

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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In the Matter of:

THE APPLICATION FOR THE ISSUANCE OF A FACILITY  
OPERATING LICENSE FOR THE VIRGIL C. SUMMER  
NUCLEAR POWER STATION, UNIT I  
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: Docket No.  
: 50-395 OL  
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Courtroom 2-A  
Richland County Judicial Center  
1701 Main Street  
Columbia, South Carolina

Tuesday, April 7, 1981

The Atomic Safety and Licensing Board met, pursuant  
to notice, in prehearing conference at 9:35 a.m.

BOARD MEMBERS PRESENT:

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

FRANK HOOVER  
Administrative Judge  
Atomic Safety and Licensing Board Panel  
U. S. Nuclear Regulatory Commission  
Washington, D. C. 20555

GUSTAVE A. LINENBERGER  
Administrative Judge  
Atomic Safety and Licensing Board Panel  
U. S. Nuclear Regulatory Commission  
Washington, D. C. 20555

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## 1 APPEARANCES:

2 For the NRC Staff:

3 STEVEN C. GOLDBERG, ESQ.  
4 U. S. Nuclear Regulatory Commission  
Washington, D. C. 20555

5 MS. MITZI A. YOUNG  
6 MR. WILLIAM KANE  
U. S. Nuclear Regulatory Commission  
7 Washington, D. C. 20555

8 For the Applicant - South Carolina Electric & Gas Company:

9 JOSEPH B. KNOTTS, JR., ESQ.  
DeBevoise & Liberman  
1200 Seventeenth Street, N. W.  
10 Washington, D. C. 20036

11 RANDOLPH R. MAHAN, ESQ.  
South Carolina Electric & Gas Co.  
12 P. O. Box 764  
Columbia, South Carolina 29218

13 For the Intervenor:

14 BRETT A. BURSEY, Intervenor  
15 18 Bluff Road  
Columbia, South Carolina 29201

16 DR. JOHN RUOFF  
17 Fairfield United Action

18 For the State of South Carolina:

19 RICHARD P. WILSON, ESQ.  
Assistant Attorney General  
20 State of South Carolina  
P. O. Box 11549  
21 Columbia, South Carolina 29211

22 DR. SAMUEL L. FINKLEA, III  
Program Management Specialist  
23 Bureau of Radiological Health  
South Carolina Department of Health and  
24 Environmental Control  
2600 Bull Street  
25 Columbia, South Carolina 29201



1 DAVID L. ROBBINS, ESQ.  
2 Office of the Attorney General  
3 State of South Carolina  
4 P. O. Box 11549  
5 Columbia, South Carolina 29211  
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P R O C E E D I N G S

CHRMN GROSSMAN: Ladies and gentlemen, this is the third -- fourth pre-hearing conference in the matter of the application for the issuance of a facility operating license for the Virgill C. Summer Nuclear Power Station, Unit I, applied for by the South Carolina Electric & Gas Company.

This pre-hearing conference was ordered by Board Order dated March 10, 1981, for the purpose of considering all the matters covered by Rule 2.752 relating to a final pre-hearing conference. Hopefully, this will be the final pre-hearing conference.

I would like to introduce the Board now. On my left is Dr. Frank Hooper. Judge Hooper is a Professor at the University of Michigan and Chairman of the Ecology, Fisheries & Wildlife Program and he is a part time member of the Board. On my right is Judge Gustave Linenberger, who is a full time member of the Board and a nuclear physicist. I am Judge Herbert Grossman and will act as Chairman of the Board.

I would like first for the participants to introduce themselves, starting on my left with the representative from the State of South Carolina.

MR. WILSON: Thank you, Mr. Chairman, I'm Richard P. Wilson, and I do represent the State of South Carolina.

DR. FINKLEA: I'm Samuel L. Finklea. I represent the Department of Health and Environmental Control and I'm acting as

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1 technical advisor to Mr. Wilson.

2 CHAIRMAN GROSSMAN: Could you spell your name, sir?

3 DR. FINKLEA: Finklea, F-i-n-k-l-e-a. I'm not an  
4 attorney, by the way.

5 CHAIRMAN GROSSMAN: Mr. Knotts?

6 MR. KNOTTS: Judges, my name is Joseph P. Knotts, Jr.  
7 with the firm of Debevoise & Liberman in Washington, D. C. I  
8 represent South Carolina Electric & Gas Company and the Public  
9 Service Authority in South Carolina in this matter. With me  
10 at the counsel table this morning is Randy Mahan, who is an  
11 attorney with South Carolina Electric & Gas Company.

12 MR. GOLDBERG: Mr. Chairman, my name is Steven Goldberg.  
13 I represent the NRC staff. With me at the counsel table to the  
14 right is Mitzi Young, legal intern in our office. To my left,  
15 William Kane, the Summer Project Manager for the NRC staff.

16 CHAIRMAN GROSSMAN: Is Mr. Bursey in the courtroom?

17 (No response.)

18 CHAIRMAN GROSSMAN: We noticed this pre-hearing con-  
19 ference for 9:30. I note that it is 9:38 and Mr. Bursey is not  
20 present. Does anyone here know of Mr. Bursey's whereabouts?

21 (No response.)

22 CHAIRMAN GROSSMAN: Has anyone been in contact with  
23 Mr. Bursey recently?

24 (No response.)

25 CHAIRMAN GROSSMAN: Is there a representative from Fairf

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1 United Action present in the courtroom?

2 MR. RUOFF: Yes, sir. My name is John Ruoff. I am the  
3 authorized representative for Fairfield United Action.

4 CHAIRMAN GROSSMAN: Mr. Ruoff, would you care to sit  
5 at the counsel table?

6 (Mr. Ruoff advances to the counsel table.)

7 CHAIRMAN GROSSMAN: We had hoped first to discuss Mr.  
8 Bursey's intervention and I'm afraid we're just going to have to  
9 forego that pleasure at the moment and perhaps we can start with  
10 Fairfield United.

11 Now Mr. Ruoff --

12 MR. RUOFF: Excuse me, sir, that's Ruoff.

13 CHAIRMAN GROSSMAN: Ruoff.

14 MR. RUOFF: Yes,

15 CHAIRMAN GROSSMAN: Okay, Mr. Ruoff. We received a  
16 somewhat belated petition from you filed approximately two weeks  
17 ago raising a number of contentions, I believe 27 contentions,  
18 some of which you indicated are repetitious of contentions that  
19 Mr. Bursey had filed. And we received a response to your  
20 petition filed by Mr. Knotts for the Applicant. I take it you  
21 have received a copy of Mr. Knotts response to you?

22 MR. RUOFF: I received that yesterday, yes, Your Honor.

23 CHAIRMAN GROSSMAN: Are you prepared to discuss this  
24 morning the matters raised by Mr. Knotts in his response to you?

25 MR. RUOFF: Frankly, Your Honor, we would object to

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1 Being called upon to go forward on that matter at this moment  
2 in that we received no notice to be here prepared to go forward.

3 CHAIRMAN GROSSMAN: Well, sir, I had the Docketing and  
4 Service Section serve a copy of our Notice of Pre-Hearing Confer-  
5 ence on you. Did you receive that?

6 MR. RUOFF: I did receive that, sir, yes.

7 CHAIRMAN GROSSMAN: Do you understand, sir, that when you  
8 file a petition, that the general rule is you take the proceedings  
9 as they are without having any special considerations given to  
10 you in terms of delay of proceedings? Are you aware of that, sir?

11 MR. RUOFF: Yes, sir.

12 CHAIRMAN GROSSMAN: I take it you do desire that your  
13 contentions be entertained by the Board.

14 MR. RUOFF: Yes, sir.

15 CHAIRMAN GROSSMAN: Well I would think that whatever you  
16 are prepared to discuss regarding your intervention petition will  
17 be in your favor as far as having any contentions admitted and  
18 having you admitted to the proceeding. To the extent you are  
19 unable to support your petition, you will of course have a  
20 weakened position with regard to intervention. You do understand  
21 that, sir?

22 MR. RUOFF: Yes, sir.

23 CHAIRMAN GROSSMAN: First I would like the staff to  
24 respond to your petition for intervention. I don't believe, Mr.  
25 Goldberg, that you have filed a written response, is that correct,



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1 sir?

2 MR. GOLDBERG: That's correct, Judge Grossman. We  
3 intend to file a written response. The staff is in complete  
4 agreement with the position taken in the Applicant's response of  
5 April 3rd, which I can elaborate on if you wish.

6 CHRMN GROSSMAN: To the extent you can, I think it  
7 would lay some of the groundwork for Mr. Ruoff to respond at this  
8 pre-hearing conference and we would certainly appreciate having  
9 an exposition on that.

10 MR. GOLDBERG: Essentially, our position is that this  
11 intervention petition is exceedingly late, approximately four  
12 years out of time, less than three months from the scheduled  
13 adjudicatory proceeding and according to the Regulations governing  
14 non-timely petitions in Section 2.714, it should not be enter-  
15 tained absent a favorable finding on the five factors that are  
16 enumerated therein. The primary factor is good cause, which we  
17 find completely absent in this petition, I think for reasons  
18 that are well articulated in the Applicant's filing and would not  
19 serve any purpose merely to echo them.

20 I would say that it does appear that quite apart from  
21 the relatively recent organizational status of this organization,  
22 that its members have resided in the area for as much as 35 years,  
23 presumably their interests, if they perceive them to be affected  
24 by the operation of a power plant in the vicinity, should have  
25 exercised far greater care and diligence to see that those interes

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1 were protected.

2 At this late date in the proceeding, I think it would  
3 be contrary to the orderly administration of this proceeding. I  
4 think fundamental concepts of fairness to the litigants who are  
5 looking forward to an expedited proceeding, and I think would  
6 compromise the overall integrity of the adjudicatory process were  
7 we to allow a petition without good cause to be entertained at  
8 this late date.

9 I would also say that with respect to the factors, that  
10 again we are in complete agreement that those factors do not  
11 militate in favor of the grant of this late petition.

END OF

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1 CHAIRMAN GROSSMAN: Could you hold up for a  
2 second, Mr. Goldberg?

3 I notice Mr. Ruoff is joined at the counsel  
4 table. Is that by a member of the organization, or is  
5 that of Mr. Bursey's, uh, someone?

6 MR. RUOFF: No, Your Honor, this is Mrs. Beverly  
7 Bervery (Spelling) B-e-r-v-e-r-y, who is a member of  
8 Fairfield United.

9 CHAIRMAN GROSSMAN: By the way, Mr. Ruoff, are  
10 you an attorney?

11 MR. RUOFF: No, sir, I am not.

12 CHAIRMAN GROSSMAN: Mr. Goldberg, would you resume,  
13 please?

14 MR. GOLDBERG: Yes, again I feel that along with  
15 the good cause which we believe is absent; obviously the  
16 late participation in introduction of issues of the scope  
17 of those sought to be introduced is fraught with great  
18 potential for delay if not in the actual hearing date,  
19 certainly in the post-hearing process .

20 In addition, if there were added contentions at  
21 this date, it is conceivable that some of the parties may  
22 need additional time to prepare appropriate testimony which  
23 I think could well jeopardize the scheduled hearing date in  
24 June.

25 Again, I think that to the extent that each

1 of these individuals have an interest, that interest was not  
2 diligently pursued and instead what it appears is that they  
3 have awaited until a most inopportune time to seek to  
4 intervene as a party in this proceeding, and only as it  
5 appears from their filing, after, it appears, that the  
6 existing intervenor would not be able to fully advance his  
7 interest as he might have had he observed certain Board  
8 rulings and procedural requirements; so, again, I would  
9 say that we oppose the late petition and really have  
10 nothing to add at this point.

11 We don't feel that it is necessary given the  
12 absence of due cause and the unsatisfactory showing on the  
13 balance of the factors to even entertain a petition or to  
14 look to see whether they're standing or perhaps well pleaded  
15 contention is present.

16 CHAIRMAN GROSSMAN: Mr. Ruoff, let me ask you  
17 whether it is your intention that the Board postpone the  
18 date set of June 22nd for the commencement of the hearings  
19 in this proceeding?

20 MR. RUOFF: If I might, Your Honor, at this time,  
21 since I did not come prepared as I explained to you to  
22 respond fully to these things, could I ask for a brief break  
23 and confer with some of my people here?

24 CHAIRMAN GROSSMAN: Okay, why don't we have a  
25 break for approximately ten minutes?

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1 (Short recess.)

2 CHAIRMAN GROSSMAN: The session is reconvened.

3 I notice Mr. Bursey has just come in to take his  
4 seat.

5 Mr. Bursey, you know this conference was scheduled  
6 for 9:30?

7 MR. BURSEY: No, sir, I didn't know. I had 10:00  
8 o'clock down. I apologize.

9 CHAIRMAN GROSSMAN: Mr. Ruoff, I think you would  
10 probably prefer a little extra time while we discuss Mr.  
11 Bursey's position in this intervention rather than to proceed  
12 now. Is that correct, sir?

13 MR. RUOFF: Yes, sir.

14 CHAIRMAN GROSSMAN: Okay, do either of the parties  
15 have an objection to going to Mr. Bursey's intervention now  
16 rather than continuing with Fairfield United, Mr. Knotts?

17 MR. KNOTTS: We will certainly accomodate ourselves  
18 to the schedule adopted by the Board, Mr. Chairman. I guess  
19 I would like to note for the record that I have been advised  
20 that Dr. Ruoff was conferring with counsel during the break  
21 and if there is counsel advising Dr. Ruoff, I would like to  
22 have an appearance be made.

23 CHAIRMAN GROSSMAN: Mr. Ruoff?

24 DR. RUOFF: Sir, we are not represented by counsel.

25 CHAIRMAN GROSSMAN: The Board does not really want



1 to interfere with any advice that any of the parties care to.

2 If counsel wants to make an appearance, that is fine,  
3 but if there is informal advice given, that is not for us to  
4 notice.

5 MR. KNOTTS: Mr. Chairman, it may have some bearing  
6 on the proceeding, Mr. Bursey is named as a witness in this  
7 proceeding and an attorney.

8 It is my understanding that a person cannot be both  
9 an attorney in a proceeding and a witness and I believe that  
10 the gentleman that Dr. Ruoff was conferring with has been  
11 designated as a witness in this proceeding.

12 CHAIRMAN GROSSMAN: Mr. Ruoff has indicated that  
13 he has not retained counsel and we are not going to be looking  
14 over your shoulders to determine if you are receiving any  
15 advice. That is a matter between him and his organization.

16 We would now like to proceed to Mr. Bursey's  
17 intervention. We have pending with regard to that a motion  
18 by the staff to preclude finally Mr. Bursey's putting forth  
19 an affirmative case. We would like to hear Mr. Bursey's  
20 response to that motion, please.

21 MR. BURSEY: Thank you, Mr. Grossman.

22 I have a summary of contentions and a list of witnesses  
23 here that I would like to enter into the record. (Handing.)

24 CHAIRMAN GROSSMAN: Okay, we will accept the  
25 document.

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1 MR. BURSEY: The attachments are lengthy and I don't  
2 have copies of them as of yet. Some of them may be a review  
3 of documents.

4 (Brief pause.)

5 I would like to just take an opportunity to say that  
6 I have looked at Fairfield United's petition and would hope  
7 the Commission would consider some way to be able to allow the  
8 people in that area to be a party to this proceeding. I am sure  
9 they would be more than willing to work with the Commission in  
10 setting up some time for agreements and constraints that would  
11 not delay the proceeding and would be able to see that their  
12 concerns are heard.

13 CHAIRMAN GROSSMAN: Mr. Bursey, our concern at the  
14 moment is your intervention.

15 MR. BURSEY: I just wanted to put my position on  
16 that into the record.

17 Do you have any questions? I mean obviously my  
18 position is that I feel as I have stated all along, that my  
19 contentions are simply stated and the general parameters of  
20 which are well outlined in the last several years of this  
21 proceeding. They are summarized and outlined in the documents  
22 that I just gave all the parties.

23 I am not sure how the Judge would have me proceed.  
24 Should I go just contention by contention?

25 CHAIRMAN GROSSMAN: Well, we do intend to go over your

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1 contentions, contention by contention and see whether we can  
2 distill out from your submissions and transmittals and other  
3 things that have been presented to us; witnesses with summaries  
4 of their testimony, but, first, we did want to hear whether you  
5 had any response to the points raised by Mr. Goldberg in his  
6 motion to deny you the opportunity to put on an affirmative  
7 case on which the Board has purposely acted.

8 MR. BURSEY: Is this NRC staff comments or order  
9 setting final pre-hearing conference, is that what that  
10 establishes?

11 CHAIRMAN GROSSMAN: Yes, that is the document in  
12 which the request was made by the staff to preclude you from  
13 presenting an affirmative case.

14 Do you have any response to that?

15 MR. BURSEY: Well, the staff briefly mentions  
16 that final date by which intervenor may file a request to  
17 remove present bar, and the earlier statement of the Board was  
18 that they would consider the contentions or consider the case  
19 as it was made, consider the contentions, piece mill, if you  
20 will, and I feel that that's a reasonable way to proceed, if  
21 we keep the door open for me to make clear and substantive  
22 arguments, I think it is in everyone's interest. I know that  
23 the Applicant to see my affirmative--my ability to present  
24 an affirmative case terminated. I don't think that that's  
25 reasonable at this point. I think that the applicant has

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1 sufficient time to be able to prepare for hearings, that the  
2 issues are indeed substantive issues. Applicant has to take  
3 issue with the nature of the contentions as dealing in  
4 technicalities and I believe that I am going to be able to  
5 provide the applicant with sufficient data to be able to present  
6 a case during the hearing and I feel that should any of the  
7 contentions in my filings between now and the requisite time  
8 for pre-hearing filings prove to be not substantial enough to  
9 be argued in the hearing, I am sure the Board will rule on  
10 them.

11 I don't see any significant difference in proceeding  
12 the way we are proceeding now and the way we have been proceeding.  
13 If the contention doesn't have merit, it is bound to be thrown  
14 out.

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1 CHAIRMAN GROSSMAN: Well, now, let me just tell you from  
2 looking at what you submitted to us what I see to be a major ob-  
3 jection to your procedure, and that is apparently you have summar-  
4 ized your contentions and have then listed a witness. But it seems  
5 to me as though there's an implication that this isn't basically  
6 what the witness is going to say. You haven't indicated here that  
7 the witness will present this particular testimony, the nature of  
8 it, any of the specifics. What exactly, going to your first con-  
9 tention, is--well, I see on your first contention you don't have  
10 any witnesses listed. Is that correct, sir?

11 MR. BURSEY: No, sir, that's not correct. Contentions,  
12 as it's noted, A(2)(a) and (b), are contentions that relate to the  
13 financial capability of the applicant to safely operate, maintain  
14 and decommission the V.C. Summer Plant. I have cited in my summary  
15 several Nu. Reg. documents, a document that is from a rule-making  
16 proceeding, a document from the General Public Utilities about  
17 decommissioning costs, and those documents will be used to seek  
18 some industry standard with respect to the type of decommissioning  
19 I'm going to argue is necessary.

20 Now in terms of the financial capability of the appli-  
21 cant, I am intending to call Attorney Robert Guild, who, by virtue  
22 of being involved in numerous Public Service Commission hearings  
23 where the applicant was the moving party, is very well-versed and  
24 familiar with the applicant's financial record. And so I would  
25 present things from Nu. Reg. documents, from existing industry



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1 standards about decommissioning figures, interface that with spe-  
2 cific information about the applicant's financial capabilities by  
3 a local attorney who's dealt with that for years, and let the  
4 Commission hear both of those points and draw their own conclusions

5 CHAIRMAN GROSSMAN: Mr. Guild is listed for the first  
6 contention. I had assumed that the first contention was A(2)(a),  
7 and he's listed by A(2)(b). And I assume from what you say he's  
8 going to testify with regard to both (a) and (b). Is that correct,  
9 sir?

10 MR. BURSEY: Well, they seem to be interrelated. This  
11 (a), (b), A(2) has been a determination made by your staff. This  
12 is not the way I wrote my contentions.

13 CHAIRMAN GROSSMAN: Tell us what Mr. Guild is going to  
14 be saying, though, when he testifies.

15 MR. BURSEY: Well, the financial capability of the  
16 applicant is their ability to be able to continue to generate  
17 sufficient revenue to be able to safely operate, maintain and  
18 decommission the facility. The nature of decommissioning has to  
19 be brought out. But what Mr. Guild will be speaking to specifi-  
20 cally is the applicant's ability to continue to generate the type  
21 of funds necessary, and in terms of their--

22 CHAIRMAN GROSSMAN: Well, now, sir, I believe you stated  
23 a figure sometime in the past with regard to decommissioning costs,  
24 and the applicant appears willing to testify with regard to that  
25 magnitude of costs they do have sufficient finances.

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1 MR. BURSEY: What magnitude of costs are you referring  
2 to?

3 CHAIRMAN GROSSMAN: Well, now, didn't you use some figure  
4 in the past?

5 MR. BURSEY: I did. The only figure that's been entered  
6 into the record that I've seen was less than ten million dollars.  
7 I have been told by telephone that that figure has been increased  
8 substantially, but I haven't seen that in the record.

9 Mr. Knotts, what was the figure you cited me, between  
10 sixty and seventy million?

11 CHAIRMAN GROSSMAN: Mr. Knotts, I believe that you had  
12 referred to a figure that had been raised, I believe, of twenty-  
13 six million. Is that correct, sir?

14 MR. KNOTTS: That's approximately correct. 26.9 million  
15 dollars. In the March 30, 1978, pre-hearing conference at transcript  
16 77 was the specific dollar amount that Mr. Bursey gave. He did  
17 not necessarily say that was the upper limit.

18 MR. BURSEY: Certainly. And I don't have the document  
19 in front of me, and I am sure that that was referenced to. There  
20 has been no dismantling of a 900-megawatt commercial reactor.  
21 That figure has absolutely no bearing on that, nor did I intend it  
22 to. I don't even know what document he's referring to, but I'm  
23 sure that was a figure that was one of the few that's available to  
24 indicate that the seven to ten million dollars the applicant had  
25 previously referred to is obviously inaccurate.

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1 CHAIRMAN GROSSMAN: Well, what is Mr. Guild going to be  
2 indicating is the cost of decommissioning a reactor?

3 MR. BURSEY: Mr. Guild is going to be speaking to the  
4 financial qualifications of the applicant, not the specifics of  
5 decommissioning. I'll be addressing that point.

6 JUDGE LINENBERGER: On this very point you just made,  
7 Mr. Bursey, for Mr. Guild to address financial qualifications  
8 assumes that you or Mr. Guild or somebody contributing to the  
9 preparation of this testimony has some figure in mind.

10 MR. BURSEY: Mr. Linenberger--

11 JUDGE LINENBERGER: Excuse me, sir. Let me finish my  
12 comments. I think they'll be helpful to you.

13 Has some figure in mind. Otherwise, you and/or Mr.  
14 Guild will be talking about financial qualifications in sort of a  
15 vacuum, absent of some target figure that you are claiming too  
16 low or too high or the applicant can't meet because he's not shoot-  
17 ing high enough or something. So, when you disclaim that Mr.  
18 Guild will have any input on decommissioning, I find it difficult  
19 to see what ground rules he will use to access financial qualifi-  
20 cations. Can you address that, please, sir?

21 MR. BURSEY: Yes. I state in my summary here--and the  
22 summary is a good thing to go on as to what I'm going to be pre-  
23 senting. It references some figures that the industry has been  
24 using. A report by General Public Utilities figured the cost of  
25 decommissioning the T.M.I. Unit 2 prior to the accident at \$125

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1 per kilowatt of capacity in 1978 dollars. Now, that's an industry  
2 reference that can be used to determine that in 1981 dollars the  
3 cost of decommissioning a 900-megawatt reactor will be approxi-  
4 mately 140 million dollars.

5 Now in terms of decommissioning, you know, certainly,  
6 that we're making educated guesses at best. There are not a whole  
7 lot of documents available in terms of decommissioning. There's a  
8 great deal of argument as to the mode of decommissioning that would  
9 be advisable. I'm arguing that this dismantling and returning the  
10 site to an unrestricted condition is what I'd like to see. And I  
11 have the best available figures that I'm going to be able to go  
12 over with Mr. Guild and present a clear and lucid argument to that  
13 point.

14 CHAIRMAN GROSSMAN: Mr. Bursey, we are not trying to  
15 cross-examine you here on your figures. We just want to make sure  
16 that you are going to be informing Mr. Knotts at this session what  
17 figures you are going to be using; where you are deriving those  
18 figures. If I understand correctly, now, you have stated what  
19 figures you're going to be using. You have referenced those  
20 figures. And my understanding is Mr. Guild is not going to, if we  
21 permit his testimony, be taking the stand and testifying to a  
22 different set of figures, of which you are not now notifying Mr.  
23 Knotts. Is my understanding correct, sir, that you are going to  
24 be standing on these figures?

25 MR. BURSEY: That's correct.

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1 CHAIRMAN GROSSMAN: Mr. Knotts, does that seem a clear  
2 enough basis for you to allow you to prepare your testimony?

3 MR. KNOTTS: I don't think that it is a clear enough  
4 basis to allow us to prepare testimony. If we're talking about  
5 what dollar amount and that's the only adhesive testimony. If  
6 the dollar amount is 125 million dollars and that's where they're  
7 going to be coming from, then we know what the dollar amount is.  
8 It doesn't help with the rest, of course.

9 CHAIRMAN GROSSMAN: Fine. As to the dollar amount, are  
10 you familiar with the report by General Public Utilities on which  
11 Mr. Bursey intends to rely in order to arrive at this figure?

12 MR. KNOTTS: I am not.

13 CHAIRMAN GROSSMAN: Mr. Bursey, do you have available a  
14 copy of that report for Mr. Knotts?

15 MR. BURSEY: I do not have it. I've arranged for it to  
16 be sent to me and will make it available to Mr. Knotts.

17 CHAIRMAN GROSSMAN: Do you have any further citation  
18 with regard to that report, other than--is there a date, some sort  
19 of number?

20 MR. BURSEY: I have it in my notes. I don't have it  
21 in my summary. I can probably look it up before the end of the  
22 day.

23 CHAIRMAN GROSSMAN: Before the end of the day, we would  
24 appreciate that.

25 MR. BURSEY: You will notice, Mr. Commissioner, that we



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1 have other cites in this summary that--I would trust when you said  
2 am I going to hold to these figures that you're referring to the  
3 figures within this summary.

4 CHAIRMAN GROSSMAN: Yes. My concern is not with what  
5 you've cited here but with what you haven't cited.

6 MR. BURSEY: Well, I believe that there's sufficient  
7 leeway within what I've stated in the summary, that rule-making  
8 proceeding that the State of New York was involved in, the G.P.U.  
9 study that was done, these Nu. Reg. studies that were done, to be  
10 able to give us a reasonable basis to proceed with a substantive  
11 discussion about the applicant's decommissioning plans and costs.

12 CHAIRMAN GROSSMAN: Now, I noted you do have that State  
13 of New York reference, and you have the number N.R.C.-R.M.-50-3.  
14 Is that the New York State reference number?

15 MR. BURSEY: That's my understanding, it's a Nuclear  
16 Regulatory Commission rule-making proceeding reference number.  
17 That's what I was told it was. If you recognize that's not the  
18 proper form, I may be mistaken.

19 CHAIRMAN GROSSMAN: Mr. Goldberg, are you familiar with  
20 that citation?

21 MR. GOLDBERG: I am not.

22 CHAIRMAN GROSSMAN: Mr. Knotts, that is at the bottom on  
23 page 2.

24 MR. KNOTTS: The docket number sounds familiar, Mr.  
25 Chairman, but I'm not familiar with the document in question.

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1 50-3 would have been the first rule-making proceeding after  
2 Appendix I. So, it must have been Table S-3 rule-making proceed-  
3 ing. That's a guess.

4 CHAIRMAN GROSSMAN: Is that your understanding, Mr.  
5 Bursey, that it was the S-3 proceeding that this has reference to?

6 MR. BURSEY: No, sir, I didn't know that. I knew it was  
7 a proceeding in which decommissioning was addressed. If the S-3  
8 Table--that's a big table he's referring to, the radon aspects.

9 CHAIRMAN GROSSMAN: Well, I believe--Mr. Knotts?

10 MR. KNOTTS: Well, the S-3 proceeding was concerned with  
11 the environmental consequences of the entire fuel cycle. I believe  
12 it extended to decommissioning. That's why I thought it might be  
13 logically in that proceeding.

14 CHAIRMAN GROSSMAN: But in any event, you postulate or  
15 you indicate that the State of New York postulated a billion-  
16 dollar cost. I think that we need some very specific reference to  
17 that document, so that Mr.--

18 MR. BURSEY: I intend to secure this document and have  
19 it submitted in the record. I mean, this was one of my questions  
20 for you, in my citing N.R.C. documents that I do not have in my  
21 hands. Do I need to submit these to you and to the applicant?

22 CHAIRMAN GROSSMAN: Well, not if you have a very clear  
23 citation that is understood by the parties so that they can pre-  
24 pare their testimony on those documents.

25 MR. BURSEY: So, we would need more specific reference

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1 than the document number?

2 CHAIRMAN GROSSMAN: Well, that's correct. Now, we do  
3 expect to have that specific reference for Mr. Knotts and Mr.  
4 Goldberg.

5 MR. BURSEY: Well, as soon as I can get it from the  
6 documents room at the Nuclear Regulatory Committion. I would hope  
7 that that would be within a couple weeks.

8 CHAIRMAN GROSSMAN: Well, now, where did you see that  
9 document to begin with? Did you have it or did Mr. Guild have a  
10 copy?

11 MR. BURSEY: No, sir. Dr. Chauncey Kepford, who has  
12 been involved in the S-3 proceedings, who is listed as a witness  
13 in my proceeding for the long-term health effects, gave me this  
14 cite as a good decommissioning figure.

15 JUDGE LINENBERGER: Was it Dr. Kepford's representation  
16 to you that the N.R.C. document cited at the bottom of page 2 of  
17 the summary you've presented this morning contained a specific  
18 reference to the New York State postulation of a one-billion-dollar  
19 figure?

20 MR. BURSEY: Yes, sir.

21 JUDGE LINENBERGER: Dr. Kepford recommended this to you?

22 MR. BURSEY: Yes, sir.

23 CHAIRMAN GROSSMAN: Now, Mr. Knotts, reading through the  
24 remainder of contention A(2)(a) and (b), are there any other  
25 references here that you see that may be too inexact for you to

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1 adequately prepare your case? Would you like to take a few min-  
2 utes on that? I believe we're going to have a long day today.

3 MR. KNOTTS: I can't argue with that. I can't argue  
4 with the fact that we're going to have a long day today.

5 CHAIRMAN GROSSMAN: Now, Mr. Bursey, you understand the  
6 alternative to doing all this is just to say that you can't pre-  
7 sent your case. But we want to see that you have a substantial  
8 case to present, and that you give the parties an opportunity to  
9 prepare for that particular kind of case. And that's why we're  
10 doing all this.

11 MR. BURSEY: I'm looking forward to the opportunity for  
12 Mr. Knotts finally understanding the substance of my case. I  
13 think it's clear.

14 CHAIRMAN GROSSMAN: Mr. Knotts?

15 MR. KNOTTS: That I can't argue with. I wonder if Mr.  
16 Bursey understands--and I guess this is in the category of un-  
17 solicited advice--that except in the case of matters which the  
18 Commission might reasonably know as an expert body and be able to  
19 take official notice of, it is not necessarily enough to cite a  
20 document. You have to provide somebody to sponsor the document  
21 who has done a study, unless you can get a stipulation, unless you  
22 can get an agreement from the other parties. You can't just come  
23 in with the citation to something that happened in some other  
24 case without it being subjected to cross-examination, without it  
25 being tested, unless it's a noncontroversial, generally understood

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1 scientific fact, or unless there's agreement. I have not seen the  
2 New York State estimate, but if, in fact, there is such an estimate  
3 it is so far out of line with what one normally sees I'm sure the  
4 Board cannot take official notice of it. That being the case, he  
5 would have to put on a witness to prove that number, and I wonder  
6 if Mr. Bursey is prepared to do that.

7 CHAIRMAN GROSSMAN: Do you want to respond to that, Mr.  
8 Bursey?

9 MR. BURSEY: Well, the first point that Mr. Knotts raised  
10 was accepting the document. If, indeed, this document exists the  
11 way it's been represented to me, and as a rule-making proceeding,  
12 I would expect if the judges that presided over that hearing  
13 ruled to its admissibility, this panel would rule to its admis-  
14 sibility. Were it presented as admissible and Mr. Knotts felt that  
15 he needed more data on it, I would be beholden to present witnesses  
16 to substantiate that. I want to be able to have this document in  
17 everyone's hands with sufficient time for the Board to determine  
18 if they will consider it admissible, and if they do, do they want  
19 to hear more substantive expert testimony to corroborate what it's  
20 postulating.

21 CHAIRMAN GROSSMAN: Well, let me further elaborate on  
22 what Mr. Knotts is saying. A document prepared by someone is  
23 hearsay, and when that person is not available to testify, gen-  
24 erally boards or courts will not accept that document. The only  
25 type of hearsay that is generally accepted when expert witnesses



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1 testify are matters that are generally relied upon by experts,  
2 and that usually does not include specific reports that someone  
3 else has formulated. To get the substance of those reports in,  
4 you need the person who made the report to take the stand and be  
5 able to defend that report. The types of hearsay that are gen-  
6 erally relied upon relate to facts that are known within the area  
7 of expertise, textbook facts, not specific reports like that.

8 Now, if you intend to rely upon a specific report, you  
9 would be best advised to get the people who formulated the report  
10 to testify for you. Otherwise, there won't be much value in that  
11 type of foundation for your expert to testify on.

12 Do you fully understand that, Mr. Bursey?

13 MR. BURSEY: Let me see if I can repeat it. Is there a  
14 point where you would rule as to the admissibility of the document  
15 as a piece of evidence withstanding expert testimony? Could you  
16 determine to do that if it satisfied you that this had been done  
17 in a court, in a Nuclear Regulatory Commission rule-making pro-  
18 ceeding?

19 CHAIRMAN GROSSMAN: Well, I can say this, Mr. Bursey:  
20 If you're going to bring in a report in which someone arrived at  
21 a billion-dollar figure and not have that person come in and  
22 testify with regard to that, yes, we would definitely rule on it  
23 and we wouldn't accept that particular report.

24 Now, if you're going to have someone come in who has  
25 read that report and independently would like to testify with

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1 regard to certain of the matters that he himself can testify to,  
2 that may be identical to what's in the report, well, that's another  
3 matter.

4 Now, will Mr. Guild be prepared to come in and say that  
5 he is familiar with this area and the costs are X dollars in doing  
6 this and Y dollars in doing something else, and allow himself to  
7 be cross-examined by Mr. Knotts and by Mr. Goldberg? Will that  
8 be the situation with Mr. Guild?

9 MR. BURSEY: That doesn't seem to be the best available  
10 evidence. I would submit that inasmuch as you see this document  
11 needing to be substantiated--and now I understand that--that I am  
12 willing and able to bring in someone who prepared this document,  
13 should I get the cooperation of the New York officials that pre-  
14 pared it. I would anticipate that I could get someone that worked  
15 with the preparation of this document that would come down and  
16 testify. I think having the State of New York participate in  
17 this proceeding when they have done an intensive, in-depth report  
18 on decommissioning aspects, and the State of South Carolina has  
19 not, would be very beneficial. I'm prepared to have the funds to  
20 bring in such a witness if this document doesn't stand on its own,  
21 and I can understand now how you would prefer to have someone--  
22 and the applicant certainly would prefer--to question about it.

23 I would like the record to reflect my willingness and  
24 ability to bring in such a witness.

25 CHAIRMAN GROSSMAN: Well, our primary concern now, Mr.

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1 Knotts, is whether you are being given enough advance notification  
2 of the specifics of the case. Now, we are also making a very good  
3 record for recognizing shortcomings in the case that may be pre-  
4 sented and giving Mr. Bursey some notice of what type of documents  
5 would not be admissible. I think we've had a full enough explora-  
6 tion of the New York State document to put you on notice as to  
7 what the basis for the testimony is, and I think we've also put  
8 Mr. Bursey on notice that the mere submission of that particular  
9 document probably won't be a very substantial foundation for his  
10 case.

11 Is there any further comment we need to have on this,  
12 Mr. Knotts?

13 MR. KNOTTS: I think the point is well taken, Mr. Chair-  
14 man; that is, in generality, not just in the context of decommis-  
15 sioning or decommissioning funds. It's well that Mr. Bursey be  
16 apprised that there are hearsay problems, foundation problems with  
17 the introduction of documents.

18 Specifically as to the New York State document, I'm at  
19 a little bit of a loss to figure out when, if ever, we would find  
20 out who the sponsoring witness would be and by what mechanism we  
21 might be able to get behind that witness, through deposition or  
22 otherwise.

23 CHAIRMAN GROSSMAN: I hesitate to put deadlines on  
24 things from past experience, Mr. Knotts. But, Mr. Bursey, when  
25 will we discover, first of all, what the specific document is

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C-GJS-15 1 that you have in mind; and further, who we might expect would be  
2 testifying in support of that document?

3 MR. BURSEY: It would be pure speculation on my part to  
4 say. I haven't even considered or delved into the production of  
5 witnesses and documents here. Mid-May would give the applicant  
6 six weeks. Now, the first of May would give the applicant six  
7 weeks. Is that sufficient time for Mr. Knotts to respond?

8 CHAIRMAN GROSSMAN: Well, there's no response here. The  
9 question is when Mr. Knotts will be apprised of the nature of the  
10 document and whatever witness you intend to present. I would think  
11 at this point that we're talking of a matter of days, not weeks,  
12 in order to apprise the parties of your position.

13 Now, are we going to have a determination of what that  
14 document is?

15 MR. BURSEY: I don't want to deprive the Board of this  
16 critical evidence by a lack of someone in New York or someone in  
17 the documents room in Washington not forwarding the document as  
18 quickly as possible. I think that if we say the end of the month,  
19 which is three weeks from now, that would give me enough time to  
20 get the document and to find out if the parties that prepared the  
21 document are willing to respond, to testify in this matter.

22 So, if we're picking a date, I would say May 1st, April  
23 30th.

24 CHAIRMAN GROSSMAN: Well, we are not going to set a  
25 particular date. The sooner you identify precisely the document

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1 that you have in mind, and the sooner you identify any witness that  
2 may support that document, the better chance you have that we will  
3 accept that document or that witness, and we will not state at this  
4 moment that we are going to accept that. We want to make sure,  
5 though, that Mr. Guild--and we're still on Mr. Guild--is not going  
6 to rely on any other documents.

7 So, let's continue on that contention and see if we can  
8 find any other documents that you intend to rely on.

9 Judge Hooper would like to also ask you a question.

10 JUDGE HOOPER: Mr. Bursey, I'm going to ask you one  
11 further question concerning Mr. Guild's proposed testimony as you  
12 see it now. Is he going to present anything on the financial  
13 capability of the applicant? What would his testimony be in this  
14 regard? You state that the applicant lacks financial capability  
15 to safely decommission. Now, what is Mr. Guild--what information  
16 will he give us in this regard?

17 MR. BURSEY: I made reference to Public Service Commis-  
18 sion hearings, where the record of the applicant's financial  
19 capabilities is extensive, and I've also made reference to the  
20 applicant's financial report, the annual report of 1979, and there  
21 a financial qualification statement in the record of this proceed-  
22 ing, all of which would be used to--

23 JUDGE HOOPER: Is Mr. Guild an economist, who has exper-  
24 tise in the area of financial volatilities of utilities?

25 MR. BURSEY: No, sir. Mr. Guild is an attorney who's



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1 been involved almost--let me say this: It's been his most time-  
2 consuming involvement in the past number of years, involved in  
3 utility rate hike hearings, wherein the prime issue of concern is  
4 the applicant's financial strength and weakness. And so in re-  
5 gards to his experience in that field, it's as extensive as we  
6 could find outside the applicant's own office in South Carolina  
7 and perhaps in the nation.

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1 JUDGE HOOPER: But he is not an expert in utility financing  
2 so he can appraise the financial status of the Applicant. This  
3 is what I wanted to know. Has he had any special training or  
4 expertise in this area?

5 MR. BURSEY: Not that I am aware of other than what  
6 his experiences provide him. He is certainly well appraised  
7 with figures, but if you're asking about his analytical ability  
8 I don't know.

9 JUDGE HOOPER: This is limited to rate hearings and  
10 this sort of thing in the State of South Carolina?

11 MR. BURSEY: Yes, sir.

12 CHRMN GROSSMAN: Well now if I understand this  
13 correctly, Mr. Bursey, we are going -- you are going to be  
14 relying again on testimony from another proceeding, a rate  
15 proceeding, and you do not intend to have the witnesses here who  
16 testified in the rate proceeding, but some attorney who may  
17 have examined those witnesses and intends to summarize their  
18 testimony. Is that the nature of the type of testimony you intend  
19 to put on?

20 MR. BURSEY: It is what I had anticipated, keeping in  
21 mind now that the Applicant was party to these hearings. This  
22 isn't that removed, the Applicant was involved in all this and  
23 it is a matter of record that they helped build. The attorney  
24 was also involved in those proceedings, so it is a very firsthand  
25 report.

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D2pw

1 CHAIRMAN GROSSMAN: Have you clearly specified what  
2 particular rate proceedings and what particular testimony you  
3 intend to rely on, sir?

4 MR. BURSEY: No, sir, I haven't. I have drafted Mr.  
5 Guild for the assignment only recently and have not had the  
6 opportunity to get down to such specifics with him, other than  
7 knowing in general we will be relying on the documents that I  
8 have just stated. If you want page number and specific cites,  
9 that's going to require some effort on the part of Mr. Guild  
10 to prepare that.

11 CHAIRMAN GROSSMAN: Yes, but we certainly expect that  
12 when you put on a witness though who is going to be testifying  
13 as an expert witness to summarize your position that he will  
14 expend that effort and that he will do it soon enough to apprise  
15 Mr. Knotts and Mr. Goldberg on what exactly he intends to base  
16 his testimony. Now I don't see any particular problem with  
17 regard to relying on the testimony of the company officials as  
18 I do with regard to the other hearsay that we had previously  
19 discussed.

20 I take it, Mr. Knotts, that you see no problem with  
21 that either, do you?

22 MR. KNOTTS: No, in general, subject to context type  
23 arguments, one can introduce the testimony of corporate officers  
24 from the same company in other proceedings and the question of  
25 weight, relevance and all that still remains, the hearsay objection

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D3pw

1 is not there.

2 CHAIRMAN GROSSMAN: This is of course admissions against  
3 a party --

4 MR. KNOTTS: -- or prior inconsistent statement or  
5 whatever.

6 CHAIRMAN GROSSMAN: Now when did you say we could  
7 expect that you will let Mr. Knotts know the specific page  
8 references from the specific testimony so that he can adequately  
9 prepare his case.

10 MR. BURSEY: Soon. By the end of the month.

11 CHAIRMAN GROSSMAN: Mr. Goldberg, did you have a  
12 comment?

13 MR. GOLDBERG: A general comment on Contention 2.  
14 In the Board's March 9 Order summarizing the conference call and  
15 Mr. Bursey's request to reinstate his affirmative case, which  
16 as I understand the status of things, he is under a current bar,  
17 provides that Mr. Bursey had to establish good cause for that  
18 removal and submit either a meaningful -- or in another part of  
19 the Board's Order a comprehensive -- summary with respect to  
20 the testimony.

21 With respect to Contention 2, as the discussion of the  
22 past 15 minutes or more reveals, we certainly have neither a  
23 meaningful nor comprehensive summary of the testimony of the  
24 sole witness, Mr. Guild, who Mr. Bursey identifies. Given the  
25 fact that this whole matter of discovery and testimony and

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1 disclosure is not of recent origin, I think that it is incumbent  
2 on this Board and the parties to begin to bring to an end this  
3 seeming endless round of filings, which never seem to lead us  
4 closer to the identification of admissible testimony, so generally  
5 we do not believe that good cause has been demonstrated for the  
6 introduction of the testimony that is only sketchily referred to  
7 in this filing or the documents which seem to be without any  
8 evidentiary potential at the present time.

9 CHAIRMAN GROSSMAN: We seem to agree with your  
10 comments, Mr. Goldberg, that at the present time, there has not  
11 been the type of presentation that we would accept in order to  
12 permit that affirmative case to go forward. What we are doing  
13 now is probing the elements of what is lacking in your case, Mr.  
14 Bursey, and what we expect would be presented to the other  
15 parties and to the Board before you are permitted to put Mr.  
16 Guild on the stand and the upshot of what we're saying now is  
17 that we're not going to be removing the bar with regard to Mr.  
18 Guild or with regard to any of the other witnesses that you  
19 have listed there in the absence of your presenting the  
20 specifics of the testimony, the specifics of the documents, and  
21 that the sooner you do that, the more likely it is that we will  
22 accept those witnesses in that affirmative case, but the closer  
23 you come to the hearing without having apprised the other parties  
24 of the nature of your case so that they can meet those specifics  
25 the less likely we are to accept that case that you intend to

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D5pw

1 present and that's basically the tenor of our discussion here.  
2 Do you understand that?

3 MR. BURSEY: Yes, sir, I do -- I do. If I could --

4 CHAIRMAN GROSSMAN: Certainly.

5 MR. BURSEY: -- remark on Mr. Goldberg's concern. I  
6 think I have outlined without the assistance of counsel, the  
7 parameters of my case in this summary. What we have been  
8 talking about is specific documents, references, citing and the  
9 admissibility of evidence. I appreciate it and I'm learning -- I  
10 believe we are moving towards resolution of my affirmative case  
11 in as final a package as I am going to be able to get it. I'm  
12 sorry that Mr. Goldberg doesn't share my excitement. I feel  
13 there is enough substance here for the Board and the parties to  
14 take their time -- we're not talking about delaying this  
15 proceeding a matter of months, we're talking about going through  
16 some tedious stuff here. Perhaps as you said and Mr. Knotts said,  
17 a long day, but I think that it is worth that to get to the  
18 substance of these issues, so I would appreciate it if everyone  
19 would bear with me. I think we're getting close to resolving it.

20 CHAIRMAN GROSSMAN: Well we're not even talking about  
21 any delay here, Mr. Bursey. We fully intend to conduct a hearing  
22 on schedule, starting June 22nd. It's not a question of a long  
23 or short delay, we're talking in terms of not having any delay.

24 MR. BURSEY: That's what I'm speaking of, I'm in  
25 agreement with that. I didn't understand Mr. Goldberg's concerns

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D6pw

1 about delay.

2 CHAIRMAN GROSSMAN: Now is there anything further that  
3 the parties would like to explore with regard to the first  
4 contention as to the insufficiency of the presentation at this  
5 point? Mr. Goldberg?

6 MR. GOLDBERG: One brief matter. On the timing of  
7 these submissions, I would note that under the present hearing  
8 schedule, summary disposition motions have to be filed on May  
9 7. Contention 2, I think, is certainly a candidate in the staff's  
10 judgment for a summary disposition. It certainly would appear  
11 that Mr. Bursey, if he delays much further in adducing the kind  
12 of information that he plans, may be faced with trying to do so  
13 in the form of a response. We certainly don't feel that the  
14 parties can be expected to address a case that may never material-  
15 ize and until it does, we'll have to move on the strength of the  
16 existing record,

17 (Pause.)

18 CHAIRMAN GROSSMAN: You do also understand, Mr. Bursey,  
19 that we are still going to adhere to our schedule of having  
20 pre-filed testimony 25 days in advance of the hearing and that  
21 at that point we will, of course, be matching the pre-filed  
22 testimony to the summaries and other matters that you have  
23 presented to the other parties during the discovery phase and  
24 that if -- even if we do allow testimony with regard to any  
25 particular aspect of the case, we may prohibit some of the

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D7pw

1 testimony on which you did not fairly apprise the other parties.  
2 Do you understand that also?

3 MR. BURSEY: No, sir.

4 CHAIRMAN GROSSMAN: Well what I'm saying is that we  
5 expect your summaries and that the matters that you present to  
6 the other parties during the discovery phase, during the pre-  
7 hearing phase of this proceeding, will fairly apprise them of  
8 the nature of your case and that if you come up to 25 days before  
9 the hearing and then present them with testimony that they could  
10 not hope to meet because of the lack of time, that in all  
11 fairness we will not allow that type of testimony to be put on.  
12 What I'm trying to do is encourage you again to give them a  
13 comprehensive summary of what you intend to put on prior to the  
14 pre-filed testimony.

15 MR. BURSEY: I understand the comprehensive aspect of  
16 the summary, simply being able to anticipate the position of the  
17 Applicant in understanding the case that they have to argue  
18 against. What I don't understand is the pre-filed testimony. It  
19 seems to me to be a repetition of the comprehensive summary.

20 CHAIRMAN GROSSMAN: Hopefully that's what we will get  
21 Mr. Bursey.

22 MR. BURSEY: All right.

23 MR. KNOTTS: Mr. Chairman, may I make an observation,  
24 if it is not untoward at the moment, that what we are talking  
25 about is discovery requests that date back to the fall of 1978.

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1 We are not just now for the first time asking Mr. Bursey for the  
2 specifics, those specifics were asked for back in the late -- well  
3 late summer I guess, September or thereabouts, 1978 and the  
4 Applicant has been pursuing those discovery requests since that  
5 time largely without success.

6 In the interest of translating something perhaps into  
7 layman's language, we are trying to avoid trial by surprise,  
8 trial by ambush, trial by sandbagging. If the party has something  
9 that is going to be brought out on direct evidence, we are entitled  
10 to find out about it in advance so that we can prepare to meet it.  
11 In the spirit of trying to avoid surprises, let me mention if I  
12 may one other thing in terms of unsolicited advice. If there is  
13 a matter wherein the Intervenor seeks to have a requirement  
14 imposed which goes beyond Commission regulations, exceeds the  
15 Commissions requirements, that there is a special procedure to  
16 do that in the Commission regulations and it calls for a prima  
17 facie showing and the Board would certify a question I guess to  
18 the Commission. I have in mind in particular in the financial  
19 qualifications, there would be some reference to plans for the  
20 ultimate disposition of spent fuel. Perhaps the Intervenor would  
21 want to submit some sort of a memorandum on that subject, but I  
22 take what I see here at the top of page 3 as being consistent with  
23 the thrust of the Court of Appeals and the Commission decisions  
24 in the Prairie Island case.

25 CHAIRMAN GROSSMAN: Well, we would like to assure Mr.

D9DW

1 Knotts that we would not entertain any matters that are contrary  
2 to Commission rules, obviously.

3 Now first of all I would also like to mention to the  
4 parties that this may be -- these may be long days. We are  
5 prepared to stay through tomorrow if necessary and have reserved  
6 the same courtroom for tomorrow if this drags on. I hope everyone  
7 will be available for that.

8 Mr. Bursey?

9 MR. BURSEY: Yes.

10 CHAIRMAN GROSSMAN: Mr. Ruoff?

11 MR. RUOFF: Yes, sir.

12 CHAIRMAN GROSSMAN: And I believe Mr. Goldberg?

13 MR. GOLDBERG: Yes, sir.

14 CHAIRMAN GROSSMAN: And Mr. Knotts.

15 MR. KNOTTS: With the indulgence of the Holiday Inn,  
16 yes.

17 CHAIRMAN GROSSMAN: Going on to --

18 MR. WILSON: Mr. Chairman, if I might at this point --  
19 I will not be available tomorrow but I have been joined by a  
20 legal assistant from our office, Mr. David L. Robins, who also  
21 attended the prior meeting in Columbia, and Mr. Robins will be  
22 in attendance at that time if necessary.

23 CHAIRMAN GROSSMAN: Yes. I'm sorry. You're sitting  
24 off to my left and it's very hard to --

25 MR. WILSON: Our eyes don't meet very well over the

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D10pw

1 Bench.

2 CHAIRMAN GROSSMAN: Proceeding further to Contention  
3 A(3), we have one witness mentioned here, but I fail to see very  
4 much in the way of a summary of his testimony.

5 Would you care to elaborate on that?

6 MR. BURSEY: Well a summary of Dr. Kaku's testimony  
7 about the Applicant's concerns will be attached. It will be  
8 attached as an attachment to this.

9 CHAIRMAN GROSSMAN: Well I notice that you do refer to  
10 an attachment, which is left blank, and when is that going to  
11 be attached to this?

12 MR. BURSEY: It was put on an airplane in New York  
13 on Sunday and was due here last night at 8:05 and it still has  
14 not arrived as of ten o'clock.

15 CHAIRMAN GROSSMAN: Okay, maybe --

16 MR. BURSEY: It may be here before the day is out.

17 CHAIRMAN GROSSMAN: I see. And that will comprise the  
18 substance of his testimony. You don't expect anything in  
19 addition to that?

20 MR. BURSEY: Yes, Your Honor. I have to admit that this  
21 is an issue that is a bit beyond me. I know enough about it to  
22 be concerned about the Applicant not -- because of times in terms  
23 of when they're completing their construction that the generic  
24 rulings on Atlas may not be applicable to them. I'm concerned  
25 about that and would like to see the issue aired. I don't feel

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D11pw

1 at all adequate to air that issue and Dr. Kaku does and I will  
2 present his testimony on that point.

3 (Bench conference.)

4 CHAIRMAN GROSSMAN: Okay, moving on to Contention A(4)  
5 (a) and (b), we have some concern with regard to the way the  
6 contention is presently phrased. Mr. Knotts indicates that  
7 perhaps the contention is moot, though I don't believe those are  
8 the words -- that that's the word he uses -- in view of the fact  
9 that seismicity has been monitored for a year.

10 Is that a correct statement of your position, Mr. Knotts?

11 MR. KNOTTS: Yes, sir, as to a portion of the contention  
12 as to that much of the contention.

13 As I understand, the contention has two parts; one  
14 part says the description of seismicity in the FSAR is  
15 inadequate, the second part says you ought to keep monitoring  
16 for a year after the reservoir is filled.

17 Well in fact we did monitor for a year after the  
18 reservoir was filled, so that much of the contention is  
19 satisfied. In fact as I pointed out, in page 4 of the document  
20 filed in response to the Board's pre-hearing conference Order,  
21 Applicant's response to order setting final pre-hearing  
22 conference, the staff has requested that we continue monitoring  
23 until at least the end of 1982, at which time an evaluation will  
24 be made to determine if it should be continued and we agreed to  
25 do that. To that extent, that much of the contention ought to be

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1 moot.

2 I see now Mr. Bursey is saying for the first time at  
3 page 4 of what we were handed this morning that the seismic  
4 monitoring should be continued through 1983.

5 CHAIRMAN GROSSMAN: Mr. Knotts, do you have any  
6 objection to an amendment of that contention at this point, in  
7 view of the fact that for one, we can entertain amendments of  
8 contentions at this point, and secondly there is -- there has  
9 been a considerable change in the situation from when the  
10 contention was originally advanced, to the present, with regard  
11 to the seismicity in the area.

12 MR. KNOTTS: I'm not sure I would agree there has been  
13 a change since the contention was advanced in regard to the  
14 seismicity in the area, but if you are saying do we have any  
15 serious objection to his translating his contention from "you  
16 ought to keep monitoring for another year" to a rolling year.  
17 Whatever year we say, he wants another year. I guess we ought  
18 to have a real serious objection to that, I don't know what he's  
19 saying. We know what we would have to say in response to that.

20 CHAIRMAN GROSSMAN: Well if I recall the sequence of  
21 events here, this contention was originally advanced prior to  
22 1978 and that -- or right at the beginning of 1978, and the  
23 reservoir was not filled until February of 1978, and that  
24 consequently all of the reservoir induced seismicity occurred  
25 subsequent to the contentions being advanced. Isn't that

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1 correct, Mr. Knotts?

2 MR. KNOTTS: That sounds essentially correct to me,  
3 Mr. Chairman, yes.

4 CHAIRMAN GROSSMAN: Now the Board is also extremely  
5 concerned --

6 MR. KNOTTS: Could I have just a moment, Mr. Chairman,  
7 I'm sorry --

8 (Brief pause.)

9 MR. KNOTTS: December '77, I'm told is when the  
10 seismicity was first observed.

11 CHAIRMAN GROSSMAN: That was when the reservoir was  
12 being filled, I believe, starting in about November of 19 -- or  
13 perhaps December, and then was completely filled in February.  
14 Is that correct?

15 MR. KNOTTS: That's correct.

16 CHAIRMAN GROSSMAN: Now would you also like to  
17 address, Mr. Knotts, not merely the portion relating to the  
18 monitoring being continued through 1983, but the preceding two  
19 paragraphs, as to whether you have any objection to the  
20 contention including those allegations?

21 MR. KNOTTS: I think there's a change in the thrust  
22 of the contention, Mr. Chairman, as I mentioned before. The  
23 first part of the contention says that the description in the FSAR  
24 -- I think it's regional seismicity, is inadequate and then we  
25 start talking about seismic design basis in the first paragraph,

Dl4pw

1 I guess -- should be used for assessing seismic safety, and talks  
2 about fault. That I don't think is within the scope of the  
3 original contention.

4 CHAIRMAN GROSSMAN: Well I believe the reference to a  
5 magnitude of 5.3 is to the portion of the SER which indicates that  
6 there is some expert at the NRC who believes that perhaps there  
7 ought to be a plan for including a magnitude 5.3 event in deter-  
8 mining safe shutdown by earthquake of this facility.

9 The Board is very interested in that too and I expect  
10 Mr. Goldberg, that you will make Dr. Murphy available to us at  
11 the hearing. Is that your present intention?

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12 MR. GOLDBERG: It may be available.  
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1 MR. GOLDBERG: He can be made available.

2 CHAIRMAN GROSSMAN: Okay.

3 MR. KNOTTS: Perhaps the Board would want to know  
4 that there have been some further developments on that front  
5 at the Advisory Committee---and which I realize is not something  
6 that is going to be in evidence before this Board, but just in  
7 terms of where the gentleman stands, he made clear his position  
8 which was perhaps not normally what one would get from a quick  
9 reading of the SER.

10 We can provide a transcript reference to Mr. Bursey  
11 and a copy to the Board.

12 CHAIRMAN GROSSMAN: We would appreciate that.

13 Did you have something?

14 MR. GOLDBERG: Yes, Judge Grossman, on this I would  
15 note that in both respects, the statement of position on  
16 contention 4 seems to be a departure and indeed an expansion of  
17 that originally advanced. Dealing I guess with sub-part B first,  
18 there doesn't seem to be any factual basis to warrant the claim  
19 that monitoring should continue through 1983, particularly  
20 in view of the staff position and the justification presented in  
21 the Safety Evaluation Report as well as the thorough scrutiny  
22 in this proceeding by the ACRS as the document and its letter  
23 report of March 18 of 1981. So, I think in terms of amending  
24 that aspect of the contention at this stage, there just seems  
25 to be neither good cause nor factual basis on which to warrant

RA E-2

1 the introduction of the contention quite apart from its timing.

2 Sub-part A similarly reflects an expansion of the  
3 addition of the original sub-part. We believe that quite apart  
4 from the individual opinions of certain reviewers about the  
5 magnitude of the maximum possible reservoir induced seismicity  
6 that the ACRS has concluded that the seismic design for the  
7 facility is satisfactory and the staff will document its  
8 conclusion to that effect in a future supplement.

9 So, again, I think we are faced with an amendment  
10 of a contention that has the specific thrust at the outset and  
11 I am not sure that there is a basis in the record as a whole  
12 to expand at this time.

13 CHAIRMAN GROSSMAN: Well, it appears to me, Mr.  
14 Goldberg, that the original contention was directed towards  
15 monitoring seismicity in the area with the expectation that  
16 for a year there would be shown to be an absence of seismicity.

17 Subsequent to the filling of the reservoir, there  
18 appeared to be considerable seismicity and, of course, these  
19 circumstances have been changed. Now the question here is not  
20 whether on the merits of Mr. Bursey is correct or whether there  
21 is good reason to permit an admendment, uh, of the contention  
22 in order to bring it up to date. If Mr. Bursey has any additional  
23 comments on that, we would appreciate it now.

24 MR. BURSEY: Yes, sir. My concerns, and I am sure  
25 the Board's concerns are with seismic safety of the facility.

DA E-3 1

2 Now, obviously my concerns are that the paper work be  
3 done on the monitoring. The paper work and monitoring are things  
4 you use to determine ongoing seismic safety. I would also point  
5 out to the Board that this contention was written by the staff.  
6 They were very helpful in writing my contentions but they have  
7 not quite reflected my concern. My concern clearly is for the  
8 seismic safety of the facility which we need all of this data  
9 in hand in order to be able to determine and, as you correctly  
10 pointed out, since the filling of the reservoir, it has been  
11 increased beyond the anticipated level of micro-seismic activity,  
12 reservoir induced, and they don't know what the near field  
13 maximum activity could be expected because of that. There has  
14 been a new cost uncovered and in order to decrease the cost,  
15 I understand the reports on which are not in yet.

16 New issues have been raised about seismic qualifications  
17 of the emergency sirens, the communication system; in fact there  
18 is bridges in the evacuation route that are critical and it has  
19 never been put together anything that the applicant has advanced  
20 or any of the emergency, state emergency people have advances  
21 as to the seismic concerns of the evacuation route.

22 The other issue mentioned here about monitoring through  
23 1983 is direct from the ACRS itself. They said they felt that  
24 monitoring should continue for an additional two years. This is  
25 1981 and the ACRS recommends monitoring through 1983.

I think it is obvious that if we increase the amount

RA E-4

1 of seismic activity beyond the anticipated level calls for  
2 continued monitoring.

3 I don't know whether the things I have raised here  
4 would call for an amendment to the contentions but these are  
5 certainly the concerns that the original contentions would  
6 substantiate.

7 MR. GOLDBERG: Judge Grossman, I don't think I could  
8 let the proceeding advance much longer without addressing one  
9 point that Mr. Bursey raised.

10 I have the advantage of having been counsel here for  
11 four years and I would say categorically that I did not draft  
12 these contentions. At the outset of this proceeding when they  
13 were initially advanced, I met on one or more occasions with  
14 Mr. Bursey in an effort to try to simplify for his benefit  
15 as well as the benefit of the other parties his precise concerns  
16 in this matter and in no way take responsibility for authorship  
17 or the content of the contentions.

18 With regard to the amendment of the contentions, I  
19 would also say that I think the same general rules that  
20 uh obtain in the considering of late intervention petitions  
21 also pertain to considering lets say late amendments to conten-  
22 tions and I don't necessarily want to embark on a laborious  
23 consideration of all the factors which are material to such an  
24 untimely filing but I do think they have to be borne in mind  
25



RA E-5

1 when we consider a late amendment to contentions.

2 CHAIRMAN GROSSMAN: Well, the first point is  
3 certainly well taken, Mr. Goldberg. My experience has been  
4 that the staff attempts to be helpful to the intervenors in  
5 tidying up the usually inartful contentions that they  
6 encounter from intervenors without much experience in NRC  
7 matters.

8 In regard to the second point as to timeliness,  
9 it appears to me at this juncture that certainly Mr. Bursey  
10 could not be expected to advance these, this amendment at the  
11 time he filed his original contention and it would appear as  
12 though certainly the matters that were raised in the Safety  
13 Evaluation Report of February of this year would have some  
14 bearing on his ability to amend his contentions prior to that  
15 date. If in fact, do you find that an objectionable statement,  
16 Mr. Goldberg?

17 MR. GOLDBERG: No, Mr. Chairman, I don't, although  
18 I would note that I think with the recommendations of the ACRS  
19 on monitoring that the ACRS letter does not contain such  
20 recommendation, so that letter speaks for itself.

21 Certainly the SER in some respects does shed additional  
22 light on these technical issues. I am not sure why it is that  
23 Mr. Bursey's concern only now comes to the floor. Presumably  
24 when this contention first arose and during the intervening  
25 years, he had developed an independent position on seismic



RA E-6 1 activities, seismic design if you will; none of which I see  
2 reflected in his submission other than to make a rather unspecific  
3 allusion as you've noted to the opinion of one staff member on  
4 one aspect of the problem. I see no independent position nor  
5 is it apparent what Dr. Carpenter's position is on these matters.

6 CHAIRMAN GROSSMAN: We were going to get to Dr.  
7 Carpenter. First we wanted to explore the amendment of the  
8 contention. Mr. Knotts.

9 MR. KNOTTS: Mr. Chairman, I am constrained to say  
10 that the Board gave Mr. Bursey thirty days from the issuance  
11 of the SER to come up with new contentions and we didn't hear  
12 boo. We didn't hear word one and now, on the date of the  
13 pre-hearing, we are asked to react to something he hands us.  
14 I don't think that's quite fair. I don't think it is fair  
15 not in the sense we are not prepared to get on with it. I  
16 don't think it's fair of Mr. Bursey, I think he owes the other  
17 parties more than that.

18 (Brief pause.)

19 CHAIRMAN GROSSMAN: Let me ask Mr. Goldberg and  
20 Mr. Knotts, even if the intervenor were not permitted to  
21 broaden the contention whether you intend to put on witnesses  
22 with regard to seismicity anyway?

23 MR. KNOTTS: On the question the Board has already  
24 raised the 5.3?

25 CHAIRMAN GROSSMAN: Yes.

RA E-7

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MR. KNOTTS: Yes.

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CHAIRMAN GROSSMAN: The entire design basis, everything that is indicated as a problem area in the SER including the Brown motion. If you want to detail this, I don't know that we are prepared to give you this but there are certainly some flags that were raised in the SER with regard to ground motion, magnitude of earthquake, so there are incomplete, uh, the SER at this point is incomplete because of some of the questions raised with regard to seismicity and it was our--at least my understand that with regard to those particular areas that there would be witnesses available to reassure the Board that all of these matters have been considered and have been well taken care of by the applicant and the staff.

MR. KNOTTS: For our part, that is correct, Mr. Chairman. If the Board has questions based on the SER, we would like to know what they are, of course, but we don't object to the Board asking questions on the SER. My comment was addressed to Mr. Bursey and the Board perhaps inadvertently simply indicated that it would be expected Mr. Bursey would see something in the SER which he was supposed to get contentions or problems based on, to us by March 6 or thereabouts but to walk in this room on April 7 and tell us about it for the first time that's okay. I don't think it is okay but if the Board has questions in that area, we have no problem answering; the whole matter as to the 5.3 is moot because we are going to have a witness anyway.

RA E-8

1 I don't concede with that.

2 CHAIRMAN GROSSMAN: Mr. Goldberg?

3 MR. GOLDBERG: Yes, the staff is prepared to introduce  
4 the relevant portions of the safety violation report. I would  
5 note that this has received thorough consideration by the staff  
6 and we of course have the benefit of the ACRS letter report.  
7 Some matters which may be obtained in the Safety Evaluation  
8 Report itself will be addressed in future supplement or supple-  
9 ments in this proceeding; but if there are particular areas of  
10 interest in the report that the Board would like specifically  
11 to address, it would be helpful in terms of case preparation  
12 to know of those particular areas.

13 CHAIRMAN GROSSMAN: Well, of course, I am a layman  
14 in seismology, but nevertheless I can pick up the Safety  
15 Evaluation Report and find certain areas like the fact that  
16 an earthquake of a magnitude of I believe 2.8 produced ground  
17 motion of .25 at some frequencies, higher of course have to be,  
18 I believe, designed with regard to the facility but even with  
19 regard to that I am not quite sure because it seems that there  
20 is some discussion of ten hertz at some places and not twenty  
21 hertz and I am not even sure, you know, what it has to be  
22 designed for and I would certainly expect that you would have  
23 witnesses that are prepared to elaborate on that including  
24 earthquakes of magnitude and the reasons why they wouldn't  
25 create even greater ground accelerations. You know, these are

RA E-9 1

things that seem apparent in the SER even to a total novice.

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Now, given the fact that we would like that type of witness, staff witnesses and also witnesses of the applicant, why shouldn't we also entertain witnesses of Mr. Bursey? But that is something we will explore when we go into Dr. Carpenter in a few moments, and I would expect with regard to him, as we did the other expert, or any other witness, that the substance of his testimony will be communicated to the other parties sufficiently in advance for them to prepare their cases, but why does either the staff or the applicant feel that we ought to preclude having another expert testify to this same area, if they do.

MR. KNOTTS: Because, Mr. Chairman, there ought to be fairness for everybody and Mr. Bursey quite frankly for the last two years has been running the Board around and dragging the other parties around defiantly and happily and cheerfully and there should come a point one would hope when the Board would hold its feet to the fire and say, look, this far, no further. You can't push us around like this. We have to prepare for trial. Every time I turn to my tablet I can see I have got a new witness to go interview, a new deposition to take, how in the world am I going to prepare for a trial on June 22 when every time Mr. Bursey opens his mouth or every time he turns a page, I get a new witness I have never heard of, and I read an order from 1978 which says, "We also rule



RA E-10

1 that Mr. Bursey may not use in his affirmative case barring  
2 cross examination any document he has failed to produce or  
3 identify in discovery" that was then, in the past tense, "without  
4 a showing that an exercise of due diligence he could not have  
5 produced or identified the document earlier." That is on page 3,  
6 of the Board's Order dated October 2, 1978.

7 Again, we have no trouble producing our witness and  
8 if the Board wants to hear from Dr. Carpenter as he is qualified,  
9 that's okay. What I am quarreling with is the reasoning that  
10 Mr. Bursey has some right because he has fulfilled his obligations.

11 CHAIRMAN GROSSMAN: Mr. Bursey?

12 MR. BURSEY: Mr. Knotts is making argument that this  
13 could be applicable at any point, he would just prefer that the  
14 contentions go away. The issues that I have raised or are being  
15 raised by me have been raised by ACRS, the NRS staff, they are  
16 not issues that I am the only party raising. With reference to  
17 the ACRS letter, I am not certain, I don't know whether Mr.  
18 Goldberg or Mr. Knotts said wasn't correct, page 2 from the  
19 ACRS, Report on Emergency--says, "As a result of continuing  
20 micro-seismic activity induced by the reservoir, the applicant  
21 has as the NRC requests agreed to conduct seismic monitoring  
22 for at least the next two years." This amounts to nothing.  
23 They have already agreed to it.

24 Now how could I have told the Board two years ago  
25 what witnesses I would be presenting in the contention when we

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1 asking at that point for further monitoring in order to be able  
2 to develop this entrance. I couldn't have told them about the  
3 seismicity of the sirens used to notify the public. They hadn't  
4 even designed the public notification system yet and I can ap-  
5 preciate Mr. Knotts going through that but I just don't think  
6 it is necessary. I think the Board, if these issues appear  
7 to be unclear, it can be resolved by the board. I will be able  
8 to present what testimony is necessary to link the things  
9 together.

10 CHAIRMAN GROSSMAN: Mr. Goldberg, rather than show  
11 my ignorance any further of seismology, isn't it possible that  
12 you could produce the few people who are responsible for the  
13 staff's report on seismology? Does that entail a large number  
14 of people where each one had a particular area or is there  
15 some one or two, are there one or two experts who reviewed this  
16 and are responsible for the conclusions in the staff report?

17 MR. GOLDBERG: May I have one moment, Judge Grossman,  
18 to confer with Mr. Kane?

19 CHAIRMAN GROSSMAN: Sure.

20 (Brief pause.)

21 End Take  
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TAKE F

F-GJS-1

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1 CHAIRMAN GROSSMAN: Mr. Goldberg?

2 MR. GOLDBERG: Judge Grossman, I think that it would  
3 appear as though it will necessitate a staff count. We had addi-  
4 tionally planned on offering a panel comprised of a review on  
5 reservoir-induced seismicity and regional seismicity, with possible  
6 availability of staff consultants on those various matters.

7 Depending on the depth of the Board's interest in the  
8 facility design basis, both structural, mechanical and equipment,  
9 it could involve one or several additional witnesses. We can't  
10 determine that right now. We'll probably have to confer among  
11 ourselves back at the office. But it probably would be helpful  
12 and best alleviating the Board's concerns, if it has them in those  
13 specific areas, if it could particularize them at some point so  
14 that we could best assemble the necessary panelists.

15 JUDGE HOOPER: Will your witnesses be from U.S. Geologi-  
16 cal Survey, or will they be staff witnesses?

17 MR. GOLDBERG: Well, I would intend, Judge Hooper, to  
18 try and use staff witnesses on both the reservoir-induced and  
19 regional geological considerations. As is evident from our safety  
20 evaluation report, we did have both the Los Alamos Laboratory  
21 and U.S.G.S. as consultants in those respective areas. And I  
22 will try to make arrangements to have them available should it be  
23 necessary to offer them as witnesses. But we would hope that we  
24 can satisfactorily address these problems with the staff person-  
25 nel.

F-GJS-2

1 JUDGE HOOPER: Would you plan to have a witness that is  
2 competent in the area of reservoir seismicity and knowing the  
3 geological literature in regard to this matter, in the specifics  
4 of this particular cite?

5 MR. GOLDBERG: May I have a moment?

6 (Brief pause)

7 MR. GOLDBERG: I think, Judge Hooper, the answer is yes,  
8 and we would hope that the safety evaluation report demonstrates  
9 the thoroughness and scope of the staff's research and evaluation  
10 in this area. So, we believe that the reviewers who have been  
11 involved in the preparation of the staff position and the exposi-  
12 tion of this issue before the A.C.R.S. are fully knowledgeable  
13 about those matters.

14 JUDGE LINENBERGER: On the point you just made, Mr.  
15 Goldberg, you referred to the staff's position as reflected in  
16 the S.E.R., but in the seismology discussion in the S.E.R., as  
17 recently distributed, there are numerous areas where the staff  
18 indicates that additional analyses or additional work, additional  
19 attention needs to be given to various subjects, and that these  
20 will come out in a later supplemental or, as you said a moment  
21 earlier, supplements.

22 Now, then, can you help orient us here how the staff's  
23 testimony or the nature you've just been attempting to describe  
24 fits in with the loose ends that are manifest in several parts  
25 of the seismology discussion in the S.E.R.? Will there be a

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1 supplement that predates the hearing? Will the supplement come  
2 later?

3 MR. GOLDBERG. Judge Linenberger, the outstanding matters  
4 will be contained in supplements that will be available before the  
5 hearing. Supplement or supplements. Quite likely, it will be  
6 more than one.

7 JUDGE LINENBERGER: And to the extent that the resolu-  
8 tion of some of these loose ends contained in the supplement might  
9 in themselves raise questions, how do you anticipate the schedule  
10 for issuance of that supplement will accommodate an opportunity  
11 to examine its contents and determine whether the Board or other  
12 parties might feel there are weaknesses?

13 MR. GOLDBERG: Well, our current plans estimate the  
14 next supplement will issue on or about April 17, and I believe that  
15 the following supplement will issue in mid-May. If I may confer  
16 with the Project Manager, I think I can get some idea whether  
17 that will complete our analysis of these matters.

18 (Brief pause)

19 MR. GOLDBERG: I'm advised, Judge Linenberger, that the  
20 goal is to finally address all of the pertinent matters in the  
21 supplement that's going to issue in April, on or about the 17th  
22 of April. As I indicated, that would be both the adequacy of  
23 plant structure and equipment qualification aspects.

24 JUDGE LINENBERGER: But those two subjects do not en-  
25 compass certain areas of seismicity, for which loose ends are

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F-GJS-4 1 represented in this present document. Now, do those come in the  
2 May--

3 MR. GOLDBERG: Judge Linenberger, I, along with my  
4 Project Manager--we're unable, I guess, to fairly come to grips  
5 with what additional matters you may have in mind. I don't mean  
6 to be disputacious, I'm just saying that we believe that all of  
7 the matters pertaining to the seismology and geology will be  
8 satisfactorily addressed by this forthcoming supplement.

9 JUDGE LINENBERGER: By the April supplement?

10 MR. GOLDBERG: By the April supplement. But perhaps if  
11 there are particular areas that you have in mind, maybe we ought  
12 to isolate those to assure that we're not missing something here.

13 JUDGE LINENBERGER: Well, certainly a large part of the  
14 areas we have in mind are the areas highlighted--I won't say  
15 highlighted--the areas mentioned in the present Nu. Reg. 07-17  
16 S.E.R. as being unresolved and as being reserved for future reso-  
17 lution and attention in a subsequent supplement. So, all of those  
18 loose ends, if you will, are of interest to us.

19 Now, there are certain conclusions that the staff reaches  
20 in the existing supplement that this Board would like an oppor-  
21 tunity to ascertain a little more in detail the basis for, analyses  
22 with respect to responses, as the Chairman said, below and above  
23 ten hertz and why these are accepted, as they seem to be accepted;  
24 why there are differences of opinion with respect to stress-drop  
25 values for certain types of vault displacements; how it is that



F-GJS-5 1 the local seismicity nontectonic generated by the reservoir re-  
2 lates or compares with what may very well be an interesting  
3 tectonic aspect of the Charleston event.

4 So, perhaps this helps you a little bit with indicating  
5 the kinds of things that interest us.

6 MR. GOLDBERG: Again, our goal is to have a position  
7 on these matters in the forthcoming supplement.

8 CHAIRMAN GROSSMAN: In other words, you're saying what-  
9 ever has been left open with regard to seismicity you expect to  
10 have covered in the April 17th or close to April 17th supplement?

11 MR. GOLDBERG: My Project Manager assures me that that  
12 is the goal. Hopefully, we'll be achieving it.

13 CHAIRMAN GROSSMAN: Now, Mr. Bursey, we see a total  
14 absence in the description of Dr. Carpenter of any summary of the  
15 testimony. One thing I would like to mention to you to begin with  
16 is that there is a provision in the N.R.C. rules for having an  
17 expert examined on your behalf. Are you aware of that, sir, that  
18 aside from your ability to use experts to testify, that you may  
19 prefer in some cases to have an expert examined for you, in which  
20 case, of course, he will not be able to testify. Now, are you  
21 aware of that, sir?

22 MR. BURSEY: No, sir. I had hoped that Dr. Carpenter  
23 would be able to perform in that capacity for me.

24 CHAIRMAN GROSSMAN: In which capacity? That's my ques-  
25 tion.

6 1 MR. BURSEY: Well, I didn't know that one precluded the  
2 other. I previously had been hoping he could testify and help me  
3 from the table. But if he can't, I would have to determine which  
4 would be the most efficient use of his talents in terms of docu-  
5 ments that we'll be relying on. They are documents that are a  
6 matter of the record, either the S.E.R. or the U.S.G.S. studies  
7 that have been done for the applicant.

8 CHAIRMAN GROSSMAN: Do you have specific reference, Mr.  
9 Goldberg?

10 MR. GOLDBERG: Yes, sir. That's Rule 2.733.

11 CHAIRMAN GROSSMAN: Mr. Bursey, do you have the rules  
12 with you?

13 MR. BURSEY: No, sir, I don't. I can get to them.

14 CHAIRMAN GROSSMAN: The rule, as Mr. Goldberg indicates,  
15 is 10 C.F.R., Section 2.733, and it states the requirements with  
16 regard to utilizing an expert to examine on your behalf. It does  
17 not specifically exclude, as far as I can see, your use of that  
18 person as an expert. However, it would appear to be inadvisable  
19 to have someone acting in both capacities. It's something that  
20 we're not going to make any ruling on now unless someone can point  
21 to something specific.

22 MR. GOLDBERG: Judge Grossman, I'm sorry, I cited that  
23 rule for the proposition that one must establish certain qualifi-  
24 cations in order to conduct expert cross-examination, but I believe  
25 that Mr. Knotts suggested earlier that the Canons of Ethics may be

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1 the bar to one appearing as both a witness and an examiner, acting  
2 obviously in that capacity as an attorney.

3 CHAIRMAN GROSSMAN: Well, you do understand that an  
4 expert testifying is supposedly testifying objectively, and to  
5 associate himself with a particular case in conducting examination  
6 would appear to compromise that position.

7 Now, as to whether the Canons of Ethics is applicable  
8 to an attorney is debatable; but nevertheless, a principle is  
9 there, and you could hardly expect that a tribunal would consider  
10 an expert as an objective witness when he participates to that  
11 extent in the party's case.

12 Does anyone want to say anything further with regard to  
13 that? I only brought the matter up to indicate that you ought to  
14 consider what use you do want to make of Dr. Carpenter. But since  
15 you have considered presenting him as an expert and you are at this  
16 point asking us to accept him, we would like to have something  
17 further from you right now with regard to the substance of his  
18 testimony.

19 MR. BURSEY: Well, I would have to get together with  
20 Dr. Carpenter to find out what he's willing to do in regards to  
21 help. So far, he has been helpful in looking at the documents that  
22 are a matter of record, the S.E.R. and F.S.A.R. and the type of  
23 geological data that's been put through the record that's come  
24 from the U.S.G.S. The University of South Carolina has done  
25 U.S.G.S. contract work around the site. I don't know any documents

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1 that Dr. Carpenter would be referring to that aren't already a  
2 matter of record except the Wateree Creek study, which isn't in  
3 yet, which I anticipate will become a part of the record even if  
4 I didn't enter it in. And any U.S.G.S. studies that have been done  
5 from the deep cores tests that they have done out there, which I  
6 do believe are, again, a part of the record.

7 I don't see anything being used to make my affirmative  
8 case that is not already a part of the record. We will be taking  
9 some facts from that and relating them to the seismic qualification  
10 of the emergency system, but there will be no documents that I  
11 know of that we would be calling on that won't be a part of the  
12 record as put in by the applicant and the staff.

13 CHAIRMAN GROSSMAN: Well, again, we're certainly not  
14 going to accept Dr. Carpenter as a witness at this point; and as  
15 with the prior witnesses we've discussed, to the extent that you  
16 submit a comprehensive summary of the expected testimony and as  
17 soon as possible you will have something favorable with regard to  
18 our accepting him as a witness. To the extent that you delay or  
19 fail to provide anything comprehensive that would fairly apprise  
20 the other parties of the substance of his testimony, you will not  
21 be able to offer him as a witness.

22 But in any event, I would hope that if his credentials are  
23 anywhere near as what would be required to have him testify as an  
24 expert, that it would certainly suffice for him to conduct exam-  
25 inations on your behalf. Does anyone object to that statement?

F-GJS-9 1 Mr. Goldberg?

2 MR. GOLDBERG: No.

3 MR. KNOTTS: No.

4 JUDGE HOOPER: Are you saying, Mr. Bursey, that Dr.  
5 Carpenter will rely only upon the documents being prepared for  
6 this record, this document, Safety Evaluation Report, and the  
7 applicant's S.E.R. and so on? Is that the only documents that he  
8 will rely on?

9 MR. BURSEY: I'm unaware of any other documents at this  
10 point, Judge Hooper.

11 JUDGE HOOPER: All right, then let me ask you this: If  
12 these are the only documents that we will be relying on, what will  
13 be the unique figure of his testimony?

14 MR. BURSEY: The first thing that comes to mind is that  
15 there's nothing in the record about the seismic qualifications of  
16 the public notification system, the communications system, the  
17 meteorological system, evacuation route. There is nothing in the  
18 record on that. From the record, one could draw seismological  
19 data that could be related to those concerns. Does that answer  
20 your question?

21 JUDGE HOOPER: I think I'm more confused now than ever,  
22 I guess, from your last statement.

23 MR. BURSEY: The seismological data that's in the record  
24 is not necessarily what we're taking issue with. There's some  
25 concern that is, as I understand, shared by all the parties,



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1 perhaps other than the applicant, about ground acceleration values  
2 and what near-site earthquake magnitude should be utilized. But I  
3 hear everyone talking around five. I don't think we'd be taking  
4 issue with those numbers. It's what you do with those numbers,  
5 what do those numbers mean to--

6 JUDGE HOOPER: It's the interpretation that you're  
7 going to argue?

8 MR. BURSEY: Yes.

9 CHAIRMAN GROSSMAN: Speaking of those numbers, the  
10 A.C.R.S. letter did say around five and was something to that  
11 effect. And the staff, apparently, has reviewed on the basis of  
12 4.5, if I understand correctly. Is there any intention of changing  
13 a review because of that, or is it not significant, the difference  
14 between around five and 4.5, or is 4.5 around five?

15 MR. GOLDBERG: I hate to hazard it, but my understanding  
16 of our position is that in terms of the adequacy of the seismic  
17 design that there is no difference between those two magnitudes  
18 and that the staff is in agreement with the conclusion of the  
19 A.C.R.S. on the adequacy of the seismic design, assuming a magni-  
20 tude in the neighborhood of 5.0.

21 CHAIRMAN GROSSMAN: And your Project Manager, I assume,  
22 agrees with your statement?

23 MR. GOLDBERG: Thankfully, yes.

24 CHAIRMAN GROSSMAN: Why don't we at this junction take  
25 a ten-minute break and come back.

(Short recess)

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END TAKE F

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1 CHAIRMAN GROSSMAN: The Board is reconvened.

2 Mr. Bursey, you do understand then that we would  
3 expect that whatever you submit with regard to Dr. Carpenter, if  
4 there is any disagreement with documents that the staff or  
5 Applicant have produced, will be stated in your summary of  
6 testimony.

7 MR. BURSEY: Yes, sir. It's becoming clear to me that  
8 what I need to do is -- deposition may be the wrong term but --  
9 in the nature of sitting down with each of my witnesses and going  
10 over with them -- this would be my sub-pre-filed testimony which  
11 I will work on immediately. You're saying I need more summary  
12 but I'm also going to need this pre-filed testimony. I'll just  
13 work on that immediately and file that post haste.

14 CHAIRMAN GROSSMAN: Well whatever allowances have been  
15 made with regard to the summary, you certainly shouldn't expect  
16 with regard to pre-filed testimony -- you're either going to  
17 have pre-filed testimony or you're not and, you know, that's  
18 something you ought to consider now too because you're getting  
19 close to the time of hearing. And that's not a question of how  
20 comprehensive it is, it's either going to be there or it isn't  
21 and, you know, that's something you ought to consider.

22 Does anyone have anything further with regard to the  
23 seismicity area? Mr. Knotts?

24 MR. KNOTTS: Only to underscore something I said  
25 earlier that where there is a challenge to a regulation or a

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1 Commission requirement, to the extent the University's witness  
2 would be trying to get the Board to establish seismic design  
3 requirement that doesn't otherwise exist, they have to go through  
4 the special circumstances showing, 2.758 if memory serves me, to  
5 make a prima facie case.

6 CHAIRMAN GROSSMAN: Okay, we now proceed to the next  
7 contention, Contention A(8), with regard to the emergency plan.  
8 And again we see Dr. Kaku listed as a witness without any  
9 summary of his testimony or with a very cursory summary, and  
10 again we would not be prepared to accept him as a witness simply  
11 on the basis of what has been presented.

12 Mr. Bursey?

13 MR. BURSEY: That is part of the missing evidence  
14 coming in. I have been informed that it is in Columbia and will  
15 be here shortly.

16 CHAIRMAN GROSSMAN: Oh, okay. Then going on to the  
17 other personnel, I understand that these are not witnesses that  
18 would be considered as your witnesses, but rather as perhaps  
19 hostile witnesses. Is there any other characterization that you  
20 would attach?

21 MR. BURSEY: Hostile may be a good one in some respects.  
22 At the last pre-hearing conference I found out that neither the  
23 Applicant nor the staff was planning on calling the people that  
24 were responsible for the state and county plans, and so it became  
25 apparent that it would be incumbent on me to call them. I guess

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1 hostile would be a good term because they're going to be presenting  
2 their view of the plan, their understanding of an accident and as  
3 we stated here, we see individuals that are not fully cognizant  
4 of the consequences. So we will show by putting them on the  
5 stand that their understanding of the consequences of a nuclear  
6 accident are not really adequate to develop a plan that's capable  
7 of dealing with all contingencies in safeguarding the public.

8 CHAIRMAN GROSSMAN: Mr. Knotts, do you have any  
9 response to the names of witnesses that have been proffered here?

10 MR. KNOTTS: I'd like to start with the reference to  
11 Dr. Kaku, Mr. Chairman, the second -- well I guess the third and  
12 fourth sentences. He will address the accident potential for the  
13 V.C. Summer reactor, he will challenge the probability projections  
14 for accidents and assess the environmental impacts of major  
15 nuclear accidents.

16 This takes us back to where we were at the last pre-  
17 hearing conference on October 25 of 1980, when Mr. Bursey was  
18 given a month to come up with the Class 9 contentions; that is to  
19 say, contentions based on the accident supplement to draft of  
20 the environmental statement and now here we are with Dr. Kaku  
21 going to address the Class 9 accidents.

22 It seems to me that if -- emergency plans stated within  
23 the contention are one thing, but getting into the Class 9  
24 accident assumption is something else again. I think that's an  
25 expansion of the contention and we ought to discuss whether the

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1 amendment is timely.

2 CHAIRMAN GROSSMAN: Mr. Goldberg?

3 MR. GOLDBERG: It does appear that Dr. Kaku's expertise  
4 and professed testimony is not in the area of emergency planning  
5 but is presented as being in the area of the probability of  
6 accidents. That is certainly not within the scope of the  
7 admitted contention.

8 CHAIRMAN GROSSMAN: Mr. Bursey?

9 MR. BURSEY: I certainly can't see how one could  
10 separate the possibility of the impacts of Class 9 accidents from  
11 emergency planning. All along that's been one of my prime  
12 concerns. I have just been handed Dr. Kaku's summary here,  
13 which with the Board's permission will be passed out.

14 (Mr. Bursey distributes a document.)

15 CHAIRMAN GROSSMAN: Well I'm not sure exactly how  
16 this ties in with the staff review to begin with. There appears  
17 to me to have been some assessments of the Class 9 or --I don't  
18 know what category they're considered in now, but core melt  
19 accidents and others in the supplement to the environmental  
20 statement that was presented I believe in November of 1980 or  
21 thereabouts. I'm not sure how this witness would be expanding  
22 on that, if at all.

23 MR. GOLDBERG: Judge Grossman, if I may, we're talking  
24 now about emergency planning and the Commission has explicit  
25 rules and requirements in emergency planning and they're contained



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1 in Section 50.47 and the staff's review of emergency planning  
2 both on site and off site is not complete, as properly noted in  
3 the safety evaluation report. Before the staff finds that those  
4 plans are acceptable, satisfactory compliance with all of the  
5 appropriate rules and requirements will have to be met.

6 Now emergency response requirements are not contingent  
7 on an accident of a particular origin or design and they may well  
8 exceed the design basis accidents, but they will meet the  
9 requirements of the regulations.

10 The purpose of the discussion in the draft supplement  
11 to serious accidents is not really an integral part of the  
12 staff's safety evaluation on the plant or its consideration of  
13 immediate emergency response requirements.

14 CHAIRMAN GROSSMAN: Mr. Bursey, do you have anything  
15 further to say on behalf of this not being an extension of your  
16 contention?

17 MR. BURSEY: From my simple standpoint, I don't see how  
18 one can prepare for all contingencies without considering all  
19 types of accidents. I understand from Dr. Kaku that it is  
20 necessary to be able to point to certain things that could cause  
21 a Class 8 to rise to a Class 9, he is prepared to do that and I  
22 just would like to reiterate that I think this is important to be  
23 included in the emergency plan.

24 CHAIRMAN GROSSMAN: Do you have any response to the  
25 suggestion that what you're proposing goes beyond Commission

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1 policy at this point.

2 MR. BURSEY: I'm not well enough versed with the  
3 regulations that Mr. Goldberg cited to know whether it does or  
4 not. I don't see how it possibly could and I'm sure the Board  
5 is as concerned as I am that emergency plans, in order to be  
6 adequate, have to at least address all contingencies.

7 MR. GOLDBERG: Judge Grossman, if I may on this, it's  
8 fairly clear just in the first paragraph of the document that  
9 we were just handed, which apparently consists of Dr. Kaku's  
10 testimony, that to quote in the third line, "It is the purpose  
11 of this statement to show that substantial scientific objections  
12 can be raised contesting this ten mile limit"referring presumably  
13 to the emergency planning zone, which is a function of the rule.  
14 This would seem to me to be a clear challenge to the rule which  
15 requires that an emergency planning zone be set up to permit  
16 emergency responses up to evacuation within a ten mile radius,  
17 it seems to me not the appropriate time or place in which to  
18 attempt to challenge that ruling. It was arrived at after  
19 fairly length consideration.

20 CHAIRMAN GROSSMAN: That rule is approximately ten  
21 miles, if I recall, Mr. Goldberg, depending I guess on site  
22 specific information.

23 Is it your position, Mr. Bursey, that there's no  
24 justification for that ten mile rule? Or something specific  
25 with regard to this facility that requires deviation from the

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1 ten-mile rule.

2 MR. BURSEY: Yes, sir, it is our position that the  
3 ten-mile rule -- the ten-mile limit is rather arbitrarily drawn  
4 and that studies that have been done after this ten-mile limit  
5 or maybe even before -- I don't know the date of the studies  
6 that Dr. Kaku has been referencing -- but that certain studies  
7 do indicate that the ten-mile limit was one that was rather  
8 arbitrarily reached and not reached with regard to scientific  
9 basis.

10 Should the Board determine that that's a rulemaking  
11 issue, it doesn't mitigate or moot the issues being raised here  
12 in terms of probability and impacts of major accidents. The ten-  
13 mile aspect is just one concern that we would want to address.

14 (Brief pause.)

15 CHAIRMAN GROSSMAN: I would like to state for the  
16 record that there have been some references made to a document  
17 that Mr. Bursey has presented to the parties and the Board members  
18 about ten minutes ago, and I think this would be an appropriate  
19 time for us to recess for lunch and review that document so that  
20 we can pick up right after lunch on this document and whatever  
21 may flow from it with regard to Dr. Kaku's prospective testimony.

22 MR. BURSEY: Thank you, Judge.

23 CHAIRMAN GROSSMAN: Why don't we take a break now until  
24 1:45.

END OF G 25

(Whereupon, a luncheon recess was taken at 12:25 p.m.)

AFTERNOON SESSION

1:50 p.m.

JUDGE GROSSMAN: The conference is reconvened.

Mr. Goldberg, after perusing that document during lunch, do you have any further comments to make? That is the Summary of Dr. Kaku's Proposed Testimony, that is the two sentences with regard to the Atlas extension?

MR. GOLDBERG: Yes, Judge Grossman, with respect to the emergency planning contention, I would note that there is no position here on the inadequacy of the Bursey plans, either those of the licensee or those of the state and local governments.

Essentially Dr. Kaku's testimony is a recitation of many familiar--I don't mean to disparage them by saying they are familiar comments about certain Class 9 scenarios which possibly to occur, but in that regard the time for seeking to introduce contentions along those lines has elapsed by virtue of this Board's ruling at the last conference that such issues must be introduced within 30 days of the issuance of the advance draft supplement, to its draft environmental statement of last November.

I would also note that to my knowledge neither Dr. Kaku nor Mr. Bursey elected to even submit comments on that draft supplement, that we could have taken into consideration in a timely manner in our preparation of the final statement and,

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1 secondly, quite clearly constitutes a challenge to the regulation  
2 governing planning which I indicated were contained in Section  
3 50.47 to the extent that it argues on the generic rather than  
4 the planned specific basis that a 10-mile emergency planning  
5 zone is unsatisfactory.

6 So, I do not see that it has any relevancy to  
7 contention 8 nor is there any other demonstration that Dr. Kaku  
8 is expert in the areas of emergency planning and/or evacuation.

9 With respect to contention 3, which I might add by  
10 virtue of Mr. Bursey's summary seems to have been somewhat expanded  
11 in scope from the initial allegation that the NRC staff require-  
12 ments governing ATWS cannot be met to the position now that a  
13 license may not issue until the aftermath from forthcoming  
14 rule making or until the implementation of the NRC rule  
15 governing ATWS which, if that is to occur, will be quite some  
16 time in the future; but the very brief references to ATWS  
17 at all in Dr. KaKu's summary certainly sheds no light on whether  
18 such an event will meet either the NRC staff requirements or  
19 licensing nor what the ultimate requirement should be in that  
20 generic area so, as I say, in both cases it is neither relevant  
21 nor probative of any of these issues that comprise those two  
22 contentions.

23 CHAIRMAN GROSSMAN: Mr. Knotts, would you care to add  
24 anything to that?

25 MR. KNOTTS: Only a very minor point of clarification.



1 I think the time ran from the date of the pre-hearing conference  
2 that Mr. Bursey was to submit something on Class 9. It is on  
3 page 6 of this Board's Order, December 30th, 1980, and it  
4 indicates that Mr. Bursey was given 30 days from the date of  
5 the conference to raise any matters resulting from the supple-  
6 ment to the DES and he was advised if this matter does not  
7 follow the Commission guidelines that the transcript reference  
8 must be given.

9 CHAIRMAN GROSSMAN: Mr. Bursey, do you care to  
10 respond?

11 MR. BURSEY: I have separated these issues in my  
12 mind somewhat, that is the consideration of Class 9 accidents  
13 is an integral part of the emergency planning, not that I was  
14 taking issue necessarily with the postulations in the DES and  
15 I felt and feel that they should be considered, can be  
16 considered as separate issues in regard to emergency planning,  
17 that emergency planning in order to be adequate has to consider  
18 all contingencies and not postulating a contingency that has not  
19 been raised, Class 9 has admittedly raised and I was just  
20 expanding on that emergency planning as to how that would impact  
21 the surrounding population.

22 CHAIRMAN GROSSMAN: The Board at this point isn't  
23 going to rule on this. We will when we issue our order following  
24 the pre-hearing conference.

25 Going further now, and of course we will to the extent

1 anything in the summary conflicts with Commission rules, we  
2 will of course not allow them.

3 Proceeding further to the listing of other witnesses.  
4 With regard to emergency planning, I would like to first ask  
5 Mr. Knotts whether there is any problem with committing those  
6 witnesses to be called that are listed at the bottom of page 5, of  
7 this Summary of Contentions that Mr. Bursey has submitted to us?

8 MR. KNOTTS: We understood Mr. Bursey's contention to  
9 relate to local implementation of emergency plans and an offhand  
10 reading of the individuals listed at the bottom of page 5  
11 suggests that if these are the individuals who are involved in  
12 the county emergency plans, they likely would have something  
13 relevant to say about that.

14 We have had some conversation from Mr. Bursey by  
15 telephone about subpoenaing these people, if he was wanting to  
16 do that...

17 CHAIRMAN GROSSMAN: About Mr. Bursey wanting to  
18 subpoena?

19 MR. KNOTTS: Yes, sir.

20 CHAIRMAN GROSSMAN: Do you understand, Mr. Bursey,  
21 these people are going to appear automatically?

22 MR. BURSEY: I do now. I anticipated earlier before  
23 that conference that they would but I understand now that I will  
24 have to call them myself.

25 CHAIRMAN GROSSMAN: I am sure the staff attorney will

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1 be helpful and explain the procedures to you, and I am sure Mr.  
2 Knotts in certain cases.

3 MR. KNOTTS: A point of clarification. Let me  
4 identify a potential problem and propose a solution. I hope  
5 I am not raising a strawman as the applicant has to work with  
6 these people from time to time in carrying out its responsibilities  
7 under the NRC regulations and otherwise, and I hope by their  
8 designation as Mr. Bursey's witnesses it will in no way interfere  
9 with that process in anyway by my talking to the other side's  
10 witnesses and that sort of thing.

11 It seems to me that there shouldn't be any problems.  
12 Mr. Bursey is likely to call them as adverse witnesses so there  
13 shouldn't be any problems as I perceive it in the applicant  
14 working with those individuals in their normal governmental  
15 capacity.

16 JUDGE GROSSMAN: I have never found any problems,  
17 as some people have, in talking with witnesses even if they  
18 supposedly belong to the other side, they are supposed to be  
19 testifying objectively anyway and I think everyone has free  
20 access to any witness that they care to interview. To the extent  
21 that these people -- I don't see any problem either with the fact  
22 ~~that they may~~ be hostile witnesses.

23 MR. KNOTTS: Thank you, Mr. Chairman, your guidance  
24 has gone beyond what I suggested and we will be glad to hear that.  
25 Thank you.

1 JUDGE GROSSMAN: Now going to page 6 of the document  
2 that was submitted to us, we see that the emergency welfare  
3 service personnel are not listed by name. Does that pose any  
4 problem to you, Mr. Knotts?

5 MR. KNOTTS: We would certainly like to know who the  
6 individuals are going to be.

7 MR. BURSEY: As soonas--I have been trying to find  
8 out myself who the responsible parties were and it is a new plant  
9 and there seems to be some holes in it. If the applicant doesn't  
10 have the information, I will be sure to provide this as soon as  
11 I can.

12 JUDGE GROSSMAN: We don't see any problem here.  
13 Whoever is responsible, we would expect to be the ones that are  
14 called.

15 Going further to medical personnel, I believe, Mr.  
16 Knotts, would you like to say anything with regard to those three  
17 named individuals as to whether there is any objections to their  
18 being called?

19 MR. KNOTTS: I would just be curious as to whether  
20 each of those individuals listed as a doctor is a medical doctor?

21 CHAIRMAN GROSSMAN: Mr. Bursey?

22 MR. BURSEY: Yes, they are.

23 MR. KNOTTS: I would certainly like to know more about  
24 what inadequate means in the two places it is used?

25 CHAIRMAN GROSSMAN: Mr. Bursey?

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1 MR. BURSEY: Surely, I can expand on that, using what  
2 we've learned from Dr. Dale Campbell who is the person who is,  
3 he was Richland Memorial Hospital and Richland Memorial Hospital  
4 is the largest facility in his facility that has a contract to  
5 handle radiation emergencies with the applicant for the workers.  
6 Dr. Campbell said that their facility handles four people and  
7 that under adverse circumstances, it could be expanded but that  
8 he doesn't anticipate such adverse circumstances every happening  
9 and one of the things that we were trying to get out is the  
10 people, whether it be the medical people or the emergency  
11 people, their understanding of potential emergency situations  
12 and their ability to cope with them. Right now, we don't see  
13 within the area of the plant facility that to have the  
14 understanding of the necessity in certain contingencies for  
15 having larger numbers of people than four which is the number  
16 that Richland County is working on, I would certainly consider  
17 that inadequate.

18 Dr. Lyles is the Doctor at the Fairfield County  
19 Hospital in Winnsboro and says that they don't really have any  
20 facilities there that he considers adequate. I think we need  
21 to get these people in here to find out what they have and what  
22 they consider adequate as opposed to various contingencies that  
23 might arise.

24 CHAIRMAN GROSSMAN: Have you discussed the situation  
25 with each of these three doctors mentioned here?



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MR. BURSEY: Yes, I have.

2

CHAIRMAN GROSSMAN: And do they understand the nature of your inquiries, do they?

3

4

MR. BURSEY: Yes, sir.

5

CHAIRMAN GROSSMAN: And are these people going to be made available for Mr. Knotts to interview now?

6

7

MR. BURSEY: Yes, sir, either through his depositions or through my summary of testimony, he will have the essence of their input.

9

10

Dr. Greenhutt, I would like to reserve her--her participation in my--as one of my witnesses. I understand that she is a participant with Fairfield United and should they proceed, she may choose to participate with them, but Dr. Lyles and Dr. Campbell are medical doctors that are practicing at major medical facilities in the area and would be called upon in the event of an emergency.

17

CHAIRMAN GROSSMAN: Mr. Goldberg?

18

MR. GOLDBERG: Judge Grossman, I believe before we leave this contention we should get some kind of date by which a motion or application for subpoena will be entered with respect to all of these individuals. Certainly we are at a considerable loss to know from the base of this pleading what the nature of their involvement in the emergency planning is and the nature of their expected testimony so that we can adequately prepare for the hearing, and I just would note that the Commission regulation

25

1 governing subpoenas appears in section 2.720 and also include,  
2 by the way, a requirement to tender fees, I believe in sub-part  
3 C of that. But, in any event, I think that in order to expedite  
4 this identification process that we should have an application  
5 for a subpoena or subpoenaes promptly.

6 CHAIRMAN GROSSMAN: For the hearing on June 22nd or  
7 are you referring to subpoenaes for the purpose of deposing  
8 these witnesses?

9 MR. GOLDBERG: Well, I don't think I would take the  
10 time and effort to depose any individuals who was not otherwise  
11 going to appear either under subpoena or voluntarily, so I  
12 think that we should know whether any witness falls within that  
13 category in order that we could undertake whatever discovery we  
14 feel is appropriate.

15 At present, there is no guarantee that these people  
16 will appear or if they do appear what they are going to discuss.

17 CHAIRMAN GROSSMAN: I don't see that Mr. Bursey's  
18 application for a subpoena would guarantee that they would  
19 appear, either, so he is certainly free to advise them to ignore  
20 the subpoena even if he receives one for them. I don't know if  
21 he is required to subpoena those persons to appear. They may  
22 appear voluntarily and I would assume under the circumstances  
23 that those people would appear voluntarily, so I just don't see  
24 why we would have to require the application for a subpoena  
25 at this point, do you, Mr. Knotts?

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1 MR. KNOTTS: I guess I didn't quite understand one  
2 thing the Chairman said. I wouldn't advise Mr. Bursey to advise  
3 somebody to ignore this Board's subpoena, and I don't think  
4 probably Mr. Bursey would advise somebody to ignore the  
5 subpoena. Now there are penalties attached and Mr. Bursey  
6 might be interested--and this is just trying to recall our  
7 prior conversation--it assure that he is not in default because  
8 some witness doesn't show up and he covered himself on that,  
9 he may want to ask for a subpoena to assure if they don't show  
10 up and they are under subpoena it is their fault and not his  
11 fault. That was the tenor of the conversation I think we had  
12 about subpoenas in the past.

13 I think Mr. Goldberg's point goes to do we really  
14 know these people are going to come, if the Board signs the  
15 subpoena that Mr. Bursey applies for, and they don't move to  
16 quash, then that smokes out the fact they are going to be here.

17 MR. GOLDBERG: Quite apart from that, Judge Grossman,  
18 we do have an obligation to file the testimony in the latter part  
19 part of May which is not that far off, I would assume then that  
20 whether voluntarily or involuntarily that the witnesses will be  
21 under that. We will also have to submit written statements of  
22 their testimony.

23 CHAIRMAN GROSSMAN: I hope you are not including those  
24 persons who will come here only under subpoena or who we describe  
25 as possible hostile witnesses. Are you going to now insist that

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1 Mr. Bursey supply pre-filed testimony on those particular  
2 witnesses?

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3 MR. GOLDBERG: I don't know really how to answer that  
4 in the negative without thereby conceding that we are prepared  
5 to proceed to hearing without any idea at all of what is going  
6 to be said. It would necessitate I would think then perhaps  
7 a continuance on some kind of rebuttal testimony to address some  
8 kind of affirmative testimony that they may offer. I think I  
9 want to eliminate to the extent possible lack of knowledge  
10 about what the relative parties are going to offer in the way  
11 of affirmative testimony.

12 CHAIRMAN GROSSMAN: Mr. Knotts?

13 MR. KNOTTS: Perhaps we are getting tangled up in  
14 what a hostile witness really is. A hostile witness is somebody  
15 you can ask leading questions for Mr. Bursey's benefit. He is  
16 not necessarily someone who has a position adverse to yours.  
17 He may have a completely neutral position, and you're trying  
18 to show he has some kind of adversity. The point is that you  
19 get to ask leading questions of him after he is declared hostile.

20 It seems to me that Mr. Bursey could interview people  
21 and provide summaries of their testimony, he can still argue  
22 that they are hostile for the purpose of asking leading  
23 questions and the Board can determine that when the time arrives,  
24 but if he can gather and submit the information, I think that  
25 would be the orderly way to do it. Failing that, then perhaps

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1 on top of that, would be people who are going to be willing to  
2 come and testify and that is what we are going to be faced with,  
3 we may want to interview them or depose them.

4 CHAIRMAN GROSSMAN: Mr. Bursey.

5 MR. BURSEY: I would certainly be willing to make  
6 those interviews and make them available as summary testimony  
7 and in the instance where someone refused to talk, I don't know  
8 what I could do.

9 In the county, the county people would be the ones  
10 to come the closest to being the ones in that hostile category  
11 and their plan--their plan is a matter of record so at least  
12 there won't be surprise testimony if you know what is going to be  
13 asked to talk about ~~quandary~~ I have a question as to the  
14 application for subpoena, is there a statutory time constraint  
15 on that?

16 CHAIRMAN GROSSMAN: I am sorry, there is some what?

17 MR. BURSEY: Is there some statutory time constraints  
18 as to when an application needs to be applied for and when it  
19 needs to be served?

20 CHAIRMAN GROSSMAN: I don't believe that is the case.  
21 Mr. Goldberg, is there any time that you see as limitation?

22 MR. GOLDBERG: No, I do not.

23 CHAIRMAN GROSSMAN: It is sufficient to serve someone  
24 at a reasonable time before their appearance. If you are planning  
25 on having--if you are planning on serving them yourself, there is



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1 no problem. If you are planning on any institution serving these  
2 people, you ought to plan on having that done ahead of time, but  
3 that is only your own---that is your own problem and not--there is  
4 no requirement as far as their having to honor a subpoena, that  
5 they receive it at any set time before their testimony is to be  
6 taken.

7 MR. BURSEY: Well, I am sure that in doing these  
8 interviews with these prospective witnesses, it will become  
9 apparent which ones are willing to participate, in the hearings.

10 MR. KNOTTS: May I make a further comment about the  
11 scheduling of witnesses, Mr. Chairman, in connection with the  
12 subpoenas? It occurs to me that a number of the people that we  
13 are talking about, local officials, medical doctors have heavy  
14 demands on their time and schedules which they have to meet. It  
15 seems to me reasonable as a matter of, shall we say, good  
16 litigation manners or something, to give these people as much  
17 notice as possible so that they don't get back and say, hey I  
18 am scheduled to perform an operation or something on the day you  
19 are calling me for and I would much rather have, with Mr.  
20 Goldberg, I would much rather receive as much notice as possible  
21 so that we are not all faced with the effort to readjust  
22 schedules to accomodate somebody with more notice who had marked  
23 it down on their calendar.

24 MR. BURSEY: Are we then going to be able to pick a  
25 day in this two weeks period to hear a certain contention that

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1 we will advise these people that it will be their probable date  
2 that their presence is required?

3 CHAIRMAN GROSSMAN: These are mechanics that are  
4 generally worked out before the hearing commences between the  
5 parties or their counsel and to the extent that you would like  
6 not to inconvenience your witnesses, I know Mr. Goldberg and  
7 Mr. Knotts would like not to inconvenience their witnesses and  
8 I feel sure that you will reach some satisfactory agreement as  
9 to when to request when witnesses will appear.

10 (Brief pause.)

11 I think we ought to move on to the next witness  
12 listed for agriculture. Mr. Coleman, would you tell us basically  
13 what Mr. Coleman is going to be discussing?

14 MR. BURSEY: Mr. Coleman maintains a dairy farm  
15 with three or four hundred head of cows about five miles away  
16 from the applicant. As part of the emergency plan of the  
17 applicant, it is necessary that they advise the people living  
18 in the area that they are in such a situation of the possibility  
19 of providing stored feed for their livestock.

20 None of the farmers that Mr. Coleman works with in  
21 this area in his dairy business, he says that there are several  
22 others that he works with that have cattle within the zone that  
23 are aware of any possible impacts of the plan on their dairy  
24 operations. This is something that certainly needs to be  
25 brought out and dealt with. I would think Mr. Coleman would be

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1 raising the possible needs that he would face in given accident  
2 scenarios as regards the care and maintenance of his livestock  
3 and evacuation centers or within the 50 mile zone, the  
4 adjustment of what agricultural producers and livestock  
5 producers, what ~~are~~ steps they need to take in the event of  
6 certain accidents.

7 (Brief pause.)

8 JUDGE HOOPER: Mr. Bursey, are you saying that the  
9 Commission's emergency plan must protect cows?

10 MR. BURSEY: The emergency plan makes reference to  
11 supplemental feed stock~~ed~~ in the event of an emergency.

12 I don't know if the Commission feels beholden to  
13 cows in particular, but I know that the food chain must be  
14 protected and cows, especially dairy cattle, are a part of the  
15 food chain.

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(Brief pause.)

CHAIRMAN GROSSMAN: Mr. Knotts?

MR. KNOTTS: I must confess to being somewhat bemused by the notion that the NRC would attempt to impose requirements on farmers. The NRC has broad jurisdiction indeed and I even remember a case when they tried to impose some requirements on a lumber company but on farmers, I don't think so.

It seems to me that this is not squarely within the original contention, so my first problem is it seems to expand the contention. The second problem is I'm not sure I understand it. I found helpful Mr. Bursey's additional statement about stored feed, and I guess I would like to know whether there is anything other than stored feed which is an alleged requirement, if I understood it correctly, that we should be prepared to talk about.

CHAIRMAN GROSSMAN: Mr. Bursey?

MR. BURSEY: We're not contending that it's the NRC's place, we're contending it's the Applicant's place to educate. I think that the NRC has mandated that the Applicant educate the impacted population. That has been one of the aspects of this contention that the education of the impacted population by the Applicant, the nature of that education, the breadth of it, and we're going to illustrate by these witnesses that the breadth has not encompassed agricultural concerns and we are not contending that it is the NRC's responsibility to mandate stored feed stocks, though the Applicant must indeed educate farmers and

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1 agricultural producers in the area that it indeed is a considera-  
2 tion that they must take under advisement. And the question of  
3 who pays for these added expenses is one that should probably be  
4 raised in another forum, but we need to lay the groundwork for  
5 an understanding between all the parties. I think that in regards  
6 to the ingestion zone, that the 50 mile ingestion zone, that the  
7 Applicant's procedure for educating that population and  
8 agricultural producers in that ingestion zone, I don't have it,  
9 I haven't seen that, I'm unaware of that type of public outreach,  
10 and that's what I'm trying to solicit and work with the Applicant  
11 to see that that outreach is done in accordance with your  
12 regulations.

13 CHAIRMAN GROSSMAN: And the second point Mr. Knotts  
14 made is that the extent of the testimony that Mr. Coleman is  
15 going to give when he's called or is there something else that  
16 he is going to testify about that you ought to tell us now?

17 MR. BURSEY: His testimony would be limited to the  
18 accident impacts on agriculture and livestock.

19 CHAIRMAN GROSSMAN: Mr. Knotts?

20 MR. KNOTTS: It sounds like that phrase might be a  
21 bit broader than the stored feed and I was wondering if there  
22 were some other examples that you know of that the gentleman  
23 would address in the live testimony -- I should be addressing  
24 the Board, excuse me.

25 CHAIRMAN GROSSMAN: You understand again, Mr. Bursey,



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1 that to the extent that you come in with a matter that you have  
2 not apprised the parties of which we consider will be unfair,  
3 we would not allow the testimony, or strike it if it's being  
4 given. And so this works both ways and we are trying to pin you  
5 down on the matters that he's going to testify to.

6 MR. BURSEY: Well what Mr. Knotts referred to as a  
7 broad statement on the accident impacts on agriculture and  
8 livestock is where I would like to stay, and the pre-filed  
9 testimony will narrow it down and I won't be able to raise any  
10 issues that aren't raised in that. It will address the types of  
11 problems that were raised with the dairy cattle around the  
12 Three Mile Island reactor as examples of potential problems.

13 I have talked with people up there but I don't have --  
14 I need to get that data, get together with the gentleman that's  
15 going to testify and talk to him about how these things will  
16 address his local situation.

17 CHAIRMAN GROSSMAN: Well I don't personally see any  
18 problem with that testimony and it appears that so far we can  
19 accept the witnesses that you have offered for that category  
20 with the exception of Dr. Kaku.

21 Now with regard to the last part of that, the SCE&G  
22 personnel, is there any problem with that, Mr. Knotts?

23 MR. KNOTTS: As far as the principle of calling appropri  
24 persons from the company to testify about what the company has  
25 done to provide the kind of information to the public which is

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1 called for by our state requirements, I don't think we have a  
2 problem with presenting the people that have knowledge of that,  
3 if it can be established that that is in some way relevant  
4 and material and might make a useful contribution to the record.

5 CHAIRMAN GROSSMAN: That's fine. Could you also tell  
6 us whether Attachment 2 is this document that you submitted to  
7 us entitled "V.C. Summer Emergency Information"?

8 MR. BURSEY: Yes, sir.

9 CHAIRMAN GROSSMAN: Does anyone have anything further  
10 on that category? Mr. Goldberg or Mr. Knotts?

11 (No response.)

12 CHAIRMAN GROSSMAN: Okay. Going on to Contention A(9) --

13 MR. BURSEY: Excuse me, Judge Grossman, I don't want  
14 to lengthen this thing, but Mr. Knotts questioned the relevance  
15 and if there is any doubt in the Board's mind as to the relevance  
16 of calling their personnel to testify as to the composition and  
17 breadth of their public education program, I can expand on that  
18 if you want me to. I see it as very germane to educating the  
19 public about potential impacts of an accident.

20 CHAIRMAN GROSSMAN: I think perhaps we ought to take a  
21 few second to discuss the mechanics of getting those people  
22 before the Board. Was it your intention, Mr. Knotts to volunteer  
23 the responsible people on the particular facets of the emergency  
24 plan?

25 MR. KNOTTS: If I may take a moment, Mr. Chairman, and

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1 refresh myself about some interrogatories that we voluntarily  
2 answered.

3 (Brief pause.)

4 MR. KNOTTS: We will advise Mr. Bursey as to who the  
5 people -- if what he's after is who the people were who  
6 prepared the documents.

7 MR. BURSEY: Well I did indeed submit interrogatories  
8 to the Applicant which were responded to in an incomplete fashion  
9 in that the information I requested was being compiled at the  
10 time I requested it. I asked for the credentials, the educational  
11 background of the people that prepared the documents, who  
12 prepared them and now the document is in existence and we can  
13 see the scope of the document. I don't care at all who the  
14 Applicant produces to speak to the composition, the distribution  
15 of the document, I just want to get that out and into the  
16 record. As the summary states, I'm taking issue that the document  
17 which Applicant is using to educate the public doesn't go far  
18 enough in addressing the possibility of accidents and the nature  
19 of their impacts which has been something that I know has been  
20 a matter of dispute between this staff and the ACRS report.

21 CHAIRMAN GROSSMAN: Well it appears that both of you  
22 are satisfied that you will work this out, so we won't pursue  
23 that any further.

24 Now going to Contention A(9), there are mentioned three  
25 workers in addition to Dr. Kaku. Now I believe at least two of

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1 those workers had been deposed and possibly all three of them --  
2 all three -- and so I take it the nature of the testimony they  
3 are expected to give is well known to all the parties here. Is  
4 that correct, Mr. Bursey?

5 MR. BURSEY: Yes, sir. Mr. Crider has not -- his  
6 testimony I don't believe has not become a matter of the  
7 Licensing Board's consideration. He testified before the  
8 Inspection and Enforcement Division and I would think it would  
9 be valuable to have that included in this record. The Applicant  
10 however has the advantage of all of the data that has been  
11 revealed.

12 I have an additional meeting set up on Mothers' Day with  
13 a nuclear physicist and these people to go through and try to  
14 pinpoint with great specificity what shortcomings they may be  
15 aware of that could possibly contribute to safety related  
16 problems.

17 CHAIRMAN GROSSMAN: Well it appears to me on the basis  
18 of the prior depositions and -- that there shouldn't be any  
19 problem with surprise when the pre-filed testimony is presented.  
20 Mr. Knotts?

21 MR. KNOTTS: There is a potential problem which I  
22 can't be very specific about without having all of the transcripts  
23 in front of me, but let me try to describe it for you.

24 It's my recollection that we had grave difficulty -- and  
25 as you may recall, I was not involved personally in the case at

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1 that time -- we had great difficulty establishing precisely  
2 what weld and precisely what pipes or precisely what portion of  
3 the plant we were talking about in some instances. And if that  
4 problem persists, it makes it awfully difficult for us to say  
5 yes, we looked at that, we investigated it again, we looked back  
6 on it and this is what we found.

7 CHAIRMAN GROSSMAN: As you recall, Mr. Knotts, I  
8 wasn't on the case at that time either, but I did review those  
9 depositions also and I do recall there were some such problems,  
10 but again any surprise testimony will be dealt with in the  
11 fashion I mentioned before.

12 MR. BURSEY: I would volunteer that should we -- I  
13 haven't had the opportunity to get these workers together with  
14 a nuclear physicist to go over the blueprints, and should at  
15 that point we come to something that does appear to have  
16 significance, I will appraise all the parties.

17 CHAIRMAN GROSSMAN: Mr. Goldberg?

18 MR. GOLDBERG: Yes, Judge Grossman, a point on this --  
19 I am not personally aware of Mr. Crider's communications with  
20 the Office of Inspection and Enforcement. Oftentimes these  
21 communications are held in confidence at the request of the  
22 individual giving information to the office. I don't know that  
23 that is the situation which attains here or not, but that is  
24 something to bear in mind in terms of any public disclosure of  
25 discussions or information that he provided to that office.



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1 CHAIRMAN GROSSMAN: Well again he is of course a  
2 person who I was not aware of having had his deposition taken.

3 MR. GOLDBERG: I am not aware that he has been deposed.  
4 In fact, I do not believe that he has. I understand that he may  
5 have communicated in some capacity with our Regional Office  
6 or perhaps with our Resident Inspector. I am not personally  
7 aware of him having been deposed.

8 MR. KNOTTS: I'm sure everybody in this room recalls  
9 that the -- some of the depositions themselves were taken in  
10 camera and it is my understanding that there is no further  
11 protective order applicable to any of those four depositions.  
12 Is that correct?

13 MR. GOLDBERG: That's correct.

14 CHAIRMAN GROSSMAN: That is my understanding. Was it  
15 Mr. Crider?

16 MR. KNOTTS: I think I incorrectly implied that Mr.  
17 Crider had been deposed when we were not fully apprised -- I  
18 had the names mixed up, he was not deposed in this proceeding.  
19 Four individuals were deposed, two of them are named here. Mr.  
20 Fort and Mr. Wisenhaut, Mr. Crider was not.

21 CHAIRMAN GROSSMAN: Now let's just clarify the matter.  
22 Is there any way that the substance of what Mr. Crider will be  
23 testifying on has been given to -- or made available to the  
24 Applicant or the staff, Mr. Bursey?

25 MR. BURSEY: It was in the record at some point that

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1 Mr. Crider had spoken to the Enforcement Division. I had  
2 anticipated that the inspector of course made that information  
3 available to the Applicant in checking out the allegations of  
4 Mr. Crider. Perhaps the Plant Manager, the NRC person on hand  
5 out there might know that Mr. Crider's information was indeed  
6 relayed from Atlanta to the plant to the Applicant. I assume  
7 of course it was.

8 CHAIRMAN GROSSMAN: Well I don't know how we're going  
9 to resolve this at this point. It appears that Mr. Bursey is  
10 offering the summary in good faith on this particular individual  
11 and it just really boils down to locating that particular summary  
12 and having that summary in the hands of Mr. Goldberg and Mr.  
13 Knotts with the risk, of course, if it isn't that we won't  
14 entertain Mr. Crider's testimony.

15 Mr. Knotts?

16 MR. KNOTTS: Just to be sure that I'm on the same  
17 wave length, may I restate what I understand to be the case and  
18 you can correct me if I'm wrong.

19 If we find that there is an NRC investigation document,  
20 an enforcement document, which is a matter of public record  
21 which turns out to have investigated the charges made by Mr.  
22 Crider or the allegations made by Mr. Crider, that will be taken  
23 as Mr. Bursey's summary of Mr. Crider's testimony.

24 CHAIRMAN GROSSMAN: That's my understanding too. Is  
25 that your understanding, Mr. Bursey?

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1 MR. BURSEY: Barring the inclusion of any new data  
2 when we get together with the workers and the physicist and go  
3 over the documents on Mothers' Day. Should there be something  
4 that is not in that record, I'm sure the Board would want to see  
5 it, I'm sure the Applicant would want to see it, if it's  
6 something substantive, pins down a certain weld or at least a  
7 pipe leg as to which -- I'm not sure there has been any  
8 opportunity for the workers to sit down with the blueprints and  
9 go over them with someone that has a working knowledge of the  
10 plant.

11 CHAIRMAN GROSSMAN: Mr. Bursey, we're not buying a pig  
12 in a poke here and we are interested in finding out the sub-  
13 stance of the testimony at this point. To the extent that you  
14 delay it, you run the risk of our not accepting the testimony.

15 Now Mr. Fort and Mr. Wisenhaut both gave the substance  
16 of what we understand you are going to be offering as testimony.  
17 Now to the extent that Mr. Crider presented the substance of  
18 what is going to be offered in the way of this testimony and it  
19 can be located, that's fine. To the extent that you bring in  
20 new matters which the parties have not been apprised of and which  
21 cannot be found in the public record, we are going to continue  
22 having that problem of deciding whether we can allow it at this  
23 late point.

24 MR. BURSEY: Yes, sir, I understand. What I'm saying  
25 is the only thing that would be in addition to that would be

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1 something that I'm sure the Board and the Applicant would want  
2 to know, the specific weld number to locate a specific problem,  
3 which has not been done previously. We're not being redundant,  
4 we're adding greater specificity in a critical safety area. I'm  
5 not even -- I don't even know if this is going to happen, but if  
6 it does that would be the only new information.

7 CHAIRMAN GROSSMAN: Well we're not agreeing to accept  
8 it if it does happen and I suppose we ought not to discuss at  
9 too great length a hypothetical situation which may resolve itself  
10 when you determine that you're going to present Mr. Crider and  
11 only limit him to what has already been presented. If that's  
12 not the case, we will have to deal with it at that time.

13 I believe that concludes the summary of your -- the  
14 matters to be offered on testimony except to -- I'm sorry, we  
15 skipped that last category. I want to make sure before we get  
16 to it that Dr. Kaku's testimony referred to in Contention A(9)  
17 is also found in that summary that you presented to us about noon.  
18 Is that correct? There isn't anything additional that you are  
19 intending to present?

20 MR. HURSEY: As I said, I have a meeting scheduled  
21 between Dr. Kaku and the gentlemen listed here on Mothers' Day,  
22 which I believe is May 10, and it's going to be the first  
23 opportunity I've had to go over with these gentlemen and blue-  
24 prints and someone with a nuclear background to pin down -- to  
25 not take any new testimony but to focus the existing record on

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1 specific points in the reactor. Should that bear fruit, that  
2 would be the only new thing, which would be an analysis of that  
3 information.

4 CHAIRMAN GROSSMAN: Again, that will be something that  
5 will be dealt with by the Board on the basis of what we have  
6 already elaborated on going to whether we accept it or not.

7 Now going to Contention A(10), you have referred to  
8 three witnesses, two of whom you indicate have summaries of  
9 testimony in attachments which I haven't found in the document  
10 you gave us at noon but which you apparently are now distributing  
11 to us.

12 (Mr. Bursey distributes a document.)

13 MR. BURSEY: This I had put up here earlier. I'm  
14 sorry but this has been coming in in dribbles. That concludes  
15 the attachments.

16 Attachments 3, 4 and 5 are relevant to Contention 10.  
17 They include Dr. Kaku, Dr. Morgan, Dr. Caldicott's statements on  
18 health effects, the curriculum vitae for Dr. Caldicott and Dr.  
19 Morgan.

20 JUDGE LINENBERGER: Which is Attachment 5, please, sir?

21 MR. BURSEY: Attachment 5 is Dr. Caldicott's attach-  
22 ment. The front page of it says "Radiation Number 2".

23 JUDGE LINENBERGER: In your summary under Dr. Caldicott,  
24 you say "see attachment 4", we have some confusion here. Also,  
25 amongst the papers you handed us is something from Kaku and I

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1 don't see him referred to under Contention A(10), so we have a  
2 little more confusion there.

3 MR. BURSEY: Yes, sir. If we could make a note that  
4 Dr. Kaku's attachment on long term health effects is Attachment  
5 3 and there will be an attachment for Dr. Caldicott which should  
6 be numbered Attachment 5.

7 JUDGE LINENBERGER: Do we infer from that then that  
8 Morgan's summary should be labeled Attachment 4?

9 MR. BURSEY: Yes, sir.

10 JUDGE LINENBERGER: And will there be an attachment  
11 corresponding to Dr. Kepford?

12 MR. BURSEY: Yes, sir, as soon as Dr. Kepford makes it  
13 available to me.

14 JUDGE LINENBERGER: And approximately when do you  
15 expect that?

16 MR. BURSEY: I spoke with him recently and I told him  
17 I had to have it in the next two weeks and he said he would do it.

18 JUDGE LINENBERGER: For the record, will you tell us  
19 when that two week period started?

20 MR. BURSEY: Well this is April -- it would be the  
21 21st.

22 JUDGE LINENBERGER: The two week period started the  
23 21st?

24 MR. BURSEY: No, sir, it started -- the two week period  
25 I talked to Dr. Kepford most recently over the weekend and he said

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1 that he would try and have it within two weeks, which would take  
2 us to the 21st.

3 JUDGE LINENBERGER: All right, sir, thank you.

4 MR. BURSEY: And that would include Dr. Kepford -- what  
5 I will use as Dr. Kepford's pre-filed testimony.

6 CHAIRMAN GROSSMAN: Do you gentlemen want to proceed  
7 now or do you want a recess for ten minutes or so in order to  
8 go through these documents?

9 Are you prepared to continue now Mr. Goldberg and Mr.  
10 Knotts?

11 MR. GOLDBERG: We're prepared to continue on this basis.

12 MR. KNOTTS: We might as well continue.

13 CHAIRMAN GROSSMAN: Okay. Mr. Goldberg?

14 MR. GOLDBERG: Judge Grossman, I guess to repeat  
15 arguments that we had advanced throughout, quite apart from the  
16 substance of these summaries there was a twin obligation to  
17 demonstrate good cause for their late submission. Now I have  
18 not had the benefit of reviewing either -- any of the summaries  
19 offered in connection with Contention 10, although the proposed  
20 witnesses are generally familiar to me as an NRC lawyer as are  
21 their -- I would characterize it as -- minority viewpoints in  
22 the health effects community. I'm really at a loss to proceed  
23 further on it. I think that what has been exhibited is really  
24 that we have allowed a single party to dictate the pace and the  
25 course of the proceeding in a fairly uncharacteristic way and,

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1 again, I am acquainted with these individuals, we have no idea  
2 when we can expect Dr. Kepford's testimony; apparently it was  
3 just requested weeks ago and in fact it should have been  
4 requested months if not longer. So I'm really in the same posi-  
5 tion as I've been throughout. I think that the view of these  
6 individuals are generally known to people who read the nuclear  
7 literature. I don't there has been any good cause why they are  
8 being offered as prospective testimony summaries here and I'm  
9 really reluctant I guess to endorse a position that would permit  
10 expanded consideration of issues that really should have been  
11 more clearly defined quite a long time ago.

12 CHAIRMAN GROSSMAN: Mr. Knotts?

13 MR. KNOTTS: What we were handed a few moments ago  
14 in addition to Dr. Caldicott's vitae, which I seem to have  
15 mislaid -- which I have now, consists of an article which  
16 appears to be from the Bulletin of the Atomic Scientist, if I'm  
17 not mistaken, dated some time in 1978 -- yes, by Dr. K. Z. Morgan;  
18 an excerpt which purports to be from the Britannica, 1980 edition,  
19 which purports to be by Dr. Morgan, a vitae on Dr. Morgan and a  
20 -- what appears to be a chapter from a longer paper which is not  
21 otherwise identified, by Dr. Morgan. I wonder if we could first  
22 find out what the paper is that this is Chapter 4 of.

23 CHAIRMAN GROSSMAN: Mr. Bursey?

24 MR. BURSEY: I'm afraid I don't know, but we can  
25 certainly find out. You're referring to what is headed "Chapter

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1 4, Radiation: Low Level Radiation and the General Public" by  
2 Dr. Karl Morgan.

3 JUDGE LINENBERGER: Did these documents for -- with  
4 regard to Dr. Morgan come from Dr. Morgan?

5 MR. BURSEY: Yes, sir.

6 JUDGE LINENBERGER: And did Dr. Morgan represent that  
7 he would testify to this effect?

8 MR. BURSEY: His schedule permitting, and his health.

9 MR. KNOTTS: I would like to know, if possible now, if  
10 not at a later time, what the date of each of the documents  
11 which is not dated is and I would like to reserve the right to  
12 argue, depending on the dates of the documents, that these  
13 could have been brought to our attention much earlier in connection  
14 with the due diligence point that was raised in the Board's 1978  
15 Order.

16 As to Dr. Caldicott's vitae, I cannot make out the  
17 handwriting at the bottom of the vitae and I wonder if someone  
18 would be kind enough to translate. Perhaps that could be  
19 done off the record, I don't know.

20 Also on the table when we returned from lunch, I have  
21 just been reminded, was an excerpt from a book by Dr. Caldicott  
22 and I'm not familiar with that work. I wonder if we could be  
23 provided with the date of it. I guess we've already touched on  
24 Dr. Kaku.

25 I would observe that the works appear general and not

I17pw

1 specific to the health effects of the Summer station, to the  
2 extent that is the contention. To the extent the contention is  
3 the fuel cycle, I take it we would have to hear from Dr. Kepford.

4 CHAIRMAN GROSSMAN: We'll take a short recess.

5 (Short recess.)

END OF I.

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RA -J-1

1 CHAIRMAN GROSSMAN: The Board's primary concern is  
2 with the sufficiency of summaries and whether the matters are  
3 within the scope of the contention; generally these matters  
4 will appear to be within the scope of the contention and  
5 apparently the summary appears to be more than adequate of  
6 what these witnesses will testify to, but there may be matters  
7 in here that are outside the scope of the contention or matters  
8 that we may not entertain because of Commission's rules. I am  
9 not sure there is anything like that. There may well be matters  
10 that we must entertain absent our throwing out this testimony  
11 on the grounds of some technical reasons of which we, right now,  
12 are unwilling to do such as being some weeks late, untimely.

13 The real question, gentlemen, with regard to the  
14 timeliness is whether the applicant and the staff are, because  
15 of the delay, forced to concentrate efforts on meeting this  
16 testimony which detract from preparation of the remainder of  
17 the case and whether they, uh, and they gather their resources  
18 at this late date, but there still are two and a half months to  
19 go before the scheduled hearing. Much of this testimony, Mr.  
20 Goldbert indicated is old hat and really shouldn't present that  
21 big a problem as far as meeting the testimony goes.

22 To the extent that there are matters that the Board  
23 should not consider, I don't think that we have the time today  
24 to go over the documents at length and I think they ought to be  
25 the subject of motions by either Mr. Knotts or Mr. Goldberg.

RA J2

1 I will certainly entertain anything you have in response to that,  
2 Mr. Goldberg and Mr. Knotts.

3 MR. KNOTTS: Mr. Chairman, since the recess, have you  
4 been addressing all of the summaries or just A-10?

5 CHAIRMAN GROSSMAN: Just the which?

6 MR. KNOTTS: A-10 or all of the summaries.

7 CHAIRMAN GROSSMAN: I am talking about--

8 MR. KNOTTS: The whole package?

9 CHAIRMAN GROSSMAN: The package we received now which  
10 I believe all relate to A-10.

11 MR. KNOTTS: That is right, that is what I originally  
12 got and then I wasn't sure. I just wanted the record to be  
13 clear we were speaking of the witnesses on the general area of  
14 contention A-10.

15 CHAIRMAN GROSSMAN: I am talking about the two  
16 witnesses, actually three that we received. Dr. Kepford and  
17 I don't profess to have any position on accepting any testimony  
18 from him. Since it is not here now, chances are diminished that  
19 we will eventually accept that testimony.

20 MR. KNOTTS: Very well, Mr. Chairman. There was  
21 one question that occurred to me when I got to the very bottom  
22 of the page and that is what is the meaning of the additional  
23 references, are the witnesses going to rely on that additional  
24 reference? Do we take it that Dr. Kepford is going to rely on  
25 it? I have another technical detailed question about it but

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RA J3

1 perhaps we could first, at the bottom of page 8, of Mr. Bursey's  
2 document styled Summary of Contentions handed out earlier today,  
3 is that additional reference for one of the witnesses or just  
4 serve in general?

5 MR. BURSEY: This is a document that had been  
6 introduced into the record at least a year and a half or two  
7 years ago. It does, it has excerpts in it from Calbicott and  
8 others. It is one that I am using as a reference. I gave one  
9 to the applicant. Mr. Goldberg has a copy of it, I believe,  
10 and it had been passed by him at one point in the earlier stages  
11 of the hearing, but this is a document that I have been using  
12 and I would not suppose that Calbicott, Morgan, Kaku or Kepford  
13 to rely on this document but it is only a reference.

14 CHAIRMAN GROSSMAN: I am not sure I understand the  
15 nature of that. Is that supposed to be a further summary of  
16 their expected testimony or are they documents that your experts  
17 are going to rely on?

18 MR. BURSEY: These are documents that I rely on  
19 in drawing my case and going to these experts and just developing  
20 my understanding in the breadth of this contention.

21 MR. KNOTTS: Perhaps--I am sorry.

22 MR. BURSEY: Go ahead.

23 MR. KNOTTS: Perhaps we could establish whether Mr.  
24 Bursey intends to offer the document into evidence so far as he  
25 knows now as an exhibit?

RA J4

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1 MR. BURSEY: I would like to do so. If it is going  
2 to cause a great deal of trouble, I feel that the experts we  
3 are calling upon will rely on their own expertise. This has  
4 been one of my guidelines. I feel that the issues will probably  
5 be covered in documents that were written by these people. If  
6 it causes undue concern on the part of the Board, then I will  
7 just hold onto it.

8 CHAIRMAN GROSSMAN: Now do I understand that these  
9 people testified in that proceeding?

10 MR. KNOTTS: That is another thing I am not clear  
11 about, Mr. Chairman. I don't recognize that as an NRC docket  
12 number, the docket number which is given here. It looks like  
13 a federal court docket number but I can't recognize it as  
14 federal court either because it doesn't tell you.

15 MR. BURSEY: The U. S. District Court from the--

16 MR. KNOTTS: The middle district.

17 MR. BURSEY: The Middle District of Tennessee, I am  
18 sorry.

19 CHAIRMAN GROSSMAN: And these witnesses testified  
20 at that proceeding?

21 MR. BURSEY: This document has no bearing on these  
22 witnesses. This is just an additional reference that I use.

23 MR. KNOTTS: As I understand it, what Mr. Bursey  
24 was saying in the past and he is saying now is that is the basis  
25 for his contention, that is what he used in framing the contention.

RA J5

1 or identifying matters of concern.

2 MR. BURSEY: Not the sole basis but certainly a  
3 supporting basis.

4 MR. KNOTTS: I haven't heard him say yet that he is  
5 going to try to have somebody sponsor that into evidence.

6 MR. BURSEY: No, sir.

7 MR. KNOTTS: In any event I wonder if I may borrow it  
8 to be sure I have a copy.

9 MR. BURSEY: Indeed.

10 MR. KNOTTS: Thank you.

11 CHAIRMAN GROSSMAN: Mr. Goldberg, do you have any  
12 response to what the Board stated before?

13 MR. GOLDBERG: One or two procedural matters, Judge  
14 Grossman, I would note we have received a considerable amount  
15 of documentation today.

16 I think it appropriate that Mr. Bursey formally serve  
17 this on me in the docket. I think I will accept this as personal  
18 service on the staff but it is not now in the docket of this  
19 proceeding.

20 Secondly, there are one or two references in the  
21 summary that I guess I would like some kind of citation for,  
22 if available.

23 One of those appears on page 6, I believe, at the  
24 bottom there is reference to a recommendation by the NRS staff  
25 governing public information.



RA J-6

1 CHAIRMAN GROSSMAN: Can you tell us what document  
2 you are referring to?

3 MR. GOLDBERG: Yes, I am sorry. I am looking at the  
4 document supplied by Mr. Bursey today, captioned Summary of  
5 Contentions; on the bottom of page 6 there is a statement that  
6 the NRC staff has apparently made certain recommendations  
7 regarding the public information program. I wonder if I could  
8 have the source of that statement?

9 MR. BURSEY: That reference was one that I read in  
10 an ACRS position that was taking issue with a staff position.  
11 I don't know what branch that was a staff of, but the ACRS took  
12 issue with those first two points that are raised, starting on  
13 page 6 and continuing to page 7, that the public should be  
14 informed of those four points. The ACRS is saying that the  
15 public needs be informed on the latter two and that the staff  
16 was taking the position that they should be informed on all  
17 four points. I am unaware of any resolution to that debate.  
18 This has been in the last three months that I read this and  
19 if Mr. Goldberg really isn't aware of that debate, I will go  
20 back and see if I can find specific cites for it. I would  
21 even without reference of the NRC staff raising those points,  
22 which I am sure I can't find, I would contend that those four  
23 points are necessary to be raised in the emergency plans.

24 MR. GOLDBERG: I would like very specific reference  
25 to that statement and I would note parenthetically that the staff

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1 position on the public education program plan is contained in the  
2 Safety Evaluation Report, appendix F, page 6, and these contents  
3 do not appear there.

4 I would also like perhaps if Mr. Bursey has those  
5 phone numbers available that he supply us with the phone numbers  
6 of those medical personnel identified on page 6 of the written  
7 summary so that we can contact those individuals in view of  
8 perhaps discussing these matters with them.

9 MR. BURSEY: Certainly, Mr. Goldberg.

10 MR. GOLDBERG: And that is all I have by way of  
11 comments.

12 CHAIRMAN GROSSMAN: Mr. Bursey?

13 MR. BURSEY: Yes, I have one additional question about  
14 the inclusion of this document as an exhibit. Now were I to want  
15 to ask questions about a statement that I would take as a  
16 statement of fact from someone in this book, if this is an  
17 exhibit, I don't know exactly how to enter it into the record  
18 so that I could use it and not preclude its use in the future  
19 for myself.

20 CHAIRMAN GROSSMAN: Well, I don't see how you could  
21 get anything like that in the record. In any event, if it is  
22 a statement made by someone in that proceeding, that person would  
23 have to be here in order to testify the same way. I really don't  
24 know the nature of what it is you intend to get in.

25 MR. BURSEY: For instance, graphs, charts and studies

RA J-8

1 on cancer fatality rates, using those to ask questions with.  
2 Would it not be helpful if the applicant had this?

3 CHAIRMAN GROSSMAN: Well, I don't see how you could  
4 mechanically use that type of information to question a witness.  
5 If the studies were generally accepted studies in the area and  
6 your expert witness wanted to rely on that as something that  
7 experts would ordinarily rely upon, that might be permissible  
8 or if an expert that you are cross examining were to acknowledge  
9 the, uh, an authoritative work and, uh, that may be cited there,  
10 and would want to, and would therefore have to respond to the  
11 question, maybe you could get it in that way; but just by  
12 submitting a record of a proceeding or attempting to do it, I  
13 don't see how we could accept it in that form.

14 Mr. Knotts, do you want to add anything, or Mr.  
15 Goldberg?

16 MR. GOLDBERG: No, sir.

17 MR. KNOTTS: I certainly agree. I don't see how we  
18 can take a document that is not in the record otherwise and use  
19 it for that purpose unless it is generally recognized as a  
20 reference document.

21 MR. BURSEY: Is it my understanding then that when  
22 the expert witness is on the stand at a given point in the  
23 hearing and we wanted to raise an issue, lets say as regards  
24 a chart of cancer fatalities around the applicant, then, at that  
25 point it would be a judgment as to whether that chart or the

1 statistics we raised would be admissible rather than now?

RA J-9 2

3 CHAIRMAN GROSSMAN: The point, the main point really  
4 is these matters may have been presented in a court does not  
5 promote the evidence. If you can lay a foundation for that  
6 evidence, that is fine and we will accept it but not on the basis  
7 of it having been submitted in another proceeding. That just  
8 doesn't promote it.

9 If a witness would recognize that material and vouch  
10 for the fact that it is an authoritative reference, well that  
11 is laying a foundation for the evidence and it will come in that  
12 way but not because it was presented in a District Court somewhere

13 MR. BURSEY: I see. Would the Board like to review  
14 this document or we will just deal with it at the time of the  
15 hearing should it arise?

16 CHAIRMAN GROSS: Well, I don't see that it would  
17 serve any purpose to present it to us now. I think that basically  
18 completes the matters that we have in particular with Mr. Bursey,  
19 although we will have some general matters I am sure after we  
20 conclude with Fairfield Action. Unless Mr. Knotts or Mr.  
21 Goldberg would like to mention something further?

22 MR. KNOTTS: Would it be useful, Mr. Chairman, to  
23 continue with the matters for the hearing from the standpoint of  
24 identification of the staff witnesses and so on? Would that be  
25 useful at this point in the record, or would you like to go  
into the --

RA J-10 1

2 I was simply going to note that we identified witnesses  
3 in our response to the Order setting the pre-hearing conference  
4 and at some point you might want to.

5 CHAIRMAN GROSSMAN: Yes, I think perhaps the staff  
6 should be forthcoming with regard to what it intends to present.

7 MR. GOLDBERG: Obviously there are changes in the  
8 substance of expected testimony. This list may undergo some  
9 change but presently we intend on contention 2, Financial  
10 Qualifications, decommission clause, our witness is Michael  
11 Karlowicz. I hope I am not doing violence to the spelling but  
12 I have (spelling) K-a-r-l-o-w-i-c-z.

13 On Contention 3, ATWS, the present witness is the  
14 Project Manager, William Kane.

15 On Contention 4, seismicity, the present witnesses are  
16 Richard McMullen, (Spelling) M-c-M-u-l-l-e-n, and Phyllis Sobel,  
17 (Spelling) S-o-n-e-l. As I indicated earlier, this panel is  
18 likely to be augmented in light of colloquy we had earlier this  
19 morning.

20 On Contention 8 on emergency planning, it will be  
21 Tom Kevern, (Spelling) K-e-v-e-r-n.

22 On Contention 9, Quality Control Matters during  
23 construction, I would expect the witness to be Mr. Virgil  
24 Brownlee, (Spelling) B-r-o-w-n-l-e-e, of Region 2, Office of  
25 Inspection and Enforcement in Atlanta.

Contention 10, Health Effects, would be Ed Branagan,



RA J-11

1 (Spelling) B-r-a-n-a-g-a-n.

2 CHAIRMAN GROSSMAN: I take it the substance of that  
3 testimony is already contained in staff reports or will be  
4 forthcoming in supplementary staff reports that we expect to  
5 receive in April and then in May, was it, or June?

6 MR. GOLDBERG: Mid-May, I think in large part that  
7 is true. Mr. Karlowicz will have some supplemental testimony  
8 and as I indicated earlier, that issue may be a candidate for  
9 summary disposition.

10 Contention 9, Quality Control matters, will be in  
11 the form of separate testimony which Mr. Brownlee will likely  
12 sponsor.

13 The testimony on Emergency Planning, there may be  
14 a need to supplement the ultimate material in the Safety  
15 Evaluation Report and supplements.

16 Contention 4, Seismic matter, should be thoroughly  
17 covered in the SER and its supplement.

18 Contention 3 I think essentially is covered in the  
19 SER and again may be a real candidate for a summary disposition  
20 in the screening of that material.

21 Contention 10, Health Effects, I believe that the  
22 substance of our testimony will be contained in the final  
23 Environmental statement which we hope to issue by the end of  
24 April.

25 CHAIRMAN GROSSMAN: Now I expect that you may want

RA  
J-11

1 to supplement some of that testimony with regard to Contention  
2 A-10 in light of what applicant submitted to you today and I  
3 would like to ask that you do that as promptly, or indicate  
4 as promptly as you can what you intend to offer with regard to  
5 that.

6 MR. GOLDBERG: Mr. Chairman, I assume that we are  
7 presuming now that the individuals whose documents we have  
8 received will in fact be available to testify. I would almost  
9 prefer it that eventuality before considerable testimonies.  
10 You know, it is quite time consuming in terms of physical and  
11 time resources.

12 CHAIRMAN GROSSMAN: I don't really know how we can  
13 require that the witnesses be here or ascertain whether they  
14 will in fact be here at this point. Mr. Bursey, would you care  
15 to--

16 MR. BURSEY: Yes, if the applicant and staff would  
17 get together with me, we can do this. We are looking at ten  
18 working days, ten working days that this hearing is going to  
19 cover. The more definitive we can pin down a certain a certain  
20 contention will be held, the greater likelihood I will have  
21 a confirming appearance by certain people.

22 CHAIRMAN GROSSMAN: I think if you can confirm the  
23 appearance of those people, the hearing is likely to go further  
24 than ten days. Mr. Goldberg?

25 MR. GOLDBERG: Yes, Judge Grossman, I seem to recall

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JQ12

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1 some rulings in the past in the proceeding along these lines.  
2 Perhaps if I can just explore the point that, uh, on this matter  
3 that the applicant and staff will put on their direct case and  
4 if some direct testimony materializes that we be allowed to  
5 address that in the form of rebuttal testimony, that need not  
6 necessarily accompany the earlier pre-filed testimony of the  
7 parties.

8 Now I haven't given a great deal of thought to the  
9 mechanics or timing of this and I do not yet know, as I say,  
10 how extensive a matter it will entail to consider in some  
11 greater detail this material, all of this material, but I am  
12 trying to be economical.

13 CHAIRMAN GROSSMAN: That seems reasonable to the  
14 Board. The only question is--I think the main question is with  
15 Mr. Knotts as to whether he foresees that that might in fact  
16 add some days on to the hearing.

17 MR. KNOTTS: I think what Mr. Goldberg was saying  
18 was that as it is not often possible to pre-file rebuttal  
19 testimony even if you do know the witness's position, you don't  
20 know exactly what he is going to say. You can file certain  
21 summary statements and then you have a lot of Q and A type  
22 testimony in rebuttal without necessarily spilling over, coming  
23 back for another session. Or are we really talking about coming  
24 back for another session?

25 MR. GOLDBERG: I was hoping it could be done within

RA J13

1 the confines of a single session but that is our position and  
2 it is entirely on the matters contained in these documents may  
3 not be reflected in our direct testimony, and we could in fact  
4 materialize it even on rebuttal testimony hopefully through a  
5 witness or witnesses to be assembled.  
6

7 MR. KNOTTS: I think that is the kind of flexibility  
8 that you can't really anticipate exactly how it is going to  
9 work, but the idea is that you try to control what is going to  
10 be presented in the way of a direct case and everybody knows  
11 what their direct case is going to be and then if there is  
12 something he has to rebut that he didn't know about in advance  
13 and obviously you rebut it as soon as you can. It may be a  
14 few days later in light of the testimony that is presented,  
15 that may require some minor adjustment in the schedule but  
16 necessarily come back for another session.

17 We are all trying to work toward getting the hearing  
18 over in two weeks.

19 CHAIRMAN GROSSMAN: Mr. Bursey, do you have anything  
20 to say with regard to that suggestion which is not really before  
21 the Board at this point, only a suggestion of a procedure that  
22 might be followed, that is that the testimony with regard to that  
23 particular issue, the staff testimony and perhaps the applicant  
24 might be prepared prior to your witnesses being presented on that  
25 matter and then their testimony offered in rebuttal to your

RA J14

1 witness's testimony. Do you have any position on that?

2 MR. BURSEY: I think that that would be all right  
3 with us. I can't anticipate why it wouldn't be if they can  
4 respond like that, that would be all right. I am thinking  
5 more on the mechanical element when we present certain witnesses  
6 chronologically with the contentions and anticipate A-10 would  
7 be the sixth contention that we get to if they are all standing  
8 at that point, and that it would be later perhaps in the second  
9 week when you would raise it? I am trying to get a better  
10 idea of when I should try to bring people to Columbia. I don't  
11 have any problem with the procedure that has been suggested  
12 for rebuttal.

13 CHAIRMAN GROSSMAN: Mr. Goldberg, do you have  
14 something further on that?

15 CHAIRMAN GROSSMAN: Not on this point, Judge  
16 Grossman.

17 CHAIRMAN GROSSMAN: I would suggest that this be a  
18 matter for the parties to get together on and see if they can  
19 work out the mechanics.

20 I believe that concludes--

21 MR. BURSEY: Excuse me, Judge Grossman, I had one  
22 other thing that I wanted to raise. In my February 23 list of  
23 witnesses I had given Mrs. Jane Lee, a Three Mile Island  
24 resident who is a dairy farmer as one of my prospective witnesses.

25 Mrs. Lee's health has made her unavailable to us but



1 I would like to be able to enter a deposition of Mrs. Lee into  
2 the record.

3 CHAIRMAN GROSSMAN: Mr. Goldberg?

4 MR. GOLDBERG: I would be prepared to respond when  
5 that offer is made. I would think there would be a possible  
6 evidentiary objection to that.

7 CHAIRMAN GROSSMAN: Mr. Knotts?

8 MR. KNOTTS: Well, is the proposal to depose the  
9 individual in question? Somewhere convenient to her to  
10 accomodate her health?

11 MR. BURSEY: Yes, it is.

12 CHAIRMAN GROSSMAN: This isn't existing testimony,  
13 do you understand that? Mr. Knotts is asking whether you intend  
14 to take a deposition and offer that in lieu of her presence?

15 MR. BURSEY: Yes, sir, her health is such that she  
16 just returned from a lengthy trip and it was only after she got  
17 back that she told me that she has decided she is not going  
18 anywhere and I had hoped to be able to take her testimony and  
19 use it as accident impacts, especially in the agricultural--  
20 because she is a dairy farmer living within three miles from  
21 TMI and would like to be able to have that document as a working  
22 document entered in the record.

23 MR. KNOTTS: I wonder if the meaning of the term  
24 deposition is clear to everybody? This would entail taking  
25 a court reporter out to Middletown or wherever the heck it is

RA J16

1 in Pennsylvania and compiling a transcript in the presence of the  
2 attorneys for all parties, all of whom have the opportunity to  
3 interrogate the witness, which usually runs through a fair number  
4 of pages of transcript. If that's the proposal, I would be  
5 prepared to take it under advisement and talk about it, but I  
6 am not sure that that is really what Mr. Bursey is talking about.

7 MR. BURSEY: Is there some lesser order of magnitude?

8 CHAIRMAN GROSSMAN: An affidavit, but I really don't  
9 think that would be acceptable. I will let the parties speak  
10 for themselves. Mr. Goldberg?

11 MR. GOLDBERG: Normally in order to have any evidentiary  
12 weight at all, the individual's testimony, whether written or  
13 otherwise, must be subject to cross examination by the parties,  
14 and an affidavit, absent the witness, does not have that kind of  
15 character so we would object to its introduction in evidence.

16 MR. BURSEY: I didn't understand. You would object?

17 MR. GOLDBERG: Into evidence on your behalf, unless  
18 we have had the benefit preferably within the hearing, or  
19 potentially outside the hearing in the form of deposition such  
20 as Mr. Knotts outlined, where the individual would be subject to  
21 examination by all of the parties.

22 MR. BURSEY: Well, if I could--Mr. Knotts' proposal,  
23 if it is indeed the only way I will be able to get this into the  
24 record as a deposition, I would like to preserve that opportunity.

25 CHAIRMAN GROSSMAN: That is a proposal you can make at

that time and the parties will either agree or object to this.

Mr. Knotts?

MR. KNOTTS: One of the things that we ran into in our response to the Board's Pre-Hearing Conference Order on the subject of witnesses, whether we needed to produce a financial witness from the Public Service Authority as opposed to the company and it has been my understanding and I can be corrected, of course, but it has been my understanding that the issue is with South Carolina Electric and Gas's financial qualifications rather than the authority's and if that is so, it is pointless to bring a witness from Moncks Corner to testify about financial qualifications and We can simply provide an affidavit, if the intervenors would care to waive cross examination.

MR. BURSEY: There are some points, financial aspects that the PSA may want to respond to, there is at present suit questioning the anti-trust nature of the dual ownership that may indeed reflect on the Public Service for its future participation as part owner, and so I am not prepared to say now whether I would want to waive the participation of the Public Service in some financial discussions.

CHAIRMAN GROSSMAN: I guess the answer is that Mr. Bursey would want to have that witness available.

MR. KNOTTS: Very well, the reasoning I will just not go into. I will just register my disagreement with the reasoning but he cannot agree and we will bring the witness.

End Take J

Klpw

1 CHAIRMAN GROSSMAN: Mr. Goldberg, did you want to make  
2 any comments on that?

3 MR. GOLDBERG: Nothing to add on that, Mr. Chairman,  
4 I just would like to ascertain whether Mr. Bursey understands that  
5 he has to formally enter these documents into the record by  
6 service upon other than those for whom personal service has been  
7 made.

8 MR. BURSEY: Yes, sir. Everyone here accepts personal  
9 delivery on the service list with the exception of those present  
10 in the room, is that correct?

11 CHAIRMAN GROSSMAN: Yes. However we want to make sure  
12 that you get the copies to the Docketing -- to the Secretary of  
13 the Commission.

14 MR. BURSEY: Yes, sir.

15 (Pause.)

16 CHAIRMAN GROSSMAN: Okay. I think we are now prepared  
17 to pursue the late filed petition to intervene of Fairfield United  
18 Action and we --

19 MR. KNOTTS: I'm sorry, Mr. Chairman, we had a logistical  
20 matter that we proposed also. You can put it off until tomorrow  
21 or whatever, I just did not want us to forget it. We brought  
22 along our expected exhibits for marking and stipulations as to  
23 authenticity and all that good stuff. We can do that at an  
24 appropriate time before we leave the subject of 2752 pre-hearing  
25 conference, I just wanted to make that point and we can do that

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K2pw

1 at an appropriate time.

2 CHAIRMAN GROSSMAN: Okay, we are prepared to stay -- I  
3 don't see any way that we are going to be leaving here today, so  
4 that we will put that on the agenda for tomorrow, and I do at  
5 this point want to ask Mr. Ruoff for his response to the statements  
6 made by Mr. Goldberg and to the formal written response made by  
7 Mr. Knotts to the petition to intervene.

8 MR. RUOFF: Mr. Grossman, at this time I am frankly  
9 not prepared to go forward to discuss the legal basis for our  
10 intervention. As I noted earlier, although we did receive the  
11 notice of this hearing, we received no order to appear to argue  
12 these issues. I note in the Applicant's letter to the Board of  
13 March 30th, that the Applicant suggested that it might be  
14 advisable for the Board to issue an order directing us to be here.  
15 Having received no such order, we did not prepare. I have not  
16 had the opportunity to do that preparation today and I would  
17 request that we be given time to prepare, to address the legal  
18 basis for the intervention and I think we could be prepared to go  
19 forward with that tomorrow morning, if the Board would be amenable  
20 to that.

21 CHAIRMAN GROSSMAN: Do you mean that tomorrow morning  
22 you will be agreeable to discussing the matters before the Board,  
23 not preparing the written document tomorrow, is that --

24 MR. RUOFF: Yes, sir.

25 The Board has already indicated that it would be here



K3pw

1 tomorrow anyway, so that would add no delay.

2 CHAIRMAN GROSSMAN: The question though is whether if we  
3 start on it tomorrow morning we will have completed it, but I  
4 suppose we can't tell that until we do that. We'll have a  
5 bench conference here,

6 (Bench conference.)

7 CHAIRMAN GROSSMAN: Now Mr. Ruoff, in addition to  
8 wanting to give your response, your reply to the Applicant's and  
9 staff's response to your petition, we also do want to go over  
10 each contention and determine exactly who it is you want to put  
11 on and what the nature of the evidence is. I don't know that we  
12 have to wait until tomorrow morning to do that, I think we can  
13 just start now with Contention 1 and find out whether you --  
14 whether that contention relates to any contentions that have  
15 already been raised or whether you expect that our taking that  
16 contention would delay the proceeding in any way and I think we  
17 can do that until -- for the remainder of the afternoon. I  
18 assume you are prepared to discuss the individual contentions.

19 MR. RUOFF: Yes, I am.

20 CHAIRMAN GROSSMAN: Now before we get onto those  
21 contentions, are there any reasons why we have to consider the  
22 anti-trust matters that you brought up? Was that for the  
23 purpose of bringing it before this Board in the first place or  
24 was that just to bring it to the attention of the Commission?

25 MR. RUOFF: It was to bring it to the attention of the

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1 Commission. The petition to intervene notes both docket numbers,  
2 the DOL and the A dockets and it was intended to bring it to the  
3 attention of the Commission.

4 CHAIPMAN GROSSMAN: And it is clear to you that we  
5 have no jurisdiction over anti-trust matters?

6 MR. RUOFF: Yes, sir.

7 CHAIRMAN GROSSMAN: Now, sir, do you relate your  
8 proposed Contention Number 1 to any contentions that have already  
9 been raised in this proceeding? And that contention relates to  
10 the overall corporate management of the Applicant being  
11 insufficiently experience in the operation of a nuclear power  
12 facility.

13 MR. RUOFF: Certainly it is not tied to any of the  
14 contentions of Mr. Bursey, it is my understanding from the last  
15 Board Order that the Board itself had indicated an interest in  
16 having corporate -- members of the corporate management appear  
17 so that the Board could go into that issue.

18 CHAIRMAN GROSSMAN: If my recollection is correct, Mr.  
19 Knotts mentioned two persons, Mr. Nichols and someone else whom  
20 I can't recall at this point --

21 MR. KNOTTS: At the last pre-hearing I mentioned Mr.  
22 Nichols and Mr. Crews, C-r-e-w-s.

23 CHAIRMAN GROSSMAN: Now I notice that you have  
24 referred to Mr. Nichols as someone that you would want to question  
25 and you do have, I believe, one or two other names here. Is that

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1 correct?

2 MR. RUOFF: There are several additional names here. In  
3 terms of questioning on this specific point, I think that we would  
4 also want to have the Chief Executive Officer of the company, Mr.  
5 Virgil Summer, appear since this goes not just to the operations  
6 of the nuclear operations division but also to the overall  
7 corporate management and the ability of the overall corporate  
8 management to deal with these issues. Mr. Nichols would certainly  
9 be the primary person we would be interested in having.

10 CHAIRMAN GROSSMAN: Did you intend to take discovery  
11 of any of these individuals, take their depositions or pursue  
12 discovery in any way with regard to these matters?

13 MR. RUOFF: As indicated in the basis for the conten-  
14 tion, there are some documents which we would like to have  
15 produced, documents which have been referenced in other proceedings  
16 and which we are informed exist. As to needing to perform  
17 discovery on Mr. Nichol and Mr. Summers, I believe that I have  
18 had an opportunity in other circumstances to examine them and I  
19 will not need to perform discovery on them on this contention.

20 CHAIRMAN GROSSMAN: Well what documents precisely are  
21 you interested in so that we get some idea of whether there is  
22 going to be a prolonged discovery period here.

23 MR. RUOFF: All right. Specifically what I would  
24 address would be a study of the management audit which is supposed  
25 to have been conducted of this company. It was referenced in the

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1 1979-1980 rate hearing before the Public Service Commission, an  
2 overall management study of the corporation, and also management  
3 studies which I understand have been done by Professor Ron  
4 Wilder of the University of South Carolina College of Business  
5 for the Applicant.

6 CHAIRMAN GROSSMAN: Mr. Knotts, are you familiar with  
7 these documents?

8 MR. KNOTTS: No, I am not.

9 CHAIRMAN GROSSMAN: I take it there are no independent  
10 witnesses that you intend to call with regard to this contention  
11 if you are permitted to have this admitted into the proceeding?

12 MR. RUOFF: At this point, I have no witnesses.  
13 Obviously as our petition stated, we were responding to a  
14 situation which we discovered in mid-February and were working  
15 to put together these contentions and on this contention, as on  
16 the remainder of the contentions, while we have had the oppor-  
17 tunity to talk with experts in the field and they have been very  
18 cooperative with us and indicated a willingness to continue to  
19 be cooperative, we have not had the opportunity to arrange for  
20 witnesses as yet, although we can certainly move on that very  
21 quickly and are prepared to do that in a way which will necessitate  
22 as little delay and not involve an attack by surprise on the  
23 part of the staff or the other parties.

24 CHAIRMAN GROSSMAN: Mr. Goldberg, do you have something  
25 to say?

K7pw

1 MR. GOLDBERG: Kind of a general observation I guess  
2 about the contentions, it would seem to me that given the  
3 exceedingly late nature of this petition that there is a greater  
4 burden than might otherwise be the case in terms of their  
5 introduction as potential issues; that is, they should be more  
6 than pleading requirements of the regulations.

7 I think that before the Board makes a final determina-  
8 tion of whether or not they should be admitted through a party  
9 or on their own initiative, that they should be satisfied that  
10 the record adduced thus far, specifically the Applicant's  
11 documents and the staff documents and in many cases the staff  
12 review of matters such as corporate management and operational  
13 quality assurance, is yet to be documented.

14 I think the Board should first ascertain whether or  
15 not that is an adequate record to satisfy any concerns that have  
16 been raised in this area and the staff would submit that that  
17 record will be adequate to so demonstrate and that we can't help  
18 but introduce a delay, if not in the pre-hearing and post-hearing  
19 process by the introduction of new issues, sometimes of sweeping  
20 magnitude, at this late date, even if the designated hearing date  
21 were to be the goal the necessity to prepare additional testimony  
22 given the rather strained resources that the staff is already  
23 operating under, it is quite possible that certain staff people's  
24 efforts will be diverted toward hearing preparation and that  
25 could lengthen the proceeding and delay the publication of staff



K8pw

1 documents. I say that as an overriding thing and I am prepared  
2 to identify in what areas we believe these matters have or can  
3 be expected to be addressed. That's what I will be prepared to  
4 do as we take these up individually, but as an overall reaction,  
5 it's an extreme burden that shouldn't be borne in terms of  
6 introducing any new issues at this late date.

7 CHAIRMAN GROSSMAN: Those are all considerations that  
8 the Board has in determining whether to admit any contentions at  
9 this late date and that's one reason why we are asking, in  
10 particular with regard to this contention, whether there is more  
11 involved than merely cross examining some company witnesses.  
12 And even if -- at this juncture we're not prepared to rule on  
13 admitting the contentions, but we do want to get as much of the  
14 background on each of these as possible, so that we can make some  
15 reasoned determination when the Board gets back to Bethesda.

16 And of course a prime consideration would be how much  
17 delay if any would be occasioned by accepting any of these  
18 contentions and of course contribution you would be making to  
19 the record by being admitted with a particular contention.

20 Now let me first ask in general whether anyone has any  
21 question as to whether we could admit an intervenor with regard  
22 to a particular contention at this late date and not admit other  
23 contentions that might be admissible absent -- had this been a  
24 timely filed petition to intervene.

25 Mr. Knotts, do you want to say anything with regard to

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1 that?

2 MR. KNOTTS: You asked a question which touches on a  
3 touchy area or a difficult area, Mr. Chairman. I'll address it  
4 as best I can. I think the first part of your question asks in  
5 effect -- or touches on the area, in effect, of would it be an  
6 abuse of discretion to allow an intervenor this late, and that's  
7 an appropriate question. I would certainly think, given the  
8 Appeal Board's SKAGIT decision that it would be an appealable  
9 order.

10 The second part of the question is would the Board have  
11 discretion, as it does in the case of discretionary intervention  
12 and as is clearly set forth in the rules, to confine a very late  
13 intervenor to just a couple of issues that the Board thought  
14 might have some merit. I think the Board, certainly if it has  
15 the authority to admit the intervenor at all, it has the  
16 authority to confine that intervenor to those issues which  
17 appear to the Board that that intervenor can contribute on.

18 CHAIRMAN GROSSMAN: I think we're going to take a  
19 break for ten minutes.

20 (Short recess.)

21

22

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24

25

TAKE L

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1 CHAIRMAN GROSSMAN: Mr. Knotts, before we go further  
2 with Fairfield, let me ask you again what you had in mind with  
3 regard to the documents. Do you intend to mark them now?

4 MR. KNOTTS: We were hoping to get Mr. Bursey to initial  
5 the documents or to waive arguments about authenticity or any of  
6 that sort of stuff. I think that was touched upon. Unless my  
7 memory's playing tricks on me, it was touched upon at the November  
8 pre-hearing conference as perhaps the desirable thing to do.  
9 But we don't need to do that if we can say we're going to introduce  
10 the environmental report, the application and final safety analy-  
11 sis, and we're not going to argue about the authenticity of those  
12 documents. We won't have to go through that procedure.

13 CHAIRMAN GROSSMAN: Well, my understanding is that the  
14 N.R.C., as well as in general U.S. Courts, that marking exhibits  
15 is generally done before the hearing or trial. And I wasn't  
16 familiar with the practice of having the exhibits marked at a  
17 pre-hearing conference.

18 MR. KNOTTS: Well, we don't have to physically do it  
19 during the pre-hearing conference, but I did want it to be on  
20 the record that the documents were here and that we propose to  
21 have that procedure unless we could get a statement on the record  
22 that we don't need to do it.

23 CHAIRMAN GROSSMAN: Well, Mr. Goldberg, do you have any  
24 position on that?

25 MR. GOLDBERG: We don't have any objection. I think

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1 it would save some time in terms of the actual commencement of the  
2 hearing if we will stipulate to the authenticity of those documents  
3 without having offered appropriate foundation testimony for it.

4 CHAIRMAN GROSSMAN: I'm sorry, I didn't hear that last  
5 part.

6 MR. GOLDBERG: We will stipulate to the authenticity of  
7 the application, environmental report and final safety analysis  
8 report without requiring the foundation for them.

9 CHAIRMAN GROSSMAN: Well, now, shouldn't the parties  
10 first get together and examine those documents before you present  
11 them to the Board, or you're willing to waive them without--

12 MR. GOLDBERG: I'm not recommending their introduction  
13 at this time, I'm just saying--

14 MR. KNOTTS: No, we're not proposing their introduction.

15 CHAIRMAN GROSSMAN: You're talking about marking them  
16 for identification?

17 MR. KNOTTS: That's correct, and initialing if that's  
18 necessary.

19 CHAIRMAN GROSSMAN: Yes, but my question is: Do you  
20 have to do that in the presence of the Board? Isn't that some-  
21 thing that you and the other parties are to get together on and  
22 do and only come to the Board if there's some disagreement?

23 MR. KNOTTS: This was a convenient way to put it on the  
24 record, and I believe it's contemplated in the Commission's rules.  
25 Though it's not always done, it's more often done in antitrust

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1 proceedings than it is in this sort of proceeding. I'm treating  
2 the pre-hearing conference as kind of an occasion where you're  
3 compiling a transcript, anyway. You can get a statement on the  
4 record waiving objections as to authenticity of the principal  
5 documents or you can note that this is something that is going to  
6 be done overnight or something between sessions.

7 CHAIRMAN GROSSMAN: Well, why don't we just note that  
8 the parties will get together and will only come to the Board with  
9 regard to any disagreements they have with regard to marking or  
10 agreeing to authenticity?

11 MR. KNOTTS: That suits us.

12 CHAIRMAN GROSSMAN: That's fine.

13 Continuing with contention number one, I'm not sure that  
14 we had fully explored the question of delay as to whether, first  
15 of all, how much time you would expect this would delay the hear-  
16 ing to begin and how much time you would take at the hearing with  
17 regard to this contention.

18 DR. RUOFF: Might I say in a prefatory manner on this  
19 and on each of the contentions as we go through them that we're  
20 certainly willing to work to minimize delay. I'm willing to make  
21 the personal commitment of time and resources to be sure that  
22 things are done and that they're done in a timely fashion. And  
23 we're also willing to work with the other parties, the applicant,  
24 the staff and other parties, to see that we can get the informa-  
25 tion that we will need in the quickest manner possible through



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1 stipulations, through expedited discovery, by voluntary submission  
2 of materials; and I would ask that if there are other ways as we  
3 go through these contentions that staff or the applicant can think  
4 of where we could minimize delays, since we're all interested in  
5 doing that, we're certainly prepared to work with them on that,  
6 and also to work with the other parties on establishing the pre-  
7 cise wording of the contentions so that we can minimize delay.

8 CHAIRMAN GROSSMAN: Well, I would think that the parties  
9 at this point would be unwilling to informally agree to any kind  
10 of procedure like that, and really I think the question is going  
11 to come down on this contention one if we were to admit this at  
12 all it would appear that we would only do it on the basis of your  
13 proceeding with examination of people that you have set forth in  
14 the basis for your contention. I don't think we would at this  
15 late date even consider that you would be permitted any discovery  
16 with regard to the contention or that you would be permitted to  
17 put on additional witnesses other than the ones that are mentioned.  
18 And the real question if you were to is whether we would con-  
19 sider allowing you in on this contention just on the basis that  
20 I mentioned now.

21 Are you offering that you would consider being admitted  
22 on that basis, Mr. Rucff?

23 DR. RUOFF: Obviously, we want to be able to assist the  
24 Board in developing the record as fully as possible. These are  
25 significant issues which touch upon the health and safety of the

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L-GJS-5 1 general public, and we would like to assist the Board to develop  
2 that record and to do so in a way which minimizes delay.

3 JUDGE LINENBERGER: Mr. Ruoff, still with respect to  
4 your contention one, on page four, the first sentence of the second  
5 full paragraph, in discussing contention one, you indicate that  
6 examination of the management and technical resources of the appli-  
7 cant should extend beyond the scope of Nu. Reg. 07-31. Now, should  
8 we infer from that that it is your position that Nu. Reg. 07-31 is  
9 inadequate for the purposes of assessing and evaluating management  
10 capabilities and technical resources?

11 DR. RUOFF: I have to confess, Judge Linenberger, that  
12 I have been operating under a considerable disadvantage in draft-  
13 ing the basis for this contention in that there is in no public  
14 library, in no public document room to my knowledge in South  
15 Carolina, a copy of 07-31.

16 I've had to make some of the references to 07-31 in-  
17 ferentially from other documents provided in the docket for this  
18 filed by the applicant.

19 JUDGE LINENBERGER: So that being the case, I think I  
20 hear you saying you have no direct basis for that statement, that  
21 first sentence in the second paragraph there that we're referring  
22 to, that it's only kind of a supposition on your part based on  
23 other things that 07-31 may not back it.

24 DR. RUOFF: I think an inference would be a better de-  
25 scription than a supposition. Also based upon comments made by

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1 Mr. Kane at the A.C.R.S. hearings.

2 JUDGE LINENBERGER: Thank you.

3 CHAIRMAN GROSSMAN: Now, you mention on page four hear-  
4 ings and other proceedings involving the applicant which, in your  
5 opinion, have raised serious questions about the general management  
6 of the applicant.

7 Now, these hearings, if I understand, were rather exten-  
8 sive hearings, is that correct, sir?

9 DR. RUOFF: They were by the history of rate proceedings  
10 in South Carolina relatively lengthy, yes.

11 CHAIRMAN GROSSMAN: Well, would you expect to be putting  
12 on a repetition of these hearings here before this Board?

13 DR. RUOFF: No, not in their entirety. Certainly, there  
14 would be matters which were revealed in those cases which are not  
15 before this Board yet and which, having been brought before this  
16 Board, would assist the Board in developing the record on the  
17 ability of the applicant to operate the V.C. Summer Plant con-  
18 sistent with the health and safety of the general public.

19 JUDGE HOOPER: How would you propose getting these  
20 things into the record, sir? Through what device? The records  
21 of rate hearings, now, is that what I understand you to say?

22 DR. RUOFF: I certainly did not intend to enter the  
23 records of the rate hearings into this record, no. That was not  
24 my intention. Rather, that matters which were raised in those  
25 which I have knowledge of because of those would allow us with the

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1 witnesses to develop a record on these points.

2 JUDGE HOOPER: You have a witness that would testify to  
3 something within a rate hearing, is that what you're saying?

4 DR. RUOFF: No, from knowledge which I have from par-  
5 ticipating in those rate hearings I would be able to cross-examine  
6 or to examine.

7 JUDGE HOOPER: Cross-examination?

8 DR. RUOFF: yes.

9 JUDGE HOOPER: Thank you.

10 CHAIRMAN GROSSMAN: Well, my question really is how  
11 extensive the sections of those hearings are and what we are being  
12 confronted with at this point. Now, could you elaborate more on  
13 that for me?

14 DR. RUOFF: I think that those particular aspects refer-  
15 red to there are not in themselves lengthy and would not require  
16 extensive time.

17 CHAIRMAN GROSSMAN: And what is your estimate of the  
18 amount of time for cross-examination of the individuals in the  
19 company?

20 DR. RUOFF: I really find that a difficult judgment to  
21 make in advance without having heard their testimony. It's ex-  
22 tremely difficult to do. I have found sometimes that you can get  
23 things done a lot faster than you would like, and other times  
24 because of an unresponsive witness it takes a lot longer. And I  
25 have found in general that the applicant's witnesses in these rate

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1 proceedings were unresponsive.

2 CHAIRMAN GROSSMAN: Is there any way that you could  
3 distill out of the hearing record in these cases rather quickly  
4 the testimony that you intend or the subject matter of the testi-  
5 mony that you intend to establish in this proceeding?

6 DR. RUOFF: I have only a little problem with your  
7 "rather quickly." I do not personally own a copy of the record  
8 in those proceedings, and at least in the most recent case we're  
9 due to argue the appeal on that next week. So, I doubt that any  
10 of the adverse parties in that appeal would be willing to give it  
11 to me within the next week, but I would think that after that we  
12 would have access to a record and we could get through that right  
13 quickly.

14 CHAIRMAN GROSSMAN: Mr. Knotts, do you have anything to  
15 ask about the contention here or any points that you would like to  
16 make, specifically dealing with this contention?

17 MR. KNOTTS: Specifically dealing with this contention,  
18 as opposed to the thrust of our answer, which is oriented toward  
19 good cause and lateness, I would comment that there is already a  
20 Board question regarding management qualifications. I think the  
21 scope of this contention is much broader than what I understood  
22 the Board question.

23 CHAIRMAN GROSSMAN: Well, I can observe that not only is  
24 there a Board question, there's an A.C.R.S. question with regard to  
25 this area. And as to whether it is broader than the Board's



L-GJS-9 1 question, I really don't know, and that's what I'm trying to pin  
2 Mr. Ruoff down on. But it doesn't seem as though we can narrow  
3 the specifics any further.

4 Mr. Goldberg, do you have anything to add to this?

5 MR. GOLDBERG: The only thing I have to add is that con-  
6 tention one apparently seeks to cross-examine applicant witnesses.  
7 The staff position on management qualifications will finally be  
8 contained in the first S.E.R. supplement. Obviously, to the ex-  
9 tent that there is any necessity for the staff to produce live  
10 testimony on any of these matters, that is certainly fraught with  
11 a potential for delay.

12 I note the thrust is confined, as I say, toward appli-  
13 cant personnel, but there is always the risk that any additional  
14 obligations in the way of firming the testimony by the staff  
15 would come at a particularly strained period of time in terms of  
16 resources.

17 CHAIRMAN GROSSMAN: Well, Mr. Goldberg, let me ask you  
18 another question with regard to Commission policy with respect  
19 to the rights of intervenors to cross-examine.

20 I believe there has been a proposal made that intervenors  
21 not be permitted to cross-examine on contentions other than the  
22 ones that they've raised. I don't know if this is part of the  
23 proposed rule-making or whether that was just an additional sug-  
24 gestion that never did get into the proposed rule. Could you  
25 refresh my recollection on that?

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1 MR. GOLDBERG: I'm afraid, Judge Grossman, I don't know  
2 the precise contours of the proposed revisions in part 2. But  
3 traditionally, I think as a matter of Commission case law an in-  
4 tervenor's examination is confined to contentions that he has  
5 raised, absent some showing that he has a discernible interest in  
6 other matters that may be in controversy.

7 CHAIRMAN GROSSMAN: Well, that discernible interest,  
8 though, really is not the same as any relation to the contention  
9 that he raised, it merely goes to standing. And if he could pos-  
10 sibly have an interest in the outcome of a particular issue by  
11 virtue of his position in the community that he can cross-  
12 examine on, then I don't think that--the question really goes to  
13 whether if we were to admit the intervenor on any particular con-  
14 tention we would be permitting a full-scale intervention with  
15 regard to cross-examination on the other issues. I believe that  
16 would be the case at this point, and the question really is whether  
17 there is a proposed rule now that would change that situation.

18 MR. GOLDBERG: I'm not aware of any proposed rule that  
19 we have to that effect. I am generally aware that a rule has been  
20 proposed which concerns certain procedural aspects of N.R.C. prac-  
21 tice, but I'm not sure that they go to those kinds of evidentiary  
22 matters.

23 CHAIRMAN GROSSMAN: And, of course, my question is  
24 directed towards determining exactly how much time we'd be adding  
25 onto the hearing by taking that kind of step.

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1 MR. KNOTTS: Mr. Grossman, I apologize. I didn't hear  
2 the first part of your question to Mr. Goldberg. I was trying to  
3 chase down something else back here. Were you inquiring whether  
4 the pending changes to the Commission's rules of practice, which  
5 were issued on March 13th, would affect the Board's ability to  
6 confine an intervenor to those issues which it decided he ought to  
7 confine it to, rather than grant them all of the contentions that  
8 they sought to present? Was that your inquiry? I'm sorry.

9 CHAIRMAN GROSSMAN: At this late hour, I won't ask you  
10 to repeat it, but I didn't quite catch it. I really was asking  
11 whether there had been a rule proposed that would limit the right  
12 of an intervenor to cross-examine on contentions other than ones  
13 that he raised. I note there had been a suggestion made. I don't  
14 know if it was incorporated in that proposed changes in part 2.

15 MR. KNOTTS: As far as what was published in the Federal  
16 Register on March 18, 1981, that does not incorporate such a  
17 proposal. However, what I referred to earlier--and part of why  
18 I didn't quite hear you was that I was looking for the reference  
19 in the Pebble Springs decision, which is the analogous situation  
20 of a discretionary intervention. At page 617 of C.L.I. 76-27,  
21 there is a discussion of limiting intervenors to less than all of  
22 their contentions as a way of sort of adjusting competing interests

23 CHAIRMAN GROSSMAN: Well, let us go on, then, to con-  
24 tention two and ask you, to begin with, whether this relates to  
25 any contentions that have already been admitted on behalf of Mr.

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1 Bursey.

2 DR. RUOFF: Again, I believe not; but I do believe that  
3 this relates to the Board question on management, and that this  
4 question could be dealt with by witnesses from the company, Mr.  
5 Nichols and I believe Mr. Bradham. There's already indications  
6 that Mr. Bradham would be called as a witness, and I would think  
7 that we could deal with it with those witnesses. I would not  
8 think it would take much time to deal with that contention.

9 CHAIRMAN GROSSMAN: I take it this is very closely re-  
10 lated to contention one.

11 DR. RUOFF: Yes.

12 CHAIRMAN GROSSMAN: Let us go on to contention three.  
13 This appears to be something that was covered by Mr. Bursey.

14 DR. RUOFF: Yes, it is.

15 CHAIRMAN GROSSMAN: Now, sir, you have worked in con-  
16 junction with Mr. Bursey, I believe, on some of these rate proceed-  
17 ings, have you, sir?

18 DR. RUOFF: No, sir.

19 CHAIRMAN GROSSMAN: Why is it that you believe that there  
20 is anything that you would contribute in addition to what is al-  
21 ready being contributed by Mr. Bursey to this proceeding by our  
22 allowing you to come in and offer this contention?

23 DR. RUOFF: I have personally participated in the rate  
24 proceedings, which Mr. Bursey has not, which does provide me with  
25 insight on and knowledge about the financial qualifications of the

L-GJS-13 1 company which would allow me to assist the Board in developing a  
2 record on this point.

3 JUDGE HOOPER: Again, is it your own personal knowledge,  
4 sir, that you would assist us in developing a record with?

5 DR. RUOFF: I would like to be able to offer a witness  
6 on contention three and contention four, but I do not have a wit-  
7 ness at this moment to offer to the Board.

8 CHAIRMAN GROSSMAN: Well, when do you expect you would  
9 have a witness?

10 DR. RUOFF: I would think that if I'm able to get one I  
11 would be able to notify the Board and the other parties within a  
12 couple weeks.

13 JUDGE HOOPER: The specific or perhaps unique informa-  
14 tion you're going to contribute again goes only to the rate hearing  
15 process?

16 DR. RUOFF: That is what Fairfield United Action, as a  
17 party, brings particular knowledge about.

18 JUDGE HOOPER: Would you bring any specific information  
19 regarding the applicant's financial status in relation to financing  
20 of decommissioning and other matters, such as operation?

21 DR. RUOFF: Certainly, I would hope that the witness,  
22 if we can get a witness on these points, would be able to bring  
23 additional information on those matters.

24 JUDGE HOOPER: But you have no witness in mind that has  
25 any special expertise about the applicant's financial situation at

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1 this point?

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DR. RUOFF: No, other than what I, myself, can bring on  
the basis of having gone through rate proceedings where the finan-  
cial status of the company was rather deeply gone into.

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JUDGE HOOPER: Thank you.

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1 CHAIRMAN GROSSMAN: Lets go on to Contention 4.

2 MR. GOLDBERG: Judge Grossman, are we going to be  
3 afforded the opportunity to comment on these--

4 CHAIRMAN GROSSMAN: Yes, absolutely, I would  
5 appreciate your comments.

6 MR. GOLDBERG: I would just note that I think in  
7 two material respects, proposed Contention 3 does expand the  
8 scope of the existing contention. Those respects are first  
9 in the claim in paragraph 3 of that contention that we have  
10 to have some demonstration that spent fuel can be maintained  
11 beyond the license terms. That seems to be entering the area  
12 of long-term waste management which the Commission has indicated  
13 should be confined to the pending waste carbons proceeding and  
14 upon, uh, the final paragraph is the claim that there should  
15 be some allowance for potential steam generator repair. Again,  
16 that is not a normal operational cost, it is speculative and  
17 should a problem occur with steam generators there are a  
18 variety of mechanisms by which repairs or adjustments can be  
19 made and they may not be confined to the present options that  
20 are being employed in other proceedings in the wholesale or  
21 replacement of the assembly, meeting other means that become  
22 available to deal with the problem should it arise.

23 In either event, neither of those examples fall  
24 within the category of the multiple operations nor a plant  
25 with decommission clause, we can see the scope of the admitted

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1 contention.

2 CHAIRMAN GROSSMAN: Mr. Ruoff, do you have any  
3 comment to make on that?

4 MR. RUOFF: My understanding of the admitted  
5 contention is it reads to say we operate, uh, on those. I  
6 think that one might, given the experience with the Westinghouse  
7 steam generators, the generic problems with them, one might  
8 well consider that to be a normal operating expense the  
9 applicant needs to take into consideration, lest that arises,  
10 can the applicant deal with that more or less normal operating  
11 expense.

12 JUDGE LINENBERGER: That was with respect to the  
13 other point made by Mr. Goldberg?

14 MR. RUOFF: I am not familiar with the Commission's  
15 decision on the contract and will put that question off until  
16 I get a new ruling in the proceeding. Certainly, what one  
17 does with what one makes also seems to me to be a normal part  
18 of operations. The fact that applicants may have in the past  
19 not have dealt with this normal part of operations does not  
20 mean that it is not.

21 CHAIRMAN GROSSMAN: There is a history of litigation  
22 in this particular area and a rule making response to it and  
23 the point made by Mr. Goldberg is that that would be outside of  
24 what the Board could consider in this proceeding in any event.

25 Going on to Contention 4, is this another contention

1 that Mr. Bursey has raised or is this something in addition?

2 MR. RUOFF: It is similar but it is not the same  
3 contention as that raised by Mr. Bursey in his contention  
4 A-2.

5 I would hope that if we are able to get a witness  
6 for contention 3, that same witness would be able to deal with  
7 both contentions 3 and 4 using essentially the same kinds of  
8 documents.

9 CHAIRMAN GROSSMAN: Is there any unique contribution  
10 you feel that he would make to this particular area that Mr.  
11 Bursey did not make himself with regard to the contention that  
12 he has?

13 MR. RUOFF: Mr. Bursey does lack a background in  
14 rate proceedings which I have examining the financial condition  
15 and qualification of the applicant.

16 CHAIRMAN GROSSMAN: Now it is possible for you to  
17 assist Mr. Bursey in preparing his case with regard to the conten-  
18 tionsheomaytduplicate, have you given that any consideration?

19 MR. RUOFF: No, Your Honor.

20 (Brief pause.)

21 CHAIRMAN GROSSMAN: Now the next couple of  
22 contentions relate to the seismicity in the area which is a  
23 matter on which Mr. Bursey has covered with his contentions  
24 and while you have apparently reviewed the SER, it does not  
25 appear on looking at the contentions and the basis of those

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1 contentions that you haven't offered us anything in addition  
2 to what you have analyzed from the SER, do you have any  
3 particular witnesses in mind?

4 MR. RUOFF: It was my desire on these contentions,  
5 Judge Grossman, to request of the Board that the Board call as  
6 its witnesses at least the members of the ACRS Consulting  
7 Panel which reviewed the Summer plant, specifically Professor  
8 Kapunic and Professor Long.

9 CHAIRMAN GROSSMAN: Mr. Goldberg, do you care to  
10 respond to that?

11 MR. GOLDBERG: I don't represent the ACRS. There  
12 is a body of litigation with which I am not immediately  
13 familiar but which stands out in my mind a proposition of  
14 this is not customarily permitted and again, I intend to  
15 delve a little bit into some of the case law and other  
16 requirements to get the source of that understanding.

17 Apart of whatever allowance might be available  
18 I would notice that the ACRS's letter report has been served  
19 on the Board and parties and it is their final decision. It  
20 would seem to me that, assuming there was some additional  
21 light that an individual member or consultant could shed, that  
22 it would certainly not bear the kind of weight that the full  
23 committee report would.

24 CHAIRMAN GROSSMAN: Mr. Ruoff, you wanted to add  
25 something?

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1 MR. RUOFF: Yes, it is my understanding that the  
2 Seabrook proceeding, the Board has agreed to call members of the  
3 ACRS consulting panel as its witness on seismicity with certain  
4 limitations on the ability of the party making that request  
5 to enter examination and contacts with that witness.  
6

7 I would also note in regard to contention 5 and  
8 contention 6 insofar as the ability of Fairfield United Action  
9 to make a contribution on the record that some of the issues  
10 which are raised in this seismicity questions turn on knowledge  
11 and understanding of statistical inference and probability and  
12 with even the background which I have, I would be able to assist  
13 the Board in developing the record on this point.

14 CHAIRMAN GROSSMAN: Do you have any seismologists  
15 in your fold?

16 MR. RUOFF: No, we have economists, medical doctors  
17 and I have a background in statistics and topography.

18 CHAIRMAN GROSSMAN: I believe that this is beginning  
19 to be somewhat late hours for us to continue, my efficiency  
20 is getting low at this point and I think we have a good start  
21 on this. What I would like to do tomorrow is to begin with  
22 Mr. Ruoff's response to the matters raised by Mr. Goldberg  
23 orally this morning and Mr. Knotts written response and then  
24 we will continue with the specific contentions to determine  
25 basically whether there is any important contribution that you

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1 make to this proceeding, whether it would delay the proceeding  
2 to admit you want any of these contentions and generally along  
3 the lines that we have been on today, and I think with that,  
4 we will adjourn until tomorrow at 9:30 a.m.

5 (Whereupon, at 5:00 p.m., the conference was  
6 adjourned, to resume at 9:30 a.m., Wednesday, April 8, 1981.0  
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This is to certify that the attached proceedings before the  
Nuclear Regulatory Commission

in the matter of: South Carolina Electric & Gas Company

Date of Proceeding: April 7, 1981

Docket Number: 50-395 OL

Place of Proceeding: Columbia, S. C.

were held as herein appears, and that this is the original transcript thereof for the file of the Commission.

Peggy J. Warren

Official Reporter (Typed)

Peggy J. Warren

Official Reporter (Signature)