

BOOKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'83 AUG 29 A11:20

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
INDUSTRY SERVICE
DOE-100

In the Matter of)
)
DUKE POWER COMPANY, et al.) Docket Nos. 50-413
) 50-414
(Catawba Nuclear Station,)
Units 1 and 2))

APPLICANTS' MOTION TO STRIKE; OR, IN
THE ALTERNATIVE, TO REQUIRE PALMETTO ALLIANCE
TO COMPLY WITH ITS OBLIGATION TO SPECIFY
ANY ADDITIONAL CONCERNS OF MESSRS.
HOOPINGARNER AND MCAFEE UNDER CONTENTION 6

In its "Answer to Applicants' Motion for Partial Summary Disposition Regarding Contention 6," [hereafter cited as "Summary Disposition Response"] dated August 12, 1983, Palmetto Alliance asserts (p.2 ¶s 1 and 4) that the depositions of William Ronald McAfee (taken May 19, 1983) and Nolan Richard Hoopingarner, II (taken May 19-20, 1983) "do not reflect each and every concern that [each] has with respect to Contention 6." No factual support is provided for these statements. Moreover, as will be demonstrated below, these assertions are directly contradicted by statements made under oath by Messrs. Hoopingarner and McAfee during their depositions. Applicants accordingly move that these statements be stricken from Intervenor's Summary Disposition Response.

In the alternative, the clear inconsistency between Palmetto Alliance's assertions in its Summary Disposition Response and the testimony of Messrs. Hoopingarner and McAfee at their depositions may indicate that these newly-alleged concerns are based upon information not known to these two individuals at the time their depositions were taken. If such is the case,

8308300461 830826
PDR ADOCK 05000413
G PDR

DS03

Applicants submit that Palmetto Alliance is now obligated to make known promptly to the other parties the nature of and specific factual bases for these concerns. A failure by the Intervenor to comply immediately with this obligation should preclude it from raising these allegations at the upcoming hearing.¹

BACKGROUND

To provide a proper perspective from which to evaluate Palmetto Alliance's claim that Messrs. Hoopingarner's and McAfee's depositions do not reflect all of their concerns relating to Contention 6, Intervenor's pattern of behavior throughout discovery on this aspect of Contention 6 should be considered. This pattern of behavior, characterized by Intervenor's repeated efforts to avoid defining the exact scope of Contention 6, resulted in Applicants' essentially being limited to one opportunity to discover the precise nature of the concerns raised by Messrs. Hoopingarner and McAfee. This opportunity arose during Applicants' depositions of these two Palmetto Alliance witnesses. At the end of these depositions, both McAfee and Hoopingarner stated on the record that all of their concerns had been addressed in the depositions.² Yet now, three months after these depositions were taken (and three months after discovery on this aspect of Contention 6 has closed), Palmetto Alliance denies that all of these individuals' concerns relating to Contention 6 are reflected in their depositions.

¹ Applicants acknowledge that this Motion seeks relief which is, in part, similar to that sought in Applicants' August 15, 1983 "Motion to Require Palmetto Alliance's Compliance with the Terms of the Board's June 20, 1983 Memorandum and Order." Had we received Palmetto Alliance's "Answer to Applicants' Motion for Partial Summary Disposition Regarding Contention 6" before filing the previous Motion, Applicants would have consolidated their requests for relief.

² See McAfee deposition, Tr. 114-116; Hoopingarner deposition, Volume II, Tr. 107.

This allegation appears to Applicants to constitute either a misrepresentation of the record or another ploy in a continuing series of attempts by the Intervenor to play "hunt the peanut" in order to avoid taking a firm position on Contention 6. Such an attempt -- which contravenes both the Board's clear directive to Palmetto Alliance in its May 13, 1983 Order to inform the other parties of what information it intends to rely upon in support of Contention 6, and the Board's ruling in its June 20, 1983 Order that Intervenor supplement its discovery responses to reflect any new information -- must not be countenanced.

Because the allegations in Contention 6 were premised upon the concerns of Hoopingarner and McAfee, about which Intervenor had provided virtually no information at the initial prehearing conference,³ Applicants sought to ascertain the exact nature of those concerns and the factual bases for them by discovery on Palmetto Alliance. The Board has characterized Applicants' discovery effort as follows:

In their initial interrogatories, the Applicants posed numerous questions to Palmetto designed to elicit basic information about this contention, particularly the meaning of its terms, the specific evidence supporting the broad allegations, and the particular

³ At the January, 1982 prehearing conference, counsel for Palmetto Alliance was asked to provide background for the Intervenor's assertion in Contention 6 that "a number" of former Duke Power Company employees, including a QC inspector, "have complained of systematic deficiencies in plant construction and company pressure to approve faulty workmanship." Mr. Guild replied that Messrs. Hoopingarner and McAfee "were ready and able to testify about personal knowledge with respect to construction deficiencies, and they are champing at the bit to some degree to explain in detail what their concerns have been." (Tr. 120). However, when asked by the Board whether Palmetto Alliance could be more specific in its allegations about quality assurance, counsel for Intervenor stated that he was not then prepared to "go into detail" (Tr. 119), adding that "much of the evidence in the form of documentation" of Contention 6 was in Applicants' possession and that Palmetto Alliance would make its concerns more specific once it had access to such information. (Tr. 120).

regulations involved. See Applicants' First Set of Interrogatories dated April 9, 1982, pp. 6-20. All but a few of Palmetto's initial responses to these interrogatories lacked specifics or, in many cases, any answer at all. See Palmetto's Responses to Applicants' Interrogatories dated April 28, 1982, pp. 7-17.⁴ The Board nevertheless ruled that Palmetto would not be required to provide specific answers until after it had had a first opportunity at discovery against the Applicants and the Staff. Following rather extensive discovery, Palmetto filed its 'Supplemental Responses' to the Applicants' initial interrogatories [on April 19, 1983].⁵ Dissatisfied with these responses, the Applicants filed a motion to compel. We granted that motion in major part, directing Palmetto among other things to provide additional responses with respect to some thirty interrogatories on Contention 6. (June 20, 1983 Order at pp. 4-5).

While acknowledging that Intervenor's answers to Interrogatories 5 and 80⁶ dealing with the concerns of Hoopingarner and McAfee were "not sufficiently specific," the Board did not compel further responses on those

⁴ These April 29, 1982 Responses contained virtually no substantive information. Palmetto Alliance professed itself unable to provide specific details respecting the concerns of Messrs. Hoopingarner and McAfee because "access to records in the possession of Duke Power Company sought in discovery requests served April 20, 1982 is necessary to refresh [their] recollection." See, for example, Palmetto Alliance's April 28, 1982 Response to Interrogatory No. 80.

⁵ In its April 19, 1983 Supplemental Responses, Intervenor acknowledged that Applicants had provided certain documents relating to Messrs. Hoopingarner and McAfee's concerns but stated that "[n]either Mr. Hoopingarner nor Mr. McAfee have examined these documents or others yet unknown which may refresh their recollection as to other activities and areas of plant construction for which workmanship is substandard." April 19, 1983 Supplemental Response to Interrogatory 5, pp. 4-5.

⁶ Interrogatory 5 states:

Please specify the activities and areas of plant construction for which you contend the workmanship is substandard.

Interrogatory 80 states:

Provide the specific allegations by each construction worker or other employee on whom you intend to rely in support of your position on this contention.

Interrogatories due to "the prominence of Messrs. Hoopingarner and McAfee in this contention" and to time constraints. Rather, the Board directed Palmetto Alliance to make its two witnesses available for depositions, and warned that "[f]ailure on their part to appear and respond fully to questions could result in exclusion of their testimony in any later hearing." May 13, 1983 Order at p. 6 (emphasis added).

Given the Board's direction, the only way left to Applicants to determine the significance of the concerns raised by Hoopingarner and McAfee, and the specific factual bases underlying these concerns, was through their deposition testimony. Having been provided with only the most general assertions as to the nature of Messrs. Hoopingarner and McAfee's concerns up until that time, Applicants anticipated that in these depositions, McAfee and Hoopingarner would reveal all of their concerns. The language of the Board's May 13 Order indicates that it, too, expected detailed information to be forthcoming. After instructing the Intervenor to make available its two witnesses, the Board further stated with respect to Interrogatory 82 on Contention 6:⁷

Now that discovery is coming to a close, Palmetto is under an obligation to review all of the information that has been provided to it at its request, to decide what specific pieces of information it intends to rely on, and to tell the other parties specifically what it is. Any information not so revealed and which is known or should have been known at this time may be excluded from a later hearing over timely objection. (May 13 Order at p. 7 (emphasis added)).

Despite the representations of Palmetto Alliance as to these witness' personal knowledge and eagerness to testify, and despite its persistent demands for access to documents "in Applicants' possession" in order to

⁷ This Interrogatory stated: "Besides the statements of those construction workers or other employees, is there any other information on which you intend to rely in support of their allegations? If so, please identify."

refresh the witness' recollections, the depositions of Messrs. McAfee and Hoopingarner reveal that these individuals were not only unable to provide specific information on alleged instances of poor quality control or substandard workmanship which they contend remain uncorrected, but also that their review of relevant documents, including those provided to Palmetto Alliance by Applicants on discovery, was minimal at best.⁸

In the "Further Supplementary Responses" which it filed on May 27, 1983, Palmetto Alliance again provided no additional information pertinent to the specific concerns of Messrs. Hoopingarner and McAfee.⁹ Rather, Intervenor appeared to take the position that the depositions of these individuals, which contain "[d]etailed information as to evidence on this contention known to these identified potential witnesses," reflected all of the information known to them on their particular concerns. See May 27, 1983 Further Supplementary

⁸ Mr. Hoopingarner indicated that he had not been asked to review any documents obtained in discovery. (Hoopingarner deposition, Volume II, p. 34). Mr. McAfee indicated that he had made only one three-hour visit to the document room at Duke Power Company to review documents in search of evidence to support his allegations and the broader allegations contained in Contention 6. (McAfee deposition, pp. 51-53). Other than indicating that the documents he had read involved welding inspectors' "complaints to supervision" and some "notices of violation," Mr. McAfee was unable to supply any specifics or otherwise explain to what documents he was referring. (Id., p. 58). Moreover, both McAfee and Hoopingarner testified that they had not seen any of Applicants' responses to Palmetto Alliance's follow-up interrogatories (McAfee deposition, pp. 49-50, 64; Hoopingarner deposition, Volume II, p. 32) and that they had not helped to prepare Intervenor's April 29, 1983 Supplemental Responses on Contention 6. (McAfee deposition, p. 44; Hoopingarner deposition, Volume II, pp. 29-30).

⁹ See the Board's Memorandum and Order of June 20, 1983, wherein the Board declined to address Palmetto Alliance's Further Supplementary Responses on Contention 6 point by point because "[a]part from welding, those responses were not merely insufficient, they provided no information at all." Id. at p. 9.

Responses, p. 3. Although one relevant sentence is garbled, Applicants believe that they have fairly represented Intervenor's remarks.¹⁰ Palmetto Alliance also stated in this pleading that it "has no knowledge at this time of - specific uncorrected faulty workmanship of safety significance at Catawba; but believes that the existence of such faulty workmanship is strongly indicated by the deficient Quality Assurance Program" Id., p. 6.

In sum, aside from their deposition of Messrs. Hoopingarner and McAfee, Applicants have had no opportunity to obtain any substantive information about these witness' allegations. Accordingly, during these depositions Hoopingarner and McAfee were carefully questioned by Applicants' counsel as to whether or not they had revealed all of their concerns. Each witness indicated that he had done so. (See section A of Argument, infra.) Intervenor's current attempt to misrepresent or ignore the positions taken by its witnesses by means of unsupported allegations in its Summary Disposition Response constitutes still another attempt by Palmetto Alliance to "make skeletal contentions, keep the bases for them secret, [and] then require its adversaries to meet any conceivable thrust at hearing . . ." Pennsylvania

¹⁰ Palmetto Alliance stated in its May 27 Supplemental Responses (pp. 3-4):

Board and parties should also note that as requested by the Applicants and Staff and as directed by the Board in its May 13, 1983 Order, Palmetto Alliance has made available to Applicants and NRC Staff its members Nolan R. Hoopingarner, II, and William R. McAfee for depositions on May 19, and 20th, 1983, at Duke Power Company's corporate offices in Charlotte, N.C. Messrs. practice here bears practice of verbal voiding fully to all questions propounded by Applicants and the NRC Staff [sic]. . . . Detailed information as to evidence on this contention known to these identified potential witnesses is, therefore, readily available to both Applicants and Staff. In response to the following interrogatories, therefore, Palmetto Alliance also directs the Board and parties attention to the information given by them in those depositions which will not be repeated hereafter.

Power and Light Co., et al., (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 338 (1980), (citing unpublished Licensing Board Order of August 24, 1979 (p. 6) in the same proceeding). As the Appeal Board has recognized, such tactics are "patently unfair and inconsistent with a sound record." Id. They must no longer be allowed in this proceeding.

ARGUMENT

- A. Palmetto Alliance's assertion that Messrs. Hoopingarner and McAfee's depositions fail to reflect all of their concerns is not supported by these individuals' deposition testimony.

As will be demonstrated below, an examination of the deposition testimony of Messrs. Hoopingarner and McAfee clearly contradicts Intervenor's assertion (on p. 2 of its Summary Disposition Response) that the depositions do not reflect all of Hoopingarner's and McAfee's concerns with respect to Contention 6.

As discussed above, the skeletal nature of Intervenor's discovery responses on Contention 6 highlighted the importance of Messrs. Hoopingarner's and McAfee's depositions as a means for Applicants to determine the exact nature of these individuals' concerns and the factual bases for these concerns. Accordingly, as a review of these depositions clearly indicates, Applicants attempted to insure in taking these depositions that each and every issue which these witnesses wished to raise relating to Contention 6 was discussed. All of the concerns attributed to Hoopingarner and McAfee in various legal pleadings, internal Duke Power Company documents, newspaper articles, etc., were raised by Applicants' counsel to provide the witnesses an opportunity to explain them. In addition to reviewing all of these documents with the witnesses in detail, Applicants' counsel then encouraged both individuals to raise any additional concerns which they might have. Moreover, Applicants questioned both of these gentlemen closely as to whether all of their

concerns regarding "systematic deficiencies in plant construction and company pressure to approve faulty workmanship" had been covered. In direct contrast to Palmetto Alliance's assertion in its Summary Disposition Response, - both Mr. McAfee and Mr. Hoopingarner indicated in their sworn testimony that all of their concerns relating to Contention 6 had been discussed.

During Mr. McAfee's deposition, for example, all of the incidents listed in his response to Interrogatory 80¹¹ of Palmetto Alliance's April 28, 1982 Response were discussed. The following exchange between Applicants' Counsel and Mr. McAfee then took place:

Q. With respect to definitions of terms in Interrogatory 80 Responses, there is reference made to faulty workmanship and to lack of proper Quality Assurance and to Company pressure; and actually the Company pressure is mentioned in Interrogatory Response 108, and I just want to assure myself -- we have been talking about faulty workmanship; is that correct?

A. (The witness nodded his head affirmatively.)

Q. And we have been talking about inadequate Quality Assurance; is that correct?

A. (The witness nodded his head affirmatively.)

Q. And again, you are nodding your head.

A. Excuse me, yes.

Q. To both questions?

A. Yes.

Q. Have we talked about Company pressure also?

A. Yes.

¹¹ See fn. 6, supra.

Q. So all the incidents you have talked about today embrace those three categories; and I don't have to pursue those further to find out if there are any other incidents that underlie substantial workmanship, faulty, inadequate Q.A. or company pressure?

A. Correct.
(Tr. 101-102, McAfee deposition.)

Applicants' Counsel then focused on Mr. McAfee's follow-up of his concerns with Duke Power employees. As to this area of inquiry, Mr. McAfee ultimately indicated that this area had been covered to his satisfaction:

Q. Aside from what we have discussed today, is there anything else you want to add in with respect to which concerns were expressed and what was the specific nature of the concern expressed?

A. No.

Q. Just so I'm clear and the Record is clear, I believe you have been responsive and you have given us this information throughout the course of the Deposition.

I just want to know if there is anything else. I'm trying to double-check, quite frankly.

A. That's right.
(Tr. 105.)

A few minutes later, Mr. McAfee was asked to elaborate on his assertion that changes in Applicants' QA program are needed "to provide confidence that the plant will perform satisfactorily in service" (Tr. 113):

Q. Are there any specifics that underlie that position, or is it just simply your observations, being at Catawba for the period of time that you were?

A. Based on my observations.

Q. I'll move away from this area, but I want to be sure in your responses to that question, there was nothing in addition underlying that response other than the specifics we have discussed today.

Is that correct?

A. That's correct.
(Tr. 114)

The following discussion then ensued (Tr. 114-116):

Q. Has it been indicated to you that you may testify in this Proceeding?

A. Yes sir.

Q. When you testify, and again, I'm asking you to the best of your knowledge today, do you intend to rely on any documents?

A. Possibly.

Q. Do you know today what those documents are?

A. No.

Q. Will you discuss any matters that we haven't discussed in this Deposition?

A. I don't think so; I think you've covered the ground pretty well.

Q. Do you have anything else to add to what you have already said today?

A. No.

Q. I'm asking you to the best of your knowledge today, on May 19, 1983.

A. What?

Q. I think you have answered my question; I'm just clarifying. We have spent a lot of time this evening trying to understand what your concerns are.

And if there is something else, this is the time that we get it on the table; so I ask you is there anything else?

A. Not at this point.

Q. I am looking at a newspaper article I'm sure you are familiar with (indicating). Does it have a date on that? Let's identify it for the Record.

A. It looks like 10/15/79.

Q. Will you read the headline?

A. "Inspector Charges Carelessness at Nuclear Power Plant."

Q. What I'm trying to do is satisfy myself. In that article reference is made to five concerns that you had; and I was looking quickly [to see] if those were five concerns we have already discussed. [If so,] I don't plan to pursue it.

If you would just confirm that --

A. They are covered.

Q. They are covered; okay. Fine, thank you.
(Tr. 114-116.)

In his deposition, Mr. Hoopingarner also spoke at length and in considerable detail about his specific concerns relating to Contention 6. In addition to discussing with Mr. Hoopingarner in detail each concern that the witness mentioned, Applicants' counsel then went through relevant documents with the witness (as was done with Mr. McAfee) in an attempt to insure that no areas of concern were overlooked. When this process had been completed, Applicants' Counsel asked Mr. Hoopingarner whether he wished to raise any additional issues:

Q. We have talked about your concerns today?

A. Yes, sir.

Q. As they related to Catawba and the safe operation at Catawba. [Are] there any other additional safety concerns that relate to the safe operation at Catawba that we haven't discussed?

A. No, sir.

Q. I think that completes it

(Tr. 107, Hoopingarner deposition, Vol. II.)

In light of the clear contradiction between Mr. McAfee's and Mr. Hoopingarner's statements in their respective depositions that all of their concerns relevant to Contention 6 had been covered, and Palmetto Alliance's - assertion that the depositions of these individuals "do not reflect each and every concern [each] has with respect to Palmetto Alliance Contention 6," Applicants submit that this assertion must be stricken from Intervenor's Summary Disposition Response.

Palmetto Alliance attempts to simply ignore, distort or negate the significance of its witnesses' sworn testimony by arguing that the deposition testimony of Messrs. Hoopingarner and McAfee

was only in response to discovery questions by Applicants' counsel (and to a limited extent by counsel for the NRC Staff). Palmetto Alliance had no control over the discovery questions asked or the manner of presentation of testimony by its members Ron McAfee and Rick Hoopingarner. (Summary Disposition Response, p. 6).

Applicants submit that these assertions do nothing to detract from these individuals' testimony. The statements of each of these witnesses were made under oath, and with a clear understanding of the question asked. It is difficult to see how these responses could have been misconstrued. The fact that Palmetto Alliance "had no control over the discovery questions" does not change the validity of what its witnesses said.

Nor may Palmetto Alliance rely upon the fact that the transcripts of the deposition "are presently unavailable to Palmetto Alliance" (Summary Disposition Response, p. 6) to excuse its extremely faulty recollection of its witnesses' remarks. The statements of Messrs. Hoopingarner and McAfee which are quoted above were all made in the presence of counsel for Palmetto Alliance. Moreover, Intervenor has in its possession tapes of these (and all other) depositions which it insisted on recording rather than obtaining official transcripts. A transcription, or even a simple playback, of these tapes

(which Intervenor has had in its possession for almost three months) is all that is required to corroborate these witnesses' remarks.

In sum, Palmetto Alliance offers no specific support for its allegation that not all of Hoopingarner and McAfee's concerns relating to Contention 6 are reflected in their depositions. This omission constitutes a failure to comply with 10 C.F.R. §2.749(b), which provides that:

When a motion for summary disposition is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of his answer; his answer by affidavits or as otherwise provided in this section must set forth specific facts showing that there is a genuine issue of fact. If no such answer is filed, the decision sought, if appropriate, shall be rendered.

In view of Intervenor's noncompliance with this NRC requirement (by its failure to provide support for its assertions), and also in view of the fact that these assertions regarding Messrs. Hoopingarner and McAfee's concerns are clearly contradicted by these individuals' deposition testimony, no grounds exist for denying partial summary disposition on Contention 6 based upon these statements. Applicants submit that the assertions in question should therefore be stricken from Intervenor's Summary Disposition Response. Ample authority exists under Rules 11 and 12(f) of the Federal Rules of Civil Procedure to strike all or part of a pleading. See Ellingson v. Burlington Northern, Inc., 653 F.2d 1327 (9th Cir. 1981).

- B. Palmetto Alliance is obligated to inform the other parties promptly of the existence of new information relevant to Contention 6.

It is not clear from Palmetto Alliance's Summary Disposition Response whether the "concerns" of Messrs. McAfee and Hoopingarner which are allegedly not reflected in their depositions are based upon information known to these individuals at the time of their deposition or upon information obtained subsequently. Applicants assume for the purposes of this section of the argument that Hoopingarner and McAfee were not aware of these additional

"concerns" during their depositions, since they have both given sworn testimony to the contrary. (See section A, supra). Accordingly, these newly-alleged concerns presumably stem from facts which came to their attention after May 27, 1983.¹² If such is the case, Palmetto Alliance is now obligated to inform the Board and other parties promptly of the precise nature of these concerns and the factual bases for them.

That Intervenor is under such an obligation has been made clear on more than one occasion. For example, the Board's May 13, 1983 Order made clear Intervenor's obligation to provide specific information regarding Contention 6.¹³ As noted above (p. 5), the Board directed that Palmetto Alliance make

¹² The information which gave rise to these concerns was apparently not available to Intervenor when it filed its May 27, 1983 Supplemental Responses, in which it indicated that Hoopingarner and McAfee's depositions accurately reflected their concerns. (See pp. 6-7, supra).

¹³ In addition, see "Applicants' First Set of Interrogatories to Palmetto Alliance and Requests to Produce," April 9, 1982, wherein Applicants stated (pp. 1-2):

These interrogatories and requests shall be continuing in nature. Thus, anytime Palmetto Alliance obtains information which renders any previous response incorrect or indicates that a response was incorrect when made, Palmetto Alliance should supplement its previous response to the appropriate interrogatory or request to produce. Palmetto Alliance should also supplement its responses as necessary with respect to identification of each person expected to be called at the hearing as an expert witness, the subject matter of his or her testimony, and the substance of that testimony. Applicants are particularly interested in the names and areas of expertise of Palmetto Alliance's witnesses, if any.

Palmetto Alliance has never supplemented its responses to any Interrogatories (for example, Interrogatory 80) which dealt specifically with McAfee and Hoopingarner's concerns.

Hoopingarner and McAfee available for depositions and that these witnesses "respond fully to questions . . . " May 13, 1983 Order, at p. 6. The Board also stressed, after granting Applicants' motion to compel on Interrogatory 82, that "Palmetto is under an obligation . . . to decide what specific pieces of information it intends to rely on, and to tell the other parties specifically what it is. Any information not so revealed and which is known or should have been known at this time may be excluded from the later hearing over timely objection." Id., p. 7. See also the Board's June 13, 1983 Order, in which it again stressed (p. 2) that the "burden is now on Palmetto . . . to be specific about problem areas under Contention 6 it wishes to pursue"

Most recently, the Board stated in its June 20, 1983 Order that Applicants' Motion for Sanctions with respect to Contention 6 should be granted in large part, due to the Intervenor's deficient discovery responses. With respect to Messrs. McAfee and Hoopingarner's depositions, the Board stated:

We assume that these depositions (which we do not have) brought out the extent of the personal knowledge of Messrs. Hoopingarner and McAfee about matters relevant to Contention 6, at least sufficient for the Applicants to prepare for hearing. (Id., p. 7).

Because discovery had closed on this aspect of Contention 6, and because the Board assumed that these witnesses' deposition testimony reflected "the extent of [their] personal knowledge" about "matters relevant to Contention 6," it appears that the Board did not include Hoopingarner and McAfee's concerns in its subsequent mandate to the Intervenor to supplement its Contention 6 Interrogatory responses with regard to any new concerns which arose after May 27, 1983:

Concerns based on information first becoming available to Palmetto between May 27, 1983 and the time of hearing that are within the scope of Contention 6 may be litigated. However, pursuant to 10 C.F.R. §2.740(c)(3), the Board is imposing a duty on Palmetto to supplement promptly its interrogatory responses under Contention 6 to the Applicants and the Staff as to any such new areas of concern

under that contention, other than welding concerns and concerns of Messrs. Hoopingarner and McAfee. (June 20, 1983 Order, at p. 8).

Applicants submit that if the Board had believed these two witnesses had not revealed all of their concerns during their depositions, it would not have excluded Intervenor's obligation to provide additional or late-discovered information relevant to the concerns of Messrs. McAfee and Hoopingarner.

In any event, such an obligation is clearly consistent with the Board's mandate that Palmetto Alliance take a firm position on Contention 6 (as well as its other contentions) in order to enable Applicants to prepare for hearing on this contention. It is also consistent with the Board's decision, explained in its June 20, 1983 Order, to narrow the scope of Intervenor's contentions "to areas where specifics have been given." Id. at p. 2.

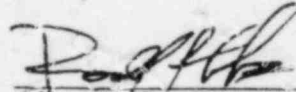
Applicants urge that the Board order Palmetto Alliance to supplement promptly relevant interrogatory responses on Contention 6 in order to state clearly and precisely what the concerns of Messrs. McAfee and Hoopingarner are which were not covered in their respective depositions. If Palmetto Alliance fails to comply, within five working days, with its obligation to supplement its interrogatory responses in order to apprise Applicants of the details and factual bases for the additional concerns of Messrs. Hoopingarner and McAfee, Applicants request that the Intervenor be barred from raising such additional concerns in the upcoming hearing. In addition, Applicants urge that Palmetto Alliance be barred from attempting to reopen the hearing record on Contention 6 on the basis of these alleged new concerns if it fails to provide the information requested. Such relief would be consistent with the terms of the Board's June 20, 1983 Order narrowing Contention 6.

CONCLUSION

Based upon the foregoing, Applicants urge that the Board strike as inconsistent with Messrs. Hoopingarner and McAfee's sworn testimony the

assertion in Intervenor's Summary Disposition Response that the depositions of Mr. Hoopingarner and Mr. McAfee "do not reflect each and every concern that [each] has with respect to Contention 6." Should the Board find that these assertions reflect the existence of new concerns on the part of Messrs. Hoopingarner and McAfee which arose after May 27, 1983, Applicants request in the alternative that Palmetto Alliance either be compelled to supplement appropriate Contention 6 discovery responses promptly or be foreclosed from raising these alleged "concerns" during the upcoming hearing.

Respectfully submitted,



Albert V. Carr, Jr.
Ronald L. Gibson
DUKE POWER COMPANY
P.O. Box 33189
Charlotte, North Carolina 28242
(704) 373-2570

J. Michael McGarry, III
Anne W. Cottingham
DEBEVOISE & LIBERMAN
1200 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 857-9833

Counsel for Duke Power
Company, et al.

August 26, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD *83 AUG 29 A11 :20

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

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH
Docket Nos. 50-413
50-414

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Motion To Strike; Or, In The Alternative, To Require Palmetto Alliance To Comply With Its Obligation To Specify Any Additional Concerns Of Messrs. Hoopingarner And McAfee Under Contention 6" in the above-captioned matter have been served upon the following by deposit in the United States mail this 26th day of August, 1983.

James L. Kelley, Chairman
Atomic Safety and Licensing Board
Panel
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. A. Dixon Callihan
Union Carbide Corporation
P. O. Box Y
Oak Ridge, Tennessee 37830

Dr. Richard F. Foster
P. O. Box 4263
Sunriver, Oregon 97702

Chairman
Atomic Safety and Licensing
Board Panel
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Chairman
Atomic Safety and Licensing
Appeal Board
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Richard P. Wilson, Esq.
Assistant Attorney General
State of South Carolina
P. O. Box 11549
Columbia, South Carolina 29211

Robert Guild, Esq.
Attorney-at-Law
P. O. Box 12097
Charleston, South Carolina 29412

Palmetto Alliance
2135½ Devine Street
Columbia, South Carolina 29205

Jesse L. Riley
854 Henley Place
Charlotte, North Carolina 28207

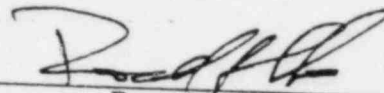
Henry A. Presler
945 Henley Place
Charlotte, North Carolina 28207

George E. Johnson, Esq.
Office of the Executive Legal
Director
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

J. Michael McGarry, III, Esq.
Anne W. Cottingham, Esq.
Debevoise & Liberman
1200 Seventeenth Street, N.W.
Washington, D.C. 20036

Carole F. Kagan, Attorney
Atomic Safety and Licensing Board
Panel
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Scott Stucky
Docketing and Service Section
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555



Ronald L. Gibson