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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)	)	

APPLICANTS' RESPONSE IN OPPOSITION TO PALMETTO  
ALLIANCE'S MOTION TO ESTABLISH DISCOVERY SCHEDULE  
ON ITS QUALITY ASSURANCE CONTENTION 6

On May 26, 1983, Applicants received "Palmetto Alliance Motion to Establish Discovery Schedule On Its Quality Assurance Contention 6." The Motion requests that discovery on Contention 6 be reopened for 5-1/2 months so that Palmetto Alliance can complete "preliminary work." In support of its Motion, Palmetto Alliance offers two basic arguments. First, it alleges that despite its best efforts, it has received critical information from Applicants and Staff late in the discovery process, which information requires additional exploration through discovery. Motion at pp. 6-10, 14. As Applicants will show, Palmetto Alliance has been granted every opportunity by the Board and the parties to obtain information necessary to support its contention. It was accorded an unusual first right of discovery. It was granted multiple extensions of time. It was advised by the Board at an early stage to

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pursue Contention 6 by various discovery means. It was provided timely access to relevant documents and information on Contention 6.<sup>1</sup> However, despite being given great flexibility in its conduct of discovery, and despite being provided with the information it requested, the fact that Palmetto Alliance now seeks a lengthy extension suggests that it has either improvidently pursued discovery or that it is seeking to take further advantage of the discovery process after the deadline imposed by the Board.

The second prong of Palmetto Alliance's argument in support of its Motion is that the Government Accountability Project (GAP) has agreed to assist the intervenor in investigating "Catawba worker concerns and adequacy of NRC efforts in response," (Motion at p. 13) and that additional

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<sup>1</sup> The vast majority of the documents requested by Palmetto Alliance in discovery have been available for inspection and copying since February-March of this year. Further, the document upon which Palmetto Alliance has focused the greatest attention, viz, Applicants' Catawba Welding Inspector's Task Force Report, was identified in the NRC Staff's September 14, 1982 letter to the Board and parties at Section III (pp. 11-12) of the Enclosure to the July 30, 1982 Memorandum from R.C. Lewis to D.G. Eisenhut. It should also be noted that many of the documents requested by Palmetto Alliance in discovery (i.e., 10 CFR §50.55(e) reports and NRC inspection reports) have been available in the local and Washington, D.C. Public Document Rooms from the date of filing (i.e., an August 1978 inspection report would have been placed in the Public Document Room on or about August 1978). Thus, these documents have been, and are, available to Palmetto Alliance totally independent of discovery on Contention 6, independent of the existence of Contention 6 and indeed independent of the existence of this proceeding.

time is necessary for this effort because "significant documentary analysis as well as the critical field work with present and former Catawba workers [is] now only beginning" (Motion at p. 16). As Applicants will show, GAP's role in this proceeding is anything but clear. In addition, GAP could have been brought into this proceeding months/years ago. The fact that Palmetto Alliance waited until one month before the close of discovery to enlist GAP's services further reflects its failure to fulfill its discovery responsibilities. Accordingly, Applicants oppose Palmetto Alliance's Motion, maintaining that good cause does not exist for a reopening of discovery on Contention 6. The bases for Applicants' opposition are set forth in detail below.

#### BACKGROUND

On July 22, 1981, Palmetto Alliance filed a Petition to Intervene in this proceeding. Attached thereto were, inter alia, the affidavits of William R. McAfee and Nolan R. Hoopingarner II. These affidavits reflected a concern over substandard workmanship, inadequate quality control and company pressure to approve faulty workmanship. On December 1, 1981, Palmetto Alliance filed contentions in this case. As acknowledged by Palmetto Alliance, (Motion at p. 5) Contention 6 as originally drafted was premised

upon the concerns of Messrs. McAfee and Hoopingarner. On March 5, 1982, this Board conditionally admitted Contention 6. See Memorandum and Order of March 5, 1982 at p. 17.<sup>2</sup>

Palmetto Alliance commenced discovery on Contention 6 on April 20, 1982, by filing interrogatories upon Applicants and Staff. Because the Board's ruling concerning the admissibility of, inter alia, Contention 6 was appealed, discovery on this contention was stayed by the Board. See Memorandum and Order of May 25, 1982, at p. 3 and Memorandum and Order of July 8, 1982 at p. 18. ("July 8, 1982 Order"). This stay of discovery was lifted by the Board in its Memorandum and Order of December 1, 1982 at p. 29.<sup>3</sup> ("December 1, 1982 Order"). Several weeks later, Palmetto Alliance was provided the unusual opportunity of "a limited 'right of first discovery'" (i.e., Palmetto Alliance was not required to furnish answers to Applicants' and Staff's interrogatories until it (1) had received responses to its original interrogatories; (2) had obtained a Board ruling on its Motion to Compel regarding such

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<sup>2</sup> In conditionally admitting Contention 6, the Board stated that this contention "can be explored in discovery and we expect the intervenors to make [it] more specific, or to withdraw [it], following discovery." Id.

<sup>3</sup> The Board's December 1, 1982 dissolution of the stay of discovery pertained only to Palmetto Alliance's Contentions 6, 7, and 44; discovery on Palmetto Alliance Contentions 8, 16 and 27 had been open since July 8, 1982. See July 8, 1982 Order at p. 18.



responses; (3) had received supplemental responses arising out of the Board's ruling on the Motion to Compel; (4) had an opportunity to file follow-up interrogatories; and, (5) had been provided additional responses to such follow-up interrogatories). See Memorandum and Order of December 22, 1982, at p. 12. ("December 22, 1982 Order").<sup>4</sup> This opportunity was provided in response to Palmetto Alliance's claim that absent the receipt of information from Applicants and Staff it would be unable to provide responsive answers to their pending interrogatories. For example, Palmetto Alliance stated that it needed such information to refresh the recollections of Messrs. McAfee and Hoopingarner. See Palmetto Alliance Responses to Applicants' First Set of Interrogatories and Requests to Produce, April 28, 1982, at p. 13.

Following the Board's December 1, 1982 Order lifting the stay of discovery, Applicants and Staff filed responses to Palmetto Alliance's interrogatories. See pleadings of December 31, 1982, and February 17, 1983 respectively.<sup>5</sup> On

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<sup>4</sup> While it recognized the potential for undue delay (p. 12), the Board indicated its intent that adherence to strict schedules would obviate such delay. See pp. 7-8, infra.

<sup>5</sup> Given Palmetto Alliance's erroneous characterization of the NRC Staff's responsiveness to intervenor's interrogatories it is necessary to clarify the record. In responding to Palmetto Alliance's interrogatories of April 20, 1982, the Staff took the position that such interrogatories were improper and objected thereto,

(footnote continued)

January 28, 1983, Palmetto Alliance moved to compel further answers from Applicants. This motion was granted in part by the Board in its Memorandum and Order of February 9, 1983 ("February 9, 1983 Order"), and Applicants accordingly filed supplemental interrogatory responses on February 28, 1983. On March 16, 1983, Palmetto Alliance filed follow-up interrogatories on Contention 6, to which Applicants responded on March 25, 1983. On April 12 and April 28, 1983, in response to Palmetto Alliance's informal requests, Applicants provided additional information on, inter alia, Contention 6; the Staff also provided additional information on April 8, 1983, supplying additional documents responsive to Palmetto Alliance's General Interrogatory 4.

In addition, as part of their response to Palmetto Alliance's discovery request, Applicants made available for inspection and copying all documents identified in their responses. The Staff appended documentary information to

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(footnote continued from previous page)

noting in a May 7, 1982 pleading that Palmetto Alliance had not made the necessary showing under §2.720(h)(2)(ii), and that absent such a showing, the Staff was not required to answer the interrogatories. However, in the interest of expediting the proceeding and furthering cooperation among the parties, the Staff subsequently agreed to voluntarily provide responses to those interrogatories as to which it believed answers could properly be compelled. See NRC Staff pleading of September 23, 1982 and the remarks of George Johnson at the October, 1982 Prehearing Conference (Tr. 625-628). See also the NRC Staff's voluntary interrogatory responses filed on December 45, 1982, February 17, 1983 (on Contention 6), and March 14, 1983.

its responses of February 17 and April 8, 1983. The Staff indicated that additional documents identified in the responses were or would be made available in the local Public Document Room.

With less than three weeks remaining within which to conduct discovery, Palmetto Alliance informally sought to take the depositions of unidentified knowledgeable employees of Applicants and Staff with regard to Contentions 6, 7, 8, 16, 27 and 44. Palmetto Alliance also informed Applicants that it wished to depose all individuals identified in the documents made available by Applicants in response to Palmetto Alliance interrogatories 23 and 25 regarding Contention 6 (a number in excess of 60 individuals). Palmetto Alliance informed the Board of its predicament in a conference call of May 13, 1983, and was directed to put the matter in writing. The instant Motion has resulted.

#### ARGUMENT

- A. The pattern of conduct of Palmetto Alliance does not support a reopening of discovery.

This Board put the parties on notice in its December 22, 1982 Order that it was taking hold of discovery in this proceeding, stating that:

In order to prevent undue delay, it is necessary for the Board to set strict schedules, limit numbers and sets of interrogatories, encourage

other means of discovery, and possibly take other actions. We will take all necessary steps to avoid undue delay in this case. [p. 15]<sup>6</sup>

To this end, the Board established May 20, 1983 as the closing date for discovery concerning, inter alia, Contention 6. See Memorandum and Order of February 2, 1983. ("February 2, 1983 Order"). However, Palmetto Alliance's Motion flies in the face of this Board's Order and is symptomatic of Palmetto Alliance's continuing efforts to avoid moving through discovery in an efficient manner despite this Board's clear direction to do so.

Palmetto Alliance has sought to delay this proceeding from the outset of discovery. On January 4, 1983, (13 days after the Board's extensive discovery opinion which urged the need to "take all necessary steps to avoid undue delay"), Palmetto Alliance sought an open-ended extension of discovery on the basis of the Commission's consideration of ALAB-687. The Board denied this request in its Memorandum and Order of January 7, 1983. In a conference call of January 11, 1983, Palmetto Alliance sought an extension of the time within which it was to respond to various discovery-related pleadings. Applicants and Staff reluctantly acquiesced in a two week extension and the

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<sup>6</sup> At the January 20, 1983 prehearing conference, the Board noted its concern that "we not let the case drift along and then find ourselves in a situation where we just have not done what we were supposed to do in a timely manner." (Tr. 660-661).

Board so ordered. See Memorandum and Order of January 14, 1983. In March, 1983, Palmetto Alliance contacted Applicants' and Staff's seeking acquiescence in extending the date within which it was to provide responsive interrogatory answers. Again Applicants and Staff agreed, albeit reluctantly. See Memorandum and Order of March 10, 1983. On April 13, 1983, Palmetto Alliance again sought an extension of time within which to file responses to Applicants and Staff interrogatories. This request was again reluctantly consented to by Applicants and Staff and approved by the Board in its Memorandum and Order of April 18, 1983 ("April 18, 1983 Order"). The above extensions caused Palmetto Alliance to file responses to Applicants and Staff interrogatories late, the consequence being that Palmetto Alliance's responses to promptly filed follow-up interrogatories of Applicants and Staff (a filing provided for in this Board's Memorandum and Order of April 1, 1983 at p. 2) are due after the May 20, 1983 close of discovery date, i.e., May 31, 1983. See Memorandum and Order of May 13, 1983 at pp. 12-13 ("May 13, 1983 Order"). Such delay has in effect resulted in an extension of discovery. This Motion requesting additional time for discovery serves as yet another attempt at delay.

Palmetto Alliance's delaying tactics are only one example of its pattern of behavior in this case. Other examples include its vague and unresponsive interrogatory answers, its attitude toward and manner of conducting depositions, and its failure to familiarize itself with information provided to it.

1. Palmetto Alliance's vague and unresponsive interrogatory answers

As long ago as the October 8, 1982 prehearing conference, the Board noted that many of Palmetto Alliance's interrogatory answers were unsatisfactory, stating that the intervenor's answers were not "responses to the questions in any full sense." (Tr. 611). In its December 22, 1982 Order, the Board again noted (p. 3) that "all but a handful of Palmetto's answers to the Applicants were not in fact responsive." Most recently, in its May 13, 1983 Order (pp. 1-2) the Board reiterated:

Palmetto's responses to many key questions have been vague, evasive, incomplete or nonexistent. This is so despite the fact that Palmetto has been given every reasonable opportunity to develop adequate answers to the Applicants' and Staff's interrogatories.

2. Palmetto Alliance's attitude toward and manner of conducting discovery

Since December, 1982, this Board has specifically urged Palmetto Alliance on several occasions to pursue multiple approaches to discovery, including the taking of



depositions of knowledgeable Duke Power Company personnel. In its December 22, 1982 Order (pp. 17-18), the Board stated:

In addition to interrogatories, Palmetto should consider taking the depositions of some key Applicant and Staff people during the months of January and February. This discovery method is usually more effective, although more expensive, than interrogatories. While we appreciate the financial limitations on intervenor groups generally, we believe that some use of depositions may be necessary for effective participation in this litigation. In any event, all parties are on notice that we will not uncritically accept a claim of lack of funds for depositions as a justification for not providing timely and responsive answers to interrogatories.

In its February 9, 1983 Order, the Board stated twice that use of depositions on particular matters would be preferable to additional interrogatories (see pp. 6 and 12). Subsequently, in its of April 18, 1983 Order, (p. 3) the Board reiterated its suggestion that depositions relating to Contention 7 would be more appropriate than interrogatories, and added, more generally:

The intervenors have not, to date, noticed any depositions in this case. We strongly suggest that they consider the deposition option in the limited time remaining for discovery.

Palmetto Alliance's only response to this Board advice was to belatedly contact Applicants and Staff some 2-1/2 weeks before the close of discovery seeking to depose the single most knowledgeable individual (to be identified by Applicants and Staff) regarding, inter alia, Contention 6.

Moreover, as noted, when it did finally contact Applicants, Palmetto Alliance also requested that Applicants make available for deposition all individuals identified in the documents made available by Applicants in response to interrogatories 23 and 25 (a list of names consisting of approximately 60 individuals). Palmetto Alliance did not file a single notice of deposition; it did not identify a single specific individual whom it wished to depose; and it failed to describe any information or documents it wished to be brought to the deposition.

Further, the depositions taken by Palmetto Alliance serve as textbook examples of a fishing expedition,<sup>7</sup> a fact particularly troublesome in that they were taken on the eve of the conclusion of discovery, a time at which Palmetto Alliance should have been expected to have narrowed its focus. See n.2, supra. Even Palmetto Alliance recognizes this point. See Motion at p. 5 wherein Palmetto Alliance

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<sup>7</sup> Pursuant to 10 C.F.R. §2.740a Palmetto Alliance is to furnish copies of depositions it conducted. Pursuant to stipulations entered into among the parties, Palmetto Alliance took its depositions by other than stenographic means, viz, tape recording. Palmetto Alliance is to furnish the Board copies of these tapes.

cites the Board's observation at the January 12, 1982 Prehearing Conference (Tr. 119) that it must "get . . . more specific about quality assurance that . . . is substandard . . . ."

3. Palmetto Alliance's failure to familiarize itself with information provided it by Applicants and Staff

Palmetto Alliance's failure to familiarize itself with the information provided it in discovery has been apparent for some months. As Applicants have pointed out above (n.1, supra), clear reference to the Catawba Welding Inspector's Task Force Report and to the NRC's intent to investigate independently the Quality Control inspectors' allegations are set forth in the September 14, 1982 letter and attachments provided by George Johnson to the other parties to this proceeding. Intervenor has been free to file interrogatories and take depositions concerning these matters since December 1, 1982, despite its representations that this information has only recently been available to it. Even if Palmetto Alliance has some excuse for its failure to know that this information was available at such an early time, Applicants referenced the Welding Inspector's Task Force Report in their December 31, 1982 interro-

gatory responses (see p. 42) and made this document available for inspection on February 15, 1983. Palmetto Alliance did not request a copy of such report until March 14, 1983.

Applicants would also call the Board's attention to the May 19-20, 1983 depositions of Messrs. McAfee and Hoopingarner. Therein, these individuals stated that they had reviewed a very few, if any, of the documents provided by Applicants in response to discovery requests on Contention 6. The following colloquy between Applicants' counsel and Mr. Hoopingarner is illustrative:

- Q. Are you aware that Palmetto Alliance filed additional answers, additional responses to that same set of interrogatories and they filed those on April 19, 1983 about a month ago. Look at the first page, and I show you that, but look at the first page. Have you seen that document before?
- A. No.
- Q. You didn't assist in the preparation of that document?
- A. Not as we are talking right now. They might have taken it off my papers or something or rap sessions in the past.
- Q. I understand, but with respect to rap sessions or any papers you supplied around the March, April time frame, you don't recall any rap sessions or preparing any papers in that time frame?
- A. No.
- Q. Let me make it simple. Did anybody say we are going to file additional answers and do you have any suggestions?

A. Possibly, but I'm not sure.

MR. GUILD: If it won't hurt, counsel, I will help respond to the question. Counsel nor Palmetto Alliance neither sought Mr. Hoopingarner's assistance with this set of interrogatories.

Q. They did not?

MR. GUILD: They did not. We relied on the original set. [Hoopingarner deposition, May 20, 1983, pp. 29-30].

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Q. Are you aware that Palmetto Alliance in addition to seeking written responses also sought documents from the applicant?

A. Yes, sir.

Q. Were you aware those documents were housed here at the Duke Power Company Building in the legal offices?

A. Yes, sir.

Q. Were you asked to review those documents?

A. If I had time.

Q. Did you come down to Duke Power Company and review those documents?

A. No, sir.

Q. Have you seen any copies of those documents?

A. I think I have seen a few.

Q. Let me ask you this question. Has anybody said, 'Here's some documents that we got from Duke Power Company, and I would like for your to review them.'

A. No, sir. [Hoopingarner deposition, May 20, 1983, p. 34].

These individuals' failure to review such documents is puzzling given Palmetto Alliance's assertion in its April 28, 1982 Responses to Applicants' interrogatories on Contention 6 that "access to records in the possession of Duke Power Company sought in discovery requests . . . is necessary in order to refresh [Messrs. McAfee and Hoopingarner's] recollection" (p. 13).

Applicants feel compelled to put this pattern of behavior before the Board because it underscores the predicament Palmetto Alliance now finds itself in. Simply put, Palmetto Alliance has not done the work necessary to complete its discovery obligations. Discovery on Contention 6 has been open for six months.<sup>8</sup> Responsive answers to interrogatories were provided by Applicants on December 31, 1982, and February 28, March 25, April 4 and April 28, 1983. In addition, documents have been available to Palmetto Alliance since February 15, 1983.<sup>9</sup> Palmetto Alliance has been granted a "right of first discovery;" Palmetto Alliance has been advised by the Board on numerous occasions to pursue taking depositions of key personnel

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<sup>8</sup> As noted, discovery on Contentions 8, 16 and 27 has been ongoing since July 8, 1982 (10-1/2 months). Presumably, if Palmetto Alliance had pursued these contentions at an early date, it could have narrowed the number of issues it had to pursue in the closing months of discovery.

<sup>9</sup> See n.1 supra concerning the availability of additional information well prior to the December 1, 1982 reopening of discovery.



early on in the discovery process;<sup>10</sup> Palmetto Alliance has been granted extensions of time. Accommodations have been made by Applicants and Staff concerning extensions and the scheduling of depositions, and yet, on the eve of the close of discovery, Palmetto Alliance was conducting basic "fishing expedition" discovery on Contentions 6, 7, 8, 16, 27 and 44. Now, after the close of discovery, Palmetto Alliance seeks to continue to conduct its "fishing expedition" by requesting an open-ended 5-1/2 month extension of the discovery period. The Board should not condone such behavior.

In ruling on this Motion the Board should also take cognizance that Palmetto Alliance has consistently avoided taking a firm position on any aspect of its own contentions. The Applicants, Staff and the Board know little more about Palmetto Alliance's contentions than they did at the time of the filing of the initial contentions in

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<sup>10</sup> Palmetto Alliance cannot be heard to say that the expense of depositions made the taking of depositions prohibitive. The Board alerted Palmetto Alliance early on that

it would 'not uncritically accept a claim of lack of funds for depositions as a justification for not providing timely and responsive answers to interrogatories.' [December 22, 1982 Order at p. 18]

The Board also advised Palmetto Alliance that alternative, less costly means of taking depositions would be entertained. See February 2, 1983 Order at p. 12 and April 18, 1983 Order<sup>4</sup> at p. 3.

December of 1981 or at least at the time of their admission. Very little in the way of substantive answers to interrogatories has been provided. Only two witnesses have been identified with respect to all of Palmetto Alliance's contentions. With specific reference to Contention 6, Palmetto Alliance has sought to keep the contention as broad and as vague as possible so as to be able to expand it at any time. Palmetto Alliance, while referencing the Welding Inspector's Task Force Report and various documents related thereto, has stated (as it did in its July 1981 Petition and at the January 1982 prehearing conference) that the allegations of Messrs. McAfee and Hoopingarner serve as the sole basis for the contention. See Palmetto Alliance's Supplementary Responses of April 19, 1983 at p. 15 (Interrogatory 76). Specific allegations arising from the Welding Inspector's Task Force Report have yet to be raised by Palmetto Alliance. Such being the case, why should this Board condone this pattern of behavior and allow it to continue by granting this motion?<sup>11</sup>

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<sup>11</sup> Palmetto Alliance's approach appears to be premised upon its position that there is no need to go forward; that the plant is not needed for twelve years, if then. However, this Board has already ruled that such matter shall not enter into the schedule for proceeding with the case. See February 2, 1983 Order at pp. 7-9. To the extent that such premise pervades the instant Motion it must not be accorded any weight.

Applicants' position is as follows: the hearing on the admitted contentions must go forward and be completed in October of this year. Current plans call for fuel loading in the spring of 1984. Emergency plan issues are yet to come. Other contentions are moving on different discovery schedules. The case has been pending since July of 1981. This Board has taken hold of the case and must continue to maintain a firm grip on it so that the scheduled progress of the proceeding will not be compromised.

B. Palmetto Alliance's specific grounds for its Motion are misleading and do not support an extension of the discovery period.

Palmetto Alliance has presented an argument clearly designed to convince the Board that significant public health and safety concerns exist which warrant further discovery. Given the status of the case, such is the only type of argument Palmetto Alliance could make and hope to attract this Board's attention. However, Palmetto Alliance's bases in support of such an "attention-getting" statement are simply non-existent. Applicants address each reason below. Applicants maintain that the assertions which underlie the Motion fail to demonstrate good cause (10 C.F.R. §2.711) or to establish "unanticipated and extraordinary circumstances"<sup>12</sup> to support the request, and

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<sup>12</sup> This Board has put the parties on notice that  
(footnote continued)

thus the Motion should be denied.

1. Palmetto Alliance asserts that "direct evidence" from Catawba Quality Control (QC) inspectors of "systematic quality assurance deficiencies including falsification of documents, harassment, intimidation and a 'whitewash' investigation" by Duke, known to the NRC Staff, came to its attention "only in mid-April 1983." Motion at pp. 1-2. To support its assertion, Palmetto Alliance refers to certain documents made available to it during discovery, alleging that it was not, and could not have been, aware of these documents until mid-April. However, an examination of the complete facts involving the availability of these documents, as well as the facts contained within these documents, demonstrates that Palmetto Alliance's assertions are groundless, and that it had access to these documents, or the facts contained within these documents, well prior to April of this year.

Specifically, one of Palmetto Alliance's basic arguments in support of its Motion is that it has only recently learned of the Catawba Welding Inspector Task Force Report, the allegations investigated therein, and the documents underlying the report. So far as the Welding

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deviations from the Board imposed schedule of February 2, 1983, would be permitted only upon the showing of "unanticipated and extraordinary circumstances." See April 13, 1983 Order.

Inspector Task Force Report is concerned, the record is clear that on or about September 14, 1982, Palmetto Alliance was on notice that an investigation of concerns expressed by QC welding inspectors at Catawba was then being conducted, both by Duke and by the NRC. See Section III (pp. 11-12) of Enclosure to Memorandum of July 30, 1982 from R.C. Lewis to D.G. Eisenhut, transmitted to the Licensing Board and served on all the parties (including both Mr. Guild and Palmetto Alliance) by Mr. Johnson's letter of September 14, 1982. (See n.1, supra). Palmetto Alliance thus knew, in mid-September 1982 the following:

During the fall of 1981, QC welding inspectors at Catawba expressed technical and non-technical concerns to Duke management. These concerns were expressed during a review of employee recourse action being taken by the inspectors as a result of a negative pay adjustment. On January 29, 1982, Duke informed Region II that concerns had been expressed and that a task force composed of Duke personnel from other sites and of outside consultant services had been formed to investigate the concerns. Duke requested that the company be allowed to pursue the investigation on their own for the time being. Region II agreed, but it was understood that the Senior Resident Inspector (SRI) would keep abreast of the findings.

On February 1, 1982 three QC welding inspectors expressed their concerns to the SRI. They told the SRI that Duke had been informed of each item. Each QC inspector was concerned that Duke would 'white wash' the problems as being the result of the recent pay adjustment. The QC inspectors were content that Region II take no action as long as Duke was actively pursuing the complaints.

The three stated that a lack of support for implementation of the welding QA program had existed for years and that they were expressing

their concerns strongly now that they had the attention of off site management for the first time.

On May 25, 1982, Duke presented to Region II a status report of the investigation, including a description of how the investigation was conducted and a summary of the concerns. Since Duke appeared to be conducting a thorough unbiased review, Region II decided to withhold its own investigation until Duke had finished.

Duke reported that fourteen inspectors had expressed 129 technical concerns, and 11 inspectors had expressed 19 non-technical concerns. The non-technical concerns were those which could not be tied to specific hardware.

As of May 25, 1982 Duke had substantiated 75 technical concerns of which 42 involved QA procedure violations. No hardware inadequacies had been identified; however, 23 potential technical inadequacies had been found. Most of the review, and implementation of corrective actions, are scheduled for completion by July 1, 1982.

Region II will perform a detailed inspection of each concern and of task force actions, independent review of the more important concerns, interviews of QC inspectors, examination of hardware where indicated, and involvement of investigation personnel where necessary. [Id; emphasis added].

The above passage makes clear that in mid-September, 1982, Palmetto Alliance had in its possession a document which clearly reflected the following facts: (1) QA/QC welding inspectors had expressed technical and non-technical concerns; (2) Duke had formed a task force composed of its own personnel (and including an outside consultant); (3) QC inspectors had approached the NRC with their concerns, including their<sup>s</sup> concern that Duke would



"whitewash" the problems as being related to the pay adjustment; (4) on May 25, 1982, Duke had met with the NRC to discuss the investigation; (5) Region II would withhold its investigation until Duke's task force had completed its work and (6) Region II would then conduct its own investigation.

However, the recitation of fact does not stop at that point. In their December 31, 1982 interrogatory responses (p. 42), Applicants identified, in response to Palmetto Alliance's Interrogatory 23 on Contention 6<sup>13</sup> the "Catawba Welding Inspector Task Force Report," and noted that that document -- as was the case with other documents identified in the December 31 Responses -- would be available for inspection and copying on February 15, 1983.<sup>14</sup> That

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13 Interrogatory 23 reads:

Identify in detail all documents, including correspondence, reports, minutes of meetings or notes of oral conversations, reflecting disagreements, disputes or differences of opinion between Quality Control Inspectors and their supervisors or Duke Power Company management. Include the subject, date, names of persons involved and resolution for each instance so reflected.

14 Applicants note that Interrogatory 23, along with 26 other interrogatories concerning Contention 6, was filed on April 20, 1982. Despite its knowledge of the Welding Inspector Task Force Report in September, 1982, Palmetto Alliance did not seek to supplement its outstanding April 1982 interrogatories prior to Applicants December 31, 1982 response. Palmetto Alliance's statement (Motion at p. 7) that the first time documents reflecting the Welding Inspector Task  
(footnote continued)

document was available for inspection and copying on February 15, 1983, and though counsel for Palmetto Alliance (together with certain Palmetto Alliance members) visited Applicants' offices on February 15, 1983, for the purpose of inspecting documents and designating documents for copying, the Welding Inspector Task Force Report was not so designated by Palmetto Alliance. On February 28, 1983, Applicants filed supplemental responses to Palmetto Alliance interrogatories in accordance with this Board's February 9, 1983 Order in which they described the Welding Inspector Task Force Report (at pp. 33-34).<sup>15</sup> However, it was not until March 14, 1983 that Palmetto Alliance designated this document for copying. On March 16, 1983, Palmetto Alliance addressed "Followup Interrogatories" to Applicants in which it requested, among other things, all documents underlying the Welding Inspector Task Force Report. Applicants made all documents responsive to this

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Force Report was made available to it was on its March 14, 1983 trip to Applicants' Charlotte, N.C. office is wrong.

<sup>15</sup> In their December 31 Responses Applicants had taken the position that identifying documents and making them available for inspection and copying was responsive to the request. The Board ordered Applicants to provide, with respect to each document, explanatory information. See February 9, 1983 Order at p. 5. Applicants complied with the Board's ruling on February 28, 1983.

interrogatory, including the consultants' report (the MAC Report), available to Palmetto Alliance for inspection and copying on March 30, 1983.<sup>16</sup>

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<sup>16</sup> Palmetto Alliance implies (Motion at p. 8) that it did not receive documents responsive to this request until mid-April, 1983. This simply misstates the situation. As noted, the relevant documents were available for inspection and copying on March 30, 1983. Palmetto Alliance chose not to come to Applicants' document room; rather, as a result of a telephone conversation with counsel for Palmetto Alliance, and as an accommodation to Palmetto Alliance, Applicants mailed copies of these documents to him.

Palmetto Alliance also states that a two week delay in receiving documents "regarding a May 25, 1982 meeting between Duke Power Company and the NRC Staff regarding the Catawba Welding Inspector Investigation" serves as good cause to support an extension of discovery. Motion at p. 10. Palmetto Alliance asserts that such delay was occasioned by an "oversight of counsel" in that the information "was sent only to Charleston, S.C. and not to Palmetto Alliance's Columbia office . . ." Motion at p. 11. As set forth in n.1 supra, the subject May 25, 1982 meeting was made known to Palmetto Alliance in September 1982 and thus such information could have been sought much earlier.

As to the allegation of erroneous service, Applicants acknowledge that the information was sent only to the Charleston, S.C. address of Palmetto Alliance counsel. This situation arose inasmuch as the request for the subject information had been an informal counsel to counsel request. Applicants accordingly copied the requested documents and mailed them to counsel at his address as it appeared on the service list, and had no way of knowing that Mr. Guild did not plan to be at his address during the two weeks following the mailing of the documents. On more than one occasion counsel for Palmetto Alliance has furnished information or made written requests to only one of Applicants' counsel. Applicants have not objected in that such correspondence is the result of informal conversations, similar to that discussed in the text above. Many of the documents provided to Palmetto Alliance were copied and mailed to counsel after a telephone call requesting  
(footnote continued)

Of course, Palmetto Alliance was not limited in its pursuit of information involving the Task Force report. The Freedom of Information Act is -- and has been -- available to Palmetto Alliance. Indeed, as noted by Palmetto Alliance, (p. 2) such procedure is presently being pursued.<sup>17</sup>

Palmetto Alliance cites various specific documents in support of its assertion that certain concerns, apparently consisting of "falsification of documents, harassment, intimidation and a 'whitewash' investigation by Duke Power Company," all apparently leading to an alleged "systematic" quality assurance deficiency, only came to the attention of Palmetto Alliance "in mid-April 1983." (Motion at pp. 1-2). Even a cursory examination of those documents demonstrates that the claim lacks substance.

The first document cited is the March 15, 1982 memorandum from P.K. Van Doorn, Senior Resident Inspector at Catawba. See Motion, Attachment 3. A comparison of that

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(footnote continued from previous page)  
certain documents that had been identified earlier.  
(See letters dated April 7 and 14, 1983, and April 12, 1983 (which refers to earlier transmittals) to counsel for Palmetto Alliance.)

<sup>17</sup> The fact that discovery information and independently-sought FOIA information have both been made available to Palmetto Alliance during the last few months does nothing to further intervenor's argument that an extension of time is warranted. Palmetto Alliance could easily have filed an FOIA request at any time during the past months.

memorandum against the material provided to Palmetto Alliance by the NRC Staff in September of 1982 demonstrates clearly that Palmetto Alliance had available to it in September of last year all the information (including the term "whitewash" which Palmetto Alliance makes much of) contained in the Van Doorn memorandum. See n.1, supra.

The second class of documents mentioned is a collection of handwritten notes from Duke QA and QC Inspectors which set forth some of their specific problems and concerns. An examination of Part II of the Welding Inspector Task Force Report (which lists the specific concerns of each welding inspector, many of them in the inspector's own handwriting) shows that each of these concerns is specifically set out therein (and is discussed and resolved in Volume 1). As noted, this Report was identified in December 1982 and made available for inspection and copying on February 15, 1983.

The third document is the report of the Management Analysis Company (the MAC Report), the outside consultant hired by Duke to evaluate its Quality Assurance Program in general and the Welding Inspector Task Force Report in particular. As discussed above, Palmetto Alliance was on notice in mid-September of 1982 that an outside consultant

was involved in the Task Force effort. In any event, as noted, the requested document was available when Palmetto Alliance inspected documents on February 15, 1983.

Finally, Palmetto Alliance mentions new documents provided in response to the Government Accountability Project's (GAP) Freedom of Information Act (FOIA) request, stating in the Motion (p. 2), that:

As late as May 19, 1983 (one day prior to the scheduled May 20, 1983, close of discovery on this contention and at the commencement of a Palmetto Alliance deposition of Inspector Van Doorn), the NRC Staff produced some 97 'additional documents' comprising several hundred pages . . .

The thrust of this argument is that additional time for discovery is necessary so that these "additional documents" can be fully explored. Applicants maintain that the fact that FOIA documents (i.e., non-discovery documents) just became available is immaterial. Palmetto Alliance has been provided more than an adequate amount of time for discovery. If it thought the information sought by GAP in GAP's FOIA request was of importance, it could have requested the same information through discovery. Further, even if one views GAP's FOIA as part of Palmetto Alliance's attempt to obtain information, one must ask why did GAP wait until the last month of discovery to file the request for information. (The fact that GAP just became involved in the case is no excuse, it should have been brought in earlier.) No argument is made by Palmetto Alliance that the Staff was



untimely in its FOIA response. Accordingly, FOIA materials were expected to be received on the eve of the close of discovery. This circumstance was a result of the timing of the FOIA request and the consequence must be borne by the initiating party -- Palmetto Alliance (by or through GAP).

More importantly, Palmetto Alliance fails to point out that the vast majority of these documents were either produced earlier in discovery by Applicants or the NRC Staff, were part of the Task Force Report or were simply never requested in discovery by Palmetto Alliance. Forty-three of the 97 documents have without question been previously made available by Applicants to Palmetto Alliance for inspection and copying.<sup>18</sup> Thirty-four of the remaining 54 documents are non-conforming item reports (NCI's), Weld Inspection Reports or Weld Process Control Sheets that were either made available as part of the Task Force Report or were not requested in discovery by Palmetto Alliance.<sup>19</sup> At least 8 of the remaining 20 documents were provided to Palmetto Alliance by the Staff on April 8,

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<sup>18</sup> The FOIA response listed all documents produced on Appendix A, 89 documents, and Appendix B, 8 documents. The following documents by number as listed on Appendix A were made available by Applicants during discovery: 3, 4, 7, 9, 11, 13, 18-22, 48, 50-61, 64, 65, 70-82, 85, 87-89.

<sup>19</sup> These documents listed on Appendix A by number are: 23-47, 49, 63, 66-69, 83, 84, 86.

1983.<sup>20</sup> Of the remaining 12 documents not accounted for above, two are drafts of documents that were served on Palmetto Alliance;<sup>21</sup> one is a Palmetto Alliance press release (Item 15, Appendix A); another is a Charlotte Observer news article (Item 17, Appendix A); and yet another is an undated blank form (Item 62, Appendix A).

At most, Palmetto Alliance received 7 "additional documents" on May 19, 1983, a review of which shows that an extension of discovery is not supported by production of these documents. One document (Appendix A, Item 1) is one page of handwritten notes with what appears to be one entry dated December 9, 1981 relating to Applicants' Welding Inspector's Task Force Report which says that Warren Owen (Executive Vice President, Construction and Engineering, Duke Power Company) called to say that a task force had been appointed and that the review would be completed by December 25, 1981.

Another document is titled "Notice of Significant Licensee Meeting," dated May 18, 1982, and providing notice to NRC officials that Duke Power Company was coming in on

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<sup>20</sup> The following documents listed by number were provided by the Staff on April 8, 1983 or earlier: Appendix A, Nos. 6, 16; Appendix B, Nos. 1, 2, 3, 4, 6, 7.

<sup>21</sup> Item 5 on Appendix B is Mr. Van Doorn's notes, which were used to provide the information in the September 14, 1982 letter to the Board which was served on Palmetto Alliance. See n.l, supra. Item 8 on Appendix B is a draft NRC Staff response to Palmetto Alliance interrogatories.

May 25, 1982 to "discuss the licensee's findings relative to the Quality Assurance Program in verifying design interfaces and investigation of welding QC inspector concerns." (Appendix A, Item 2). Mr. Van Doorn made it clear to Palmetto Alliance's counsel during his deposition that this was simply a notice of the meeting.

Another of these 7 documents is a 3-page handwritten summary chronology of the prehearing contentions. (Appendix A, Item 5). Nothing in this document appears to warrant an extension of discovery. A fourth document is an internal NRC memorandum which transmits a case chronology to the NRC Staff counsel (Appendix A, Item 10). Another document is a March 4, 1983 presentation to the Advisory Committee on Reactor Safeguards (ACRS) by Jack Bryant, the Senior Resident Inspector at Oconee Nuclear Station and formerly Section Chief of the PRP Division of the NRC Region II Office. (Appendix A, Item 12). This document summarizes the NRC inspection activities at Catawba and contains no new revelations which support an extension of discovery.

The final two documents produced are the undated memorandum from Mr. Van Doorn to Mr. Vorse (Appendix A, Item 8) which is discussed at p. 33, and a March 17, 1983 memorandum from a Duke Power Company engineer which transmits a series of documents to Mr. Van Doorn relating

to NCI 9092. (Appendix A, Item 14). Palmetto Alliance has made no argument that this document (Item 14) supports an extension of discovery.

Aside from its general allegation that recent receipt of FOIA material warrants the reopening of discovery, Palmetto Alliance focuses on two of the FOIA documents in an attempt to support its allegation that additional time is necessary. First, Palmetto Alliance implies that it was not until it received the FOIA information on May 19, 1983, that it learned of the May 25, 1982, meeting between Duke and the NRC regarding the Welding Inspector Task Force Report. (Motion at p. 2). As the previously referenced September 14, 1982 letter shows (n.l, supra), this is erroneous. Additionally, the Staff provided Palmetto Alliance with a copy of the presentation made by Duke Power Company officials at the May 25 meeting as an attachment to the Staff's April 8, 1983 discovery response, and the same document was sent to counsel for Palmetto Alliance on April 14, 1983 by Applicants' counsel. Moreover, Palmetto Alliance's apparent failure to review documents, or its intentional misrepresentation of the facts, is highlighted in this instance since the Motion itself indicates that these documents were received by counsel for Palmetto Alliance on April 29, 1983. See Motion at pp. 10-11.

The second document specifically discussed by Palmetto Alliance in its Motion is an undated memo from Mr. Van Doorn to J.Y. Vorse, which Palmetto Alliance characterizes as "detailing Van Doorn's conclusions that falsification of documents, harassment and intimidation of QC inspectors had occurred at Catawba." See Motion at pp. 2-3. During his deposition, Mr. Van Doorn explicitly stated in response to detailed questions by Mr. Guild that this document did not represent his conclusions. Mr. Van Doorn stated:

THE WITNESS: The words, as I recall, are based on what the inspectors said. I was not trying to draw conclusions in here. Some of these words appear like there may be a conclusion. [Deposition of P.K. Van Doorn, Volume II, May 20, 1983, p. 49].<sup>22</sup>

As can be seen, Palmetto Alliance, in an attempt to convey to the Board that new and substantive information had been made available, intentionally mischaracterizes the nature of the memo.

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<sup>22</sup> It is important to note that with respect to the merits of the allegation, Mr. Van Doorn stated:

The final results of this overall effort showed that there, in fact, was no falsification and no harassment by our definition of harassment and falsification.

So in that sense the final results of this effort, if you take this memo out of context and sent it to somebody, obviously it is going to be misleading. The final results, as it applies to this memo, said there was no falsification or harassment. [Id. p. 53].

2. Palmetto Alliance notes on p. 7 of its Motion that Applicants' first discovery response on Contention 6 "was not served until December 31, 1982," that it contained "virtually no substantive information," and that it provided only an incomplete list of documents sought by Palmetto Alliance. Applicants maintain that these responses were filed with reasonable promptness after the suspension of discovery was lifted and that they did contain "substantive information." After the December 1, 1982 Order lifted the stay of discovery on Contention 6, Applicants filed a Motion dated December 9, 1982 which included a proposed schedule for the completion of certain outstanding discovery matters. In this motion, Applicants proposed (p. 2) to file responses to Palmetto Alliance's interrogatories on Contentions 6 and 7 "on or before December 30, 1982." Palmetto Alliance did not indicate any opposition to this proposal at the time -- nor, in fact, did it subsequently express any dissatisfaction when Applicants filed the responses on December 31, 1982. If Palmetto Alliance believed itself prejudiced by this schedule, it has had ample opportunity before now to complain.



As to the allegation that the December 31, 1982 Responses contained "virtually no substantive information," Applicants disagree. Applicants submit that a review of these responses reveals that substantive information was provided.

3. Palmetto Alliance asserts that its request for assistance from GAP in March-April 1983 and GAP's view that additional time is necessary for discovery warrants the grant of an extension of discovery. Motion at pp. 12-13, 16. Applicants disagree for the reasons set forth below.

First, as noted, if Palmetto Alliance was so concerned about quality assurance, it should have sought the assistance of GAP at a much earlier date. Palmetto Alliance's tardiness in this regard is not the result of Applicants' or the Staff's delay. Accordingly, neither Applicants or Staff should be made to bear the burden of delay.

Second, the discussion of GAP's purported reputation and recent activities does nothing to further Palmetto Alliance's explanation of why additional time for discovery in Catawba is warranted.

Third, Billie Garde makes it clear in her affidavit that GAP is conducting an independent investigation, and in fact will only share information in the public domain with Palmetto Alliance. GAP makes it clear that "[t]he use,

sharing, etc., of information from the workers will be shared with Palmetto Alliance only at the request or with the permission of each worker." Garde affidavit at p. 7, n.1. As such, GAP must be viewed as being independent of Palmetto Alliance. Accordingly, Palmetto Alliance should not be permitted to rely upon GAP to support its request for an extension. Since GAP is to be viewed as independent, it has no status in this proceeding, and should be accorded no deference. If, as Billie Garde's affidavit indicates, GAP has a complaint about some aspect of this proceeding, GAP should file a petition to intervene, as have the other interested entities. Should it become a party, however, GAP will then be obligated to take this proceeding as it finds it, and would be required to substantiate the allegations set forth in the Garde affidavit.

Finally, there are several matters relating to GAP and the instant Motion which must be clarified. In its Motion (and in the affidavit of Billie Garde) Palmetto Alliance recounts a meeting held in Washington, D.C. with counsel for Applicants and Staff. Palmetto Alliance asserts (Motion at p. 13):

On Friday, May 6, 1983, GAP and Palmetto representatives met with Washington counsel for Applicants and with counsel for NRC Staff to discuss the Catawba investigation and a

negotiated extension of discovery on Palmetto Contention 6. While these discussions were fruitful, no agreement was reached.

At this meeting Applicants' counsel stated that at the time Palmetto Alliance held its press conferences on April 20-21, 1983, and announced publicly that it would seek from the Board an extension of time for completion of discovery, Applicants had considered agreeing to a 60-day extension. Applicants then went on to state, however, that because Palmetto Alliance had delayed over two weeks in approaching Applicants' counsel to raise this matter, (although it visited Duke Power Company offices during this time) Applicants had concluded that Palmetto Alliance was being disingenuous and was waiting to raise the matter at the last instant in order to create maximum confusion. Therefore, Applicants' counsel did not agree to any extension.<sup>23</sup>

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<sup>23</sup> Applicants' counsel did ask about the nature of the extension sought by Palmetto Alliance, suggesting that if intervenor could represent that at the conclusion of a 60-day period Palmetto Alliance's discovery on Contention 6 would be completed, and any concerns arising thereafter would be waived, Applicants would consider acquiescing in an extension. Palmetto Alliance could not make such a representation. In her Affidavit (pp. 7-8), Billie Garde implies that Applicants' position was premised upon a desire to limit the issue such that new matters would not arise on the eve of the hearing, thereby requiring further hearings. Such is entirely correct.

It is Applicants' position that this inexplicable delay in seeking an extension of time raises serious questions as to the credibility of the instant Motion, inasmuch as the introduction of GAP appears to be one of the most important considerations being advanced by Palmetto Alliance in support of its Motion. Applicants would further note that Palmetto Alliance made reference to GAP in a conference call in March of 1983. Billie Garde's affidavit reaffirms the point that Palmetto Alliance had made contact with GAP by at least March 1983.

4. Palmetto Alliance asserts that its "inability to adequately conclude review of the complex and rapidly developing evidence . . ." led it to elect "to defer its earlier noted depositions" regarding Contention 6. Motion at p. 14. Applicants submit that a more likely explanation for this failure to conduct the depositions is that Palmetto Alliance waited until the last minute, despite this Board's urging it to pursue depositions early on, and then found itself unable to complete the necessary preparations or to read the available discovery materials. Applicants made available for depositions Duke's Corporate Quality Assurance Manager, as well as the subject Catawba quality assurance and construction workers even though no formal notices of depositions were provided; Palmetto

Alliance chose not to avail itself of the opportunity.<sup>24</sup> That was Palmetto Alliance's choice and such should not be accepted as a reason for extension.<sup>25</sup>

5. On p. 15 of the instant Motion, Palmetto Alliance asserts that the "Manual for Complex Litigation utilized in the Federal courts provides valuable guidance for coping with the discovery task presented by this quality assurance contention."

Applicants maintain that Palmetto Alliance's attempt (Motion at pp. 15-16) to apply the discovery categories used in the Manual to the discovery which has taken place

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<sup>24</sup> Applicants note that Palmetto Alliance did elect to take the depositions of two employees of the NRC Staff's Office of Inspection and Enforcement with respect to Contention 6. Messrs. Van Doorn's and Bryant's depositions were taken on May 19 and 20, 1983.

<sup>25</sup> Palmetto Alliance suggests the depositions were conducted in "protracted sessions extending past midnight . . .," attempting to convey the burden of the depositions. Two observations are warranted. First, the depositions by Applicants of Palmetto Alliance's 2 witnesses did extend into the evening. This was because Palmetto Alliance requested that the depositions begin at 6:00 p.m. to permit the witnesses to work during the day. As an accommodation, Applicants acquiesced. Applicants note that, despite the representations made by counsel for Palmetto Alliance with respect to Mr. McAfee's unavailability for depositions during normal business hours, after his deposition was completed on Thursday evening, (11:00 p.m.) May 19, 1983, Mr. McAfee was present at depositions conducted during the day of May 20, 1983. Second, the battery of depositions were protracted simply because Palmetto Alliance waited until the last minute to take depositions of Applicants' and the Staff's witnesses. It should be noted that although the witnesses were available, Palmetto Alliance chose not to take any depositions on May 16, 17 and 18.

on Contention 6 is completely inaccurate. Specifically, its assertion that the "second wave" of "discovery on the merits" should now be allowed to begin ignores the fact that Palmetto Alliance has obtained much more than "first wave" information (i.e., names and location of witnesses whose depositions may be sought, the existence and location of documents, and information on the "transactions" on which the claims for relief are based) from Applicants thus far. If it now believes that insufficient "discovery on the merits" has taken place, this deficiency is clearly due to Palmetto Alliance's own conduct of its own discovery effort. As the Board has stated, and as any reviewing body would reasonably find, this intervenor has been given "every reasonable opportunity" with regard to discovery.

6. Palmetto Alliance suggests that the schedule it advances is reasonable and will not adversely affect scheduling, and that an extension should thus be granted. Aside from the fact that Palmetto Alliance has failed to advance any reasonable basis for extending discovery, the proposed schedule itself is unacceptable. First, as pointed out in Billie Garde's affidavit, GAP is proposing 5-1/2 months to conduct "preliminary" research (p. 7);<sup>26</sup> no final end date is provided. Applicants maintain that

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<sup>26</sup> The Garde affidavit suggests that a definition of "preliminary research" can be found at pp. 10-12 of the affidavit. Applicants could find no such definition.



absent clear assurances of finality, no extension request can be seriously entertained.<sup>27</sup> Second, the schedule does not provide an adequate time for summary disposition, a procedure which the depositions of Messrs. Hoopingarner and McAfee indicate is warranted. Third, a December hearing date on this issue may well compromise a May 1984 fuel load date. It is necessary to complete the first phase of this hearing in October, file proposed findings of fact and begin the emergency plan phase (if such eventuates). A December hearing would impact upon this schedule.

Fourth, the Board requested in its December 22, 1983 Order (pp. 25-26) that the parties be prepared to submit detailed proposed schedules, at the January 20, 1983 prehearing conference. Palmetto Alliance provided no schedule. (Tr. 711). Such omission should work against the instant request. In this regard, one cannot lose sight of the fact that despite the rhetoric contained in the Motion, Palmetto Alliance has not advanced a single substantive fact which warrants additional time. Indeed, as noted, the only information it has to support Contention 6 rests with Messrs. McAfee and Hoopingarner. See p. 3, supra.

7. Palmetto Alliance submits that

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<sup>27</sup> Assurances of finality should be required given the stage of the proceeding. Palmetto Alliance is not at the initial stage of discovery; rather it is 4 months from hearing.

the absence of any contention regarding the safety evaluation report (SER) and the now limited environmental contentions provide significant additional flexibility to the February 2, 1983 schedule. [Motion at p. 15].

This argument is to be given no weight. When this Board established the discovery schedule in February 1983 it had no SER contentions before it and environmental contentions were already limited. Since these facts have not changed the Board's February 1983 reasoning for closing discovery on May 20, 1983 should continue to control.

8. Palmetto Alliance makes reference to the affidavit of Billie Garde as support for its extension request.<sup>28</sup> Motion at p. 16. This affidavit fails to set forth facts upon which this Board can rely upon in deciding the Motion. Rather it consists of numerous innuendos without any basis.

Several other troublesome aspects of the affidavit are addressed below:

(a) The affidavit asserts that "there were significant gaps in the discovery documents provided . . ." Affidavit at p. 5. As noted, Applicants and Staff provided Palmetto Alliance with all information (not subject to privilege) that was requested during discovery. There are no Motions to Compel pending, and the suggestion that Applicants or the Staff have failed to provide some relevant information is simply unsupported.

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<sup>28</sup> Applicants note that the affidavit of Billie Garde was signed May 26, 1983, not May 25, 1983, the date the extension request was due. Applicants also note that they did not receive a copy of the affidavit until late in the day on May 26, 1983.

(b) The affidavit asserts that the "'control factor' at Catawba is stronger than anywhere we have investigated." Affidavit at p. 11. GAP does not explain this control factor as used in the affidavit. It appears, however, that GAP is attempting to set up a Catch-22; if there is a strong union and an independent construction contractor, Applicants have too little control since, as GAP points out, there is no union or independent construction contractor, (and thus "no separation between utility and construction") there is too much control. This allegation simply carries no weight.

(c) The affidavit implies that notices concerning the "'whistleblower protection act'" have not been properly disseminated so as to provide workers with relevant information. Affidavit at p. 12. As the Staff reported to the Board in its pleading of April 13, 1983, notices have been posted throughout the job site.<sup>29</sup>

#### CONCLUSION

Palmetto Alliance's Motion for a reopening of discovery on Contention 6 should be denied. As Applicants have demonstrated, Palmetto Alliance's assertion that it has only recently received a substantial number of documents of major significance from Applicants and the NRC Staff (such as the Catawba Welding Inspector's Task Force) is inaccurate. Palmetto Alliance has been given every possible opportunity by the Board and the parties to complete a comprehensive and timely discovery effort on Contention 6, including a unilateral "right of first discovery" and several extensions of time, and has been

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<sup>29</sup> Applicants would note that they have complied with the posting requirements of the Board's April 27, 1983 Order.

given timely access to every document it has sought on discovery except those to which Applicants successfully objected to supplying.

Palmetto Alliance's argument that GAP's investigation necessitates a reopening of discovery is similarly unpersuasive, particularly in light of the intervenor's failure to explain why GAP was not brought into this proceeding months ago. Clearly, if significant findings result from GAP's continuing investigation of quality assurance matters, such could be brought to the attention of the Board and under the late-filed contention criterion could be evaluated with respect to admissibility. At that time, the Board can make the threshold determination of whether the matter could have been raised earlier, if so, it should be rejected.

Lastly, Palmetto Alliance has provided no new significant information which requires further inquiry and which might serve as good cause to reopen discovery. Rather, Palmetto Alliance is simply seeking additional time to make up for the time it has squandered away.

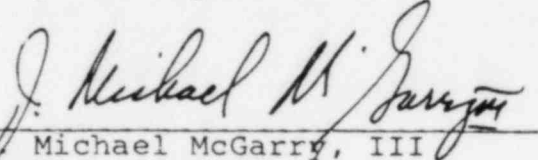
To grant this Motion would in effect penalize Applicants for Palmetto Alliance's failure to conduct itself responsibly in this proceeding. The plain fact is that Palmetto Alliance has not done its work, despite this Board's notice in January of 1983 that "discovery

obligations falling on Palmetto Alliance in the next few months should come as no surprise." Memorandum and Order of January 7, 1983 at p. 4.

For the above stated reasons, Applicants urge that Palmetto Alliance's Motion to Establish Discovery Schedule

On Its Quality Assurance Contention 6 be denied.<sup>30</sup>

Respectfully submitted,

  
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June 2, 1983

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<sup>30</sup> Although specifically opposing such a suggestion, the most Palmetto Alliance should be permitted is to take the depositions of the Catawba construction and quality assurance employees that Applicants had made available during the week of May 16, 1983 regarding Contention 6. In this regard, any representation by Palmetto Alliance that these names became available late in discovery is misleading. The names of all of the QC inspectors were available on February 15, 1983 as a part of the Task Force report. The names of all Quality Assurance employees were available prior to the March 14, 1983 inspection by Palmetto Alliance. Additional names were made available in response to Palmetto Alliance's follow-up interrogatories. The documents reflecting these additional names were identified in Applicants' March 25, 1983 discovery response, were available for inspection on March 30, 1983, and at counsel's request, were copied and sent to Palmetto Alliance on April 7, 1983.



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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)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Response In Opposition To Palmetto Alliance's Motion To Establish Discovery Schedule On Its Quality Assurance Contention 6" in the above captioned matter have been served upon the following by deposit in the United States mail this 2nd day of June, 1983.

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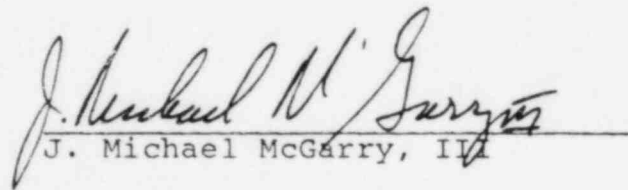
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