, 1986