

NUCLEAR REGULATORY COMMISSION

ORIGINAL

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

DUKE POWER COMPANY )  
Catawba River Units 1 & 2 ) DOCKET NOS. 50-413  
 ) 50-414  
 )

DATE: October 7, 1982 PAGES: 380 thru 567

AT: Charlotte, North Carolina

TR 81

ALDERSON  REPORTING

400 Virginia Ave., S.W. Washington, D. C. 20024

Telephone: (202) 554-2345

8210130207 821007  
PDR ADDCK 05000413  
T PDR

RA

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

-----X  
:  
In the Matter of:                   :  
:  
DUKE POWER COMPANY                : Docket Nos. 50-413  
Catawba River Units 1 & 2         :                   50-414  
:  
-----X

Thursday, October 7, 1982  
Board Room, Fourth Floor  
Mecklenburg County Administration  
Building  
720 East 4th Street  
Charlotte, N. C.

The PREHEARING CONFERENCE in the above-entitled matter  
convened, pursuant to adjournment, at 10:00 a.m.

BEFORE:

- JAMES L. KELLEY, Chairman,  
Administrative Judge  
Atomic Safety and Licensing Board
- DR. DIXON CALLIHAN, Member  
Administrative Judge  
Atomic Safety and Licensing Board
- DR. RICHARD F. FOSTER, Member  
Administrative Judge  
Atomic Safety and Licensing Board

APPEARANCES:

On behalf of the Applicant:

- J. MICHAEL MCGARRY, III, Esq.
- AL V. CARR, Esq.
- ANNE COTTINGHAM  
Debevoise & Liberman  
1200 Seventeenth Street, N. W.  
Washington, D. C. 20036

(Continued)

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345



1 APPEARANCES: (Continued)

2 On behalf of the NRC Staff:

3 GEORGE JOHNSON, Esq.  
4 and  
5 K. N. JABBOUR, Project Manager  
6 U. S. Regulatory Commission  
7 Washington, D. C. 20555

8 On behalf of CAROLINA ENVIRONMENTAL STUDY GROUP:

9 JESSE L. RILEY  
10 854 Henley Place  
11 Charlotte, N. C. 28207

12 On behalf of PALMETTO ALLIANCE:

13 ROBERT GUILD, Counsel  
14 &  
15 MICHAEL LOWE, Director  
16 314 Pall Mall  
17 Columbia, S. C. 29201

18 On behalf of CHARLOTTE-MECKLENBURG ENVIRONMENTAL COALITION:

19 HENRY A. PRESSLER, Chairman  
20 943 Henley Place  
21 Charlotte, N. C. 28207

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

P R O C E E D I N G S1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

JUDGE KELLEY: Good Morning. This is the second pre-hearing conference in the Nuclear Regulatory Commission's ongoing proceeding concerning the operating license application for the Catawba Nuclear Power Facility. I see at least one new face among the Counsel tables this morning. A lot of old faces, perhaps I should say familiar faces. Why don't we just introduce ourselves for the record anyway to establish who's here. We want to start on the left and go to the right.

MS. COTTINGHAM: I'm Anne Cottingham with Debevoise and Liberman. I'm here on behalf of the Applicant, Duke Power.

MR. MCGARRY: My name is Michael McGarry and I'll be assisting in the representation of Duke Power.

MR. CARR: My name is Al Carr, Counsel for Duke Power Company.

MR. JOHNSON: I'm George Johnson, and I'm Counsel for the NRC Staff.

MR. JABBOUR: I'm Kahtan Jabbour and I'm Project Manager for the NRC Licensing of Catawba.

MR. RILEY: I'm Jess Riley and I'm Spokesperson for C.E.S.G.

MR. GUILD: Mr. Chairman, my name is Robert Guild, and I'm Counsel for Palmetto Alliance and with me is Director, Michael Lowe.

JATA2

1 MR. PRESSLER: Henry Pressler, I'm the Chairman of the  
2 Charlotte-Mecklenburg Environmental Coalition, Intervor.

3 JUDGE KELLEY: Thank you. The Board next would like to  
4 thank on the record, the Applicants for the site visit which they  
5 took a group of us on yesterday, the Board, and representatives of  
6 the Intervenors and N.R.C. Staff. We thought it was a very well  
7 conducted tour, very informative and we appreciate it.

8 The occasions for this second prehearing conference are  
9 basically two. One is the Appeal Board's decision last month and  
10 a very long one, known generally as ALAB-687, which resolved some  
11 issues that had been in dispute about contentions before the  
12 Board, and that decision has been rendered by the Appeal Board.  
13 We are now in position to implement that decision and apply it  
14 to the contentions in this case.

15 The second main reason for being here is the fact that  
16 the Staff's Environmental Impact Statements, its Draft Environ-  
17 mental Impact Statement, was issued in mid-August, and under our  
18 prior prehearing order, we established the procedure whereby  
19 contentions could be filed with respect to the Draft Impact  
20 Statement, if filed within 30 days after the availability of the  
21 statement, with respect to new information -- nothing else -- and  
22 we have had some proposed contentions filed with respect to the  
23 statement.

24 In response to those contentions, we have received from  
25 the N.R.C. Staff and from the Applicants, largely in opposition to

JATA3

1 -- at least to those new proposed contentions, and the Board --  
2 we're here today to get some further information from the parties and  
3 to give them an opportunity to say things they might not have been  
4 able to say prior to this, so that we can make decisions on those  
5 new contentions.

6           We thought that first we would like to talk about the  
7 effect of the Appeal Board decision on where the case stands now  
8 and where it ought to be put. To that end, we had put to the  
9 parties a series of, I believe five different questions, which  
10 in many respects were overlapping, but there are five questions  
11 that were designed to elicit a pretty clear statement and position  
12 about what ought to be done now.

13           There was, as we look at it, a significant degree of  
14 agreement among the parties in the interest of those questions,  
15 and some divergence, however, toward the bottom line question of  
16 what this Board ought to do about the contentions previously  
17 submitted on a conditional basis, and we don't need to go over all  
18 of those questions -- obviously not the ones everybody agrees on  
19 anyway, but we would like to ask a few questions this morning and  
20 give you a chance to comment on the area or areas where there  
21 appear to be some difference of opinion.

22           There seems to be unanimity and the Board thinks that  
23 the decision by the Appeal Board doesn't have any automatic effect  
24 and they didn't rule on any particular contentions -- they pretty  
25 clearly left it to us to do that by applying the principles that

JATA4

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

1 they had laid down, and the second point on which there seems to be  
2 agreement, obviously you'll have a chance to contradict me if I've  
3 attributed agreement where none exists in a few moments, but the  
4 second point where there seems to be agreement, the Board in its  
5 order of March 5, 1982, admitted on a conditional basis, I believe  
6 a total of 16 contentions, tendered them -- or contentions that we  
7 found to be vague in one degree or another, but which we thought  
8 might be made acceptably specific if at some later date a docu-  
9 ment from the Staff, such as the Staff Impact Statement, supplied  
10 information that would allow the preponderant of the contention  
11 to make it more specific.

12           So we let in ten of those contentions and said that when  
13 the relevant document appears, please make it more specific or  
14 withdraw it.

15           The second category or the category of six contentions  
16 which were similarly vague and varying in respects, but which it  
17 seemed to us might possibly have been made more specific through  
18 the process of discovery, so we allowed in six contentions I be-  
19 lieve it was, and said, well, these are rather vague but you can  
20 have discovery for 90 days and then do what you can by way of  
21 making them more specific.

22           A basic aspect of the Appeal Board's decision and a key  
23 ruling really was that this concept of conditionally admitting  
24 a contention subject to later specification, either through a  
25 document, or through discovery, was not permissible. They held that



TA5

1 contentions are not to be admitted unless they met the basic speci-  
2 ficity requirements set forth in the Rule of Practice 2.714, so  
3 we asked the question to the parties of, in light of the Appeal  
4 Board's ruling, should this Board vacate that part of its earlier  
5 order admitting these contentions conditionally, and as we read  
6 them, all parties said, yes, that's what you should do.

7 That is also what we think we should do, and so that  
8 brings us to a point where we have taken the Appeal Board order,  
9 read it to say conditional admission is not valid, and we then  
10 withdraw the prior conditional admission, which leaves us with a  
11 group of contentions before us and then I think I'm getting to  
12 the point where the parties kind of split off in various directions  
13 and maybe I can state very quickly what I understand you to be  
14 saying and then I'll give each of you an opportunity to elaborate  
15 on that if you wish.

16 The Intervenors as I understand it, Mr. Guild, let's take  
17 the ones for the moment that were made -- that were conditionally  
18 admitted, pending refinement upon discovery.

19 MR. GUILD: Yes, sir.

20 JUDGE KELLEY: Okay, and I believe your position is that  
21 we should find them to be adequately specific and then allow them  
22 in just on their own merits.

23 MR. GUILD: Our position was at the time they were filed  
24 while lacking perfect specificity, they met the threshold require-  
25 ments of the admission rule, at the time in light of the information



1 and documents then available, and that they fell into the category  
2 of the types of contentions for which sufficient material was not  
3 presented in the then available documents to allow any greater de-  
4 gree of specificity at that time. They should have been admitted  
5 then. They should be admitted now, and the normal discovery  
6 process should be used to see whether sufficient evidence exists  
7 to support them, to allow them to be litigated at a later stage  
8 in the proceeding.

9 JUDGE KELLEY: What do you do with the Appeal Board de-  
10 cision, which, I'm not quoting now, I'm paraphrasing, but it seems  
11 to say that the idea of letting in a contention on the theory  
12 that more discovery will sharpen it is not acceptable -- don't they  
13 say that pretty much in so many words?

14 MR. GUILD: Judge Kelley, we don't read it that way.  
15 The way I see it is that the Appeal Board instructs this Licensing  
16 Board that no contention will be admitted unless it meets the  
17 minimum threshold of specificity requirement, and we think speci-  
18 ficity is like beauty. It's in the eyes of the beholder. Obviously  
19 some subjects will allow a greater degree of specificity. We  
20 think the Board put it well when they observed, for example, on  
21 the subject of quality assurance.

22 Let's say defects in plant design or construction. The  
23 Applicants are unlikely in their own filing, in this case the  
24 Final Safety Analysis Report, to highlight defects in plant design  
25 or construction, so only extra document, or extra record imple-

1 mentation of facts will allow one plead of contention in that area.

2 For example, Palmetto Alliance #6 which says former  
3 workers based on their own knowledge at the site say that there  
4 are defects in actual construction, leading us to assert that there  
5 are systematic problems with quality assurance. That is the kind  
6 of contention that was specific enough as plead, in light of the  
7 documents then available.

8 We think that's clearly the kind of thing that the  
9 Appeal Board understood should be allowed in, but the judgement  
10 of this Board is based on the information then available.

11 JUDGE KELLEY: Were the I & E Inspection Reports on  
12 Catawba then available, I assume they were?

13 MR. GUILD: I --

14 JUDGE KELLEY: That's for information -- I'm not clear  
15 about that.

16 MR. GUILD: I don't know. I really -- I can't say.  
17 Perhaps so, but the fact of the matter is that this is not like  
18 saying the Applicants tell you it's black, we say it's white, and  
19 therefore, the issues are joined. The assertion is -- there are  
20 no assertions other than the general assertion that we are doing  
21 right contained in the FSAR with respect to quality assurance,  
22 and therefore, we think it's the kind of contention that lends  
23 itself to filing only based on our own knowledge.

24 JUDGE KELLEY: But I just want to clarify this separate  
25 point. I think it's a small point, but if for example, supposing

JATA8

1 some company had some defects in welding, the I & E people came  
2 and found them and wrote a big report, wouldn't that be in the  
3 PDR?

4 MR. GUILD: Yes, sir. They would be, in fact something  
5 was distributed to the Board by letter from me concerning an on-  
6 going investigation of various quality control and assurance  
7 matters, and it references previous reports from I & E on those  
8 subjects, back to, I think, '79 or perhaps a little bit earlier,  
9 and those are all available to the public, in the public docket  
10 room I believe.

11 That's -- I guess the question, you know, what degree  
12 of diligence and search is required, if there's some document  
13 that sits in Washington, let's say, that the Staff has available,  
14 that they say if you knew it existed, if you asked for it by name  
15 we would have given it to you, therefore, the --

16 JUDGE KELLEY: I was asking whether it was in a PDR in  
17 South Carolina? That's what I meant. Maybe I'm not clear.

18 MR. JOHNSON: I do not know.

19 JUDGE KELLEY: Maybe you could check on that and just  
20 advise us what the case is one way or the other. Okay, I think I  
21 understand your position, Mr. Guild. Let me just -- we like to  
22 break this into small pieces. That way it's easier to read the  
23 transcript that way. The real question is what do you do now with  
24 regard to conditionally admitted contentions that would keep the  
25 later discovery -- and Mr. Johnson, the Staff had a specific position

1 on that. I wonder if you could state it and make sure I understand  
2 it.

3 MR. JOHNSON: Well, our position on these matters is that  
4 as stated in our response to your questions was that there was not  
5 adequate specificity, that was our position at the time, however,  
6 we looked at your rulings and felt that there was some ambiguity  
7 in those rulings, and in response to your last question on whether  
8 you should reconsider or not, we said that to the extent there is  
9 ambiguity and you did not decide the question of whether or not  
10 they were specific enough on the appropriate standards, that you  
11 might want to go back and look, in light of the Appeal Board ruling,  
12 however, -- and so it's saying, I think you could reference the  
13 -- some matters you said in this March 5th ruling, it refers to  
14 transfer and distinguishing these contentions from those other  
15 ten contentions, where Staff documents or Applicant materials were  
16 involved, here we had references to things that seemed to be within  
17 the possession or control of the Intervenors and you've referenced  
18 statements that you seem to be referring to information that was  
19 in their possession that might make it specific, and our position  
20 would be that -- would be limited in ruling now to those matters  
21 that were on the record at that time.

22 JUDGE KELLEY: Let me just ask you your reaction to one  
23 point. You're in this position now and you issued a ruling six  
24 months ago, which said what it said, and then you get in this  
25 appeal ALAB-687 and now you're here today and you're looking at--



JATA10

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

1 I suppose you could argue in a sense that it's a prior ruling --  
2 we all know about specificity, sort of the law in a case or  
3 Res judicata and you can't look at it again. On the other hand I  
4 suppose you could argue that if you had available to you the  
5 advise of a conditional admission, you might look at a contention  
6 and say, well, this is kind of vague, but I'm going to admit it  
7 conditionally, and wait for the Impact Statement, or wait for some  
8 discovery.

9           You might look at it somewhat differently if you had to  
10 let it in or let it out unconditionally period, and it just seems  
11 to me that arguably at least we're in a position where we're look-  
12 ing at it in a different context and therefore, it's legitimate  
13 to look again. I would suppose that if we said six months ago  
14 this contention is so vague it would never get in without further  
15 specification. It's pretty hard to turn around and now say, it's  
16 really okay, and -- but if it was marginal and I'm not speaking of  
17 any of them in particular, but if it was marginal, you might want  
18 to take another look I would think. Do you follow me?

19           MR. JOHNSON: Yes, sir. And I would only like to add one  
20 other point unless I'm not being responsive. I didn't understand  
21 that you were --

22           JUDGE KEILEY: They're very long, 300 word questions --  
23 the real question is can one put on a different set of spectacles  
24 now than one had on before --

25           MR. JOHNSON: I would agree that you have a different

1 situation than you had previously.

JATA11 2 JUDGE KELLEY: Mr. McGarry, would you like to speak to  
3 the question of the -- for now anyway, just the ones that pertain  
4 to further discovery.

5 MR. MCGARRY: Our position is clear cut. We maintain  
6 that all conditionally admitted contentions, including those con-  
7 tentions which were premised upon further discovery, should be  
8 vacated.

9 JUDGE KELLEY: Because they are actually too vague,  
10 or because we said they were vague six months ago?

11 MR. MCGARRY: Because you said they were vague six months  
12 ago and because they are too vague. We maintained from the be-  
13 ginning that the contentions -- now we're just focusing on the  
14 discovery contentions, but my response applies to all of the con-  
15 tentions were non-specific. They were vague characterizations.  
16 We asked for specificity. Take for instance, the Q.A. Contentions,  
17 there are allegations made that there are former employees that  
18 had information and that statement was made to this Board, and the  
19 Board referenced that statement in the prehearing transcript, and  
20 yet there has been absolutely no specificity provided. What are  
21 those two former employees' concerns.

22 Absent that demonstration, the contention lacks speci-  
23 ficity, the diesel generators is another example. We find out here  
24 in the prehearing conference or through discovery that the basis  
25 for the contention which we submit is lacking specificity, is that



JATA12

1 some individual who is now dead, told Palmetto Alliance thus and  
2 such.

3 Now what is the problem with diesel generators. What's  
4 the specific problem? They don't know. The individual is now  
5 deceased, so again it's totally lacking in specificity.

6 JUDGE KELLEY: Okay.

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

1 JUDGE KELLEY: Okay.

2 Lets turn then to the other contentions. I believe there  
3 are about ten of them that were admitted conditionally upon the  
4 appearance of another--upon the appearance of some document like  
5 the Impact Statement.

6 It is unclear to me, Mr. Guild, in reading your most  
7 recent filing, the twenty-two or three contentions on the Impact  
8 Statement. What is your position, what happened to the 10 conten-  
9 tions that I am talking about now as far as you are concerned?

10 MR. GUILD: Well, sir, we---

11 JUDGE KELLEY: Are they before us now?

12 MR. GUILD: Yes, sir.

13 JUDGE KELLEY: Okay, and in what way?

14 MR. GUILD: They are before us in their original format  
15 where our position is that they stand as specific enough in light  
16 of the subsequent filing of the Staff's DES and we stand by them,  
17 or they have been revised and are now contained in a revised  
18 form in the filing that you have before you of the twenty-three  
19 DES contentions; but they are all before you, yes.

20 JUDGE KELLEY: All right, but lets take it one at the  
21 time if you will, the old contentions, the contentions of last  
22 March, ten of which I think we admitted conditionally. You would  
23 regard them as being before us for ruling?

24 MR. GUILD: Yes, sir.

25 JUDGE KELLEY: In light of 687?

1 MR. GUILD: Yes, sir.

2 JUDGE KELLEY: Okay. Then separate from those ten  
3 are the new--I will call them "new contentions" if that won't  
4 cause you much confusion, on the Draft Impact Statement--lets  
5 say Draft Impact Statement contentions which were recently filed.

6 Now you say that some of the old ones have been revised.  
7 The thing I want to get clear in my own mind is, does it really  
8 matter? And what I mean by that is don't you have to get in  
9 on the basis of new information and if you haven't got new infor-  
10 mation, you are not in? Isn't that true under 687? So that  
11 could be a revision or it could be brand-new, but if it doesn't  
12 have new information, it won't be in.

13 MR. GUILD: Let me take it one step at the time, Judge.  
14 First of all, I think in substance it doesn't matter. I think  
15 that point we tried to address in our comments in response to  
16 your question.

17 It is really a highly technical matter with probably  
18 no substantive effect whether you go back and look at all of  
19 your original vague--vague subsequent--vague dependent on document  
20 filing of the contentions, the ten, or you hold the decision  
21 in abeyance on all of those until some subsequent filing, and  
22 the reason why it is not a distinction of substantive import is  
23 because the vast bulk of those were environmental contentions,  
24 that either--as to which we either official cut date now because  
25 the Staff's Environmental Analysis was filed last month; so, the

1 bottom line is, Judge, we think that all of those are right for  
2 a decision now with few exceptions, and the subject matter that  
3 comes to mind as to the exception is the Emergency Planning matters.

4 You will recall the Board said well, they haven't filed  
5 an Emergency Plan. You have concerns on that subject. We can't  
6 decide whether they are good or bad concerns because they hadn't  
7 filed their plan yet, so we will admit them conditionally.

8 The Appeal Board said that was not a proper process.  
9 They are either in or out on their merit at the time. We now  
10 have the instruction that when that plan is published, we should  
11 address it as we have concerns about it and we intend to do so.

12 But, as to the bulk of the ten, the DES is now out.  
13 Either the original pleading of those contentions is satisfactory  
14 because of what was filed by the Staff on the DES or we have made  
15 revisions and we think those are all right for decision today.

16 JUDGE KELLEY: Can I make one qualification on that  
17 I think. When I say of the draft impact statement contentions,  
18 the twenty-three, is it?

19 MR. GUILD: Yes, sir.

20 JUDGE KELLEY: Okay, the twenty-three. When I say it  
21 doesn't matter whether they are a revision or not, in terms of  
22 trying to parse it and say this is old Palmetto ten or CESG eighteen,  
23 why should I care, except insofar as it applies, if there is an  
24 ancestry, it probably has some bearing on the argument that is not  
25 new information, and that might be of interest, but, what I sort



1 of shudder at is sitting down and parsing all of these and trying  
2 to find where everything fits because you don't have such a parsing  
3 in your filing, and my inclination is to say except for the argument  
4 on new information, I don't care.

5 MR. GUILD: Right, my inclination is to agree with you,  
6 Judge Kelley, and that certainly is a rather cumbersome task to  
7 have to do as you suggest might be required. My only problem  
8 is that I am worried that the applicants, Duke Power, are setting  
9 a trap for us in this regard and they say well, you have got to  
10 have anticipated whether or not the Encyclopedia Britannica of  
11 1932 commented on this point, therefore, you are charged knowledge  
12 of it and should have pled it back then. To that extent, to avoid  
13 falling in to this trap, we tried our best to articulate the breadth  
14 of our concerns when we first filed our contentions, even though  
15 some of them were premature, save these environmental issues,  
16 so I agree with you in substance but I hesitate to say there are  
17 no points where, because of the argument, that new information  
18 is the crux of the matter. We might have to turn back to our  
19 original filing to see what we said then.

20 DR. CALLIHAN: Have you said, Mr. Guild, in effect that  
21 we have before us duplicative contentions?

22 MR. GUILD: That is not what I meant, Judge. I mean  
23 it is--if there is a contention that has the same allegations  
24 as the one we filed originally and that was filed anew with this  
25 most recent filing, it was filed again because it was revised

1 in response to you all's direction and the direction of the Appeal  
2 Board as we read it, so duplication in a sense, yeah, that we  
3 had to restate a contention in order to speak to the particular  
4 analysis that the NRC staff published in the draft statement,  
5 yes.

6 Am I responsive? If I can do better, please---

7 DR. CALLIHAN: Well, I think my questions was rather  
8 obvious. I understood you to say a few moments ago that you are  
9 retaining some Contentions from the filing of last December, or  
10 whenever it was.

11 MR. GUILD: Yes, sir.

12 DR. CALLIHAN: Quote "old contentions".

13 MR. GUILD: Yes, sir.

14 DR. CALLIHAN: I also understood you to say that some  
15 of those items are re-addressed in the twenty odd contentions  
16 filed last month?

17 MR. GUILD: Yes, sir.

18 DR. CALLIHAN: Is that true?

19 MR. GUILD: Yes, let me give you an example that comes  
20 to mind, Mr. Riley mentioned to me. One of the matters raised  
21 originally was Control Room Design in response to the TMI Action  
22 Plan. That is not contained in the DES, so we retain that conten-  
23 tion and we were told by the Board here we should deal with that  
24 matter in more detail when the Company files their specific report  
25 on TMI Control Room Redesign, and we are awaiting that report.



1 So, that contention we maintain is still alive because  
2 we have not had to revise it, the document has not been published  
3 yet, and Emergency Planning is another subject of that.

4 The only one Environmental contention that comes to  
5 mind, Judge, and I--please forgive me if I find there is something  
6 else there, but I am trying to be as responsive as I can, is the  
7 corbicula, the Asiatic clam matter. We raised that originally.  
8 It is an environmental issue in part because it says the plant  
9 capacity factor will be reduced since the cooling water flows  
10 will be reduced in essence. We were told to revise it if need  
11 be. We think that the record bears us out in our original statement  
12 of that contention and we stand by that. That is one example  
13 of an environmental matter that we stand on our original filings.

14 DR. CALLIHAN: I think you have given some examples  
15 of non-repetition. Now, is there repetition? Are you prepared  
16 to say at this moment or will you be prepared to say later if  
17 the question comes up again?

18 Let me just forewarn you, it is going to come up again,  
19 I won't demand an answer now.

20 MR. GUILD: All right, sir.

21 DR. CALLIHAN: But we will come back to it.

22 MR. GUILD: All right, sir, I am afraid it may.

23 DR. CALLIHAN: Thank you.

24 DR. FOSTER: Perhaps I could ask Mr. Guild another question  
25 along the same lines here. Relative to the DES, does your new

1 filing cover all of your concerns relative to contentions that  
2 you would expect to be treated, which are in fact associated with  
3 the DES?

4 MR. GUILD: As to the information as presented at this  
5 time in that document, I think our obligation in fairness is to  
6 respond within the 30-day time frame that you gave us, and we  
7 did so.

8 I am informed that there are several portions in the  
9 DES where the staff says Applicants haven't made a filing on this  
10 subject yet and we will address it in our final statement.

11 It comes to mind for part of their Severe Accident Analysis  
12 is premised on an analysis yet to come of the Emergency Plan, and  
13 to analyze actually how many people will actually be moved out  
14 of the way of the plume in the event of a severe accident. They  
15 said you can't do that completely because the plan is not yet  
16 published. To that extent, there will be a revision of environ-  
17 mental matters at some later time, either a supplement to the  
18 DES or in the FES. Of course, if it is new information then,  
19 we would like an opportunity and ask an opportunity to respond;  
20 but as to everything that is contained in this document, Judge,  
21 we think our obligation was to address it and we think we have,  
22 so you have everything that we have concerning this document and  
23 what's available now.

24 JUDGE KELLEY: Let me just make one qualification to  
25 my earlier statements about relationship between the old contentions

1 the old ten and the new twenty-three, and I had suggested that  
2 analytically it doesn't really matter whether one of the new twenty-  
3 three is the son of one of the old ten, because you can come in  
4 with a new contention, based on new information, and it doesn't  
5 matter whether you filed one earlier, if it is really new. I  
6 didn't mean to suggest at all--in fact, quite to the contrary--  
7 that we are not interested in knowing what's knew about these  
8 twenty-three contentions, that's crucial. It is the only way  
9 you can get any of these in, as I understand the law, and I was  
10 a little disappointed not to find in your pleadings any indication  
11 of where the new element was to be found. I think when--I guess  
12 it is partly our fault--if I had it to do over again, we could  
13 have a format that would say contention and explanation of why  
14 this is new. We didn't say that in so many words, but, nevertheless,  
15 the Appeal Board decision 687, I think, makes it incumbent upon  
16 somebody who does offer a contention late to either explain why  
17 it is new or certainly be prepared to explain why it is new, so  
18 that we can decide whether it is admissible, and as we do get  
19 into this contention by contention discussion probably fairly  
20 soon, maybe your lead-off or early comment might be what element  
21 in this contention was first disclosed in the Draft Impact State-  
22 ment.

23 Well, we went on at some length on that. I was really  
24 trying to get a summary of positions from each party on, in this  
25 case, the ten. Maybe the staff could just state its position

1 and, with that, we can move on.

2 MR. JOHNSON: I would just focus on two things. The  
3 first is under ALAB 687, the disposition of those contentions  
4 is left open on remand and reconsideration by the Board. There-  
5 fore, in a sense, even though you are required to follow their  
6 directions and vacate the original admission, in a sense they  
7 are still floating around here somewhere, and at some status  
8 we will have to dismiss or admit them, so in a certain sense,  
9 they are still around.

10 JUDGE KELLEY: They are not ruled on yet, isn't that  
11 right? The only ruling we have made is gone.

12 MR. JOHNSON: In a sense, I would agree with that. On  
13 the other hand--

14 JUDGE KELLEY: In what sense are they ruled on? Just  
15 like A-1 as far as I can tell. But go on, go ahead.

16 MR. JOHNSON: Secondly, I think there is a sense in  
17 which the law of the case has been established by your own order  
18 requiring that any DES or any environmental contentions be either  
19 submitted or revised. The original contentions be revised with  
20 particularity, based on the new information in the DES or be  
21 considered withdrawn. In other words, that was your directions  
22 to the intervenors and it seems to me that that is the guidance  
23 which you have established and since they offered what they  
24 considered to be their--the contentions, using their words in  
25 their pleadings, it seems to be those are the things before us



RA b10 1

2 on environmental matters and as you said, they are either revisions  
3 or they are not and those are all that's before you it seems to  
4 me and anything that came before has to be considered either revised  
5 or withdrawn, and if it wasn't revised by those--what we have  
6 before us now that was recently submitted, they should be considered  
7 withdrawn.

8 JUDGE KELLEY: But if they are withdrawn, it is a  
9 voluntary act of the author or, correct?

10 MR. JOHNSON: Okay.

11 JUDGE KELLEY: As normal use of the term, and Mr. Guild  
12 says he hasn't withdrawn.

13 MR. JOHNSON: What I understand your order originally  
14 to be is that you directed them to withdraw if they didn't revise  
15 this.

16 JUDGE KELLEY: Oh sure, if the world had gone on like  
17 we all thought it would or like some of us thought it would.  
18 Others were convinced the Appeal Order reversed this and in part,  
19 they were right, but you can say I think that 687 is something  
20 of a supervening event which says, no, that is not the way the  
21 world works, it works this way, and that leaves open, I suppose,  
22 the possibility that you look at the old contention and decide  
23 whether it is too vague or not, for one thing. I think it said  
24 we could do that with regard to the discovery contentions. Right?

25 MR. JOHNSON: Yes.

JUDGE KELLEY: Okay. A lot of this discussion can get

1 pretty academic and if, in fact, the Intervenors have really revised  
2 most all the things they care about, then it is not going to matter  
3 very much, but--it would interest lawyers but nobody else--but,  
4 anyway, I think I understand your position.

5 Okay, Mr. McGarry what about the ten?

6 MR. MCGARRY: Like the six, we maintain that they all  
7 should be vacated pursuant to ALAB 687. We maintain that from  
8 the outset these ten contentions lack specificity. You had asked  
9 Mr. Johnson in what sense it had been ruled on, I maintain our  
10 view of the rulemaking made on March 5 is a determination that  
11 the contentions lack specificity, but you are the judge of that  
12 determination. However, I emphasize that if you do go back and  
13 look at the contentions both these ten and the other six that  
14 we stand on our pleadings of December 30th, it speaks for the  
15 lack of specificity.

16 We also would like to re-emphasize our clear understand-  
17 ing of ALAB 687 and that is that it is incumbent upon a party  
18 seeking to raise contentions at this time to address essentially  
19 two sets of factors. Three factors speak to the newness of the  
20 document. Was the document available and the Appeal Board sets  
21 those documents out.

22 If that test cannot be adequately satisfied, then one  
23 reaches the five factor test and that is the lateness test, and  
24 with respect to the filing of the DES contentions, neither one  
25 of those tests were addressed.



1 JUDGE KELLEY: We can stipulate, can't we, that there is  
2 no attempt to meet the late filing, isn't that correct, Mr. Guild?

3 MR. GUILD: If that test is applicable, Mr. Kelley,  
4 we are prepared to meet it.

5 JUDGE KELLEY: But you haven't done it to date, sitting  
6 here this morning, there has been no attempt to justify the--

7 MR. GUILD: Judge, you told us to file contentions  
8 addressing the DES and we did so, and we think that, you know,  
9 supervening events, the express order of this Board, and common  
10 sense reflect that we did what we were told to do and if it were  
11 required to do anything further, we are prepared to do that.

12 JUDGE KELLEY: I don't mean to find fault, Mr. Guild,  
13 I am just asking you whether you have addressed the five lateness  
14 factors, do you think the answer is no?

15 MR. GUILD: I think the answer is no.

16 JUDGE KELLEY: Okay.

17 MR. McGARRY: And we just went around the circle, we  
18 would maintain that ALBA 687 is clear and I think we have addressed  
19 that point. It clearly spells out that the Intervenors have an  
20 ironclad obligation, there is no mistake.

21 I would like to comment on the setting the trap observa-  
22 tion of Intervenors. I don't want to get--I hope this hearing  
23 is not going to stoop to that level. We aren't setting any trap  
24 for the Intervenors. We are simply following the rules and we  
25 will continue to follow the rules and preserve the positions and

1 fight for the positions that we think are supportive of the rules.

2 With respect to contentions that fall in the category  
3 that we are now discussing, but do not involve the DES, that is  
4 the Emergency Plan contentions.

5 JUDGE KELLEY: Yes.

6 MR. MCGARRY: The Control Room Design contentions, we  
7 maintain all those should be vacated. Again, we stand on our--

8 JUDGE KELLEY: Let me ask you simply to do this, at  
9 some later point, could you raise that again as sort of a separate  
10 point, and I just want to make sure we set it apart and don't  
11 get it all tangled up in what we have been talking about. Okay.  
12 I will make a note of it, too.

13 MR. MCGARRY: And I believe that's our comments.

14 JUDGE KELLEY: Well, that, I think, tells us your position  
15 pretty fully on where we stand on the 687 and what we are supposed  
16 to do with the old ten and the old six and brings us around to  
17 the Draft Impact Statement, twenty--twenty-three, in the contentions  
18 and I expect we will spend a lot of our time today talking about  
19 those. We will have to rule on one by one.

20 In some preliminary discussion we did, following my  
21 reading of the papers, come up with a few sort of generic points  
22 that we felt we might raise at the outset and get some comment  
23 from you to provide a sort of framework for the later discussion.

24 First of all, a sort of obvious point, the staff in  
25 writing this Impact Statement is not in the business of writing

1 an encyclopedia. They have a very difficult job and I won't extend  
2 these comments except to say it is supposed to be a concise  
3 digestible document which somehow comes to grips with a very  
4 complicated subject, preferably in less than a hundred pages or  
5 so, so that it is supposed to be accurate and balanced and objective  
6 and they tried to do that and at any rate, we will go through  
7 and knitpick it and we don't propose to litigate footnote type  
8 points about this document. It is supposed to be sort of an over-  
9 view as we understand it and we look at the contentions from that  
10 light.

11           Secondly, and I don't mean to denigrate these at all,  
12 we do have some contentions which struck us as essentially stylistic  
13 in nature. That is to say, it may well be helpful to the draftsman  
14 in the final Environmental Statement, but they are really not  
15 litigable.

16           There is a contention--I believe it is number 4--about  
17 some confusion possibly arising between metric and English-type  
18 numbers and that may well be, but it is not anything that we think  
19 is appropriate for litigation. It may be appropriate for discussion  
20 between the Intervenors in their role as commentators on the Impact  
21 Statement and the drafters of the statement.

22           In that regard, I want to ask the Intervenors to --  
23 and I am not--Mr. Pressler, I will get to in a minute--with a  
24 somewhat smaller piece of business to be dealt with and we might  
25 get to you first so you can go on if you want to, but I am referring

1 to the 23. There are some contentions in there and I won't attempt  
2 to number them, but I will ask you to look them over and see whether  
3 you don't see on reflection they are really more appropriate as  
4 stylistic comments than contentionable points and if so, we need  
5 not spend a lot of time discussing them today.

6 A problem that we see coming up in the application of  
7 687, we have used the phrase, new information; and the phrase  
8 in 687 it sort of jumps off the page and gets quoted a lot is  
9 "wholly dependent" on some of the documents and then one readily  
10 gets into a discussion about just what does that mean? The staff  
11 does some analysis of it and offers some analysis, takes a position  
12 on its preferred use and, as we talked about it, it seemed to  
13 us that you might be able to come up with a sort of range of  
14 approaches to what "wholly dependent" ought to mean in this con-  
15 text.

16 We frankly have an open mind on it. I didn't see any  
17 citation of cases in the papers filed. I don't know that there  
18 is any existing wisdom on this beyond what one can infer from  
19 687, although the notion of new information in filing right  
20 contentions has been around for awhile. If any of you can point  
21 us towards some body of NRC law and point that out, I would  
22 appreciate that.

23 I suppose you could take a spectrum of positions where  
24 by on the one hand if you wanted a rule of law that made these  
25 contentions rather exceptional, you might say that "wholly



1 dependent" means something like the whole subject matter is brand-  
2 new and the whole thing appeared for the first time in the Staff's  
3 Draft Impact Statement, and since that wouldn't happen very often,  
4 I assume, then it would be a rare contention that would get in,  
5 except by jumping over the late contention hurdles.

6           Conversely, I suppose the duty is here, because even  
7 a little planning element that's new as far as contentions, that's  
8 enough and then that is a very liberal, from Intervenors standpoint  
9 and then it gets a lot of contentions in. You can probably get  
10 into debates about whether it has to be information in the sense  
11 of hard data, hard facts or whether it can be staff analysis,  
12 some new thought that the staff seems to have had, and these  
13 are just suggestions of some of the things that are troubling  
14 us. We don't know the answers and as I say, I think we have  
15 some discussion from Mr. Johnson, but we would like to hear from  
16 you on that point.

17  
18  
19  
20  
21  
22  
23  
24  
25  
End take B

Clpw

1 Well, surely it's something you've thought about at great  
2 length, you've written all these papers. So why don't we just ask  
3 you at this point -- Mr. Guild, can you state a position on this  
4 problem? What does it take to be wholly dependent?

5 MR. GUILD: I would like to respond to that. Mr. Riley  
6 asks if he'll have an opportunity to speak on these subjects as  
7 well, or if he should assume that his opportunity goes with me.

8 JUDGE KELLEY: I'm sorry, I didn't mean -- I guess  
9 lawyer to lawyer type stuff -- Mr. Riley, I don't mean at all to --  
10 I realize you're a separate intervenor and -- sure.

11 MR. GUILD: Yes, Judge Kelley, first let me say that  
12 lawyer to lawyer amongst ourselves, we've sort of recognized that  
13 we're on some rather new ground here and that the Appeal Board  
14 speaking through ALAB 687 on the subject of how contentions are  
15 filed and initiated in contested cases before the Nuclear  
16 Regulatory Commission is one that is sort of startling to be  
17 elucidated at this late date, after all of the water in licensing  
18 has gone over the dam over all these many years.

19 That reflects, it seems to me, just how much of a moving  
20 target we're dealing with here on the tasks that are set before us,  
21 the standards that we're being asked to meet. The "wholly  
22 dependent" language is one that sprung forth within the last  
23 month and a half, it didn't pre-exist, to my knowledge, in any  
24 NRC case law, rules, regulation or practice.

25 So, we are kind of formulating this process as we go

C2pw 1 along. That said, it seems to me that we can only really address  
2 these analytical problems in the context of where we find ourselves  
3 today, and that is with the staff's Draft Environmental Statement.

4 In that context, it seems to me that the intervenors are  
5 addressing one of the -- the agency's action that is fundamental  
6 to licensing this nuclear power plant to operate, that action is  
7 required under the National Environmental Policy Act and it is  
8 the agency's initial, preliminary decision that the benefits of  
9 licensing this facility's operation outweigh its cost, environmental  
10 and otherwise.

11 We take issue with that conclusion in specific respects  
12 -- 23; some of which are weightier than others, some of which are  
13 more important than others in our view, but all of which in one  
14 form or fashion take issue with the analysis as presented to us.  
15 To that extent, Judges, the DES contentions that we've presented  
16 to you are implicitly wholly dependent on an analysis that did  
17 not pre-exist. The DES came out in August, it didn't come out  
18 before, there was no environmental analysis at the operating license  
19 stage before that, and so none of these matters could be joined  
20 effectively before that. And that's the import, I think, of your  
21 earlier decision about the ten contentions being premature, in  
22 effect.

23 We think that we've tried to go beyond simply saying,  
24 as I just said, that this addresses the DES and therefore it's  
25 all new. We've gone beyond that in this regard, we've, where

1 important, addressed specifically how the staff's analysis in the  
2 DES at the operating license stage differs in material terms from  
3 their analysis of the Final Environmental Statement at the  
4 construction permit stage. We think that is a significant point  
5 where we've attempted to shoulder the further burden of saying this  
6 is new information.

7 Now as another general point on the new information  
8 question, we think that it's inevitable in a complex subject such  
9 as this where either the proceeding before the Commission or its  
10 predecessor agency goes back many years or the fact of construction  
11 of this facility goes back many years -- and both of them do --  
12 that many facts will pre-exist the filing of our latest supplement  
13 containing contentions. It's inevitable. The plant existed and  
14 was being built years ago. There were licensing actions years ago.

15 So to the extent that it is simply a matter of the  
16 Applicant saying ah ha, ten years ago we talked about the issue  
17 of reactor vessel metal standards, there will always be pre-existing  
18 information. The central point, we think, right now that faces  
19 us is the staff has committed itself to the environmental analysis,  
20 and it did that last month, and we promptly responded to it per  
21 your direction with our critique containing our new contentions.

22 JUDGE KELLEY: Well it's true that documentation goes  
23 back a long ways, even before the CP. I asked myself that very  
24 question this morning when I looked at 687. My question was do  
25 I have to read the CP stuff, and the answer seems to be yes, you do.



C4pw  
1 I don't see any other way to read this. That's the ironclad  
2 obligat'on, isn't it? We're supposed to read all that material.  
3 It's a lot of stuff I grant you, but that's what it seems to say,  
4 it's available.

5 MR. GUILD: Well, sir, I think -- let's put it back in  
6 the context of a long series of authorities before the Commission  
7 that say first the premise is this; the contention, including the  
8 basis and specificity requirement is analagous to pleading in civil  
9 cases. It's not exactly the same, but it's analagous to it. And  
10 the similarities and distinctions are highlighted. I don't have  
11 the specific case cite in front of me, but there are a number of  
12 Appeal Board decisions that say very clearly why it's like that  
13 and why it's different.

14 It's like that in the sense that pleading performs a  
15 certain number of functions. And Mr. McGarry, in his pleading,  
16 quotes the case I had in mind and says, you know, here's what it  
17 does. To paraphrase, it provides the other side notice of what  
18 they have to defend against and narrows the issues for trial,  
19 let's the tribunal -- you Judges -- know what it is you have to  
20 decide, so that we don't raise issues that are, let's say, policy  
21 matters not suitable for litigation in this individual case. It  
22 does those kinds of things.

23 Put in that context, sir, you have to consider -- and all  
24 the authorities about the specificity and basis requirement flow  
25 from this proposition, consider the position a litigant finds

C5pw  
1 himself in in any other case, and when you seek to amend the  
2 pleading in the way that the late filing requirement talks about  
3 amending your contentions to add new material or revise old  
4 material, you put it in the context of the burden that would be  
5 faced by any litigant.

6 Now I think put in that context, the wholly dependent  
7 language or the due diligence language or the ironclad obligation  
8 language has to be considered under a rule of reason. Now if you're  
9 going to hold intervenors to the standard of having read and  
10 digested every conceivable piece of information that is publicly  
11 available in the sense that we could get it if I committed a year  
12 to reading every piece of paper that's ever been filed publicly  
13 about this plant or that is available under the FOI or that, you  
14 know, could otherwise be received if I asked the staff to give it  
15 to me, then you will never have a contention that's new -- never --  
16 because no one can meet that burden, sir. And we maintain that  
17 given that rule of reason and the authorities about why this  
18 pleading requirement is made the way it is, analagous to pleading  
19 in civil cases, we think that you have to set a rule of reason and  
20 that rule of reason is met by reading the key documents, and those  
21 are the FSAR, you identified that as something we're obligated to  
22 read. We disagreed with your view at the time and frankly  
23 suffered as a consequence of disagreeing with that. There are  
24 points where you said we didn't look at it closely enough and we  
25 had contentions dismissed for that reason.

C6pw 1 But we think the DES is a fundamental document, we have  
2 to address it, and we think that the record that has been built at  
3 this stage of the case are things that, you know, we're charged  
4 with knowing about. Beyond that, on a case-by-case basis, I think  
5 we have -- should have a fair opportunity of saying to you that's  
6 just not reasonable to say we should go back and look at that.  
7 And frankly, when we looked at the CP Final Environmental Statement,  
8 my view was we were going above and beyond the burden that we  
9 face in addressing the operating license Environmental Study, but  
10 I think we did so to show you these are important matters.

11 JUDGE KELLEY: I'm not -- I understand the point that  
12 you're making and there is merit in your position, I'm just  
13 concerned as an implementor of 687 that I do what I've been told  
14 to do. And the language on page 13 seems to impose a very, very  
15 high standard of reading and studying. We, the Licensing Board,  
16 can't quarrel with that, we just apply it as we read it.

17 Are you saying in effect that you don't think that an  
18 intervenor is charged with knowledge of the CP documents, for this  
19 purpose?

20 MR. GUILD: Yes, sir. Unless there are some other  
21 circumstances that puts that intervenor on notice of that document.

22 JUDGE KELLEY: Is it possible for you to single out a  
23 test for new information that -- well, maybe it's not -- but  
24 single out a test which says, for example, so long as a single  
25 element of the contention is really new, the fact that the rest

C7pw  
1 of it has been around before doesn't disqualify it. Would that be  
2 your position, or something like that?

3 MR. GUILD: I don't want to advance an overly technical  
4 view because I really think it's dependent on -- you know, the  
5 bottom line, Judge, is is this an important issue that bears on  
6 the agency's licensing responsibilities, is this an issue that,  
7 you know, should be of concern when you say crank that plant up.  
8 And I'm not interested in nitpicking, my client is not interested  
9 in nitpicking, we're interested in presenting for litigation  
10 important concerns that we have. And I guess I'm asking you to  
11 say, you know, let's apply a rule of reason, a rule of, you know,  
12 good public policy when we consider this stuff as opposed to saying  
13 -- I'm not prepared to say if they changed the punctuation, that's  
14 new, and ask you to rely on that overly technical view of things.  
15 I don't think that gets to the real point that we're here to  
16 address.

17 JUDGE KELLEY: Okay, fine, that's helpful.

18 Mr. Johnson, you did address this, as I mentioned  
19 before. Maybe you could just restate it and we might have a  
20 question or two for you about the staff's position on it.

21 MR. JOHNSON: All right. Our position was that we  
22 should look at the ALAB decision in its entirety, and the require-  
23 ment to present new information should be read in the context of  
24 the so-called ironclad obligation that's referred to in the ALAB  
25 687 decision on page 13, and if a person, an intervenor, pleads



C8pw

1 something is inaccurate or inappropriately stated in the DES, the  
2 mere reference to the DES on a matter that was contained in previous  
3 documentation isn't enough to carry today. That the function, the  
4 purpose of this pleading requirement was to assure that the  
5 opportunity to plead contentions under the statute was available,  
6 and it seems to me if you look at this decision on that level, you  
7 will see that the broader the matter that is being raised, the  
8 more likely it is that they could have addressed it earlier. I  
9 won't go into specifics, but the more general the statement, the  
10 less specific the contention, the worse the contention is on the  
11 merits, the more likely it could have been raised earlier. The  
12 more specific the contention and the more it is dependent upon  
13 information or statements that are just contained in the DES, the  
14 more likely -- well, in the case before us it didn't lead to new  
15 contentions either, but the more specific the contention the more  
16 likely it is also, not only to be timely but to be a good  
17 contention. For example, some examples that I was thinking of that  
18 are wholly dependent upon -- might be considered wholly dependent  
19 upon the DES are, in this situation, some of the worse contentions.  
20 They aren't contentions at all, it's nitpicking types of units of  
21 measure were confusing. I agree, that's wholly dependent upon the  
22 DES but yet it doesn't fall of the category I was saying, but if  
23 it's some item in which new information was contained in the DES  
24 and it was a very important matter and it's focused upon, then it  
25 seems to me you would have a situation where even though the

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

C9pw  
1 general subject matter might have been addressed somewhere in some  
2 previous document, that the role that the DES plays might, in a  
3 balancing situation, weigh in favor of admission.

4 JUDGE KELLEY: Excuse me.

5 (Brief pause.)

6 JUDGE KELLEY: Mr. Riley -- let me think a moment about  
7 sequence -- can you hold just a minute?

8 MR. RILEY: Sure.

9 JUDGE KELLEY: I'll certainly get back to you.

10 (Brief pause.)

11 JUDGE KELLEY: I wanted to ask you, Mr. Johnson, I'm  
12 looking at pages 5 and 6 of your staff statement of position on  
13 the contentions and you discuss in that section this problem and  
14 see some ambiguity in the Appeal Board's decision. By the way,  
15 I would take it that although the Appeal Board's decision is  
16 certainly pertinent here and entitled to respect in the question,  
17 this is not a case where the Appeal Board really faced this  
18 question and spelled out what they meant. They didn't say "and  
19 by -- whatever that phrase is -- wholly dependent, I mean"-- and  
20 give us a paragraph of help along those lines. It isn't here.  
21 So we can use some common sense, as well as you have here, as well  
22 as just words on the point, the words "particular subject", that's  
23 out of 687, at the bottom of page 5, "particular subject could not  
24 have been advanced". Can you put a little of flesh on the concept  
25 of "particular subject" and maybe examine that a bit? I'm not clear

C10pw

1 what that means.

2 MR. JOHNSON: Well, the subject that comes to mind in  
3 the particular contentions we have before us was, for example,  
4 cooling tower drift where the question of the acidity and alkalinity  
5 of substances that are in the water that's being -- the blowdown,  
6 and whether there would be chlorine gas or sulphuric acid in the  
7 drift, it seems to me that that is a subject that has been a  
8 subject -- well, first of all, it's a general matter that's  
9 dealt with in each licensing proceeding; second of all, it's a  
10 subject matter that in general and in this particular case is  
11 dealt with in the FES and the CPC, and also addressed in the  
12 environmental report of the applicant. And therefore, the subject  
13 matter of the acidity or the contents of the balance of the drift  
14 is a matter that is well before everyone by this point. And so  
15 the subject matter is a subject matter that they could have dealt  
16 with.

17 JUDGE KELLEY: Okay, but suppose, to take your  
18 example, drift from the cooling tower. A contention that eventuates  
19 from the intervenors' side is on that subject and has in it three  
20 or four elements -- well, let's say four, three of them have been  
21 around for a long time, everybody knows that or ought to; but there  
22 is something new about blowdown that the staff found out about and  
23 put in their Draft Impact Statement for the first time, at least  
24 in this case. My question is, does the subject matter test, if I  
25 can call it that, particular subject matter test, mean that everything

C11pw 1 has to be new, or might it be enough that some significant element  
2 of the contention is new?

3 MR. JOHNSON: Well it seems to me that if the new element  
4 is significant then that might be enough because it seems to me  
5 in order to put any sort of idea, any sort of contention into  
6 context, you may have to include things that are already known  
7 before the DES; however, it's a question of how important is that  
8 new item. You know, does that in itself form a basis for a  
9 contention.

10 JUDGE KELLEY: An important new element, which is only  
11 one part of the contention, might be an adequate justification for  
12 a contention.

13 MR. JOHNSON: Yes, and by contrast, if you basically  
14 reiterate things that you could have found verbatim or in  
15 substance from another document and just say this is not adequately  
16 analyzed in the DES; that is obviously not a substantive new point  
17 that has been raised.

18 JUDGE KELLEY: Let me ask you a question about this  
19 notion of analysis and maybe Mr. Jabbour could comment on it too,  
20 or perhaps both of you would, I'll leave it up to you, but -- a  
21 layman like myself might want to distinguish between the facts and  
22 analysis and the cooling tower blowdown, I've got lots and lots of  
23 facts but perhaps the staff would come up with a new model or some  
24 new method or some new way of looking at all these facts; can some  
25 analytical new element also justify a contention as opposed to just



1 data, in your view? Or is that an artificial distinction? I'm  
2 not entirely sure that it's not.

3 MR. JOHNSON: It's hard to deal with that in the abstract  
4 but it seems to me it depends on the importance of the matter  
5 being addressed. If it's a requirement that the staff analyze a  
6 particular matter, for example the environmental consequences of  
7 severe accidents pursuant to the Commission's policy statement,  
8 you might want to address the adequacy in terms of what the  
9 Commission stated the staff was required to do. In that case, some  
10 of the -- in fact, a large part of what was required is an analysis  
11 -- in the nature of an analysis, contents of an analysis, and it  
12 addresses methodology as a requirement, and I suppose that you  
13 could measure a contention of that sort to basically say that the  
14 analysis itself is a new element.

15 JUDGE KELLEY: Mr. McGarry, thoughts on the subject of  
16 "wholly dependent"?

17 MR. MCGARRY: Yes, sir.

18 We agree with the Board that ALAB 687 has indeed set a  
19 high standard with respect to the ironclad obligation of establishing  
20 a foundation, the initial obligations for intervenors to search  
21 out available evidence and, for example, contentions. If thereafter  
22 they file new contentions, we must look to wholly dependent.

23 We think there has been some guidance given by the Appeal  
24 Board and we would direct your attention to page 17 of the Appeal  
25 Board decision. I make reference to the bottom paragraph. It starts

C13pw

1 out, "In sum, in the instance of a contention that was susceptible  
2 of filing...." -- you have to ask yourself that, was this contention  
3 susceptible of filing within the period prescribed. We go down  
4 toward the bottom, five or six lines from the bottom, the sentence  
5 begins, "Where, however, the non-existence or public unavailability  
6 of relevant documents made it impossible for a sufficiently speci-  
7 fic contention to have been asserted at an earlier date...." Those  
8 are two pieces of wisdom that the Appeal Board has shared with us  
9 with respect to "wholly dependent".

10 I'd just like to, I think, perhaps follow up your  
11 discussion you had with Mr. Johnson, so you get our view. You  
12 postulated or hypothesized an incident where you have a contention  
13 that has three existing facets to it and then a new fourth one;  
14 our position would be the contention would then be a new contention,  
15 but it would be limited to facet four. Facets one, two and three  
16 were existing information and unless they're critical to the  
17 entire contention, I'm assuming that there are problems with the  
18 cooling tower because of A, B, C and D. Our position would be  
19 A, B, C and D could have been raised, if one had looked at the  
20 CP FES, because they're addressed there, or look at the FSAR or  
21 whatever, they're addressed there. But if indeed element D is  
22 new, then I think that would come within the meaning of what the  
23 Appeal Board meant by "wholly dependent".

24 JUDGE KELLEY: I don't know that we disagree, these  
25 things are hard to talk about in the abstract. I was simply

1 positing that you usually need three or four facts to state a  
2 contention. Now you're positing two or three problems and a fourth  
3 problem.

4 MR. MCGARRY: That's right.

5 JUDGE KELLEY: Maybe the problems are old hat and you  
6 don't think --

7 MR. MCGARRY: No, we can just look at the contentions we  
8 have before us. I'll give you a for instance; this is not  
9 necessarily the DES but it just comes to my mind, severe accidents.  
10 There are four examples; loss of power, ATWS, fatigue failure and  
11 stud bolts. Now this is off the point of ATWS -- off the point of  
12 the DES but they're four facets and three of those have already  
13 been discussed at length but one of them had never been discussed  
14 before. Then severe accidents would come in, but it would be  
15 limited to the one that had never been discussed before. That's  
16 our position.

17 Now second of all, you asked about -- facts haven't changed  
18 but there's a new analytical model. Our position on that would be if  
19 the subject matter was known, then it should have been filed  
20 earlier. Now that's our general feeling. We would acknowledge  
21 there could be some distinctions drawn, but as a general proposition  
22 the very fact that the staff chooses to now use another model but  
23 is still using the same facts, we maintain then the subject matter  
24 that would be the basis of the contention was known well in  
25 advance of the filing date.

C15pw

1 Two other points, since I do have an opportunity to speak.  
2 The intervenors indicated that if they were obliged to search all  
3 the relevant information, the suspect that they would never be able  
4 to justify filing a new contention. Well, that begs the question.  
5 If they had fulfilled their ironclad obligation in the first  
6 instance, they wouldn't have to worry about whether or not a con-  
7 tention was new. That's not a relevant consideration in the first  
8 instance.

9 Second of all, there may be some confusion with respect  
10 to drawing analogies between the practice that one has in federal  
11 courts and state courts and the practice that we have here. This  
12 is not a notice practice proceeding. There is a specific -- there  
13 is a specificity and basis requirement imposed.

14 I think that concludes the comments we have.

15 JUDGE KELLEY: I'm going to give Mr. Riley a shot, but  
16 it's twenty after eleven, we've been sitting here for awhile. Why  
17 don't we take a short break, ten minutes, and come back and maybe  
18 go 11:30 to 12:30 and stop for lunch around that time.

19 (A short recess was taken.)  
20  
21  
22  
23  
24  
25



JAN 1 1 JUDGE KELLEY: Back on the record. Did you finish?

2 MR. MCGARRY: I have one further point. The last obser-  
3 vation we had with respect to the definition of wholly dependent,  
4 we would just ask you to bear in mind that the Appeal Board used  
5 the word wholly. They could have just said is it dependent upon  
6 new information. They didn't say that. They said is it wholly  
7 dependent on new information, and in observation, I would ask you  
8 to consider that.

9 JUDGE KELLEY: Okay. By way of upcoming agenda, why  
10 don't we turn to Mr. Riley and ask for his observations on these  
11 new topics we've been talking about and then we'd like to talk  
12 about Mr. Pressler's contention and finish that up -- I think we  
13 probably can before lunch, and we might even spend a few minutes  
14 before lunch talking about scheduling. We'd like to get an updated  
15 revised idea as to where various documents are for the record.

16 So with that, Mr. Riley, you want to go ahead?

17 MR. RILEY: I think there are some distinctions that need  
18 to be made that have not been made in our discussions here. One of  
19 the distinctions is that between information impulse and evaluation  
20 or weighing or judgement. Now if we go to the Environmental  
21 Protection Act, it charges some agency of government with accumulat-  
22 ing information and making a weighing or balance of what it applies.  
23 We do not think that burden is on the Applicant.

24 It certainly isn't charged with that burden under the  
25 Environmental Protection Act. By earlier decision,

JAT  
1 I have reference to the CALVERT CLIFFS Decision, Judge J. Skelley Wright  
2 the Agency, the AEC and the successive N.R.C. are charged with this  
3 burden of making the weigh and balancing. Our 23 contentions are  
4 wholly dependent upon the Draft Environmental Statement because  
5 not only do they embody information much of which is in the  
6 Environmental Report, though not all, but we are seeing what their  
7 judgement or their balance is on it, so from my point of view, the  
8 game started when we received the DES.

9 I have a few additional comments to make.

10 JUDGE KELLEY: Let me just ask you a question.

11 MR. RILEY: Yes, sir.

12 JUDGE KELLEY: It's true enough that the Staff and NRC  
13 ultimately has to make the judgement, but let's suppose in a  
14 particular case, a particular thing to look at -- blowdown-- let's  
15 say, the ER filed by the Applicant makes a conclusion and it says  
16 it won't have any significant effect on the environment, along  
17 comes the Staff and says exactly the same thing. Is the fact that  
18 it's the Staff's judgement enough to set it apart from the earlier  
19 ER in your view?

20 MR. RILEY: Absolutely, in accepting a wrong statement,  
21 and I think that any judge of scientific peers would conclude that  
22 there are wrong chemical statements, Draft Environmental Statement,  
23 those referenced in our contentions #2 and #3, the Staff has  
24 committed itself to an error and certainly should be challenged  
25 I see it, as a contention in this litigation.

1 If the Staff commits itself to an error, even though its  
2 language is identical to the ER, as far as we're concerned is the  
3 -- they said okay, and they did it.

4 JUDGE KELLEY: I understand your position.

5 MR. RILEY: I would like to add another comment with  
6 respect to the use of the word consider. We'll probably be getting  
7 into this later in the Staff's point by point argument against  
8 accepting any of our 23 contentions, but only too frequently it  
9 uses the word considered but it doesn't tell us what that consid-  
10 eration was in the DES. They considered it but we never saw the  
11 paper, and as far as the public is concerned, I think that's a very  
12 unsatisfactory form of consideration.

13 One other comment I have to make has to do with the way  
14 we consider parts of a thing. Let's say that somebody is follow-  
15 ing out a recipe, some dish at a meal. The recipe has a revision  
16 and only one part of that recipe is revised. It's the salt that's  
17 added. It may have been far too bland the first time. May be  
18 far too salty the second time. The point is that that one element  
19 interacts with the whole picture, and if you've got more sulphuric  
20 acid in that thing than -- in the cooling system water than you  
21 should, you are liberating chlorine and you wouldn't have before  
22 and that's an extremely significant change though other elements  
23 are still as they were.

24 I also would like to make one comment about knit-picking  
25 and that is this. One can say that we are critical of the style

JA1D4

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

1 of the shoes in writing the Draft Environment Statement, but one  
2 can also pick it up from a different aspect and that's the  
3 semantic aspect. If somebody is reading over a huge volume of  
4 material, as I catch it, 0.3 cubic meters per second .3 something,  
5 that's not very much. On the other hand if the language is  
6 25 million pounds per day, whatever the corresponding amount would  
7 be, that has a very different impact on the reader, one thinks  
8 twice about that, and I think that very definitely that is a  
9 semantic element to this in terms of the way that presentation is  
10 received, so I don't think it's knit-picking to say that for com-  
11 parisons of say, water flow, that the same status -- it's not  
12 a question metrically for english, but the same uniform standard  
13 be used every time that particular subject is brought out.  
14 Thank you.

15 JUDGE KELLEY: That may be -- your last point -- it may  
16 be a useful comment maybe in the way it's written should be im-  
17 proved upon. One point I was making, and would make again, however,  
18 that it's not something that we're going to make a law suit out of  
19 as far as I can see. You can reach the point where an Impact  
20 Statement is written in such a convoluted unreadable fashion,  
21 that it's just not -- it just doesn't communicate. I don't under-  
22 stand you to be making a contention of that sort.

23 MR. RILEY: None whatsoever. As a matter of fact, in a  
24 private conversation yesterday, I told Doctor I thought  
25 it was extremely well written and well edited, but it's some of the



JATD5

1 content I disagree with.

2 JUDGE KELLEY: Okay.

3 MR. GUILD: Judge Kelley, I wanted for the record if I  
4 could, to supply a citation, a case I had in mind, that I referenced  
5 earlier. That's the Allen's Creek Decision ALAB-565 10 NRC 5.1  
6 and the analogous to pleading in Federal Court reference and most  
7 directly references the Federal Rule 8(a)2 which says that the  
8 initial pleading is a short and plain statement of the claim, show-  
9 ing that the pleador is entitled to relief, and the Appeal Board  
10 specifically approved that as the standard for the contentions  
11 advanced in NRC proceedings, and we think that that add weights to  
12 the whole import of what 687 should be read to mean in this context.  
13 A short and plain statement to the entitlement to relief.

14 JUDGE KELLEY: We'll consider the material you've quoted.  
15 It's been my view for a long time that we don't have notice  
16 pleading in the NRC -- never have had, but I'll certainly look at  
17 it. In other words, I don't know what specificity means for a  
18 notice pleading but I'll certainly look at it. Why don't we go to  
19 Mr. Pressler and Charlotte-Merklenburg -- my thought being it would  
20 come up before lunch and it does not appear that very much divides  
21 Mr. Pressler and the Staff and the Applicants.

22 We received from you a revised version of your contention  
23 #4, right?

24 MR. PRESSLER: (Nodding head affirmatively.)

25 JUDGE KELLEY: And Mr. McGarry, you filed a very short

JATD6

1 piece of paper I think on Mr. Pressler's revised #4?

2 MR. MCGARRY: Yes, sir, and we have no problems with Mr.  
3 Pressler's revised #4. We do not object to revised #4.

4 JUDGE KELLEY: And the Staff --

5 MR. MCGARRY: If I may interrupt?

6 JUDGE KELLEY: Sure.

7 MR. MCGARRY: The point we made was, Revised #4 is con-  
8 sistent with discussions that we have had over the past months with  
9 CMEC, so we have no objections.

10 JUDGE KELLEY: And the Applicants have no objections to  
11 revised CMEC #4. Mr. Johnson, forgive me if you've told me on  
12 paper, but was -- what is the Staff's position on CMEC#4?

13 MR. JOHNSON: Our position is that there is a basis with  
14 specificity stated in the revised contention, CMEC Contention #4,  
15 but we'd like to limit that contention to the points #1 and #4,  
16 the basis stated in #1 and #4, our view is that they stated a basis  
17 for the sufficient specificity, however, the basis stated in Para-  
18 graphs #2 and #3 are based on a misunderstanding, a mis-reading or  
19 what have you, of the DES, is that the Staff did not rely on the  
20 so called linear hypothesis for mis-quesstimation and it doesn't  
21 seem to meet with any disagreement, therefore, there really isn't  
22 any contention. The Staff did rely on the linear hypothesis.

23 JUDGE KELLEY: Have you had an opportunity to discuss  
24 it with Mr. Pressler?

25 MR. JOHNSON: I mentioned it -- yes, I did, we didn't

JATD7

1 really resolve it, but we did discuss it yesterday as we were  
2 going through the dust.

3 JUDGE KELLEY: Mr. Pressler, what's your prospective on  
4 this?

5 MR. PRESSLER: Well, I'd like to address that just a  
6 moment, but I think -- first of all I'd like to ask a general  
7 question, and that is how the Board or how Mr. McGarry or how Mr.  
8 Johnson take the discussion that's been occupying us for the past  
9 hour and a half -- how they take it as affecting this particular  
10 contention?

11 JUDGE KELLEY: Okay, should we skip over to Mr. McGarry?

12 MR. MCGARRY: We're not raising any objection to the  
13 contention, so a discussion -- we will stipulate that a discussion  
14 has no bearing on your contentions. As far as we're concerned,  
15 that contention is in and now we will of course take discovery  
16 and what not and at some appropriate point in time we may move for  
17 summary disposition, and we may end up litigating the issue.

18 JUDGE KELLEY: Let's get back one step -- I'm looking for  
19 my copy -- your first three contentions as I recall were admitted  
20 and we did say we wanted you to look at the Impact Statement when  
21 it came out in light of what it had to say, but there wasn't any-  
22 thing conditional about it, except to ask you to read it. There  
23 wasn't any specificity objections to #1 through #3 as I recall,  
24 is that correct?

25 MR, MC GARRY: That's correct from the Applicant.

JATD8

1 JUDGE KELLEY: Okay #1 through #3 were admitted prev-  
2 iously and are in and are not in any suspended status at this  
3 point. It's only #4 of which there is any question. Do you -- well,  
4 I guess you're the second one, Mr. Johnson, to get the question,  
5 and can you respond to Mr. Pressler's question about the bearing  
6 of prior discussion today if any? On his contention.

7 MR. JOHNSON: I don't believe that we raised a timeli-  
8 ness objection on #4.

9 JUDGE KELLEY: You're just unhappy with the wording of  
10 some parts of it?

11 MR. JOHNSON: Yes, sir.

12 JUDGE KELLEY: All right, do you think it likely that  
13 you could come to agreement on this? Given a little bit more  
14 time.

15 MR. PRESSLER: Well, I would think that we probably  
16 could. We've been able to agree pretty generally. Mr. Johnson  
17 thinks that I misread the DES and I think he has misread the con-  
18 tention, and I think that probably we could agree if we had an  
19 opportunity to talk about it.

20 MR. JOHNSON: I have a suggestion. Why don't we try to  
21 confer at lunch or at some break, and then come back and report  
22 whether we do have agreement or not.

23 JUDGE KELLEY: To come back by the end of the day I think  
24 would be helpful, so if you could try to do that, then respond.  
25 Okay, now -- there's nothing else outstanding then as I know of,



JED9 1 so far as Charlotte-Mecklenburg is concerned.

2 MR. PRESSLER: Right.

3 MR. JOHNSON: Right.

4 JUDGE KELLEY: Okay, so I'll hear from, if and when you  
5 reach some kind of worked out arrangement you will report to the  
6 Board later on. Let me just ask Mr. Johnson about the Staff pro-  
7 cess on the Impact Statement, you have the Draft out now, my  
8 question is are contentions, the kind filed, or the kind involved  
9 here -- the 23 I mentioned, from Palmetto and CESC, are those  
10 routinely reviewed as comments, whether or not to litigate, is  
11 that the case?

12 MR. JOHNSON: One second if I may.

13 (Brief pause)

14 MR. JOHNSON: Your Honor, there's some lack of knowledge  
15 I think here as to whether it's routinely done. We will in fact  
16 in this case do it. I have seen things addressed as -- in the FES  
17 and other facility DESs -- FESSs, that were common place -- I can  
18 only say for this particular purpose we do intend to treat them as  
19 comments.

20 JUDGE KELLEY: I think -- quoted in the FES itself? I've  
21 seen that done. I wondered whether in this case you would be  
22 doing that.

23 MR. JOHNSON: I believe they will be. I recall -- I  
24 think it was Turkey Point's FES that the comments were raised and  
25 then they were answered. To the extent that we are going to exhibit

JATD10

1 them as comments, they will be answered.

2 JUDGE KELLEY: Just one other procedural question.

3 Assuming that there is a contention offered and the Board rules it  
4 in, and then you make some change in your FES to accommodate the  
5 problem at least as far as you're concerned, do you then come back  
6 in and make a motion to strike, or ask the Intervenor to withdraw  
7 or how does that work?

8 MR. MCGARRY: I'd say, speaking for the Applicant,  
9 that we would file a motion for summary disposition. Unless we  
10 can handle it more expeditiously. Excuse me for interrupting.

11 JUDGE KELLEY: That's all right.

12 MR. JOHNSON: I don't want to delay anything anymore.  
13 Let me get back to you on this.

14 JUDGE KELLEY: Okay. We thought it might be simple  
15 looking at the clock and our schedule to get down to something we  
16 could handle in a short time, go to lunch, rather than start in  
17 on these contentions right now. We did want to talk a little bit  
18 about scheduling and when things are expected and so forth, and  
19 I wondered if we might just raise some questions then with the  
20 appropriate people about the progress of various things and when  
21 we might expect them, and we would like to consider that in terms  
22 of what we are planning for, timing and the like. Mr. McGarry,  
23 I guess in the Applicant's case, can you give us -- if not now  
24 later -- some report on where the emergency plans stand?

25 MR. MCGARRY: The Emergency Plans will be filed with FEMA

1 in March, 1983.

2 JUDGE KELLEY: March, '83. And this will include, have  
3 you got two plans, or six or eight or what?

4 MR. MCGARRY: It will -- it will have all of the appro-  
5 priate plans, the State Plan of South Carolina, it will have the  
6 appropriate County Plans, and North Carolina as --

7 JUDGE KELLEY: It's essentially State Plans and what --  
8 Mecklenburg and York Counties -- is that right?

9 MR. MCGARRY: It's the relevant counties. Whatever the  
10 relevant counties are.

11 JUDGE KELLEY: When you say relevant you mean within  
12 10 miles of the plant?

13 MR. MCGARRY: Yes.

14 JUDGE KELLEY: Well, what about -- is there a separate  
15 plan for Rock Hill?

16 MR. MCGARRY: That I don't know.

17 JUDGE KELLEY: I'm just -- maybe you could let us know.

18 MR. MCGARRY: We will.

19 JUDGE KELLEY: But it's your expectations ~~that~~ these plans  
20 will be completed and available to the Board and parties by March  
21 of '83.

22 MR. MCGARRY: March of '83.

23 JUDGE KELLEY: When is your final Impact Statement due,  
24 Mr. Johnson -- about?

25 MR. JOHNSON: The final Impact Environmental Statement

ATD12  
1 is due January '83.

2 JUDGE KELLEY: Any reason to think that won't be on  
3 track?

4 MR. JOHNSON: We believe it will be.

5 JUDGE KELLEY: What about the SER?

6 MR. JOHNSON: The SER is on track and we believe it will  
7 be published in February, 1983.

8 MR. RILEY: Is the SER a draft, a final form or is  
9 final form only?

10 MR. JOHNSON: I believe it's in final form with the  
11 possibility thereafter of having supplements for updated matters  
12 but it's not in draft form.

13 JUDGE KELLEY: With those dates in mind, and making some  
14 assumptions about time for discovery it's kind of hard to make now  
15 except as guesses, Mr. McGarry, what are your thoughts about going  
16 to hearing?

17 MR. MCGARRY: We believe that discovery should begin  
18 October 8th, 1982. It should end March 8, 1983. Summary disposi-  
19 tion should be filed on May 8, 1983. Responses to summary disposi-  
20 tions should be filed June 8, 1983. Board ruling on the summary  
21 disposition August 8, 1983. Pre-trial testimony filed September  
22 8, 1983, and the hearing to commence on October 1 and run no longer  
23 than December 31, 1983, proposed findings to be filed no later  
24 than January 31, 1984, and initial decision will be issued April  
25 31, 1984, so as to put us in the position to receive a license so



JATD13

1 that we can load fuel on October of 1984, and our schedule today  
2 is consistent with obtaining -- requiring permission to load the  
3 fuel in October of 1984.

4 Now with respect to the schedule, there is quite a bit  
5 of I'll say --

6 JUDGE KELLEY: Stopping you just a minute. Do you have  
7 that on a piece of paper or is that -- it's in the record now I  
8 know, and I guess maybe that's enough. You don't have a handout  
9 do you?

10 MR. MCGARRY: No, sir.

11 JUDGE KELLEY: Okay. That's fine.

12 MR. MCGARRY: With respect to the schedule, we based  
13 this schedule on what are the contentions today. We can speculate  
14 as to future contentions that may be filed provided they can meet  
15 the appropriate standards. Now we have have put blinders up. We  
16 recognize that there are a lot of discussions about emergency.  
17 There is a lot of -- I would characterize it -- as fat in the  
18 schedule. We are allowing from this point on six further months  
19 of discovery. We're also allowing two months for the preparation  
20 of summary disposition. That's usually a vehicle that the Appli-  
21 cants or the Staff would use. I don't think -- an additional  
22 period of time.

23 We're allowing two months for the Board's decision on  
24 summary disposition and we'll be doing nothing, and it's likewise  
25 in the month to respond to some of these. There's about six months

JATD14

1 of fat in the schedule and I maintain that six months can accommo-  
2 date contentions that are subsequently filed in the early part of  
3 1983.

4 JUDGE KELLEY: There is another aspect of this and I'm  
5 sure you are aware of, but I don't believe you mentioned, emergency  
6 planning -- if the documents come in last on emergency planning,  
7 and as a matter of fact they will, and if some of them trail off  
8 for one reason or another, it is possible to apply for them if you  
9 meet the requirements to get a low power license without having gone  
10 through all of that. You have to before you go full power, but not  
11 low power, so that's a consideration I suppose.

12 MR. MCGARRY: Having gone through the McGuire Hydrogen  
13 Exercise, we're well aware and appreciate that there could be  
14 juggling at the end but right now we would like to perceive as one  
15 hearing and one license. We all recognize that things do happen  
16 but I suggest that emergency plan contentions be filed after the  
17 submittal of the plans, which the schedule I understand is a firm  
18 schedule, and that we will meet that one schedule, that we can still  
19 litigate in a hearing the emergency plan contention toward the end  
20 of the three month period that I referenced.

21 JUDGE KELLEY: What is your hearing date beginning  
22 projected again?

23 MR. MCGARRY: The 1st of October, 1983 and run through  
24 the 31st December.

25 JUDGE KELLEY: Okay. Well, that's a nice layout of a lot

JATD15

1 of different points and that's helpful to give us your thinking.  
2 Does the Staff -- has the Staff thought that far ahead on all of  
3 these matters?

4 MR. JOHNSON: The Staff has not arrived at a detailed  
5 schedule such as Mr. McGarry has offered, however, we do have a  
6 projection of a hearing date of 9/83 -- September, '83. The  
7 availability of various documentation I think obviously are bench-  
8 marks that dictate certain scheduling of matters, and also it's  
9 very difficult to project what contentions are going to be at this  
10 time, in terms of sequencing perhaps summary disposition and dis-  
11 covery until we know what the contentions are.

12 JUDGE KELLEY: I gather -- you just heard Mr. McGarry's  
13 schedule and I rarely ask the people to comment, you know, cold,  
14 I understand your premises -- useful to have something in front  
15 of us -- you wouldn't have any further comment to offer other than  
16 what you've given me, right?

17 MR. JOHNSON: I'm afraid I didn't take down all of the  
18 dates that Mr. McGarry, if you're asking me to comment on his  
19 schedule --

20 JUDGE KELLEY: I don't think it's necessary. If you had  
21 a comment, fine, but we don't need detailed comment at this point  
22 I don't believe.

23 MR. JOHNSON: As a general matter, I would agree with  
24 him that there is some time in this period during which to have  
25 adequate discovery and opportunity for summary disposition, and

1 still get to hearing by September, '83.

JATD16  
2 JUDGE KELLEY: Your projected fuel load date, Mr. McGarry  
3 was October --

4 MR. MCGARRY: October, '84.

5 JUDGE KELLEY: Mr. Riley?

6 MR. RILEY: Is there a date available for the filing of  
7 the control room review?

8 JUDGE KELLEY: I don't know that there is.

9 MR. MCGARRY: Yes, the control room review information  
10 will be filed in the January-February time frame. To be clear we  
11 will file our plan January-February, 1983, and it will indicate  
12 the methodology that we will use, that we will go through. Thereafter  
13 to be clear, we will perform an analysis, but the methodology and  
14 clear road map of the control room review will be provided in  
15 January, 1983.

16 JUDGE KELLEY: Mr. Riley, any other comment or question  
17 or statement about the scheduling matters?

18 MR. RILEY: Well, I'm sure this can be done informally  
19 except Mr. McGarry speaks faster than I write, and I'd like to get  
20 some more dates.

21 JUDGE KELLEY: Mr. Guild?

22 MR. GUILD: The point of initial observation, Judge  
23 Kelley, is that Mr. McGarry's premise seems to be on the contentions  
24 that are in today, and he's opposed every contention that we've  
25 filed, so I'm really not sure what issues he conceives this sched-



JATD17

1   ule is intended to address, but I assume that they are few in  
2   number. That should bear on the adequacy of this schedule it  
3   seems.

4           JUDGE KELLEY: Numbers of contentions as of right now  
5   this morning is kind of speculative exercise and we'll know more  
6   when we can rule on what's before us. Okay, well that's helpful  
7   information I think. Are there other points along that line that  
8   you want to raise? Maybe this is as good a time as any to take a  
9   lunch break. Anything else that anybody who perhaps has to leave  
10  and can't come back this afternoon wants to raise?

11           MR. MCGARRY: Judge Kelley, just so I'm clear, in going  
12  through your order you raised several matters. First was impac'  
13  of 687, the second item was discovery. We're prepared to address  
14  it but we're also prepared to rest on the papers and I'd just bring  
15  that to your attention. The next item is DES contentions and I  
16  understand we'll go through those this afternoon if that would be  
17  helpful. The schedule for construction, I think we've indicated  
18  that to you. Completion of required documents, we've discussed  
19  that. Credible accident pleadings.

20           JUDGE KELLEY: We've got that.

21           MR. MCGARRY: You've got that. We'd stand on that  
22  unless you want anything further. The other relevant matters we  
23  had to bring up was schedules, so as far as we see it, this after-  
24  noon should be DES contentions unless you want to hear from us on  
25  discovery, or parties on discovery or any other matter, but I just-

JATD18

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

1 JUDGE KELLEY: That's a good point about what we'll try  
2 to do the rest of the day and tomorrow the same thing. I think we  
3 see as our next priority the discussion of the new contentions and  
4 I expect that will take us a while to do. We might have some dis-  
5 cussion about d'-covery say later in the afternoon if we get to  
6 that, and then we'll just have to make a judgement at the end of  
7 the day whether it will be useful, and try to reconvene tomorrow  
8 morning and it sort of depends on how far we get and what we think  
9 we can resolve and what we think -- what we think we'll have to  
10 take home with us, so I think that's about all we can state for  
11 now.

12 Okay, it's about -- what that clock says it is, 7 minutes  
13 after 12. Shall we say -- 1:15.

14 (Whereupon a luncheon recess was taken at 12:07 p.m.)  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## AFTERNOON SESSION

1:20 p.m.

JUDGE KELLEY: Back on the record.

We will be turning very shortly to these individual new contentions. As we left, it was a discussion about -- discussion between Mr. Johnson and Mr. Pressler, did you get a chance to talk over--

MR. PRESSLER: Yes.

JUDGE KELLEY: What was the upshot of that?

MR. PRESSLER: The two paragraphs of CMEC's revised contention where--that is the staff had difficulty with them and what we decided to do roughly was to split the difference. I agreed to drop the second paragraph and Mr. Johnson agreed to let the third paragraph stand. The staff still feels that my third paragraph is in error and we are going to pursue that in the discovery process. I still think that there is a certain amount of merit in the second paragraph and I plan to submit it as a comment on the DES to the staff simply as a comment.

JUDGE KELLEY: Are we in--well, go ahead.

MR. JOHNSON: May I just add that I agree with virtually everything that was stated. I would just add that we also stipulated that to the extent that paragraph 3 relies on certain statements that indicate that the staff is relying upon BEIR III that upon analysis and review of certain documents or perhaps as a result of discovery it turns out that we were relying on BEIR

1 I, which is my contention that he stipulated that he would withdraw  
2 that element of it.

3 MR. PRESSLER: Yes.

4 JUDGE KELLEY: Can you then state where, in your opinion,  
5 that puts us analytically? Now we still have to rule, that's  
6 true, but in terms of your position, where do you think we are?

7 MR. JOHNSON: That the contention, we are ready to accept  
8 this contention as admissible, delete--have deleted the second  
9 paragraph and the third paragraph is in but subject to further  
10 stipulation of the parties.

11 JUDGE KELLEY: Well, anything is always subject to further  
12 stipulation I suppose. Now it is in the record now that we are  
13 thinking about that, but insofar as the document is concerned,  
14 that paragraph from your standpoint will be it, right?

15 MR. JOHNSON: Yes, we are ready to look at that.

16 (Brief pause.)

17 JUDGE KELLEY: Okay. Mr. Pressler, is there any further  
18 business that you are aware of that we need to do with you in  
19 your representation? I am happy to have you here if you want  
20 to stay but I thought I would cover this and then if you didn't  
21 want to, you don't have to.

22 MR. PRESSLER: I don't think there is any further  
23 business but, on the other hand, I do want to stay.

24 JUDGE KELLEY: Fine. Okay. We are at the end at least  
25 in that we have covered Charlotte-Mecklenburg's points and we



RA e3

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

1 will turn now to the discussion of the document captioned Palmetto  
2 Alliance and Carolina's Environmental Study Group Supplement to  
3 Petitions to Intervene regarding Draft Environmental Statement  
4 dated September 22, 1982, and I think we would like to follow  
5 the format somewhat similar to the format we took at our first  
6 pre-hearing. We don't, I don't think any of us want to take every-  
7 body else's time to restate everything we have said in our papers  
8 but rather to focus on what are the salient points of disagreement.  
9 This is a situation which is typical in that we have contentions  
10 filed by the Intervenors and we have responses in writing from  
11 the other two parties. We don't have anything in writing at this  
12 point from Intervenors as to what they might want to say in response  
13 to what's been said in the opposition papers, so lets give them  
14 an opportunity to speak to the opposition papers.

15           Is there any--I think the Board's chief interest here  
16 and certainly a principal interest will be to isolate those elements  
17 or element in each of the contentions that are new information  
18 or new analysis in some sense that are felt by the Intervenors  
19 to justify filing at this point rather than earlier without being  
20 subject to an untimeliness finding of some kind.

21           And sticking to the notion that we don't want to simply  
22 repeat what we have already said, a little bit of context can  
23 help so let me suggest that whoever is appropriate, whether it  
24 is Mr. Riley or Mr. Guild on a particular contention, I suppose  
25 one or the other of you would be the lead on these various points.

1 Could you just very briefly capsule the thrust of contention one,  
2 as a starting point, and then we will move on.

3 MR. GUILD: Just to make a suggestion as to how to group  
4 them, I have just, over the lunch break, looked again at the staff's  
5 statement and they make an effort to group by subject matter.

6 Since we are going to be flipping back and forth and  
7 that may be a little bit cumbersome, I was just going to suggest  
8 that we follow their format, without saying that we agree to the  
9 comments, they tend to group them by subject matter and that might  
10 make it a little quicker.

11 JUDGE KELLEY: What do you think, Mr. McGarry?

12 MR. MCGARRY: Whatever is the most expeditious. I just  
13 thought going one at the time and moving right along, but if it  
14 is more expeditious the other way, so be it.

15 JUDGE KELLEY: Does the staff have a thought?

16 MR. JOHNSON: Whatever is agreeable to everyone else  
17 is fine with us.

18 JUDGE FOSTER: One at the time.

19 JUDGE CALLIHAN: I agree.

20 JUDGE KELLEY: Appreciate the suggestion. I think we  
21 would prefer to just take them one at the time. So, on number  
22 one, whoever wants to restate that briefly, I think that would  
23 be helpful.

24 MR. RILEY: The initial sentence in what I am now calling  
25 ES-1 because of the series of new Arabic numerals should be

1 separated from our original contention numbers, and the prefix  
2 ES will do it; the initial sentence states that, "The probability  
3 of severe accidents, radiation exposure and damage are under-  
4 stated", in the Environmental Statement, making specific reference  
5 to figures 5.3, 5.4, 5.5, 5.6 and 5.7. If you will take a brief  
6 glance at those figures, you will see that they are all cast  
7 in the form of a probability number on the ordinate scale, it is  
8 on page 5-59.

9 JUDGE KELLEY: Okay.

10 MR. RILEY: These are -- five figures are all cast,  
11 the probability in the ordinates scale and the response in the  
12 abscissa scale and observation number one is that these probabilities  
13 have to be distinguished from what we normally refer to as proba-  
14 bilities. Actuarial experience is usually the basis of probability  
15 so like when we talk of an automobile accident, this failure or  
16 that failure, sliding in the bathtub. These are based on certain  
17 assumptions made, certain models built and so forth. It is our  
18 contention that these models of probabilities resulting therefrom  
19 are unrealistic and we note that though the DES recognizes on  
20 page 5.6, there was one serious accident, namely TMI, for 400  
21 reactor years of operation; we think that there are two other  
22 very serious accidents. There was Fermi--

23 JUDGE KELLEY: Let me interrupt you. I have a little  
24 trouble reading this. I wasn't sure whether there were two or  
25 three contentions here or really one.

1 Now the point about the tables, they are critical on  
2 the tables, then you talk about Fermi and Browns Ferry against--  
3 in addition to TMI; is there some relationship between the three  
4 accidents and these tables?

5 MR. RILEY: Yes, there is. Fermi, Browns Ferry and  
6 TMI are all real worlds in the context of actuarial, not speculative  
7 or calculation, and in the real world, there were, as I view it,  
8 three very serious accidents in 400 reactor years. This will  
9 give an accident incidence of one, more or less, in 130 to 140  
10 years, as opposed to one serious accident in the Reactor Safety  
11 Study of one per 20,000 reactor years which if you spread the  
12 uncertainty limits far enough, you could say it includes one in  
13 400. Now we are saying that we regard these figures and the  
14 probabilities that they associate with given types of accidents  
15 to the general area of high-class fiction. That they are unrealis-  
16 tic in the sense that they are speculative when there is sufficient  
17 evidence to indicate material doubt about them to not rely on  
18 them.

19 MR. GUILD: Judge Kelley, if I could add, I understand  
20 the point of the staff's reference to TMI, which is at 5-46 of  
21 the DES, is to confirm the validity of the probability numbers  
22 derived in the Reactor Safety Study and that's the point of the  
23 assertion that there were, in fact, two additional accidents that  
24 should be considered in that checking process, and that when checked  
25 by that actuarial set of facts, the probabilities used by the



1 staff are demonstrably in error.

2 MR. RILEY: I further can't agree with some of the state-  
3 ments in the staff's response. Our understanding is that the  
4 monitors at Browns Ferry were inoperative at the time of the accident  
5 Now, of course, there is no recording from inoperative monitors.

6 JUDGE ALLIHAN: What monitors, Mr. Riley, please?

7 MR. RILEY: Atmospheric Release Monitors.

8 JUDGE CALLIHAN: Thank you. Stack?

9 MR. RILEY: No stacked, but placed at a distance,  
10 probably--

11 JUDGE ALLIHAN: Radiation monitors?

12 MR. RILEY: Yes, sir.

13 JUDGE CALLIHAN: Thank you.

14 MR. RILEY: We also feel that the argument Fermi should  
15 be excluded from consideration because it was a liquid metal fast  
16 breeder reactor overlooks the fact that it is in the population  
17 of reactors for which an estimate of accident probability had  
18 been made. I have reviewed the original Fermi documents, of the  
19 NEC, the predecessor staff of the present NRC staff. I think  
20 this is a fair sampling of population regardless of the type of  
21 reactor.

22 I also point out that the fact that these were not as  
23 major as TMI was due to several inadvertencies of a very slender  
24 sort. I submit that if Fermi had been allowed to go only a few  
25 more minutes without scrambling, the melt down would have been

RA e8

1 a very significant one and the reactor would have been breached.  
2 There was a period of 30 days in which there was enough additional  
3 internal heat generation in the reactor at Fermi to make it very  
4 iffy as to whether or not it was going to hold. I am saying that  
5 when you get that close a brush, you should realize that you had  
6 a serious accident.

7 At Browns Ferry, I was almost amused at the discussion  
8 on that accident in terms of provisions being made for handling  
9 fires. The point is that the fire at Browns Ferry went way beyond  
10 any of the extents which the Commission had proposed in dealing  
11 with them. The Commission specified that carbon dioxide be used  
12 and the people at the plant were pretty religious about using  
13 carbon dioxide. They fought the fire for six hours and finally  
14 gave up on it. A County Fire Chief who tried to get into the  
15 act several hours before was finally let in at this desperation  
16 moment and he believed in water and in 15 minutes, he had the  
17 fire out. What I am pointing out is that the system of regulations  
18 that was then in effect permitted the fire to occur that was far  
19 beyond the bounds anticipated. The regulations would assume that  
20 the fire was extinguished. The fact was the fire was not.  
21 Again, I feel that it was very close. If that Fire Chief had  
22 not come along, if we hadn't had a brilliantly improvisational  
23 operator who used the control rod system hydraulic pumps to keep  
24 the water level up, we would have had a melt down there, so I  
25 regard these as serious accidents, and the actuarial information

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

1 is one accident in about 130 or 140 years.

2 JUDGE ALLIHAN: Referring, Mr. Riley, to your  
3 ES number 1. Is that a topic which was covered in the December,  
4 1981 filing or is this a new contention that has not yet appeared  
5 until this moment?

6 MR. RILEY: It was covered in the December filing.

7 JUDGE CALLIHAN: Can you give us a reference, please?

8 MR. RILEY: I certainly shall. It was contention number  
9 2.

10 JUDGE CALLIHAN: Now there were several groups of  
11 contentions as I remember.

12 MR. RILEY: Yes, sir.

13 JUDGE CALLIHAN: There was Palmetto or yours, number  
14 2, whose number 2?

15 MR. RILEY: It is Palmetto number 2.

16 JUDGE CALLIHAN: Thank you.

17 MR. GUILD: Judge Kelley, the significant distinction  
18 between Palmetto number 2 as originally filed and this new ES-1  
19 is of course the Environmental Statement and the Staff's Environ-  
20 mental Analysis had not yet been done at that time so there was  
21 not a specific critique of probabilities available to us at the  
22 time of this summer '81 filing.

23 JUDGE CALLIHAN: Can you give us a reference to that,  
24 please, Mr. Guild?

25 MR. GUILD: Well, sir, the number 2, Palmetto Alliance

1 number 2 originally was a severe accident contention. But its  
2 focus was not on the DES because the DES did not then exist.

3 JUDGE CALLIHAN: I am asking for a reference in the  
4 DES to your recent assertion.

5 MR. GUILD: There is none. There was no DES at the  
6 time. If I am not following you, tell me.

7 JUDGE CALLIHAN: I understood you to say that ES number  
8 1.

9 MR. GUILD: Yes, sir.

10 JUDGE CALLIHAN: Bears some relation to Palmetto number  
11 2 in their early days.

12 MR. GUILD: Yes, sir.

13 JUDGE CALLIHAN: Has been derived on the basis of the  
14 DES.

15 MR. GUILD: Yes, sir.

16 JUDGE CALLIHAN: And I am asking for a reference in  
17 the DES which you used to evolve from PA number 2 to ES number  
18 1.

19 MR. RILEY: That is on page 5-46 of the DES.

20 JUDGE CALLIHAN: Thank you.

21 MR. RILEY: And the corresponding figures I have already  
22 given, sir.

23 JUDGE CALLIHAN: Yes. Now, referring to 5-46, can you  
24 be a little explicit and say what is on page 5-46 that has made  
25 ES number 1 different from PA number 2?



1 MR. RILEY: The thing is the specific probabilities  
e 112 that are provided in those four figures. We have no probabilities  
3 to hang our hat on prior to DES.

4 JUDGE CALLIHAN: I will make a statement and ask for  
5 your comment on it. Browns Ferry, Fermi, even Three Mile Island  
6 were pretty well in the public domain, information pretty well  
7 in the public domain prior to December, 1981, so I guess I am  
8 asking again what explicitly as new information has derived on  
9 or about September 7, 1982 when I received the Environmental State-  
10 ment which has led to this recasting of PA number 2 into ES number  
11 1?

12 MR. GUILD: Judge, to start from this position, we filed  
13 a series of severe accident contentions including Palmetto Alliance  
14 number 2 in the initial filing. The Board's response to them  
15 was in short, to paraphrase, these contentions are premature.  
16 Under the interim statement of policy, the Commission staff must  
17 address severe accidents in their environmental analysis and we  
18 expect them to address the criticisms made by Palmetto and CESA  
19 in their contentions or to explain why they are not. Well, the  
20 staff published the DES which contained some 30-odd pages of analyses  
21 of severe accident impacts, including a number of points that  
22 we will characterize as responsive to our criticism. We then  
23 analyzed the DES severe accident analysis and I believe when taken  
24 together, if you go through the severe accident contentions you  
25 have in front of you, the September filing, we go point by point

1 with each of these pieces of analysis that the staff makes, so  
2 that is the thrust of the development of this subject matter,  
3 sir, and, of course, what transformed the original Palmetto Alliance  
4 number 2 into what you now have as ES number 1 included the staff  
5 responding to our criticisms and then us digesting those responses  
6 and formulating the contentions on the subject of severe accidents  
7 that you now have in front of you.

8 JUDGE CALLIHAN: As you state your -- "your criticism"  
9 is that PA number 2?

10 MR. GUILD: PA number 2 and, if I can, just for clarity--

11 JUDGE CALLIHAN: Well, it was in this filing, without  
12 bothering about--

13 MR. GUILD: Yes, that is correct.

14 JUDGE KELLEY: A question on your last point, Mr. Guild.  
15 Now, in the context of earlier contentions filed prior to the  
16 Impact Statement, as to most topics one would expect that they  
17 would be covered one way or another in the ER and therefore, one  
18 would expect that a party opposing the contention would point  
19 to the ER and say, look, we have already talked about that. Is  
20 this particular topic a little different in the sense of serious  
21 accident analysis in an Impact Statement? There isn't anything like  
22 that in the ER, I believe. Isn't that right? I mean you don't  
23 have any obligation to discuss serious accident beyond design  
24 basis.

25 MR. GUILD: That's correct.

1 JUDGE KELLEY: The staff does by virtue of the so-called  
2 policy statement. Has the staff, Mr. Johnson, ever in the past  
3 in any other document talked about severe beyond design basis  
4 accidents at the Catawba facility?

5 MR. JOHNSON: Not to my knowledge.

6 MR. RILEY: I can answer that question.

7 JUDGE KELLEY: I didn't ask you.

8 MR. RILEY: I know, voluntary.

9 (Brief pause.)

10 MR. JOHNSON: To my knowledge, this is the first time.

11 JUDGE KELLEY: Okay, and in the analysis it is site  
12 specific, is it not, in the sense that it is not just some riff  
13 number from some other generic study but rather it is a look at  
14 Catawba and some calculations and some number comes out, isn't  
15 that right?

16 MR. JOHNSON: Yes, sir. I think the DES does discuss  
17 the extent to which generic analyses are relied upon.

18 JUDGE KELLEY: Right. But there is--it is a site specific  
19 analysis?

20 MR. JOHNSON: Yes.

21 JUDGE CALLIHAN: You just said, Mr. Johnson, that these  
22 curves--figures, five point something over here, would not apply  
23 to some other pressurized water reactor of this design?

24 MR. JOHNSON: No, that is not what I intended to say.  
25 I just had trouble finding the reference. There is a statement

1 I believe, the first page of Appendix E explains the way in which  
2 the generic studies, the reactor safety study, the base lining  
3 of that study, of those analyses were applied to Catawba, but  
4 it states, for example, "Therefore, the use of the Surry rebaselined  
5 sequences is appropriate since a Catawba plant-specific assessment  
6 of accident sequence is not available."

7 JUDGE CALLIHAN: I guess it is obvious what I am trying  
8 to establish is some site specificity of this analysis and in  
9 what way is it site specific?

10 MR. JABBOUR: I can answer. It is site specific in  
11 the sense that Catawba's--this analysis was done for Catawba,  
12 not for any other plant so that--

13 JUDGE CALLIHAN: What characteristics of Catawba make  
14 this a unique analysis as contrasted to Mr. Somebody Else's  
15 pressurized water reactor on another river?

16 JUDGE KELLEY: And what about numbers of affected persons,  
17 isn't that site specific?

18 MR. JABBOUR: You mean the population around Catawba--

19 JUDGE KELLEY: Yes.

20 MR. JABBOUR: Would be wholly different factors. Other  
21 things could be slightly different from another accident but not  
22 major differences involved in it.

23 MR. GUILD: I believe meteorology is also supposed to  
24 be site specific. Topography is also supposed to be site specific.

25 MR. RILEY: Property values are sit specific, 5.7.



1 JUDGE KELLEY: I think all we are really after is, is this  
2 new information or is this something we have all known for a long  
3 time and a lot of it is, well, a lot of material for it is old  
4 stuff I guess, everybody knows Browns Ferry happened a long time  
5 ago, but the analysis specific to Catawba, these curves here,  
6 the five figures that are cited, those are site specific curves,  
7 are they not?

8 MR. RILEY: Yeah.

9 JUDGE KELLEY: And if you look at similar curves for  
10 five other reactors, they are not going to look very much different  
11 but they are somewhat different, and then you say in your contention  
12 that those figures are inaccurate.

13 MR. RILEY: That is correct.

14 JUDGE KELLEY: Are you saying that because there isn't  
15 any discussion of Browns Ferry and Fermi, is that why they are  
16 inaccurate?

17 MR. RILEY: No, I am saying the fundamental predicate  
18 there has been at most one serious reactor accident in 400 years,  
19 on the face of it, in error. That's a basic fault.

20 JUDGE KELLEY: What, in the tables?

21 MR. RILEY: In their methodology.

22 JUDGE KELLEY: On the table--are you saying the tables  
23 are wrong because they left those accidents out? I am just trying  
24 to understand the contention.

25 MR. RILEY: Yes, I am saying that the figures are

1 wrong because they are not based on experience, but they're based  
2 on side roles and from hearsay, a set of assumptions.

3 JUDGE CALLIHAN: What characteristics of the Browns  
4 Ferry occurrence causes you to classify it as a serious accident?

5 MR. RILEY: The fact that it was within 30 inches of  
6 exposing the core. It is normally--

7 JUDGE CALLIHAN: 30 inches of--

8 MR. RILEY: Water. 30 inches of water over the core,  
9 it come down to about 12 to 13 feet.

10 JUDGE CALLIHAN: I am trying to understand your statement.

11 MR. RILEY: Oh, in a boiling water reactor, sir, the  
12 core is normally covered by 12 to 13 feet of water.

13 JUDGE CALLIHAN: True.

14 MR. RILEY: During the boiling off that took place  
15 over a period of five or six hours, that level got down to 30  
16 inches.

17 JUDGE CALLIHAN: I understand.

18 MR. RILEY: Now if a brilliant reactor operator had  
19 not started out a pump that fell outside the safety system, namely  
20 the hydraulic supply for the control rod system, that reactor  
21 would have melted down.

22 JUDGE CALLIHAN: Would you agree with me if I said--  
23 I am sorry, let me rephrase that.

24 Can I characterize your statement as saying it was  
25 potentially a serious accident?

RA el7

Ed takeE

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

MR. RILEY: It was a serious accident. For instance, one of your sustained the release in the atmosphere.

1 MR. RILEY: It was a serious accident. The reactor was  
2 unavailable for electrical generation for several years. There was  
3 over a hundred million dollars of damage done in the accident. It  
4 was more than substantially serious, it was serious. And there was  
5 no measurement of the actual release. If there were any leaking  
6 fuel rods, there had to be release because massive quantities of  
7 steam were released in the atmosphere.

8 JUDGE KELLEY: I'm still unclear, Mr. Riley, on the  
9 statement of the contention and if you will, the logic, the  
10 rationale of the contention. You said I think a few minutes ago,  
11 and I'm paraphrasing but I think you said that you didn't agree  
12 with the approach and methodology and that they were speculative  
13 and not based on fact. Now that may all be true, but this  
14 contention doesn't say that. This contention to me says those  
15 figures are understated, period. Then it goes on to say they've  
16 only recognized one accident and there have actually been three.  
17 Now this doesn't say there's anything wrong with their methodology  
18 or their assumptions or their approach that I can see, it sounds  
19 to me like you're attacking their data base. And I gather from  
20 our discussion that that's not it.

21 MR. RILEY: Well I think, sir, that maybe I can help  
22 clarify the communication problem. I thought it was apparent in  
23 the language that I was using that they were calculating probabilities  
24 rather than relying on actual experience. And I'm saying when you  
25

Flew

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345



F2pw  
1 take a look at the actual experience from the incidence is one in  
2 133, it's orders of magnitude different from the probabilities they  
3 come up with in these tables. And I thought on the face of it, the  
4 contrast was apparent. I didn't make the bridge which you point  
5 out was lacking, I'm sorry, I took it for granted.

6 JUDGE KELLEY: Well, I'm a layman reading it but I'm  
7 just trying to understand it.

8 Okay, well, I think this has been useful, I'm not sure  
9 what the format is but we'll just forge ahead.

10 Mr. McGarry, --

11 MR. MCGARRY: Yes. I have more than several comments,  
12 let me just jump into them.

13 The staff in the subject section of the DES is considering  
14 severe accidents. It defines those severe accidents on page 5-36,  
15 as class high accidents that can be distinguished from design-basis  
16 accidents in two primary respects. They involve substantial  
17 physical deterioration of the fuel in the reactor core, including  
18 over-heating to the point of melting.

19 They're talking about core melt situations. They're  
20 not talking about Brown's Ferry, they're not talking about Fermi.  
21 So one point we'd like to make is whether or not they included  
22 those two incidents in their data base is irrelevant to the very  
23 subject that the DES is addressing.

24 Second of all, the DES does make reference to Fermi and  
25 does make reference to Brown's Ferry, contrary to the intervenors'

1 allegation. So there is -- first of all, the contention is  
2 irrelevant; second of all, there's no basis for the contention.

3 Now I have a question down on my pad, why are the models  
4 unrealistic, because that is a term that was used. And I don't  
5 think -- I've not heard a clearcut answer, and if there is going  
6 to be a contention, that's the answer that's necessary to support  
7 that contention. With respect to the Reactor Safety Study, in  
8 this contention and in other contentions there is reference made  
9 to the impropriety of using the Reactor Safety Study. We are  
10 never told why. There is no specificity, there is no basis.

11 With respect to newness of the contention which I believe  
12 the Board was inquiring to, with respect to the Reactor Safety  
13 Study, it was clear in the interim policy statement on Class 9  
14 accidents that would recognize the Reactor Safety Study was a  
15 proper tool to use. So we maintain the intervenors should have  
16 been on notice. And just to be clear, there is no question that  
17 the intervenors were aware of the Reactor Safety Study. I just  
18 make reference to a motion filed in the Catawba CP case by CESG  
19 back in 1979, that culminated in the Reactor -- the Director's  
20 decision in January of '81, that attacked the use of the Reactor  
21 Safety Study.

22 And as a basic point as we go through applicant's position  
23 we're going to rely and standby our pleadings as this Board has  
24 asked us to. I'm just trying to address points as they come up.

25 JUDGE KELLEY: What about the information in Figures

Flow

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

F4pw

1 5.3, 4, 5, 6, 7; the site-specific probability curves? Isn't that  
2 new information?

3 MR. MCGARRY: These curves may indeed be new information  
4 in the sense that it wasn't contained in our Environmental, but  
5 then I'd ask -- I think the fundamental question after you get  
6 over the newness is the contention. new, which I think is the point  
7 you're making there. Then let's address the contention itself.  
8 What's wrong with these curves? And I say to you, what's wrong  
9 with the curves, if it's because they fail to consider two accidents,  
10 I maintain first it's not necessary for them to consider those  
11 two accidents because of the very nature of the subject matter.  
12 And second of all, the DES itself does address these two accidents  
13 and explains how it treats those two accidents.

14 JUDGE KELLEY: Is there actually a prose discussion of  
15 both Browns Ferry and Fermi?

16 MR. MCGARRY: In our pleadings we make reference to Fermi  
17 and --

18 JUDGE KELLEY: I saw Fermi, is Brown's Ferry in there  
19 too?

20 MR. MCGARRY: As we state in our pleading, the Brown's  
21 accident, which is well known to the intervenors and has been  
22 referenced in other contentions, other cases by them, is referenced  
23 in the DES as a source authority. The case is strong on Fermi in  
24 terms of clearcut discussion of Fermi in the DES. With respect  
25 to Brown's Ferry, you have to go to the records. Again, that goes

F5pw 1 to newness, if you will.

2 JUDGE KELLEY: The fact that the staff makes a reference  
3 to something in an Impact Statement doesn't -- it doesn't necessarily  
4 follow that everything that's being referenced is therefore old  
5 information.

6 MR. MCGARRY: I would agree with the Board that you have  
7 to be reasonable in that, in where you draw the line, and we're  
8 not here to really pound our fists on the table on that point. We  
9 just draw it to your attention that it was referenced and we also  
10 draw to your attention I think the point that Dr. Callihan made  
11 that Brown's Ferry is not something new and --

12 JUDGE KELLEY: No, it's not.

13 Let me ask Mr. Johnson. We have your filing, do you  
14 want to comment on what you said? A number of things have been  
15 said.

16 MR. JOHNSON: The only thing I'd like to address is  
17 my new understanding of what the contention intended. I think we  
18 stand by everything that's stated in our response. From what I  
19 gather, Mr. Riley is saying that he's relying on the real world,  
20 these three real world events to undercut the reliability or the  
21 reliance of the staff on the Reactor Safety Study and the  
22 corrective rebaselining and the other site-specific analyses that  
23 were done. It seems to me based on what the definition of severe  
24 accident is, that there are -- those two other accidents are  
25 irrelevant and form no basis for challenging the staff's compliance



F6pw

1 with the Commission's policy statements. Since there is no other  
2 basis there, if this is it, I think there is no basis stated.

3 MR. RILEY: Mr. Chairman --

4 JUDGE KELLEY: Let me ask to what extent -- I've looked at  
5 parts of the Impact Statement, I confess I haven't read it all --  
6 a diligent reader of this document, if I were one, of every page,  
7 would I come away and be able to say what produced these numbers  
8 in these tables? Is your methodology really laid out in the  
9 Impact Statement?

10 MR. JABBOUR: I think the basic assumptions that appear  
11 here, we're analyzing a core melt and under certain meteorological  
12 conditions, the curves are the product of that analysis. Core  
13 melt is -- Class 9 accident is what's being analyzed here.

14 JUDGE KELLEY: I understand that, I think. But you then  
15 reviewed the analysis and you produced this chart and those numbers  
16 which gives me a probability number.

17 MR. JABBOUR: That's correct.

18 JUDGE KELLEY: Does the Impact Statement explain in  
19 detail how you got these numbers?

20 MR. JABBOUR: It does not describe the model very much  
21 in detail, it doesn't describe that, no. But I think that rebase-  
22 lining sheds some light on the model and its use in relation to  
23 the Reactor Safety Study, but there is no detailed description of  
24 the model here. The rebaselining study did discuss the model and  
25 its relationship to the Reactor Safety Study.

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

F7pw 1 MR. JOHNSON: Let me just add to that, if you read the  
2 Commission's Policy Statement, nothing more really is required.  
3 It says that detailed quantitative considerations that form the  
4 basis for probabilistic estimates of releases need not be incor-  
5 porated in the Environmental Impact Statements, but shall be  
6 referenced therein, and I think that has been done.

7 JUDGE KELLEY: Well what I was asking was -- this conten-  
8 tion says these tables understate the risk and your methodology is  
9 off and I was wondering well, what is the methodology, and it's  
10 thumbnail sketched in here, but a lot of it comes out of the  
11 Safety Study and the rebaselining which is recalculations of risk  
12 estimates reported in the Lewis report and things like that. Is  
13 that a fair statement?

14 MR. JOHNSON: Yes, sir. As I understand, the DS states  
15 that they analyzed the rebaselined results against the original  
16 Reactor Safety Study and found that the differences were much less  
17 significant than the differences that they determined were based  
18 on a margin of error. They said it was more than ten, a factor of  
19 ten, less than a hundred.

20 JUDGE KELLEY: Does the staff have any position in light  
21 of the discussion here on Contention 1, if it is read or put  
22 forward as a contention which faults methodology? I have a  
23 specificity problem, I think, because I don't quite see how but I  
24 don't believe that was in your pleading and I wonder whether you  
25 have any thoughts on that in light of our discussion.

F8pw 1 MR. JOHNSON: Well, yes, I would agree with that state-  
2 ment that there isn't anything specific other than the reference  
3 to the Fermi and the Brown's Ferry events and without that there  
4 isn't any specificity, it seems to me.

5 JUDGE FOSTER: This contention seems to say that the  
6 figures and the associated probabilities are wrong because of the  
7 use of one accident in 400 reactor-years. I'd like to ask the  
8 staff whether that frequency of accidents that is included in the  
9 text entered into the development of these figures in some way or  
10 whether these are developed from the Reactor Safety Study and in  
11 an independent fashion.

12 MR. JOHNSON: My impression from reading the DES was that  
13 the -- this one accident in 400 reactor-years was used, not in  
14 the evaluation as such, but a check against the results from the  
15 reactor modeling, the accident analysis modeling results, but I  
16 cannot give you a definitive answer on that, I'm sorry.

17 MR. RILEY: Judge Kelley, if you're interested in the  
18 reference to Fermi, I can give it to you.

19 JUDGE KELLEY: Yes.

20 MR. RILEY: At the bottom of page 5-30.

21 JUDGE KELLEY: 5-30?

22 MR. RILEY: Yeah.

23 JUDGE KELLEY: Okay. If we go 1, 2, 3 and follow Mr.  
24 Johnson's pleading, where is 2 in your pleading?

25 MR. JOHNSON: Where is 2 in my pleading?

F9pw

1 JUDGE KELLEY: Yes.

2 MR. JOHNSON: I made myself a little index, it's on page  
3 22.

4 JUDGE KELLEY: Let's just take a second to look over  
5 the contention itself again.

6 (Brief pause.)

7 JUDGE KELLEY: This is yours, Mr. Riley?

8 MR. RILEY: If I may have a moment.

9 JUDGE KELLEY: Excuse me?

10 MR. RILEY: If I may have a moment.

11 JUDGE KELLEY: Yes.

12 (Brief pause.)

13 MR. GUILD: Are you talking about our Number 2 Contention?

14 JUDGE KELLEY: "The DES fails to consider...."

15 MR. GUILD: All right.

16 MR. RILEY: With reference to pages 4-3 to 4-7 of the  
17 DES will supply the material, particularly I think if we refer to  
18 page 4-3 at this point. In the second paragraph from the end, I  
19 quote, "The applicant plans to use sodium hypochlorite to control  
20 biofouling in the cooling tower portion of the condenser circulating  
21 water system instead of gaseous chlorine, as indicated in the FES-CP.  
22 That's change one.

23 JUDGE KELLEY: Is that a change from the SER?

24 MR. RILEY: Yes, it is -- oh, I don't know if it's a  
25 change from the R, sir, I doubt it. My guess is it corresponds with



F10pw

1 the -- "The planned application rate of biocide is ... (600 lb per  
2 unit per day) instead of ... (300 lb per unit per day)...." There's  
3 a doubling factor. As indicated in the FES-CP.

4 Then going down to the bottom paragraph -- no, let's  
5 stay with this one for must a moment. "However, because of the  
6 change in the form of chlorine to be applied, the proposed  
7 application rate will cause the same average 1.0 milligram per liter  
8 of free available chlorine to exist in the cooling water as was  
9 anticipated in the FES-CP." We do not challenge that, we bring it to  
10 your contention because it says "free chlorine" is the name of the  
11 game. "This residual is expected to vary between 1.5 milligrams  
12 per liter in the summer and 0.5 milligrams per liter in the winter,  
13 based upon a 3-4 milligram per liter chlorine demand."

14 Let's continue in the next paragraph. "Other condenser  
15 circulating water treatments proposed are (1) continuous  
16 sulfuric acid addition at ... (1350 lb per unit per day) instead of  
17 ... (1000 lb per unit per day) as proposed in the FES-CP and...  
18 possible intermittent use of...." some other chemical. Well those  
19 are all changes since the FES.

20 Our comment is addressed to what the staff did with this  
21 in making its environmental statement and we feel that the chemistry  
22 of the staff has simply been lacking, because if you are a chemist  
23 and you note some of the assertions and you look at Table 4.4 --

24 JUDGE KELLEY: In the DES?

25 MR. RILEY: Yes, sir, 4-28. You will see a list of 30 to

Follow  
1 40 parameters there in which the average intake concentrations are  
2 given, the cooling tower blowdown averages are given, and because  
3 the rate of intake is several times the rate of blowdown because  
4 six-sevenths of the intake is evaporated in the cooling operation,  
5 you can skim down the cooling tower blowdown average concentration  
6 and see the ratio to the intake is seven to one, except for such  
7 things as were added, like for instance sulfate where instead of  
8 having seven times ten, you have 194; like in the case of sodium  
9 where instead of about 50, you have 72. These are all a consequence  
10 of the chemical addition that we just discussed. And by means of  
11 the science of chemistry, you can tell about what the acidity  
12 basicity of the system will be.

13           If the bench is not familiar with the pH system, I'd  
14 like very briefly to describe what it is.

15           JUDGE KELLEY: Go ahead.

16           MR. RILEY: All right. pH is inverse logarithmic state-  
17 ment of the acidity of a liquid. On Table 4.5, normal range of pH  
18 is given as 7.0-8.0 and the limit is given as 6.0-9.0. You can't  
19 put together the materials in Table 4.4 and come out with that  
20 range, it will come out in the vicinity of 4 pH. So we have a  
21 real internal inconsistency here which has not been resolved. There  
22 is not statement made about how you're going to get from 4 pH to  
23 your preferred 7.0-8.0, or that you are going to. And if you don't,  
24 you're going to have a lot of unhappy people because the environ-  
25 ment will not be kind to metal appliances, automobiles and the

F12pw

1 rest of it. There's a real incompleteness here, I don't know  
2 the resolution, but I'm saying it doesn't hold together.

3 JUDGE CALLIHAN: On the matter of consistency, referring  
4 to ES Number 2, can you do something to the chemistry there to  
5 make things balance?

6 MR. RILEY: There are several things you could do, one  
7 is you could use less sulfuric acid --

8 JUDGE CALLIHAN: No, I mean as it's written.

9 MR. RILEY; Well the only question --

10 JUDGE CALLIHAN: There's a lack of balance at the moment,  
11 so --

12 MR. RILEY: In my opinion the equation is balanced as it  
13 stands.

14 JUDGE CALLIHAN: Well then I guess I misunderstand. My  
15 difficulty arises from the number of blocks you use.

16 MR. RILEY: All right. I come out with 5 on each side.  
17 Will you be helpful to me?

18 JUDGE CALLIHAN: Yes, you have 4 with the sulfuric acid,  
19 you have 2 with the sodium hypochloride.

20 MR. RILEY: Right, that would give us 6. I agree, it  
21 doesn't balance. Well if over the break I might be given an  
22 opportunity to find out what I did wrong --

23 JUDGE CALLIHAN: All right.

24 (Brief pause.)

25 JUDGE KELLEY: Going back to another question, have you

1 studied the Environmental Report with regard to this same problem?

2 MR. RILEY: I have not.

3 JUDGE KELLEY: Okay.

4 JUDGE CALLIHAN: Returning to my original question, I'd  
5 like to make this a blanket inquiry for all consideration. Can you  
6 relate this to the December, 1981 filing, to a contention in the  
7 December, 1981 filing?

8 MR. RILEY: No, sir, this is a fresh contention related  
9 to the DES.

10 JUDGE CALLIAHN: Thank you.

11 JUDGE KELLEY: Comments, Mr. McGarry?

12 MR. MCGARRY: Yes, sir. Again, we stand on our pleadings,  
13 but I'd like to make some observations. The Board has asked the  
14 intervenors several times if they referred to the ER and the answer  
15 has been no. It's interesting at Table 4.4, in the DES, which was  
16 referenced by intervenor at page 4-28, if you look in the bottom  
17 lefthand column -- the bottom lefthand part of that table, you'll  
18 see the source of that table, ER-0L Table 3.6.1-2 -- not new  
19 information.

20 JUDGE KELLEY: I'm sorry, where is this?

21 MR. MCGARRY: 4-28, bottom lefthand --

22 JUDGE KELLEY: Oh, I see it.

23 MR. MCGARRY: Not new information.

24 JUDGE KELLEY: What about the earlier information in  
25 the contention itself in terms of sulfuric acid and so forth, is



1 that information also in the ER?

2 MR. MCGARRY: That information is in the ER and we would  
3 also maintain that during the construction permit phase of the  
4 Catawba proceeding a similar type contention was raised.

5 JUDGE KELLEY: I'm focusing on the ER in this one  
6 because Mr. Riley is saying some of the numbers were different  
7 between here and there and I thought, well, never mind what was  
8 in the CP, what's in the ER. If these numbers match the ER, do  
9 you look beyond that, do you read this?

10 MR. MCGARRY: I guess I reference the CP only for the  
11 point that the intervenors had previously expressed an interest in  
12 this area, they were familiar with the area -- the topic area. At  
13 least that's the point of that reference.

14 With respect to the ER, there is adequate information on  
15 these points in the ER. I missed the intervenors' comment with  
16 respect to the free chlorine but if I heard what he said, I under-  
17 stand that was a consideration to him in this contention, and I  
18 just ask, is that correct?

19 JUDGE KELLEY: Mr. Riley, maybe you could just speak  
20 to that question.

21 MR. RILEY: It applies to the following contention.

22 MR. MCGARRY: The following contention?

23 MR. RILEY: Yes.

24 MR. MCGARRY: The last comment we would like to make is  
25 with respect to the pH discussion. We have an NPDES permit for

F15pw

1 Catawba. That permit authorizes a specific pH range, we cannot  
 2 vary from that range. So if the thrust of the contention is  
 3 inadequate pH, this is not the forum that this matter is litigated  
 4 in. The Board is well familiar with the Yellow Creek decision,  
 5 and we set forth this proposition in our tables.

nd F.

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

JATGL  
1 JUDGE FOSTER: Mr. McGarry, you've just answered part  
2 of the question I was going to ask, and that was whether or not  
3 this discharge was in fact subject to the State Licensing. I'd  
4 like to ask a second part to that and that is can you tell us what  
5 the State status of that permit is at the present time?

6 MR. MCGARRY: Yes. We have received and I believe re-  
7 ceived it in 1981, I believe it was June 29, 1981 --

8 JUDGE FOSTER: I seem to recall from the DES that that  
9 permit expired in 1981 as well. Was it extended by some admini-  
10 strative action?

11 MR. MCGARRY: To the best of our knowledge, we have in  
12 effect the appropriate permit.

13 JUDGE FOSTER: Thank you.

14 JUDGE KELLEY: On this report that I was just given  
15 a typed up proposed hearing schedule from the Applicant which is  
16 helpful. Did you have copies of that to spread around?

17 MR. MCGARRY: Yes.

18 JUDGE KELLEY: All right, fine. Thank you. Staff,  
19 any further comment on -- on this?

20 MR. JOHNSON: Our position I think will be stated in our  
21 papers. There's virtually nothing in the DES that wasn't already  
22 discussed in the ER, so there's nothing in it, at least on time-  
23 liness and secondly, the DES clearly does consider the question of  
24 Ph acidity and balance of the chemicals if you'll refer to the  
25 cited sections in our response, and then the last point of course

JATG2

1 is that by the NPDS permit the acidity alkalidity is required to  
2 be within a range that's contrary to what it's alleged to be in  
3 the case.

4 JUDGE KELLEY: The fact that there is such a permit, are  
5 you saying that then is just a conclusive answer -- that's why  
6 permits can get violated from time to time.

7 MR. JOHNSON: I don't say that it's conclusive of what  
8 I believe the Staff I believe looked at or the way in which Ph  
9 acidity non-balance would affect the internal workings of the  
10 plant systems themselves and I think there's reasonable -- they  
11 did negotiate the reasonable assurance that an imbalance would be  
12 controlled because of the cost with plant machinery if it weren't.  
13 In other words, if there's a balance between -- you have to have  
14 enough sulphuric acid and there has to be -- that does its job,  
15 that neutralizes the alkalinity --

16 JUDGE KELLEY: Okay.

17 MR. GUILD: Judge Kelley, a couple of observations.  
18 The first -- the NRC Staff is obligated to evaluate the environ-  
19 mental costs of the action which they propose to license and that's  
20 the operation facility. Whether or not some sub part of those  
21 operations is legal or is under a permit or has been approved by  
22 somebody is irrelevant to their obligation underneath. They still  
23 must evaluate the cost and those costs are significant and outweigh  
24 the benefits then the obligation is to decide against the proposed  
25 federal action, so the existance of a State NPDES process that may

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345



1 or may not have approved this water chemistry doesn't alter the  
2 obligation of the Staff to evaluate whether or not drift from the  
3 cooling towers is going to adversely affect the environment and  
4 cause it costs. It must be weighed in the balance nonetheless.

5 In that connection, I wanted to refer the Board back to  
6 your March 5th order on Page 14 where you address this question  
7 of what the relationship between the Staff and the Applicant's  
8 obligations underneath them, and the language there in reference  
9 to Mr. Pressler's health affects contention is as follows, and I  
10 quote -- at the top of the page.

11 "Should these contentions go to hearing, the focus will  
12 be on the Staff's Impact Statement, not the Applicant's Environ-  
13 mental Report" -- because the substance of NEPA obligation is  
14 discharged through the Impact Statement, and that's our point which  
15 we want to reiterate here and as these other contentions. Whether  
16 or not the company talked about some fact in their Environmental  
17 Report and whether that fact was relied upon or not relied upon  
18 by the Staff is irrelevant.

19 The point is what was the Staff's analysis of costs and  
20 benefits contained in the DES and that is what we seek to address,  
21 not what Duke Power Company has to say about its environmental  
22 affects in their environmental reports, and so, we view it as not  
23 providing us any analysis or information that could be the basis  
24 for a contention, and you told us that in March.

25 JUDGE KELLY: I don't think that goes to quite that. Be

JATG4

1 that as it may you've got 687 to deal with and I think that argu-  
2 ment is swimming up stream on that decision.

3 MR.GUILD: In fact we disagree, Judge.

4 JUDGE KELLEY: Fine, I understand your point, but we've  
5 been told pretty clearly if something is covered fully in the ER  
6 and you didn't file a contention at that time, then you're late  
7 now and you've got to address the lateness factors.

8 MR. GUILD: So that the ER does not do the Agency's job  
9 for it -- it's simply the Applicant's submission. We could not  
10 file a Draft Environmental Statement contention challenging the  
11 Agency's deliberative process based on the Environmental Report.

12 JUDGE KELLEY: That's quite true -- that's quite true.  
13 The fact remains that there are judgements made in the ER and the  
14 Staff comes along in many cases and may say, that's right, we  
15 agree with that, we're going to put the same thing in the Impact  
16 Statement, and when they do that, that's not -- there's nothing  
17 new in that.

18 MR. GUILD: But, yes, but when they do that it seems to  
19 me that's the point where it's our obligation to say you are wrong  
20 in doing that. That's what we're trying to respond to.

21 JUDGE KELLEY: We say that 687 says your obligation  
22 arose six months ago with respect to the ER.

23 MR. GUILD: Well --

24 JUDGE KELLEY: Okay, difference of opinion.

25 MR. GUILD: I just would ask you to take that into

JMS 5 1 -- that view into account and your earlier instruction to us into  
2 account when you read the rest of these contentions. I mean there's  
3 just only so much burden can put us to and we respectfully disagree  
4 with the notion that even the Appeal Board was saying you should  
5 have gone back at the ER stage and guessed what the Agency's  
6 Environmental Impact Analysis would be, based in part or in whole  
7 on that analysis.

8 JUDGE KELLEY: Well, I think -- you know, I understand  
9 your point and I hope you understand mine, and I think -- I'll  
10 keep that in mind, and we'll just go on with it.

11 MR. GUILD: Thank you.

12 JUDGE KELLEY: Shall we take a stretch -- 10 minutes?

13 MR. RILEY: Judge Kelley, may I answer Judge Callihan's  
14 question?

15 JUDGE KELLEY: Now or later? Go ahead.

16 MR. RILEY: Simply add one half 02 to the right hand side  
17 of the equation.

18 JUDGE CALLIHAN: Thank you.

19 JUDGE KELLEY: Okay, let's take 10 minutes, no more than  
20 10 minutes.

21 (A short recess was taken.)

22 JUDGE KELLEY: We're back on the record. We'll take up  
23 with Contention #3 concerning Chlorine and maybe the approach here  
24 that would do best and clear and straight forward it seems to me,  
25 we've got opposition papers suggesting that it's been covered in the

JATG6

1 ER and we can read that ourselves. We don't have to discuss that  
2 part of that. Would you like to comment otherwise on the oppositions  
3 to this contention?

4 MR. RILEY: Yes, I would, Judge Kelley. If you would  
5 take a glance back about the equation in #2 and it explains the  
6 nature of the problem. The chemical reaction -- if you beef up  
7 things on one side of the arrow, it moves away from that. In  
8 other words, it moves in the direction of relieving that low, and  
9 so if you add more sulfuric acid to the sodium hypochlorite, you  
10 make more chlorine. If you have less sulfuric acid in the equi-  
11 librium you have less less chloride, and the name of the game is  
12 to get enough chlorine there to discourage the growth organisms,  
13 primarily Corbicula, so what you want is a really neat position  
14 there where you have just enough chlorine to take care of the  
15 Corbicula but not too much.

16 Now, moving on to Contention #3, the table that is  
17 associated with this discussion, the table that we looked at  
18 previously, shows the chlorine moving out of the system -- this  
19 is about two-thirds the way down the table in the form of  
20 chloride ions --

21 JUDGE KELLEY: This is Table 4.4?

22 MR. RILEY: Yes, sir.

23 JUDGE KELLEY: All right, thank you.

24 MR. MCGARRY: 4.2. 4.4?

25 JUDGE KELLEY: 4.2 or 4.4?



JATG7 1

MR. RILEY: 4.4.

2

JUDGE KELLEY: Page 4-28, right?

3

MR. RILEY: Right. Now I have to make a correction in the -- pertaining to the drift, when I referred to Table 4.2 I should refer to table 4.4. If there is enough chlorine to take care of the Corbicula in the water, as six-sevenths of the water that comes in is evaporated -- the question is where is that chlorine going, and our position is that that chlorine is going in the atmosphere along with the evaporated water. How much will be going is not addressed through the DES by presumption of the DER.

12

I think this is an extremely large unsatisfied area of information, enough to drive a truck trough so to speak, and it should be addressed.

15

JUDGE KELLEY: Thank you. Mr. McGarry?

16

MR. MCGARRY: We stand on our pleading, but we would simply again reference Tab 4.4 which was provided by by the Intervenor, it's clearly an EROL document and so states. If he had a concern in this area there was the information in the ER and he could have raised it at that point.

21

JUDGE KELLEY: Mr. Johnson?

22

MR. JOHNSON: I would like to point out that on Page 5-50, Section 5.4 J.1, there is a statement concerning monitoring program of cooling tower drift which would apply not only as we have indicated to the Contention #3, but also Contention #2, in

25

JATG8

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

1 terms of whether the Staff considered possibility of affects,  
2 adverse affects to the environment. In addition, I would like to  
3 point out that one of the presumption -- assumptions in the Con-  
4 tention #3 is there will be a chlorine gas and I'm informed by the  
5 Staff that according to the Handbook of Chlorination by C. White,  
6 1972, Chapter 4, Chemistry of Chlorination, above pH 6 the reaction  
7 products of chlorine do not include molecular chlorine, so that  
8 if the pH is balanced in the way in which it is indicated, that  
9 it will be, that you wouldn't have chlorine gas.

10 JUDGE KELLEY: Let me ask you -- what if -- we're in a  
11 moment of deciding contentions on the merits, give the Staff note  
12 that we're still looking at them as adequate on their face so to  
13 speak -- should we be concerned with your last reference -- well,  
14 at all?

15 MR. JOHNSON: Well, I offered it -- admittedly, it does  
16 somewhat go to the merits whether they're correct in what they say  
17 but it also is relevant whether some standard book on the subject  
18 demonstrates that what they're stating is an impossibility.

19 MR. MCGARRY: Judge Kelley, if I may be heard, because we  
20 take the same position in many of these contentions and our position  
21 simply, we think that we have an obligation to point out to the  
22 Board if there has been a mis-statement and because there has been  
23 a mis-statement then we reach the next conclusion -- there is no  
24 basis for the contention, so you're not going to the merits, you're  
25 going to the basis. While I've interrupted for a second, just to

TG9

1 clear up one further area. On Pag 5-50, Dr. Foster, if you'll  
2 note in Section 5.14.2 that the last sentence talked about the  
3 NPDES permit. It says the permit has been extended by the State.  
4 So there is an NPDES permit in effect.

5 JUDGE KELLEY: Well, let me just comment and I won't  
6 belabor this, but looking at Contention addressed in the Disclosure  
7 type document, it does seem to be a little bit different to apply  
8 this rule about merits or not. I got the feeling in some of the  
9 pleadings that I was being led into the merits and I wasn't sure  
10 whether I ought to go there, so let me just scate a caution, and  
11 that's something I'm a little bit uneasy about, but my feeling was,  
12 let's say a contention says, your Impact Statement is wrong because  
13 your analysis to the chlorine diffusion is off and doesn't consider  
14 such and such practical, and you come back and say, oh, no, that  
15 factor isn't being used anymore, see the attached text book, and  
16 then my reaction would be let's see you at the summary disposition  
17 stage, and maybe you're right, but I can't resolve it now.

18 But that's a general concern -- but, you know --

19 MR. MCGAI Y: We share that concern and I think the case  
20 law supports that concern. We just, again, would go back and say  
21 it's a matter of judgement and so clear -- and our position would  
22 be it goes to the basis -- is there a basis, and there is no basis.  
23 It's clear on its face, there isn't a basis, to you, the decision  
24 maker.

25 JUDGE KELLEY: I think that all of us know what we're

1 talking about.

JATC10

2 MR. GUILD: Judge Kelley, we strongly object to the  
3 notion of attempting or being forced to prove our case at this  
4 stage of the pleading and would cite to the Commission, the Grand  
5 Gulf Decision, passing upon the question as to whether an Inter-  
6 vention petition should be granted and the weighing of the con-  
7 tention. It is not the function of the Licensing Board to reach  
8 the merits of any contention contained therein. Section 2.714 does  
9 not require the petition to detail the evidence which will be  
10 offered in support of the contention.

11 JUDGE KELLEY: Right.

12 MR. GUILD: It's enough that as here the basis for the  
13 contention respecting the inadequacy of the consideration of X  
14 is identified with reasonable specificity and that's a 1973-80 C  
15 Case and we believe that there's nothing that has intervened since  
16 then in terms of decisional authority alters that burden of Inter-  
17 venors.

18 JUDGE KELLEY: We'll attempt to apply that principle.

19 Okay.

20 MR. CALLIHAN: Mr. Johnson, with apology what was your  
21 reference to the monitoring program?

22 MR. JOHNSON: Page 5-50, Section 5.14.1.

23 MR. CALLIHAN: Thank you, and Mr. Riley, is this a --  
24 is this a new contention or is this related to one of the earlier  
25 ones?



JATG11

1 MR. RILEY: This is a new contention, sir, and inciden-  
2 tally, 5.14.1 refers to infrared photographs of the area. It seems  
3 to me it's totally irrelevant with respect to the matter at issue.  
4 It's monitoring but it's not monitoring what we're after.

5 MR. JOHNSON: Well, may I respond to that?

6 JUDGE KELLEY: Yes.

7 MR. JOHNSON: I think we're talking about impacts -- Mr.  
8 Riley himself is worried about dilatorious impacts and this may be  
9 a method for doing that.

10 MR. RILEY: And it may not be.

11 JUDGE KELLEY: Well, let me ask you, Mr. Johnson, the  
12 thrust of the contention as I understand it is that the Inter-  
13 venors are saying that chlorine is a noxious gas substance, and  
14 a lot of it is going to be coming out in these cooling towers and  
15 there isn't any analysis for chlorine per se in here. You talk  
16 some about salt. You've got a monitoring program, but there's  
17 nothing in here about chlorine to speak of, or at all -- I'm not  
18 sure which of the two it is.

19 Now are you saying -- well, first, is there any discussion  
20 in here at all other than a reference to chlorine in Table 4.4 to  
21 chlorine drifts?

22 MR. JOHNSON: There's a discussion on Page 4-7. It says,  
23 "The applicant will control the discharge concentration of total  
24 residual chlorine in the cooling tower blowdown by interrupting  
25 system blowdown during the time of application of biocide,"

1 JUDGE KELLEY: I'm sorry, I'm trying to stay with you.

JATG12 2 Where is this?

3 MR. JOHNSON: At the very top of Page 4-7.

4 JUDGE KELLEY: Okay.

5 MR. JOHNSON: My reading of that is that the Applicant  
6 is saying that he is quite concerned that the minimization of the  
7 amount of residual chlorine that comes out of the -- in the dis-  
8 charge during the blowdown and that that be adjusted to minimize  
9 the residual chlorine concentrations.

10 MR. RILEY: I think in simple language, Judge Kelley,  
11 it means that the liquidity fluent will have less than .1 milligram  
12 per liter of chlorine but it doesn't say anything about the gases.  
13 The best way to get the level of liquid down is to evaporate it  
14 into the atmosphere.

15 JUDGE KELLEY: What I'm trying to get at is, is it the  
16 Staff's position that chlorine blowdown whether liquid or gaseous  
17 is a trivial matter in this case and need not be the subject of  
18 any extended consideration?

19 MR. JOHNSON: I believe that is the Staff's position.

20 JUDGE KELLEY: Is it the Intervenors position that it's  
21 non-trivial, that it's serious and ought to be analyzed in greater  
22 detail?

23 MR. RILEY: Correct.

24 JUDGE KELLEY: That helps me.

25 JUDGE FOSTER: For clarification, is it a correct under-

JATG13

1 standing of ES-3 that the concern that you have is related to the  
2 atmospheric concentration of chlorine as contrasted with the  
3 equatic concentration?

4 MR. RILEY: That is right.

5 JUDGE KELLEY: Okay, #4 is a contention about the use  
6 of metric systems. This is the one at least that I had in mind  
7 earlier when I referred to a contention that might be a helpful  
8 clarifying comment, it might not, but I didn't see it as a subject  
9 of litigation. I made the suggestion that you consider the comment  
10 and see whether you didn't agree with that suggestion with re-  
11 spect to some of the contentions, or whether you don't. I think  
12 -- I think, at least on this one, are we in agreement that we  
13 don't see this as a litigation contention?

14 (Judge Kelley, Judge Callihan and Judge Foster confer.)

15 JUDGE KELLEY: The Board doesn't see this as a subject  
16 of litigation, and of course, we may just have to make a formal  
17 ruling on it, but that's our view. Mr. Riley, let me ask you  
18 whether you've given that further thought -- to my earlier state-  
19 ment, and what your reaction would be? I would just as soon pass  
20 this and move on to a more substantive -- move on a litigation,  
21 if you will, litigation type point.

22 MR. RILEY: I think we can dispose of this readily. I'm  
23 trying to call attention to the fact that when you look at .3  
24 cubic meters per second, you have a very different impression  
25 than if you look at 28,500 tons a day. All I'm saying is I'll be

JATG14

1 satisfied if there were uniformity in expression in units. I will  
2 be glad to withdraw this as a litigative contention, because I  
3 think that the positions that have been taken are very reasonable  
4 positions. I did want to call this to the attention of the Board.

5 JUDGE KELLEY: Let me ask the Staff -- is there a prac-  
6 tice or are you under any requirement to deal in metrics -- I  
7 don't know.

8 MR. JOHNSON: I saw it somewhere just recently that  
9 the Reg Guide, 4.2, I think it was in the Applicant's pleading,  
10 where -- the direct use of metric --

11 MR. MCGARRY: Right.

12 JUDGE KELLEY: Of course they don't have the force of  
13 law.

14 MR. GUILD: Judge, let me add only this point. It's our  
15 view that when the Staff publishes a Draft Impact Statement for  
16 comment, the function of that statement is to solicit critiques  
17 and comments from the general public as to what they believe -- the  
18 Staff believes, to be the adverse impacts of the action that they  
19 propose to take. In this instance, one reflection of what we  
20 think is a choice of terms that tends to mitigate or minimize the  
21 impact as to the reader and we just think in fairness if the Staff  
22 uses a uniform set of units of measure and is consistent in that,  
23 the reader gets a fair understanding of what the Staff's appraisal  
24 of impacts is and will distinguish the significant from the in-  
25 significant and focus attention on the ones that are significant.



1 MR. RILEY: Let me clarify this. It isn't metrics versus  
2 English that's involved here. Let me point out. It's seconds  
3 versus days and we can talk about 26,000 metric tons per day and  
4 be talking about the same thing.

5 JUDGE KELLEY: Let me make sure I'm with you. Let me  
6 find your contention there. Go ahead.

7 MR. RILEY: Would you like me to address the Contention  
8 5 now?

9 JUDGE KELLEY: Let me just express agreement with the  
10 broad principle. My personal agreement -- the FES ought to be  
11 written not necessarily in layman's language, but at least so  
12 that people can understand. We're going to make some intellectual  
13 effort, but you ought to take a term that carries with it a meaning  
14 to someone, and there lots of ways to do that and lots of ways to  
15 point out whether it's seconds or hours or days, and I think the  
16 Staff -- I'm sure they are aware of that, and would seek to do it  
17 to the extent that it may not have been done in all places here,  
18 we should consider your comments. Okay, why don't we go on to #5.

19 MR. GUILD: Mr. Riley speaks for both CESG and Palmetto  
20 in withdrawing this as a proposed contention for litigation. This  
21 -- we simply wanted to bring it to the attention of the Board.

22 JUDGE KELLEY: Okay, fine. Are you speaking of #5 or #4?

23 MR. RILEY: #4.

24 JUDGE KELLEY: You're speaking of #4. You're back to  
25 that. All right, #4. Okay, #5. Is the first sentence really a

JATG16 1 problem, Mr. Riley. I saw some explanation of why this was being  
2 done.

3 MR. RILEY: I think that's rather a nigley detail, but  
4 the important thing is the 25 percent difference. Now that is  
5 based on new information. On July 19, this year, the Staff ad-  
6 vised the Applicant that McGuire was to be run at no more than  
7 75 percent of graded power. The steam generators in Catawba Unit  
8 1 are the same steam generators as in McGuire Units 1 and 2, and  
9 apparently the problems are generic as encountered in a Swedish  
10 steam generator, encountered with Spanish steam generators, and  
11 these are all referred to in Staff's correspondence with the  
12 a-plicant and it seems very reasonable to anticipate that Catawba  
13 unless there is some major change in circumstance, will be subject  
14 to the same operation provision. This makes for a very serious  
15 difference in the benefits of the plant in terms of the turning  
16 out more or less three-quarters as much as it was expected to  
17 turn out.

18 The Staff had some problems with 60 percent and 75 per-  
19 cent and apparently thought the capacity factor was being referred  
20 to full time . 75 percent is maximum output, 60 percent is  
21 capacity benefit.

22 JUDGE KELLY: Maybe you've already said this, and I'm  
23 just not grasping it yet, if you reason that the Catawba Units  
24 should be rated from 75 percent number because of the McGuire  
25 problem, what capacity factor does that give you?

1 MR. RILEY: It doesn't. The capacity factor is based  
2 on other things, but the general experience --

3 JUDGE KELLEY: I'm sorry, that's how much of the time  
4 you run.

5 MR. RILEY: Exactly. Exactly.

6 JUDGE KELLEY: But what about if you had electrical  
7 output, it takes you from what to what if you crank in 75 percent  
8 instead of 100?

9 MR. RILEY: It takes you from 12 million Mwt. hours per  
10 year down to 9 million, and if you'd like a cite, it's in one of  
11 the DES tables.

12 JUDGE KELLEY: It cuts you by 25 percent almost by  
13 definition.

14 MR. RILEY: Exactly.

15 JUDGE KELLEY: All right.

16 MR. GUILD: That's assuming it runs the same number of  
17 hours a year as it would at full capacity.

18 JUDGE KELLEY; Okay, but it's 25 percent cutback in net  
19 output.

20 MR. GUILD: Yes, sir.

21 JUDGE KELLEY: That's a rather straight forward point.  
22 Mr. McGarry, you want to speak to it?

23 MR. MCGARRY: We stand on our responses, two observations  
24 with respect to capacity factors. The capacity factor, there  
25 embraces the concept that there will be plant down time for various

JATG17

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

1 reasons. This would be one of those reasons, and it's averaged  
2 over the life of the plant, but the important factor with respect  
3 to this contention, is that it's not new. The Intervenors have  
4 known about the steam generator -- the steam generator situation  
5 for over a year and indeed Mr. Riley is on the service list at  
6 McGuire and received the documents concerning steam generators  
7 back in September of 1981, and I guess the last one is the  
8 particular rating of McGuire has been in place for over a year.

9 JUDGE KELLEY: Mr. Johnson?

10 MR. JOHNSON: We have nothing to add.

11 JUDGE KELLEY: Let me ask you this question. If you  
12 assume the validity of Mr. Riley's thesis and if you wanted to  
13 look at this just like it -- just like McGuire, and knock it down  
14 25 percent, and if you took both numbers, 9 million instead of  
15 12 million and you look at the cost benefit resulting from that,  
16 does it still hook the balance in favor of the plant, but does  
17 this change -- does the rating effect change in the cost benefit  
18 analysis, to such a degree? What can you say -- I don't know.

19 MR. JOHNSON: You're not asking me whether -- suggest  
20 the question of whether it's a temporary problem or --

21 JUDGE KELLEY: Not really -- I'm asking you -- maybe it's  
22 pretty hypothetical -- maybe it's unfair, but I'm simply saying,  
23 well, can you just say, so what, so it's down 25 percent, we still  
24 less -- is that what the Staff concluded -- or have you done that  
25 analysis?



JATG19 1 MR. JOHNSON: Well, that occurred to me, Your Honor.  
2 that you had 9 million Giga-Watts if that's what it is, instead  
3 of 12, it seems to me that you would still have no large benefit  
4 in terms of cost benefit analysis. That wouldn't change from  
5 large to something small. It certainly wouldn't be nil.

6 JUDGE KELLEY: I'm thinking of a case, Pennsylvania  
7 Reactor I think -- well, on the river follower where the river  
8 goes up and down, and when the river is up you run it and when  
9 the river is down you shut it off, and they had to do an analysis  
10 on that and they came out with like 50 percent instead of 75, and  
11 still came out licenseable, so I just wondered if this was such  
12 a dramatic change that it changes the results.

13 MR. JOHNSON: I think that we analyze the use of 60  
14 percent and you'll average the capacity factor for the analysis  
15 which I believe is the information that we've used in the ER, and  
16 beyond -- it seems to me that that takes care of any problems,  
17 especially if you consider the fact that this slightly -- and beyond  
18 that our position would be that you don't consider this problem  
19 because it's too remote.

20 JUDGE KELLEY: Doesn't that Impact Statement address  
21 this point in steam generators, de-rating at McGuire and so forth,  
22 factoring in some way into the likelihood of the availability  
23 of this plant? No explicit discussion of the point?

24 MR. GUILD: Judge Kelley, our point is that that there  
25 was their obligation and our contention arose when they did not

JATG20

1 meet that obligation by addressing that point in some form or  
2 fashion, and that arose in August of 1982 when they published this  
3 analysis without taking into account reduced capacity factor  
4 and operation level to be rated.

5 JUDGE KELLEY: In the actual derating of McGuire, the  
6 Staff ordered -- issued when?

7 MR. MCGARRY: I have the document, Judge, if you wish  
8 to see it.

9 JUDGE KELLEY: Is that a Staff document or a Staff  
10 letter?

11 MR. RILEY: Yes, it is.

12 JUDGE KELLEY: Okay, what's the date?

13 MR. RILEY: July 19.

14 JUDGE KELLEY: Of '82?

15 MR. RILEY: Right.

16 JUDGE KELLEY: From Mr. so and so to --

17 MR. RILEY: To Mr. William O. Conker from Darrell D.  
18 Isonhawn (ph).

19 JUDGE KELLEY: Okay, thank you.

20 MR. GUILD: Just so the record is clear, that's a continu-  
21 ation of a rating and derating action from McGuire and the Inter-  
22 venor -- I don't want the impression created -- it was not until July  
23 of 1982 that they were aware of this. I don't think Mr. Riley would  
24 tell this Board that's the case. They have been aware of this  
25 since July or September of 1981. The plant didn't operate until

1 December of '81 at all.

2 JUDGE KELLEY: I'm not sure that we want to relitigate  
3 the -- all the details of that particular matter.

4 MR. MCGARRY: The Court can give consideration of when  
5 they knew about it.

6 JUDGE KELLEY: We'd just like to sort of nail it down  
7 without spending a lot of time on it. The official Staff -- the  
8 official order from the Staff saying, don't let that run over 75  
9 percent -- was that the letter that Mr. Riley just referred us to?

10 MR. MCGARRY: I don't know.

11 MR. RILEY: Do you wish to see it, Judge Kelley?

12 JUDGE KELLEY: If I know the date I can always get it,  
13 if that's your copy, why don't you keep it. I'm sure we can find  
14 it. Thank you anyway, but just keep it.

15 MR. RILEY: Judge Kelley, in this earlier period that  
16 Mr. McGarry refers to, there are several phases. At one point  
17 there was -- their limit was 50 percent over a period of perhaps  
18 30 days and then there was permission, based on their request to go  
19 up to 75 percent for a very brief period, take the plant down to  
20 see what was happening, it was subsequent to that they received  
21 this authorization to operate at 75 percent rating.

22 JUDGE KELLEY: That's doubtful. I think if we decide  
23 that this is really significant, what I suppose we would do is  
24 call on Mr. Johnson to give us the Staff's brief one page, double  
25 spaced history of what went on with a copy to everybody else, if we

JATG22

1 decide it's significant. I don't want to make a big thing out of  
2 what might not be a very big thing, but I'd like to -- I guess I  
3 know enough. I know as much as I think I want to know right now.

4 MR. MCGARRY: One point I just found out and I'll be  
5 quiet after this, is we're authorized to operate up to 100 percent  
6 now. There's never been an official order saying you can only  
7 operate at 50 or 75 percent. It's been through voluntary actions  
8 of Duke Power Company working with the NRC to resolve this pro-  
9 blem that we've voluntarily gone down to 50 or 75 and it's been  
10 flopping back from there, but our license authorizes us to go to  
11 100 percent.

12 JUDGE KELLEY: The letter though that Mr. Riley referred  
13 you to we could look at that and get a pretty good handle on --

14 MR. MCGARRY: That's one of many letters that have taken  
15 place since mid 1981 that Mr. Riley has been aware of.

16 JUDGE KELLEY: Okay, let's pass on from here.

17 MR. MCGARRY: Judge, actual reading, and I again apologize  
18 for breaking protocol, but there about three contentions now that  
19 have come in and we characterize them Need for Power contentions.  
20 Our position is clear and the facts and regulations, you've told  
21 before this Board the facts and regulations and in the spirit of  
22 moving this along and -- along with the Intervenors -- I think we  
23 ought to group these contentions and that's our position and we  
24 ought not to waste that much time on it -- they're contentions  
25 that we have been over many times.

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345



1 JUDGE KELLEY: You're referring to #6?

2 MR. MCGARRY: #6, #7, #8.

3 JUDGE KELLEY: #7, #8, and the Applicants basically  
4 contend that those are impermissible Need for Power contentions,  
5 and you elaborate upon that a bit later if you want to do that.

6 MR. MCGARRY: Yes.

7 JUDGE KELLEY: I just want to take a half a minute to  
8 look through these.

9 (Brief pause)

10 JUDGE KELLEY: Mr. Riley, can you tell me what a bus bar  
11 cost is?

12 MR. RILEY: Yes, sir, it's costs of all elements going  
13 into producing the Kilowatt hour of energy at that point leaving  
14 the station. That means salaries, it means return to investor,  
15 it means fuel costs, it means the investment --

16 JUDGE KELLEY: That's a very strange phrase.

17 MR. RILEY: It comes from the electrical industry, sir.

18 JUDGE KELLEY: Okay. Mr. Riley, you can speak to these  
19 two, or the combination of the two?

20 MR. RILEY: Yes, sir.

21 JUDGE KELLEY: You're familiar with the Applicants and  
22 the staff's papers and the Applicant stated this position on the  
23 need for power ground. Perhaps you could speak to that general  
24 point.

25 MR. GUILD: Yes, sir, let me start by responding to

JATG24

1 Mr. McGarry's observation. We of course maintain that if forced  
2 to demonstrate a need for the facility, the Applicants would have  
3 been able to do so. We recognize that the Commission for whatever--  
4 for the wisely or otherwise has barred consideration of need for  
5 power issues at the OL stage. We may dispute the wisdom of that  
6 but that's been done. A number of our contentions that were  
7 otherwise litigatable were dismissed because of that intervening  
8 rule.

9           The Staff's Impact Statement as most Impact Statements  
10 do, says under the section "need for the action" that they no  
11 longer have to analyze the need under that rule, and there's a  
12 blank page, however, consistent with NEPA --

13           JUDGE KELLEY: That really makes the point doesn't it?

14           MR. GUILD: It certainly does. Consistent with NEPA,  
15 the Staff still must have a benefit to balance all of the environ-  
16 mental and other costs against, and they perform a benefit analysis,  
17 and that's the point that Mr. Johnson had reference to when he was  
18 talking about 12 billion versus 9 million Giga-watts of electricity,  
19 a large benefit. It's our position that these series of conten-  
20 tions challenge the Staff's assumptions about the magnitude or  
21 the existance of those benefits, So it's not need for power that  
22 we assert, or lack of need for power that we asser here. We'd  
23 like to, but we can't. What it is we assert is that they have  
24 erroneously weighed or analyzed the alleged benefits of the action  
25 that they have under consideration, and I at that will defer to Mr.

JATG25

1 Riley to speak to the specifics.

2 MR. RILEY: Yes, referring to the --

3 JUDGE KELLEY: Excuse me just a minute. I want to ask  
4 Mr. Guild one question. In NEPA cost benefits calculus, you have  
5 to put benefits on one side and cost on the other, right, and come  
6 out with a favorable balance, are you saying that the Commission's  
7 rule also excluded demonstration of amounts of power a plant would  
8 produce for purposes of looking at benefit?

9 MR. GUILD: No, sir, it didn't, and the Staff understood  
10 and must agree with that position because they do --

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

RA hl

1 MR. GUILD: No, sir, it didn't, and the staff understood  
2 and must agree with that position because they do put that calculus  
3 in the amount of electricity and the value of that benefit.

4 JUDGE KELLEY: Okay, and so as you look at, I guess,  
5 what the staff concluded is assuming that it is needed.

6 MR. GUILD: Yes, sir.

7 JUDGE KELLEY: Saying, total output will be sold in  
8 one way or another and that can be looked at as a benefit.

9 MR. GUILD: They add in a number of factors on the benefit  
10 side of the scale, jobs, tax dollars, and electricity, etc., and  
11 we challenge a number of those points in terms of magnitude or  
12 existence of those benefits through these contentions.

13 JUDGE KELLEY: Go ahead, Mr. Riley.

14 MR. RILEY: This is summarized in Table 6.1 of the  
15 DES.

16 JUDGE KELLEY: What page is that on?

17 MR. RILEY: 6-4.

18 JUDGE KELLEY: Pardon?

19 MR. RILEY: Page 6-4.

20 JUDGE KELLEY: Okay.

21 MR. RILEY: And the staff assessment of the benefit  
22 of the electrical energy is given as large and that raises a question  
23 of what size would it be at 9 million--I am sorry, 9 billion  
24 kilowatt hours per year.

25 Our position for Contention 6 is that using the Applicant's



1 present forecast that growth--the fact that McGuire II is yet  
2 to go on line, by 1985, there will still be around a 3 percent  
3 reserve. It seemed that the fear of striking a balance of costs  
4 in the magnitude of 12 or 9 billion kilowatt hours should be taken  
5 into consideration.

6 JUDGE KELLEY: Are you saying as a legal matter that  
7 it is not proper for the staff to measure the full output for  
8 this plant subject to a capacity factor of some kind?

9 You just assume that full output is going to get sold  
10 and there is a benefit of some kind?

11 MR. RILEY: I am saying something very like that. I  
12 am saying that our best present information is that we have no  
13 reason or no assurance that that plant will not be de-rated  
14 25 percent.

15 JUDGE KELLEY: Lets put that part to one side.

16 MR. RILEY: Okay.

17 JUDGE KELLEY: Go ahead.

18 MR. RILEY: Now, if McGuire II is present, given the  
19 present rate of growth.

20 JUDGE KELLEY: Now that's the point, annual growth.  
21 That is what need for power is all about, isn't that right?

22 MR. RILEY: May I continue just a moment because it  
23 will look alot less like that?

24 If there is a great surplusage of power, whether it  
25 is 9 billion or 12 billion kilowatt hours per year that they have,

RA h3

1 they are going to have to shut down other facilities, and if they  
2 are going to shut down other facilities, that is a cost in it  
3 for them, so a cost benefit consideration.

4 JUDGE KELLEY: And if they have to shut down other faci-  
5 litites, it will be because there isn't enough need for power  
6 and that will involve this Board in figuring out need for power  
7 which we have been told not to do.

8 MR. RILEY: It is a real catch-23 situation. I mean,  
9 if I may say so, it's absurd to disregard the need for power  
10 when you are talking about capacity for generating power.

11 JUDGE KELLEY: Well, okay.

12 MR. RILEY: But if you have a 12 billion dollar or a  
13 12 billion kilowatt hour, or a 9 billion kilowatt hour on the  
14 positive side added to the system, added to the society, added  
15 to the community, and yet you take away a 12 billion kilowatt  
16 hour because you shut down other facilities, you have to put that  
17 into the calculus somehow and that is the point of this contention.  
18 You can't just add a plus in and ignore the minus. Either it  
19 is a neutral figure or it is something less than the 12 billion  
20 the staff uses and that is the basis and the point of the assertion.

21 Or to be very liberal about it, under the cost column,  
22 one can see a large offsetting cost in terms of, you might say,  
23 a negative 9 to 12 billion kilowatt hours accumulated capacity.

24 JUDGE KELLEY: This is when McGuire gets shut down?

25 MR. RILEY: When McGuire gets shut down or Blues Creek

1 gets shut down, whatever the plant is shut down, you make a justi-  
2 fication for operating Catawba.

3 JUDGE KELLEY: So we are supposed to sit here as a Board  
4 and decide when McGuire is going to be shut down?

5 MR. RILEY: I didn't suggest it would be McGuire, sir.

6 JUDGE KELLEY: Well, if it were to go beyond McGuire,  
7 and they are down the road here, now what else are we supposed  
8 to speculate about? That's why they got into this as I understand  
9 it.

10 MR. RILEY: It is simply this. If Catawba is to go  
11 on with its energy output at the time they say it is, something  
12 else is going to go off. The public has already paid a lot of  
13 money for that something else and anyway you slice it, that's a cost  
14 to the public, and it should show up in any balancing event that's  
15 in cost.

16 JUDGE KELLEY: I don't see how you get around a big  
17 litigation on need for power under your thesis, I just don't under-  
18 stand it.

19 MR. RILEY: Well, perhaps you can help--

20 JUDGE KELLEY: You could file a petition for a waiver  
21 of the Commission's rule explaining why they were misguided, they  
22 didn't understand and that we should look at it differently, but  
23 I think--

24 MR. RILEY: Not using the phrase of your need for trans-  
25 portation, lets assume you have a perfectly satisfactory 1975

1 Chevy and somebody comes along and sells you on a nice new 1983  
2 Coup-dé-Bee(sic). All right, while there has been a benefit,  
3 there has also been a loss because that Chevy isn't going to see  
4 anymore use. It is that sort of situation. It is a displacement  
5 effect.

6 JUDGE KELLEY: Maybe the Chevy keeps right on driving,  
7 maybe my kid turns 16, who knows? You know, there are ways.

8 On 7 then, maybe you ought to restate 7. This seems  
9 to me somewhat different thrust.

10 MR. RILEY: Well, the DES finds an economic benefit  
11 for the plant because it only associates with the plant's operation  
12 fuel costs and operation and maintenance costs, that is Section  
13 6.4.2.1. But certainly if you take a look at real cost and real  
14 benefit, it is the public that benefits by the availability of  
15 electricity. It is also the public that pays the cost for it,  
16 and what we are saying here in 7 is that the fixed charges should  
17 not have been ignored with respect to figuring cost benefit.

18 There are two aspects to this. The company has an equity  
19 on the order of 35 to 40 percent in the Catawba plant. Under  
20 North Carolina Utility law, they are permitted earnings, based  
21 on their equity for plants that go into the rate base. What it  
22 means is that in the real world if a plant operates, the customer  
23 is going to have to pay more for electricity from that nuclear  
24 plant than he would have for the coal plant that had to be retired  
25 and this certainly is a cost.



1 JUDGE KELLEY: I just want to make sure I understand your  
2 point. Insofar as the Impact Statement claims there is a benefit,  
3 electricity at a reasonable cost, even at a low cost, you have  
4 to look at costs, I assume.

5 MR. RILEY: What the consumer pays. In other words,  
6 the customer pays fixed charges along with operating and fuel  
7 costs. He doesn't just see the operating and fuel costs. He  
8 sees the whole bit.

9 JUDGE KELLEY: All right, in fixed charges now, what  
10 am I going to find in fixed charges that the staff hasn't included  
11 in the Impact Statement?

12 MR. RILEY: There is no statement about the earnings  
13 level to be associated with that component in the fixed charge.  
14 If the plant is not permitted to operate, the customer's charge  
15 will be less and the electrical supply will be the same.

16 The door is open to that by the third item under direct  
17 benefits where it is stated that they will reduce generating costs,  
18 but leaves out the fixed charges component, so the customer is  
19 going to see a bigger bill, not a smaller one.

20 JUDGE KELLEY: I wonder if you could be real patient  
21 with me and tell me again what fixed charges includes? Are we  
22 talking now of North Carolina Utility Law, could you answer that  
23 question? Is that right?

24 MR. RILEY: That certainly is part of it.

25 JUDGE KELLEY: Okay.

1 MR. RILEY: The fixed charges are the installments  
2 of capital costs or the borrowing to build the plant. Part of  
3 that borrowing is done through what is known as mortgage and  
4 refunding bonds, part of it is done through preferred and preference  
5 stock, part of it is done through the sale of common stock. Now  
6 the common stock is the company's equity, it's their share of  
7 it and they are permit to make earnings--they have been asking  
8 for 17-1/2 percent of this portion of their equity. Those would  
9 all be in the category of fixed charges and they will be the same  
10 whether the plant generates the coal or not.

11 JUDGE KELLEY: So you are saying, are you, that the  
12 Impact Statement distorts, it doesn't accurately state the cost  
13 of this electricity?

14 MR. RILEY: Exactly right.

15 JUDGE KELLEY: And that therefore the benefit side is  
16 inflated to the extent that that is true.

17 MR. RILEY: Right.

18 JUDGE KELLEY: Are you saying that it crucially affects  
19 the balance or merely that it has some effect?

20 MR. RILEY: I am saying it has a very significant effect.

21 JUDGE KELLEY: Mr. McGarry?

22 MR. MCGARRY: We stand on our pleadings, page 29.7.  
23 This Board has already ruled on this exact contention. The big  
24 point is we are talking about some cost, construction costs, capital  
25 costs. That is not appropriate at this stage of the proceeding

1 and pts back to--

2 JUDGE KELLEY: Mr. Johnson?

3 MR. JOHNSON: I have nothing further to add.

4 JUDGE KELLEY: Okay.

5 JUDGE CALLIHAN: Mr. Riley, would you read to yourself  
6 the penultimate sentence in number 7? To me there is something  
7 missing. "A difference between" what?

8 Or between the FES and what?

9 MR. RILEY: "A difference between", okay. I haven't  
10 read that sentence, I am sorry.

11 (Brief pause.)

12 Yes, sir, there is something missing.

13 Please insert after "CP FES", and the OL DES, "and  
14 the OL DES is that it provides a capital cost figure for Catawba  
15 of \$1,055,272,000".

16 JUDGE CALLIHAN: So it now reads, "A difference between  
17 the CP FES and the OL DES"?

18 MR. RILEY: Yes. Let me put it in more straight forward  
19 language. There was a considerable discussion of capital cost  
20 in the construction permit stage environmental statement, something  
21 like five different alternative configurations of the plant are  
22 looked at and each one is priced out.

23 The capital cost has strangely disappeared as a considera-  
24 tion from the current draft of our little statement. We have  
25 no sense of what that plant is estimated at, and I am saying that

h9

1 although that may not be absolutely essential figure to making  
2 a finding, it does provide some perspective of what the cost  
3 in the plant is and it can lead to consideration of fixed charges.

4 JUDGE CALLIHAN: This certainly has a familiar ring  
5 to me. How does it relate to your earlier contention?

6 MR. RILEY: I wouldn't be surprised but what there is  
7 some overlap but the point here is, the Draft Environmental  
8 Statement has changed from construction permit stage and it is  
9 made in judgment that involves this, and the judgment from our  
10 point of view is a favorable one in that it makes the cost of  
11 power appear to be less than it is.

12 JUDGE CALLIHAN: Now would you address my remark as  
13 follows, but much of this cost of construction of Catawba has  
14 already been expended; how does that get plowed back into this  
15 description?

16 MR. RILEY: I would agree completely with your remark  
17 and I would refer back to our first contention filed in December  
18 of last year in which we sought the earliest possible termination  
19 of activities at Catawba I and Catawba II to keep this fixed cost  
20 from going further. I feel the greatest public benefit would  
21 be there.

22 JUDGE CALLIHAN: That was a familiar ring. Thank you.

23 MR. GUILD: The record should reflect, Judge Kelley  
24 and Judge Callihan, that that contention is barred by the need  
25 for power unit. Nonetheless the staff of the Regulatory Commission



RA hlQ

2 supports granting an operating license based on an assessment  
3 of benefit that we believe to be erroneous and that is what this  
4 contention addresses.

5 MR. JOHNSON: Did you want any comment from me on that?

6 JUDGE KELLEY: Sure.

7 MR. JOHNSON: It seems to me that, I could just  
8 reiterate, the distinction between the cost to the consumer that  
9 are based on fixed capital costs are figured into the rate base  
10 and the regulatory direction or the precedent that is recognized  
11 in the ruling in the Short Harris case that some costs are not  
12 considered at the operating license stage and that is virtually--  
13 that is what they are asking be done here and so the fact that  
14 you may consider it in your rate base and it is a change, it is  
15 still not going to affect that consideration because it is not  
16 before you now.

17 JUDGE KELLEY: I think 8 raises some similar consideration  
18 looking at it if you want to add on that, Mr. Riley?

19 MR. RILEY: Yes, I would, if you please. The Draft  
20 Environmental Statement introduces the concept of socio-economic  
21 impact and concludes that it is beneficial, so it puts something  
22 in the middle of the pans. We are pointing out if you are going  
23 to put up that balance, there is something that can be put in  
24 the other pan. That is that what it is going to cost the users  
25 of the applicant's power in terms of the higher rate they will  
have to pay for the electricity made available by this plant.

1 JUDGE KELLEY: Okay.

2 JUDGE CALLIHAN: That is page 5-2. I beg your pardon,  
3 5-12, I apologize.

4 MR. RILEY: That is correct, sir. It is Section 5.8  
5 on that page.

6 JUDGE KELLEY: Anything else?

7 JUDGE FOSTER: I would like to ask the question that  
8 Dixon usually asks and that is, is this a restatement of a conten-  
9 tion that you submitted earlier?

10 MR. RILEY: I don't really think it is, Judge Foster,  
11 because earlier we didn't know how the staff was going to make  
12 its weighing, we didn't know that it was going to conclude that  
13 there was a favorable socio-economic benefit. They have made  
14 that statement, so concluded, and we challenge that.

15 JUDGE FOSTER: But it has a familiar ring relative to  
16 the contentions that you submitted last year.

17 MR. RILEY: It is in the subject area, sir, but it  
18 is very definitely tied to the evaluation, the judgment made by  
19 the staff in fulfilling its NEPA duties.

20 JUDGE FOSTER: Okay.

21 JUDGE KELLEY: Well, moving on to number 9 concerning  
22 spent fuel pool. It appears to be fairly straightforward about  
23 the question of what's new in number 9 as opposed to what might  
24 have been available information before, notably in the applicant's  
25 filing.

1 MR. RILEY: Well, if we go back CP stages, much of it  
2 is new. If we go to the current ER, there is no change here.  
3 The matter that is involved again is the evaluation and the  
4 evaluation is that routine releases from spent fuel are taken  
5 into account, apparently comfortably so and increasing so greatly  
6 the amount of fuel at the present, we have greatly increased the  
7 source term for several types of potential accident. If it is  
8 appropriate, I will go into that, those types of potential accident  
9 at this point; if it is not, fine.

10 JUDGE KELLEY: Well, the sentence where you say, "Since  
11 the CP FES both fuel pool accidents relating to handling (to be  
12 discussed in the SER, p. 5-19) and pool water loss have become  
13 topics of concern." That is all you say about accidents and I  
14 don't know what kind of accidents. It seems to me, if you are  
15 interested in accidents in this contention, then there is a lack  
16 of specificity in that part of it.

17 MR. RILEY: Perhaps what we need to do is fuse it with  
18 a later contention where we are concerned about the effect of  
19 missiles of the fuel pool. One specific hypothetical would be  
20 an aircraft coming down on the fuel pool.

21 JUDGE KELLEY: Well, that comes later, right?

22 MR. RILEY: It does.

23 JUDGE KELLEY: Well, okay.

24 JUDGE CALLIHAN: The penultimate sentence however  
25 kind of points out a continuing absence rather than something

h13

1 new and I am not sure that that quite qualifies in our ground  
2 rules, if I interpret the penultimate sentence. The sentence  
3 says to me that it wasn't considered before and it is not considered  
4 now, is that the intent? It says "They", they being consequences,  
5 "They appear not to be explicitly considered in the DES".

6 MR. RILEY: That is correct. I agree with your reading.  
7 It would be a pleasant surprise--lets put it this way--if the  
8 staff had considered the consequences of several types of fuel  
9 pool accidents. The point is that there is an enormous inventory  
10 of radionuclides in a fuel pool that has seen something like three  
11 years of storage. Now, the plans for this fuel pool are to take  
12 McGuire and Oconee fuel pool and take all of the disposition  
13 they are able to afford them and accomodate them. That was based  
14 on the amendment to the license that was made after the CP stage  
15 was completed. What it means is with this enormous source term  
16 that if you have a figure of cooling water, you can really be  
17 in for some major consequences. These consequences were not  
18 grieved about previously nor are they grieved about now. It is  
19 perfectly obvious that they are recognized because the West German  
20 government authorized a consultants report on the subject. I  
21 obtained a translation of this consultant's report from the NRC  
22 staff so they certainly have cognizance of this type of accident.

23 JUDGE KELLEY: Maybe we should just pass to the staff  
24 and ask them you didn't discuss fuel pool accidents in the impact  
25 statement, draft statement, is that correct, and/or if not, why



1 not?

R. h14 2 MR. JOHNSON: On page E-2 of Appendix E, the position  
3 of the staff is stated. In addition, at another point with respect  
4 to another contention, we referred to a statement--I am not sure  
5 exactly - page 5-19, that the aspects of handling spent fuel from  
6 Oconee and McGuire within the fuel-handling facility at  
7 Catawba will be discussed in the SER and the fuel-handling of Catawba  
8 generators will also be handled there as well, so that is a subject  
9 for the SER.

10 JUDGE KELLEY: Can I just take you back to E-2, I am  
11 looking at it. Where on E-2?

12 MR. JOHNSON: It is the paragraph before the title  
13 "Event V", "Probabilities and release fractions". And the  
14 conclusion is, "impacts of these types of accidents are well below  
15 the impacts of the reactor accidents presented here", so it was  
16 considered to be bounded by what was analyzed, so, for the reasons  
17 stated therein.

18 JUDGE KELLEY: And what was analyzed in this section  
19 were various types of design base accidents, right, in the plant  
20 but no spent fuel accidents, but the conclusion is that whatever  
21 happened in the spent fuel pool would be within some bounds of  
22 probability, would be less severe?

23 MR. JOHNSON: Yes, sir.

24 JUDGE KELLEY: I am sorry, and then the other reference  
25 was E-2 and the second reference was where?

1 MR. JOHNSON: It is 5-19--excuse me--5-19, and there is  
2 a statement that the fuel handling under the section entitled  
3 "Spent Fuel Storage".

4 JUDGE KELLEY: While we are with you, Mr. Johnson, any  
5 other comments on that?

6 MR. JOHNSON: No, I would stand on what's in the pleading,  
7 we have addressed the normal operation and accidents points.

8 JUDGE KELLEY: Okay, Mr. McGarry?

9 MR. MCGARRY: The contention is not new, the ER provided  
10 adequate information. The intervenors have been aware of this  
11 topic area. Indeed they have filed previous spent fuel contentions  
12 back in late 1981 and indeed this matter is considered in the  
13 DES. The staff has made reference to certain sections on page  
14 33 of our pleading and make reference to other sections.

15 JUDGE CALLIHAN: Picking up Mr. Johnson's remark and  
16 maybe being duplicative of Mr. Riley, the staff in its reply of  
17 October 4, 1982 at the top of page 17 "The staff has considered  
18 a range of limiting severe accidents", now, is that range too  
19 narrow or considerations too limited as the thrust of your number  
20 9?

21 MR. RILEY: One of our problems would be identifying  
22 what they considered it. Now in terms of the West German study  
23 to which I alluded, it seems to me it would be very hard to pass  
24 that off as not a severe accident. Without identifying specific  
25 accidents, it is pretty hard to judge whether they dealt with

RA hl6

1 all that you would consider serious enough to be weighed heavily  
2 in the DES.

3 JUDGE CALLIHAN: Well, can we put the shoe on the other  
4 foot and ask what do you identify as severe accidents that the  
5 staff did not and that is a rhetorical question. I don't expect  
6 an answer to it at this moment, but I express my concern.

7 MR. RILEY: Well, I could if you wish, a short answer.

8 JUDGE CALLIHAN: I think that is a deficiency somewhere  
9 in this argument.

10 MR. GUILD: We are prepared to address that subject,  
11 Dr. Callihan, if that's a trouble to the Board, but we think that's  
12 is a deficiency that exists in the staff's analysis and having  
13 pointed out that deficiency, that's our burden of specificity  
14 and it is an evidentiary matter as to which specific accidents  
15 and what their consequences would be and how that alters the  
16 cost benefit balance.

17 JUDGE CALLIHAN: Well, it has been stated before in  
18 this connection that your number 9, your ES-9 really doesn't do  
19 more than mention accidents and I am trying to figure out how  
20 or why the staff is deficient?

21 MR. RILEY: It would be my basic understanding that  
22 the staff has obligations to consider the normal operation situation  
23 and accident situation, and, in our opinion, the staff dealt with  
24 the accident question by dismissing it, saying we considered several,  
25 we don't think it is big enough, severe consequence and we feel

1 the staff is in error there. We feel there is a deficiency in  
2 their study.

3 JUDGE CALLIHAN: Well, until they know how they are  
4 deficient, what can we do about it?

5 MR. RILEY: The thing that bothers me, Judge Callihan,  
6 is that they should know where they are deficient because they  
7 have the materials in hand on the West German study that describes  
8 a very serious accident scenario.

9 JUDGE CALLIHAN: Well, could we look upon this as a  
10 criticism of DES and expect more when they come out with their  
11 Final Environmental Statement, Mr. Johnson, is that viable?

12 MR. JOHNSON: It is certainly considered as a comment.  
13 This is the first time we hear about this Germany accident scenario.

14 MR. RILEY: I realize that Mr. Johnson is handicapped  
15 in this respect and this is certainly not meant in any personal  
16 way. Well, perhaps, Judge Callihan, it would be agreeable to  
17 the Board for us to formulate a contention after the Final  
18 Environmental Statement issues pertaining to whether or not this  
19 contention is dealt with, I mean the issue is dealt with in a  
20 more adequate way or not.

21  
22  
23  
24  
25



1 JUDGE KELLEY: To the extent there is something new in  
2 the Final Environmental Statement, you could make your contention.  
3 Are you asking for sort of a -- I'm not entirely clear what we're  
4 asking, what we're considering.

5 JUDGE CALLIHAN: The staff claims in its remarks about  
6 intervenors' new contentions or revised contentions or DES  
7 contentions, that there has been considered a range of limiting  
8 severe accidents, and presumably they've been analyzed. But I  
9 understand Mr. Riley's comment is to the effect that -- in Number  
10 9, that -- one statement "The consequences of such mishaps have  
11 not been considered." My question to Mr. Riley was, why has the  
12 staff not done it and my question to Mr. Johnson was, do you  
13 take this as a criticism of the DES, do something about it in the  
14 FES. Mr. Riley says maybe yes, but then we'll file a contention  
15 after the FES is out, if they haven't done it right. Is that  
16 viable?

17 MR. RILEY: May I inject one item, and that is that  
18 staff has already indicated that the SER is to further consider  
19 the matter of fuel pool which contains fuel from Ocone and McGuire,  
20 making the source even larger. Perhaps it's just premature to  
21 shake the whole tree down.

22 JUDGE CALLIHAN: That was going to be my words. Can we  
23 hold it in abeyance and see what happens, Mr. Johnson?

24 MR. JOHNSON: Well my position on that is that we have  
25 all the information we need and I don't think that anything new is

12pw

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

1 going to develop about the source term that can be expected from  
2 the spent fuel that is coming from -- that may come from other  
3 plants. I think we discuss in another contention, in our response,  
4 that this also is bounded -- the transshipment impacts are bounded  
5 by other factors since some source term is likely to be less. But  
6 we still don't have anything to go on. I don't know what the  
7 Spearman (ph.) study is, I don't know whether it's a severe  
8 accident, a reactor melt down, I don't know whether it's a spent  
9 fuel pool; there's nothing here really for us to go on. I just  
10 wanted to additionally point out -- I was asked whether the reference  
11 in Appendix E-2 was the design-basis accident, it's severe  
12 accidents we're talking about here, just to clarify.

13           There's no basis here for anything, I think there's some  
14 obligation to go forward and say why these accidents that have  
15 been analyzed aren't bounded on the spent fuel accident, so that  
16 hasn't been done.

17           JUDGE CALLIHAN: I get the impression the staff hasn't  
18 really anything to address on the basis of criticism.

19           MR. JOHNSON: Absolutely right.

20           JUDGE CALLIHAN: The criticism is deficient in that it  
21 doesn't say what's wrong and what you've got.

22           MR. JOHNSON: That's right.

23           JUDGE FOSTER: I'd like to ask Mr. Riley if Contention  
24 Number 16, which I think you alluded to here a little bit ago,  
25 whether 16 encompasses the concerns that you had in Contention 9.

I3pw

1 MR. RILEY: It gives one accident mechanism, it doesn't  
2 discuss in detail the relationship between that accident and the  
3 source term. The source term, of course, is going to be dependent  
4 upon how much fuel is in the pool and how fresh it is. But it does  
5 cover part of it; namely, a mechanism by which there could be a  
6 loss of water in the fuel pool and a loss of providing water.

7 JUDGE FOSTER: And except for the more specific aspect of  
8 a particular kind of an accident, these two are very similar  
9 contentions, aren't they?

10 MR. RILEY: They are indeed. Sixteen is very closely  
11 tied in, of course, with the DES, it's tied in with the configura-  
12 tion of the plant, it's tied in with the fact that we're quite  
13 near an airport, tied in with the fact that we have morning fogs  
14 much of the year and there has been a commercial air line crash  
15 here within the last ten or so years and many smaller crashes  
16 recently.

17 JUDGE KELLEY: Why don't we just skip up to 16 while  
18 we're talking about it. We talked about 9, I think, pretty  
19 thoroughly. You've already started on 16, go ahead.

20 JUDGE FOSTER: Well we suggested perhaps they could be  
21 fused in some way or other and I'm just wondering -- I'm reluctant  
22 to look later on at some sort of a combination, that's why I'm  
23 probing here to see if 16 doesn't in fact substantially contain  
24 or concern Number 9. Perhaps we would not need to look hard at  
25 Number 9 in view of the existence of 16.

I4pw

1 MR. RILEY: Sixteen is pretty explicit about an external  
2 hazard being the cause of the accident. Nine is not specific on  
3 the cause of it, it could be something like a tornado taking out  
4 the trunk line, the plant becoming inoperative due to an accident  
5 caused by the loss of power and the inavailability of the cooling  
6 supply for the fuel pool. And we certainly don't wish to exclude  
7 that from consideration.

8 JUDGE KELLEY: Mr. Riley, I believe the staff has a NUREG  
9 document concerning analysis of airport hazards, it has certain  
10 criteria, so many miles for a reactor, those kinds of things. Are  
11 you familiar with that?

12 MR. RILEY: I am not.

13 JUDGE KELLEY: I believe -- I'll just ask the staff -- it's  
14 my impression that there are some pretty standard guidelines the  
15 staff follows, they may be right from the FAA for all I know, and if  
16 a reactor site does not meet those criteria it doesn't get any  
17 particular analysis. If it does, it gets analyzed. Am I right  
18 about that?

19 MR. JOHNSON: I believe you're right, Your Honor.

20 JUDGE KELLEY: I'm just wondering whether an analysis  
21 of this kind, or a statement that no analysis was needed, is around  
22 in the earlier documents. Do the applicants have -- you must have  
23 some kind of airport analysis.

24 MR. MCGARRY: Page 47 of our document, we point out that  
25 the aircraft hazard was discussed in detail in Section 2.2.3.1.3 of



I5pw

1 the FSAR.

2 JUDGE KELLEY: Is this a site situated such that no  
3 special analysis is necessary from the staff's standpoint?

4 MR. MCGARRY: Our analysis was performed consistent  
5 with that regulatory guide.

6 JUDGE KELLEY: You said there was --

7 MR. MCGARRY: Yes.

8 JUDGE KELLEY: Some in-depth analysis of aircraft hazard?

9 MR. MCGARRY: Yes.

10 JUDGE KELLEY: Okay. I'm seeking information.

11 MR. MCGARRY: The answer is yes.

12 Do you want to hear from me further?

13 JUDGE KELLEY: Why don't you go ahead while we're at  
14 you and then we'll come back.

15 MR. MCGARRY: Not only is this contention not wholly  
16 dependent upon the DES, it's not even dependent upon the DES.  
17 We're talking about airplane accidents. Clearly intervenors could  
18 have raised this matter a year ago. I just point out the information  
19 is in our FSAR, there is nothing new about an airport, the airport  
20 has been there for years, there's nothing new about morning fog.  
21 Mr. Riley has raised morning fog in his contention in the CP stage  
22 of the Catawba proceeding. One other point I do want to reference  
23 and that is Mr. Riley said we don't want to exclude from  
24 consideration other accidents. We do. When we talk about these  
25 contentions, it's a theme that runs throughout the intervenors'

I6pw

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

1 contentions; for example, we think we're here now and we talk  
2 about specificity and basis, what are the particular accidents  
3 that we're talking about. This is not a game that we're giving a  
4 for instance, what is your concern, what is the specific accident.  
5 And the only accident set forth in Contention 16 is the airplane  
6 accident. It isn't a loss of power accident, it's an airplane  
7 accident.

8 JUDGE KELLEY: Let me just ask you about this earlier  
9 analysis of the aircraft hazard with reference to I gather this  
10 would be the Charlotte airport, would you characterize that analysis  
11 as one which said well it's close but we'll make it, you know,  
12 it's up against the standard but okay, or would you say that it  
13 doesn't even come close or no problem here? Because what I'm after  
14 is shouldn't the Impact Statement talk about it one way or the  
15 other?

16 MR. MCGARRY: I'm sure it's at the bottom of the scale,  
17 but if you can give me one moment --

18 (Brief pause.)

19 MR. MCGARRY: Well, let me just answer this, in the DES,  
20 and we point this out in our pleading on page 46, the DES  
21 characterizes the concern as negligibly small. They're talking  
22 about accident associated with -- the risks associated with  
23 transportation accidents, military facilities, explosives, missiles,  
24 toxic gas, all those considerations, airplane being one of them,  
25 as negligibly small.

I7pw

1 MR. GUILD: Judge Kelley, look at page 5-32, which is  
2 where Mr. McGarry is quoting from.

3 JUDGE KELLEY: Okay.

4 MR. GUILD: The balance of the paragraph reads, "A more  
5 detailed discussion...."

6 JUDGE KELLEY: No, no, no. I didn't have it open before-  
7 hand, tell me where.

8 MR. GUILD: It's the last paragraph on Section 2, Site  
9 Features.

10 JUDGE KELLEY: Okay, I've found it.

11 MR. GUILD: I'll just go on to say that the last  
12 sentences promises a more detailed analysis of the subject in the  
13 SER, but doesn't answer the question of whether or not they  
14 considered adequately the subject of -- in this particular, Number  
15 16, an airplane crash in the spent fuel pool with the consequences  
16 that flow from that.

17 MR. MCGARRY: Judge Kelley, to answer your question,  
18 in the referenced FSAR section we conclude the probability is  
19 ten to the minus seven. That's based on an analysis performed  
20 consistent with the NUREG -- the Reg. Guide, I believe.

21 JUDGE CALLIHAN: Ten to the minus seven per something,  
22 per what?

23 MR. MCGARRY: The sentence says, "Probability of aircraft  
24 accident at Catawba based on calculation methods of Reference 11."  
25 And Reference 11 is the standard review plan aircraft hazards,

I8pw

1 Section 3.5.1.6, November 24, 1975, is approximately ten to the  
2 minus seven.

3 JUDGE CALLIHAN: That's one in ten million of something.

4 MR. MCGARRY: That'd be per year. It doesn't say it here  
5 but it would be per year.

6 JUDGE KELLEY: That would be significant, whether it  
7 was per year or per hour --

8 JUDGE CALLIHAN: Per flight.

9 JUDGE KELLEY: Per reactor-year is a fairly common  
10 number that one finds in these analyses.

11 MR. MCGARRY: And throughout this section here they're  
12 talking about yearly figures.

13 JUDGE KELLEY: Well you gave us the reference, we'll just  
14 have to look at it.

15 MR. MCGARRY: Our point is it has been therefor over a  
16 year, what's wrong with that analysis, it's never been addressed.

17 JUDGE CALLIHAN: While you're there, Mr. McGarry, please,  
18 what's the Reg. Guide number?

19 MR. JOHNSON: 0800 is the standard review plan, Section  
20 3.5.1.6.

21 JUDGE CALLIHAN: Of what?

22 MR. JOHNSON: Of the standard review plan, NUREG 0800.  
23 It's referenced also on page 15 of our brief.

24 JUDGE CALLIHAN: I thought somebody said awhile ago there  
25 was a Reg. Guide on it.



I9A.w

1 JUDGE FOSTER: Again for reference, that's in your ER,  
2 isn't it?

3 MR. MCGARRY: This is in the FSAR and I referenced one  
4 section and it's called aircraft hazard, FSAR Section 2.2.3.1.3 and  
5 it's on page 2.2-8. There are other references to airplane  
6 considerations throughout this Chapter 2 and again there's an  
7 analysis that's consistent and based upon the standard review plan.

8 MR. GUILD: Judge Kelley, that's a safety analysis done  
9 by the applicant and not an environmental cost appraisal done by  
10 the agency. And we address the environmental cost appraisal done  
11 by the agency.

12 MR. JOHNSON: Just to reiterate, the staff says in its  
13 response, page 5-33, that this was analyzed and the hazard was  
14 found to be negligibly small.

15 JUDGE KELLEY: Okay, let's see if we can have our tea  
16 in ten minutes and come back.

17 (A short recess was taken.)

18 JUDGE KELLEY: We're back on the record. We had been  
19 talking about Contention Number 16 involving the airplane accident  
20 and spent fuel pool. I think we've pretty well discussed that, are  
21 there other points that counsel didn't get to make that they want  
22 to make?

23 MR. MCGARRY: No, sir.

24 JUDGE KELLEY: Okay, we had skipped from 9 to 16 because  
25 they were related. Number 10 is also -- well it's not spent fuel,

110pw 1 it's -- it is spent fuel, it's not spent fuel pool. This is a  
2 transshipment contention. Where in the DES is this discussion?

3 MR. JOHNSON: It's in Appendix G.

4 JUDGE KELLEY: Let me just ask the staff, the discussion  
5 here of impacts, are these Table S-1 numbers -- S-4, are these  
6 Table S-4 numbers?

7 MR. JOHNSON: Which numbers are you referring to?

8 JUDGE KELLEY: Well, for example, looking at radiological  
9 impacts on transportation workers -- okay, this is DOT stuff,  
10 general public, three minutes one foot -- where do all those  
11 numbers come from?

12 MR. JOHNSON: It doesn't say there but if you refer  
13 back to page 5-18 where -- Section 5.9.3.1.2 --

14 JUDGE KELLEY: Okay.

15 MR. JOHNSON: -- right there under Transportation of  
16 Radioactive Materials, if you read through there it state further  
17 on, "The contribution of the environmental effects of such trans-  
18 portation to the environmental costs of licensing the nuclear  
19 power reactor is set forth in Summary Table S-4, reproduced in  
20 Table 5.5." It states, "The cumulative dose to the exposed  
21 population as summarized in Table S-4 is very small when compared  
22 to the annual collective dose of about 60,000 person-rem to this  
23 same population or 26,000,000 person-rem to the U.S. population  
24 from background radiation."

25 JUDGE KELLEY: But is it your understanding that the

Illpw

1 discussion in Appendix G, at least in part, is also reflective  
2 of S-4 numbers?

3 (Brief pause.)

4 MR. JOHNSON: From the document itself, there is only  
5 indirect evidence it seems to me. The reference is WASH-1238,  
6 which is the document S-4 is based on.

7 JUDGE KELLEY: One point I was making is that if you do  
8 an analysis in S-4 terms, you're really taking a table number and  
9 doing the multiplying but it isn't anything -- a site-specific  
10 thing, it's something you get out of a table and you're okay, but  
11 it's useful to know where the number does come from.

12 Is it the staff's legal position that S-4 governs this  
13 case? And I mean by this case, the perhaps little bit out of the  
14 ordinary situation where you contemplate possible transfers from  
15 other reactors to this spent fuel pool?

16 MR. JOHNSON: Yes, sir. I believe we took this position  
17 with respect to the earlier filed contentions and that position  
18 remains.

19 JUDGE KELLEY: Mr. Riley, did you say the consequences  
20 of the accidents are not referred to in quantitative terms. Could  
21 you illustrate maybe by example what you would rather see that is  
22 not here?

23 MR. RILEY: Well I'd like to see the situation  
24 quantitatively defined. For instance, on page G-2, four accidents  
25 considered in the accident analysis, (c) is cask overpressurization.

I12pw

1 JUDGE KELLEY: Let us catch up with you, where are you  
2 exactly?

3 MR. RILEY: Next to the end paragraph, 3. Accident  
4 Analyses and it's two lines from the bottom, (c), cask over-  
5 pressurization. Now that's a very succinct statement and I assume  
6 that the overpressurization is caused by fire and the fire is  
7 probably the standard fire that's assumed with setting up the  
8 engineering criteria for a cask. If I recall correctly it's  
9 1475 degrees Fahrenheit. A number of studies of fires that  
10 occur in transportation of various flammable chemicals have found  
11 that fires vary considerably in excess of 1475 and if I recall  
12 correctly 1800 degrees is sort of an average number, depending on  
13 how much you've got, you can get up to 3000. The time of the  
14 fire is 30 minutes exposure, this is what is felt overpressurization.  
15 If you've been following the newspapers in the last two weeks,  
16 there's been a chemical train fire that burned I guess over five  
17 days. The accident condition that has been considered I regard as  
18 a relatively mild condition as these things go. The consequences  
19 therefore are almost certainly going to be under-stated.

20 I also refer to the fact that casks are not actually  
21 tested physically, they're designed to take a 30 foot drop from  
22 their most vulnerable position. How does one know what it is  
23 without actually trying it out. The velocity in a 30 foot drop  
24 is about 30 miles per hour. Well we know that there are a lot of  
25 things on our highways that are moving a lot faster than 30 miles



1 per hour and I suspect fuel trucks are included.

2 This is what I mean by a concern with the fact that  
3 the accidents are not defined in quantitative terms, there is no  
4 basis for assessing how good a choice of accidents was made and how  
5 conservative the calculations are.

6 JUDGE KELLEY: Just a minute. I left my green book back  
7 at the hotel, can I borrow one?

8 MR. MCGARRY: The Regulations?

9 JUDGE KELLEY: Yes.

10 (Mr. McGarry hands a document to Judge Kelley.)

11 JUDGE KELLEY: I understand the point you just made, I  
12 just wanted to look at this table S-4, which sets forth some  
13 values for environmental impact in transportation. It's pretty  
14 cryptic as far as far as accidents are concerned. It just says  
15 radiological effect small, in the footnote, and common radiological  
16 causes, one fatal injury in 100 reactor-years, one non-fatal  
17 injury in 10 reactor-years, \$475 property damage per reactor-year.  
18 That doesn't tell you, in this table itself, even what accidents  
19 they were thinking about, let alone the parameters on the accident,  
20 whether it's 1400 degrees or 2800 degrees. There's a book under-  
21 lying this, I want you to understand that.

22 MR. MCGARRY: There's a Regulation underlying it, it's  
23 Appendix B to Part 71.

24 JUDGE KELLEY: Appendix B to Part 71, okay.

25 MR. MCGARRY: And it says when you analyze a hypothetical

114pw 1 cask accident, you consider a 30 foot drop and a certain thermal  
2 load and it's right in that Appendix, the thermal load, and it's  
3 like 1400. That's the accident you've got to consider, I don't  
4 care how that accident happens, that's the load, and these casks  
5 have all been --

6 JUDGE KELLEY: What's the cite again?

7 MR. MCGARRY: Appendix B --

8 JUDGE KELLEY: Is this in your papers already?

9 MR. MCGARRY: I don't believe so. Appendix B, Part 71 of  
10 those Regulations.

11 MR. JOHNSON: Page 546 of that book.

12 MR. GUILD: Judge, that's the basis for cask design  
13 standards though, that's not a rule setting forth accident  
14 consequences.

15 JUDGE KELLEY: Okay, I'm on 546.

16 MR. MCGARRY: Appendix B.

17 JUDGE KELLEY: Hypothetical accident conditions, and  
18 it sets forth drops and speeds and temperatures and so on, for  
19 casks. But how then do you get from that over here to Table S-4?  
20 I assume they're talking about cask accidents, that's the most  
21 obvious and that's the one we think of, but where does it say  
22 this table with these results is based on a cask accident. Where  
23 does it say that?

24 MR. MCGARRY: It clearly has it in WASH-1238, which is  
25 the underlying document to Table S-4.

I15pw

1 JUDGE KELLEY: That's the study, if you will, that  
2 produced these numbers?

3 MR. MCGARRY: That's right.

4 JUDGE KELLEY: But the upshot is you've got a rule here  
5 and it tells you these two things about accidents and if you put  
6 that in your Impact Statement, presumably that's all you need to  
7 put in. This is a legal point. Maybe you don't agree with that.

8 MR. GUILD: No, sir, we don't. We of course find our-  
9 selves in the position where you've rejected one argument on an  
10 earlier contention, and that was that S-4 was inapplicable and we  
11 stated the position it was inapplicable because it sets out the  
12 specific circumstances where it would apply and say in all others  
13 there will be an independent assessment made. You said there's  
14 no distinguishing -- significantly distinguishing features to  
15 this transshipment and we just accepted it. Beyond that, we believe  
16 that the staff has undertaken expressly to do an accident analysis  
17 and weigh the costs of that, and that's what they do at G-2 under  
18 3. Accident Analyses. And having done so and done so we believe  
19 inadequately and erroneously, we have attacked that accident  
20 analysis that they have done.

21 JUDGE KELLEY: You're saying they've gone beyond S-4?

22 MR. GUILD: I'm saying they've erroneously evaluated the  
23 costs of this facet of plant operation because they have done an  
24 erroneous accident analysis which is here and it is beyond S-4.

25 JUDGE CALLIHAN: In which way is it erroneous, in what

116pw

1 manner is it erroneous?

2 MR. GUILD: It's erroneous amongst other reasons that it  
3 fails to evaluate cask design or cask construction that does not  
4 live up to cask design, or cask subjected to accident conditions  
5 as Mr. Riley just related that exceed the conditions assumed to  
6 underlie cask design. I just wanted to direct your attention so  
7 you'll know --

8 JUDGE KELLEY: Let me stop you before I lose you. You  
9 say that their analysis is erroneous because they haven't looked  
10 at the construction and it doesn't meet design standards. Now  
11 is that in a contention somewhere?

12 MR. GUILD: Yes.

13 JUDGE KELLEY: Which one.

14 MR. GUILD: That's what I was going to point you to, look  
15 at Number 19, just because it also is a more detailed statement  
16 of a transshipment storage contention, page 11 of our filing.

17 JUDGE KELLEY: Maybe we can tie that in or move directly  
18 to that when we get through with this.

19 MR. GUILD: I think we can agree that this is an  
20 amplification of what we've been talking about, Number 10.

21 JUDGE KELLEY: Ten is rather general, nineteen seems to  
22 be, on a quick look, more specific.

23 JUDGE FOSTER: Since the Impact Statement indicates that  
24 the truck shipment has or are going to meet 10 CFR 71 requirements  
25 for Type B packaging, are you contending that the 10 CFR 71



I17pw

1 requirements are inadequate for handling this situation?

2 MR. GUILD: Well sir, our view -- my view is that those  
3 standards may not be adequate, but that is not what we seek to  
4 litigate here, the adequacy of those standards. Our view is that  
5 as part of the NEPA obligation of staff, it must assess the costs  
6 of accidents in transshipment. That included in the costs of  
7 assessing accidents in transshipments is the low probability but  
8 high consequence severe accident that includes an accident in a  
9 cask that is not constructed to design standards.

10 For example, a cask that might have a defective seal  
11 ring, O-ring, that allows for it to release contents when subjected  
12 to a cask drop or fire that may be equal to or less than design  
13 standards. Or a cask meeting design standards but subjected to  
14 conditions in excess of those set forth in the design standards.  
15 High consequence, low probability accidents but nonetheless an  
16 accident that can be evaluated in terms of costs in much the same  
17 fashion that the beyond design basis reactor accident can be  
18 evaluated and have a cost assigned to it.

19 That cost should be accurately assessed and factored into  
20 the cost benefit balance for the license, in this respect, the  
21 license to tranship fuel from Oconee-McGuire and store them at  
22 Catawba.

23 JUDGE FOSTER: This sounds very much to me as though  
24 you think the requirements are inadequate for the situation. Is  
25 that --

I18pw

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

1 MR. GUILD: Judge, you know, I may think so, my client  
2 may think so but we're not seeking to litigate the adequacy of  
3 the requirements but simply to require the staff to accurately  
4 assess the costs attributable to an accident that might occur in  
5 the way we've described. Now for example, just to put it in  
6 context, we can't attack the design standards for nuclear reactors  
7 but yet the staff in assessing environmental costs has to put a  
8 number or a cost assessment on a beyond design basis accident;  
9 low probability, high consequence. We would urge that in weighing  
10 the costs of authorizing this transshipment of fuels, that cost  
11 must be evaluated. Then the next step to that is we say that --  
12 well, the first step we say is there has been no effort to analyze  
13 or weigh the need for the action and I think to paraphrase the  
14 staff's responses, well they will analyze the need in their SER,  
15 but there is no analysis for need of the action in the Draft  
16 Environmental Statement. There's no demonstration that there's a  
17 need to subject the environment to the costs associated with  
18 accidents or transshipments.

19 MR. JOHNSON: May I interject?

20 MR. GUILD: Yes.

21 MR. JOHNSON: Our position on that was that this is an  
22 environmental impact appraisal and under the regulations 10 CFR  
23 Section 51.7, there is no requirement to address need; however, that  
24 we would in any event address the need and the benefit derived  
25 therefrom in the FES. That was our position.

119pw

1 MR. GUILD: We of course assert that there is obligation  
2 tion at this point to assess the need and therefore the benefit  
3 from the transshipment, and then I guess the final leg of the  
4 contention is that having not addressed a need, having not addressed  
5 adequately the cost, there is the further obligation to assess  
6 available alternatives that have a lower environmental cost or that  
7 mitigate the costs of the alternative that was analyzed, and those  
8 are outlined at the bottom of the contention and we believe technically  
9 available state-of-the-art developments for on-site storage of  
10 spent fuel, which should have been assessed to have a lower  
11 environmental and economic cost than the alternative of trans-  
12 shipment and storage of fuels at Catawba.

13 JUDGE FOSTER: Are we still talking about Number 10 here?

14 MR. GUILD: Yes, sir -- oh, I'm sorry, 19. Nineteen is  
15 the detailed statement of Number 10, the transshipment and storage.

16 JUDGE FOSTER: I was still back on 10.

17 MR. GUILD: I'm sorry.

18 JUDGE FOSTER: I gather then, relative to number 10, that  
19 what you're really asking for is an evaluation of the cost of  
20 an accident which exceeds the current design basis for cask design?

21 MR. GUILD: In short, I'm not certain that the term of  
22 art means the same thing as it's used when you're talking about  
23 reactor accidents, but I think in short or in substance we're  
24 looking to evaluate low probability, high consequence accidents.

25 (Brief pause.)

I20pw

1 JUDGE CALLIHAN: How does this relate to December 1981  
2 filing?

3 MR. GUILD: We raised storage and transport contentions  
4 there, Judge Callihan and --

5 JUDGE CALLIHAN: What's new here?

6 MR. GUILD: What's new is that this is specific. These  
7 specifica-ly address the DES analysis or lack of DES analysis by  
8 the staff. On the environmental portions of the contentions we  
9 raised in December, the direction was in short, take a look at the  
10 DES when it comes out and revise or recast your contention in  
11 light of what the staff says there, and that's what this is. I  
12 think if you'll look at the first paragraph of 19, you will find  
13 that is either the same language or in essence the same import  
14 as one of the earlier contentions, and the remainder of that 19  
15 specifically addresses the DES analysis. It's a revision.

16 JUDGE CALLIHAN: Well I feel it's separate, the earlier  
17 one had such words as "plainly credible, very severe accident".  
18 And you imply that the cask won't stand it even though the cask  
19 has withstood the Appendix B tests.

20 MR. GUILD: Well, sir, the casks themselves -- I'm sorry?

21 JUDGE CALLIHAN: Kind of a vacuum.

22 MR. GUILD: The casks themselves have not been subjected  
23 to the design standards. The design was engineered to meet those  
24 standards, but we maintain and would offer evidence at the  
25 appropriate time that the casks in fact are used or in service that



I21pw

1 cannot meet those design standards, that cannot be subjected to the  
2 30-minute fire or the 30-foot drop or the drop onto the six inch  
3 rod. There is a design parameter but there is not a testing  
4 requirement for individual casks that are used in transhipments.  
5 I mean we can talk about specific casks that are on the road that  
6 have been removed from service because they had deficiencies in  
7 the construction or their condition.

8 My clients inform me that Duke Power owns one that they  
9 don't tranship in but that is used for on-site storage.

10 JUDGE KELLEY: Let me take you back, Mr. Guild, the  
11 concept of the need to ship spent fuel from let's say Oconee to  
12 Catawba. Are you saying that a demonstration of need -- a  
13 discussion of need -- demonstration of need was required in the  
14 Impact Statement?

15 MR. GUILD: Yes, sir, we think that's the crux of the  
16 matter.. I think the applicants take the position that this is  
17 not an intention to do this on their part, it's not a plan to do it,  
18 it is an alternative or an option, that sort of conditional  
19 language. Yet they're seeking license approval to do it, in this  
20 proceeding. Our position is if they don't need to do it, then  
21 they don't deserve the authority to do it or they don't deserve  
22 the authority because NEPA says don't subject the environment or  
23 the public to a cost unless it's for some counter-weighting benefit  
24 and we state that as a fundamental premise behind asking you to  
25 do something like this you should demonstrate there's a need. The

I22pw 1 obligation falls on the agency staff at this point because they  
2 have come down in favor of authorizing the actions, but they have  
3 to assess that need and they haven't done so.

4 JUDGE KELLEY: Let me play devil's advocate for a minute.  
5 What does that really come down to? Suppose they said this outfit  
6 has two other reactor sites and the spent fuel pools are filling  
7 up or full, so they need to ship over to Catawba where they've got  
8 some room. Period. End of analysis. You think it takes more than  
9 that?

10 MR. GUILD: We think it takes a good bit more than that,  
11 but that's the direction of the proof that I would expect to see  
12 coming back from them. For example, where the document referenced  
13 the DOE analysis by E. R. Johnson Associates which assesses  
14 alternatives for on-site storage, that sets out specific alternative  
15 technologies and assesses costs and availability of those alternatives  
16 It seems to me that staff has to analyze those in terms of need and  
17 in terms of the ability to mitigate the environmental costs of the  
18 chosen alternative.

19 JUDGE KELLEY: Do you think it's fair to say that the  
20 environmental impacts set forth in Table S-4 are let's say trivial?  
21 Would you say that's a fair statement?

22 MR. GUILD: Small is the term they use, yes, sir.

23 JUDGE KELLEY: Small?

24 MR. GUILD: Yes.

25 JUDGE KELLEY: Quite small. And the applicant comes in

I23pw

1 and says I want to tranship, they're not going to tranship we can  
2 assume just for the sheer pleasure of transhipping, they've got  
3 some reason for wanting to do it. And they come in and they rely  
4 on this table the answer is there's really nothing to this. I'm  
5 just trying to get a handle on what's involved in proving need for  
6 shipment.

7 MR. GUILD: Well, sir, just to give you -- to try to  
8 respond the best I can without essentially, you know, proving their  
9 case for them; in South Carolina the Governor's Nuclear Advisory  
10 Council, an advisory body of technicians including representatives  
11 from at least one utility and the Savannah River Plant, has been  
12 performing an analysis just of this sort in part based on data  
13 submitted by Duke, which I've seen, which attempts to make an  
14 analysis of the spent fuel inventories at various sites, the  
15 alternatives available and the use of away-from-reactor storage.  
16 As a policy document, the staff of that body is trying to present  
17 to the Governor of South Carolina a weighing of alternatives. Do  
18 we need to tranship to an away-from-reactor storage facility? Well  
19 the data seems to exist and beyond that Congress now seems to be  
20 directing some weighing of the necessity for the transhipment to  
21 an away-from-reactor storage facility if such is authorized by  
22 this current waste legislation now pending. All of those call for  
23 the kind of weighing and assessment that we speak to here, and that  
24 is some kind of identification that this is a necessary burden to  
25 place on the environment and on the community, and that hasn't been

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

I24pw 1 done at all and we think that is required.

2 JUDGE KELLEY: I understand, okay, that's all.

3 Mr. McGarry?

4 MR. MCGARRY: It seems to us this contention -- and I'm  
5 referring to both 10 and 19 in my remarks -- is an attack on either  
6 one of two regulations, an attack on the Part 71, Appendix B  
7 Regulation or it's an attack on Table S-4. I've listened to  
8 intervenors and they're not happy with the cask and the cask isn't  
9 going to comply with the regulations, that's an attack on the  
10 regulations pertaining to the cask. If they're satisfied with the  
11 cask but then they're saying that the environmental impact associated  
12 with the cask accident hasn't been adequately considered, it has,  
13 that's Table S-4. You cannot go beyond Table S-4.

14 These are observations I would like to make. Again, I  
15 emphasize the point, intervenors make reference to -- this is one  
16 example, if there are going to be contentions in this area or any  
17 other area, we shouldn't have it by way of example. What are the  
18 specific accidents that one is talking about so we can get our  
19 arms around this octopus.

20 Now with respect to the three aspects of Contention 19,  
21 the first one we focused on is need. As far as we're concerned  
22 what is at issue in this particular proceeding is the ability of  
23 Catawba to receive spent fuel from other Duke facilities in the  
24 event Duke determines to ship. But Oconee and McGuire, the two  
25 Duke facilities, already have the authority to ship. That need to



I25pw

1 ship is a need that is determined in Ocone and is determined in  
2 McGuire, do they need to ship. That need is implicit in the granting  
3 of an operating license and it is envisioned in Table S-4. So we  
4 maintain the need issue is not before us and we've discussed this  
5 in the pleadings. There are two other aspects of Contention 19,  
6 one had to do with the integrity of the cask. I repeat and we set  
7 out in our pleadings, that is an attack on the regulations. With  
8 respect to alternatives, we maintain that alternatives need not be  
9 considered when it is determined that the impact associated with  
10 the activity are trivial or small and there is case law to support  
11 it, we cite that case law.

12 One last point. Not only do we want the specific  
13 accidents, when we're talking about alternatives, I just notice that  
14 they indicate alternatives such as -- again, if we're going to get  
15 into alternatives, and we maintain we shouldn't, what are the  
16 alternatives.

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

End I.

17  
18  
19  
20  
21  
22  
23  
24  
25

1 MR. GUILD: Judge Kelley, I think Mr. McGarry's obser-  
2 vation that the need to trans-ship is implicit in Table S-4 high-  
3 lights, you know, one of our problems with S-4 from the beginning  
4 as Applicant applied for this situation. S-4 does not explicitly  
5 or implicitly assume trans-shipment among reactors for storage  
6 at another reactor site. It expressly applies only to what was  
7 anticipated and required under normal circumstances with the  
8 back end of the fuel cycle closed, and that was shipment to a  
9 reprocessor, shipment for final disposal, and that highlights the  
10 fact that this is a unique request that is sought by Duke, this  
11 intra-system trans-shipment, and where no need has been established  
12 at all, it certainly cannot be boot strapped in by saying that S-4  
13 assumed that there was a need.

14 JUDGE KELLEY: Let me ask the Staff, in your statements  
15 here and in the text and also in the Appendix analysis, where you  
16 indicated earlier that at least some of the numbers were derived  
17 from S-4, right?

18 MR. JOHNSON: Well, I didn't say exactly that. I said  
19 that both S-4 and the analysis here relies on 1238, that's what I  
20 did say, and earlier on, in an earlier section, yes, it did say  
21 that S-4 was relied on -- I forget what page that was -- it was  
22 Page 5-18 and 5-19.

23 JUDGE KELLEY: Let me just look at that for a minute.

24 (Brief pause)

25 JUDGE KELLEY: Yeah, on 5-18 -- 19 at least, and there

JATJZ

1 isn't any discussion of this proposal to ship fuel from Oconee,  
2 McGuire and Catawba. There's just some general statements about  
3 shipping and the impacts. Now this is something that I have a very  
4 imperfect grasp of myself and I'm -- my colleagues I'm sure have  
5 a second hand line, but if you look at S-4 it does look like it  
6 contemplates -- an isolated reactor with cold fuel coming in one  
7 end and hot fuel going out the other, somewhere at least, to a  
8 reprocessing plant I guess it says in the rule. If you're apply-  
9 ing S-4 to this situation where you are going to -- let's say you  
10 have some spent fuel from Oconee sent to Catawba and then later on  
11 the same fuel gets sent off to a reprocessing plant or whatever  
12 else is designated as the next home for spent fuel, the numbers, are  
13 they different? I would guess they would be different. I would  
14 guess they would be higher because you would have spent fuel for  
15 both ends of the trip as opposed to the numbers that are given for  
16 a normal reactor. Am I making any sense?

17 MR. JOHNSON: Do you mean in terms of new fuel coming  
18 in and old fuel going out --

19 JUDGE KELLEY: Yeah, this is a reactor -- 1,000 M.Wt.  
20 reactor and there's certain numbers in S-4 and I'm told that's what  
21 I'll get every year, and here in applying those numbers I guess,  
22 the spent fuel coming from Oconee let's say to Catawba and then  
23 later sent somewhere else, and so there's some kind of spent fuel  
24 which puts out more radiation than cold fuel, correct? So do the  
25 numbers fit and if they don't, what numbers did you use?

JATJ3

1 MR. JOHNSON: I think you know, all of this discussion  
2 has not really addressed what in fact the Staff did here in Appendix  
3 G --

4 JUDGE KELLEY: Let's get to that. Yeah, go ahead.

5 MR. JOHNSON: I think it becomes quite clear that a very  
6 detailed analysis was done for the Oconee-McGuire context and pub-  
7 lished in documents referred to in the referencing section, and was  
8 relied upon very heavily in this analysis in G-3 -- Appendix G,  
9 and there --

10 JUDGE KELLEY: Would you just for the record, give us  
11 the title of that document?

12 MR. JOHNSON: That document is called Environmental  
13 Impact appraisal related to spent fuel storage of Oconee spent fuel  
14 at McGuire Nuclear Station, Unit 1 Spent Fuel 4, and the Docket  
15 number is 70-2623, December, 1978, and it doesn't take too much  
16 to find out that -- in reading this document, that the analysis  
17 is taken directly from it, and it relies very heavily on this  
18 analysis that was done before I believe -- I believe S-4 was  
19 published after this -- no, no -- in any case, it does rely upon  
20 this analysis which has, as it stated on Page G-2, an evaluation  
21 of very severe accidents, and all of the quantitative doses and  
22 that would result from those very severe beyond design base acci-  
23 dents are included in this document that's referred to. The  
24 Commission standard as I referred to earlier on another contention  
25 was that the -- it wasn't necessary to have a detailed discussion

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345



JATG4

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

1 of all the quantitative impacts of severe accidents in the environ-  
2 mental impact stage, but only that they be referred to and they are  
3 referenced here and one can easily pick up this document and read  
4 it. It not only discusses the kind of accident that Mr. Guild is  
5 referring to, very severe accidents, and reaches the conclusion  
6 that there are negligible impacts, and once you get to that end,  
7 what has been done in this Appendix G is to say that this has been  
8 done. The last paragraph before the References on Page G-3. It  
9 says, "Transportation accidents noted above were previously  
10 analyzed for the shipment of spent fuel from Oconee to McGuire.  
11 In each case the risk is found to be small. The fuel shipped to  
12 McGuire was assumed to have been cooled for 270 days. Because the  
13 spent fuel shipped to Catawba will have been cooled at least 5 years.  
14 the radiological consequence of accidents during the proposed  
15 shipments from Oconee and McGuire and McGuire to Catawba will be  
16 no greater than those calculated in the Environmental Impact App-  
17 raisal in this document here, published in 1978.

18 MR. CALLIHAN: You may have said, Mr. Johnson, but what's  
19 the cooling time for the intra-plant shipments?

20 MR. JOHNSON: 5years. So -- but it is only logical  
21 to say that the analysis that was done for the Catawba plant is  
22 bounded by the analysis that was done for the Oconee-McGuire ship-  
23 ments and if you look to the conclusion that it was negligably  
24 small for the Oconee-McGuire, they found here that it would be no  
25 greater than thos calculations, and presumably it would be less.

JAMES  
1           Then once you come to the conclusion that the impact is  
2 negligible, I think then the regulations really in a sense end the  
3 controversy and the investigation, because if you find that the  
4 environmental consequences are negligible you don't have to examine  
5 the alternatives to that, and if you determine in the appraisal  
6 that you don't have any consequences that are significant you  
7 don't have to access the need either.

8           JUDGE KELLEY: Let me just be sure I'm clear. I thought  
9 before -- maybe I'm not listening right, but I had the understand-  
10 ing earlier that the Impact Statement in effect incorporated the  
11 S-4 numbers. Now I understand that that is really not it. That  
12 the Impact Statement analysis is based really on the 1978 detailed  
13 analysis of Oconee-McGuire.

14           MR. JOHNSON: Let me clarify this a little bit, but I  
15 would just point out that Appendix G is not an Environmental Impact  
16 Statement. It is incorporated into the large document, but it is  
17 a separate Regulatory finding. It's entitled Environmental Impact  
18 and Appraisal for trans-shipment of spent fuel from Oconee and  
19 McGuire to Catawba Nuclear Stations, and it's judged under the  
20 standards for Environmental Impact Appraisals.

21           JUDGE KELLEY: I understand what you're saying. Go  
22 ahead.

23           MR. JOHNSON: Well, that is premise for some of my earlier  
24 statements concerning Regulatory requirements of assessing need.  
25 Now if you refer to the Oconee-McGuire Appeal Board Decision, which

JATG6

1 is on Page 23 of our response, it's well settled that neither  
2 Section 1022 (c) or Section 1022 (e) of NEPA obligates the Federal  
3 Agency to search out possible alternatives to a course which itself  
4 will not either harm the environment or -- a social matter in which  
5 the country's resources are being expended.

6 JUDGE KELLEY: Okay, but I just wanted to nail down what  
7 I think is a fairly simple point and that is I thought that your  
8 analysis was an S-4 analysis of these transportation impacts,  
9 environmental impacts, of transportation of spent fuel. Now I  
10 understand that they're not. They're really based on this 1978  
11 analysis that was done of Oconee-McGuire, and that's a much more  
12 elaborate site specific if you will, analysis than that Table does  
13 and -- but that's right isn't it, you base this on the more elabor-  
14 ate analysis?

15 MR. JOHNSON: I believe that that's correct, because if  
16 you look at the references in G-3 which is no reference to Table  
17 S-4, there's no reference to Table S-4 in the text, so that it  
18 seems to have gone beyond what is stated in S-4. On the other  
19 hand, I was only addressing the analysis of severe accidents, which  
20 I think was the subject of that contention, and that definitely  
21 is based on some other environmental Impact Statements.

22 JUDGE KELLEY: This is pure legalistic discussion --  
23 would you say that the Staff in writing the Impact Statement here  
24 could have used S-4 but has discretion to rely on this more elaborate  
25 analysis? You see, if you come in and you say, here's S-4, and here

JATG7

1 are these numbers and that's that. Then you could also say to Mr.  
2 Riley, Mr. Guild, that's a rule, and you can't attack rules but on  
3 the other hand, you're not doing that, and you're saying here is  
4 this elaborate analysis and I would think that that's fair game  
5 for them if they want to review it,

6 Well, my question may have gotten lost. Can you just  
7 say, well, I'm not going to use S-4 this time. We're going to do  
8 something a little more indepth and we'll go ahead and slug it  
9 out with whoever wants to question the analysis.

10 MR. JOHNSON: Well, it seems to me that that's been  
11 done, although it would seem to me that S-4 -- relying on S-4  
12 exclusively is within the Regulations.

13 JUDGE KELLEY: But you didn't do it?

14 MR. JOHNSON: Well, we didn't rely expressly on these  
15 numbers. I do not -- there's no evidence from the document as I  
16 read it that S-4 was used in these calculations, unless these  
17 numbers in the Environmental Impact appraisal for Oconee-McGuire  
18 were based on the S-4 numbers, because it's these numbers that are  
19 relied upon.

20 JUDGE KELLEY: Well, I think the Board is entitled to  
21 know whether these are S-4 numbers or not, and based on what we've  
22 heard this afternoon, I think that we would assume that they're not  
23 and that this is a particularized analysis based on the facts per-  
24 taining at least in this area, and we would treat them as such.

25 MR. JOHNSON: I think that's correct, Your Honor, but I



JATG8 1 would like to check back with the Staff that analysed --

2 JUDGE KELLEY: We'd like to know for sure, you know,  
3 whether these numbers are fully consistent with S-4, or whether  
4 they're peculiar to this site.

5 MR. JOHNSON: I will check.

6 JUDGE KELLEY: And these times.

7 MR. GUILD: Let me offer something else here. From the  
8 document referred to by the Staff, Environmental Impact Appraisal  
9 in the Oconee-McGuire document, Introductory Page 5 it states and  
10 I quote, "although not bound by values in Table S-4 this action  
11 resulted in values less than those given", which is the completion  
12 of the accident analysis and the Environmental Impact Analysis  
13 done in this document, but even at that time, the Staff was not  
14 relying on S-4 as settling the matter and seemed to recognize that  
15 they had to do an independent Environmental Cost Appraisal at that  
16 time, and we maintain that no less and probably more ought to  
17 apply here, where we're talking about not just from one plant to  
18 another, but from two plants to another.

19 JUDGE KELLEY: Well, then you're saying yes, you need an  
20 individualized study and we'd have to look at your contentions, but  
21 the general point is that this is not a particularized, individual-  
22 ized enough to set forth the relevant consideration.

23 MR. GUILD: That's correct -- that's correct.

24 MR. MCGARRY: Our feeling is S-4 controls.

25 JUDGE KELLEY: Excuse me?

JATG9

1 MR. MCGARRY: Our point is Table S-4 controls and you  
2 don't need Appendix G.

3 JUDGE KELLEY: I understand.

4 MR. RILEY: Judge Kelley, the answer of course depends  
5 upon the assumptions that go into it, and quoting the same docu-  
6 ment that the Staff was referring to on Page 35, the consequences  
7 of extra severe colision, or overturn accident are discussed,  
8 and there's a probability given, but the dose of course for giving  
9 release depends on where people are in relationship to the dose.  
10 I'd like to simply read the concrete assumption that was made to  
11 that specidic situation.

12 "Doses due to the extra severe colision or arbitrary  
13 accident were calculated for the same population groups which were  
14 discussed in Section 6.1.3." That was a groupof students on the  
15 campus of Clemson University. The first year total body dose to  
16 any one student standing 400 meters from the accident would be  
17 4 milligrams or 4 percent of natural background, and that's great,  
18 but most people are standing closer than 400 meters.

19 So I'm pointing out that the thing is very specifically  
20 dependent upon the assumptions you make in the analysis, and given  
21 this problem, I'm sure any competent person would come out making  
22 it smell like a rose or looking like the -- looking like it's  
23 hell. This flexibility, this choice that's available to the  
24 person making the calculations that we're challenging. We're  
25 saying that it's treated too much -- Your Honor.

JATG10

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

MR. GUILD: Clemson is between Oconee and McGuire and  
 not between Oconee and Catawba or McGuire and Catawba. It's site  
 specific.

JUDGE KELLEY: Okay.

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

1 JUDGE KELLEY: Mr. Johnson, can you--the document you  
2 referenced in the 1978 one, could the staff have some--not now,  
3 but when you get back home, can you serve copies of that?

4 MR. JOHNSON: To who?

5 JUDGE KELLEY: Serve it to us I guess, maybe not everybody.  
6 You have got a copy, don't you?

7 MR. GUILD: I would like one.

8 JUDGE KELLEY: One to Mr. Guild and one to us. The  
9 applicants may need one.

10 MR. JOHNSON: I don't want to repeat this overly, but  
11 if you refer back to page 5-18, the statement does say that, "The  
12 contribution of the environmental effects of such transportation  
13 to the environmental costs of licensing the nuclear power reactor  
14 is set forth in Summary Table S-4". It may be, and I will check  
15 this out, that the site specific aspects of exposure and so on  
16 may have relied on S-4 in addition to the analysis that was--

17 JUDGE KELLEY: Okay. Maybe just a little letter to  
18 us when you get around to it.

19 MR. JOHNSON: Sure.

20 JUDGE KELLEY: Well, actually if you can do it in the  
21 next week or so.

22 MR. JOHNSON: Yes.

23 JUDGE KELLEY: Well, why don't we do one more and that  
24 will carry us up to 5:30 or so? Number 11 talks about the  
25 relationship to McGuire. Lets take a minute to read that over



1 again.

2 (Brief pause.)

3 Is this you, Mr. Riley?

4 MR. RILEY: Yes, sir.

5 JUDGE KELLEY: Does this speak to the question of the  
6 DES that talks about severe accident analysis, is that what we  
7 are talking about?

8 MR. RILEY: Yes, that certainly does.

9 JUDGE KELLEY: Okay.

10 JUDGE CALLIHAN: Do you have a reference?

11 MR. RILEY: That is table 5.1.0 and page 5-45.

12 JUDGE KELLEY: Maybe you could just paraphrase, in simple  
13 terms if you can, the contention as a way of getting it started.

14 MR. RILEY: The Board seems to have had a problem with  
15 respect to what we are trying to communicate earlier and we feel  
16 that the totality of this is the appropriate concept to use con-  
17 sidering the operating license for this plant, and I think the  
18 Board's language suggested and so did the pleading by the staff  
19 that we were talking about an event in which simultaneously at  
20 McGuire and at Catawba an accident happened, and the joint impact  
21 on individuals of these two simultaneous accidents; that isn't  
22 what we were talking about. Individuals live through time. They  
23 are exposed to a number of risks. Some risk is eventually going  
24 to terminate the life of the individual, and I am saying that  
25 the person is living through the period of operation, assume,

1 for these two nuclear plants is exposed to the risk of both of  
2 them, cumulatively; not necessarily simultaneously. Am I making  
3 that point reasonably clear?

4 Well, this business of summing up risks is as far as  
5 I know something that previously has not been staff practice and  
6 for me it appeared that the staff broke new ground in recognizing  
7 the validity of this summation concept and I refer you to page  
8 5-45, the second paragraph, first sentence. In relevant part,  
9 it reads, "If the probability of sustaining a total loss of the  
10 original facility is taken as the sum of the occurrences of a  
11 core-melt accident (the sum of the probabilities for the categories  
12 in Table 5.10) then--" etc., and I think is a reasonable approach  
13 and really the only valid approach to be taken, so I feel that  
14 it is an improper and inadequate analysis if we look at the proba-  
15 bility of accident A, well that's low; then accident B, oh, well,  
16 that's low, and so forth, and we don't sum up the entire population  
17 probabilities that is generated coincident with the operation  
18 of the plant. Totality of risks.

19 JUDGE CALLIHAN: Are you addressing the manner of combining  
20 separate probabilities?

21 MR. RILEY: Yes, sir.

22 JUDGE CALLIHAN: The probability of something happening  
23 here and the probability of something happening here?

24 MR. RILEY: Right.

25 JUDGE CALLIHAN: And you are addressing the way in

1 which those two probabilities are combined?

2 MR. RILEY: Well, more than two, sir.

3 JUDGE CALLIHAN: Yes.

4 MR. RILEY: Exactly.

5 JUDGE FOSTER: You are making reference here that  
6 Table 5.10--

7 MR. RILEY: Yes, sir.

8 JUDGE FOSTER: I am having difficulty matching the  
9 Table on page 5-79 with--

10 MR. RILEY: No, sir, all right, 5.10, comes on page  
11 5-79.

12 JUDGE FOSTER: Is that the table you are referring to?

13 MR. RILEY: Yes, sir. The probability column is the  
14 second column, starting with the Event V two times ten minus six.  
15 Both probabilities have--

16 JUDGE FOSTER: Your text talks about the probability  
17 for ten categories.

18 MR. RILEY: Right.

19 JUDGE FOSTER: What are the ten categories?

20 MR. RILEY: I pass on that one and defer to the staff.

21 MR. JOHNSON: I only see five.

22 (Brief pause.)

23 JUDGE KELLEY: Is that a quote? Is that a quote in  
24 your contention? It says, "ten categories".

25 MR. RILEY: There is a typographical error there.

P k5

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

My writing is not that legible. It should read, "for the categories in Table 5.10", my apologies.

JUDGE KELLEY: And on what page are you looking?

MR. RILEY: I am looking at page 7 of our contention, and that is on Contention 11, it is the second line from the bottom.

JUDGE CALLIHAN: And would you give us the correction again, please, I am sorry.

MR. RILEY: I beg your pardon?

JUDGE CALLIHAN: Give us the correction again, please.

MR. RILEY: For the word "ten", substitute "the".

JUDGE CALLIHAN: Thank you.

JUDGE KELLEY: Let me ask about the text of 11, the first sentence, general sentence, about taking McGuire into account, the second sentence also references McGuire, and then the rest of the contention seems to be a compliment to the DES because you seem to say, well, you have done it right here and then you quote that section that you quoted just a minute ago, so the contention of course is never a compliment but in these last six lines seems to be your accolade to the DES so I am not sure what you are saying is wrong with the DES.

MR. RILEY: I am saying the DES is right in this respect and if I may put it so boldly, the Board found that we were wrong when we introduced the totality of risk concept in our December, 1981 contention, so I am saying this buttresses our approach.



1 JUDGE KELLEY: I appreciate that. Now lets get it as  
2 clear and as candid as we can. We are not offended, we can  
3 certainly make corrections here, but I am not sure where I am--  
4 I mean if this is a contention--if you are saying that the DES  
5 is fine and that is really what is before the house, then how  
6 are we to deal with this? I thought it was looking for problems  
7 in the DES from your standpoint.

8 MR. RILEY: Judge, I think that I was too oblique in  
9 the way I put that. What I really wanted to say is we were turned  
10 down on our totality of risk contention.

11 JUDGE KELLEY: Right.

12 MR. RILEY: We shouldn't have been. The DES is showing  
13 us here that it works the same way that I suggested that we should  
14 work, namely on the totality of risk basis.

15 JUDGE KELLEY: Uh-huh.

16 MR. RILEY: And the contention here, the invisible  
17 contention is that our earlier contention should have been  
18 admitted.

19 JUDGE KELLEY: I see, so, but what do we do now?

20 MR. RILEY: Admit our earlier contention if you will,  
21 please.

22 JUDGE CALLIHAN: What is--give us the designation of  
23 your earlier contention.

24 MR RILEY: Yes, sir.

25 JUDGE CALLIHAN: Number something?

1 JUDGE KELLEY: But again, contentions are levelled at  
2 staff documents, applicant documents. You have got nothing to  
3 level this against. I mean what you are saying is the Board made  
4 a mistake and maybe we did, but you are still in the position  
5 of litigating deficiencies in staff and applicants papers, right  
6 and if there isn't any deficiency in the staff's Draft Impact  
7 Statement, what are we litigating about?

8 MR. RILEY: Perhaps it is a motion for reconsideration  
9 more properly put.

10 To respond to Judge Callihand if I may, it is contention  
11 number 3 in the CESG filing of December 9, 1981.

12 JUDGE CALLIHAN: Thank you.

13 JUDGE KELLEY: Well, we can go back to the old contention  
14 and read it in light of this discussion.

15 Can you tell me what that contention, the old contention,  
16 what did it reference?

17 MR. RILEY: I beg your pardon?

18 JUDGE KELLEY: The old contention that we turned you  
19 down on, what did it refer to?

20 MR. RILEY: It contended that the staff evaluation on  
21 risks was inadequate. That of course assumed that the DES would  
22 be inadequate in this respect. The DES we now feel is inadequate  
23 in this respect.

24 JUDGE KELLEY: Is inadequate?

25 MR. RILEY: Yes.

1 JUDGE KELLEY: Or is adequate?

2 MR. RILEY: It is inadequate despite their embracing  
3 the concept, we feel the practice that they are embracing is in  
4 error.

5 We like to think that they have taken one step but we  
6 think that there is another step that should be taken.

7 JUDGE KELLEY: And that step is?

8 MR. RILEY: That step is a more realistic assessment  
9 of the probabilities where you see, in our judgment, one major  
10 accident actually per 133 operating years rather than you know  
11 one hypothetical, two chances and ten to the minus six and another  
12 three and ten to the minus fifth and that sort of thing, magnitudes  
13 of weight. We like their summary probabilities but we think their  
14 probabilities are wrong.

15 JUDGE KELLEY: I guess I am still not sure what--you  
16 know, when you look now on a piece of paper with 60 words, what  
17 are we supposed to rule on? Is it in or out?

18 MR. GUILD: Judge, I guess the original contention is  
19 a NEPA contention.

20 JUDGE KELLEY: Okay.

21 MR. GUILD: It says the staff failed to give adequate  
22 weight to the totality of risk of an accident.

23 JUDGE KELLEY: Okay.

24 MR. GUILD: The cost attributed to that, and the McGuire  
25 contribution to that element of risk is what Mr. Riley had reference

1 to. It is the McGuire piece that is missing from the staff's  
2 analysis when he targeted that in December and that McGuire piece  
3 is still missing.

4 JUDGE KELLEY: McGuire is still missing.

5 MR. GUILD: In short, yes, sir.

6 JUDGE KELLEY: I think I understand and then. It as  
7 written pretty much says that and I think we can rule on it.

8 Let me ask the staff whether they agree that the McGuire  
9 piece, if you will, is missing?

10 MR. JOHNSON: Is what?

11 JUDGE KELLEY: Missing.

12 MR. JOHNSON: No, it is our position it is not missing.

13 It is not necessary. I can try to review what was offered originally  
14 and what is offered today and what the staff document says. The  
15 staff document sums the probabilities, core-melt scenarios. It  
16 seems to me that is quite a different thing from either the  
17 new contention or the old contention. The old contention was  
18 a totality of risk where that was rejected based on lack of speci-  
19 ficity as to what the concept was and what its bases were, but  
20 it seems to me that if you look at that original contention,  
21 it has not summary possibilities as the core-melt of the accident  
22 scenarios and it was costs of risks associated with decommissioning  
23 transport, inter and long-term storage, radioactive substances,  
24 etc. Our position is that you are basically evaluating the  
25 risks at Catawba and you look at Catawba and we did not understand



1 the contention the way it has been presented here in this proceed-  
2 ing. We thought that it was talking about the risk of simultaneous  
3 accidents and we addressed that. It wasn't clear.

4 Now I understand that we are talking about assessing  
5 lifetime risk and I am not aware that that is a concept that the  
6 staff follows that applies in accident evaluation. I would have  
7 to look at that.

8 JUDGE KELLEY: You say you don't follow that?

9 MR. JOHNSON: I am not aware that the staff does do  
10 that and so am not prepared to address it.

11 JUDGE KELLEY: If I am a resident a couple of miles  
12 away from a nuclear power site, and there is a debate whether  
13 they should have one unit or four units, am I at greater risk  
14 with four units than I am with one?

15 To me that is sort of obvious, I assume I am.

16 If in range of McGuire and Catawba, is there greater  
17 risk than presumably one site? Just a very general term, that  
18 still meant that I am at greater risk.

19 MR. JOHNSON: My understanding was that the scope of  
20 review is the risks that are generated by Catawba and that one  
21 wouldn't look to, for example, the risks associated with automobile  
22 accidents or chemical spills when evaluating the risks generated  
23 as a result of the operation of Catawba and similarly you wouldn't  
24 assess the risks for the operation of Catawba in terms of what  
25 might or might not happen in terms of risks at McGuire.

1 JUDGE KELLEY: Well, but if you told somebody in the  
2 McGuire proceeding that the chances of their being close to a  
3 core melt were ten to the minus six and then two years later you  
4 had a Catawba case, somebody who lived exactly in between the  
5 two, would you just ignore the fact that they were already--they  
6 were an equal distance away from an already operating reactor?  
7 Isn't that relevant?

8 I assume it increases the risk. That sounds reasonable.

9 MR. JOHNSON: That sounds reasonable.

10 JUDGE KELLEY: Okay. But that is not the approach that  
11 you take here, that the staff physically takes-- you look at  
12 the reactor and prepare the risks.

13 MR. JOHNSON: I believe from my review of the DES, that  
14 was the approach that was taken. Now I would like to have a chance  
15 to ask the staff about it again.

16 JUDGE KELLEY: Okay.

17 JUDGE FOSTER: The Commission has not yet adopted a  
18 safety goal in quantitative terms--I will address this to Mr.  
19 Johnson--to my knowledge, the staff and the Commission has not  
20 yet adopted a safety goal which would put an actual quantitative  
21 limit on the probability which would be acceptable or unacceptable,  
22 is that correct?

23 MR. JOHNSON: It is my understanding it has been published  
24 for comment.

25 JUDGE FOSTER: This is, what I am getting at here is

1 in relationship to a combined risk from one or more plants from  
2 these kinds of accidents, the Commission does not yet actually  
3 have any firm numbers as a benchmark to work against.

4 MR. JOHNSON: That is my understanding.

5 JUDGE FOSTER: All right. So if we had a number which  
6 was one-half, or twice, or four times what is here, is there still  
7 no benchmark against which that could be judged?

8 End Take K

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Llpw

1 MR. JOHNSON: When I stated that we were relying on our  
2 position, when you look at Catawba, I was relying on the NEPA --  
3 the environmental provisions in Part 51 which talks about the proposed  
4 action. It says you look at the environmental consequences of the  
5 proposed action.

6 JUDGE FOSTER: So a way that this risk could be looked at  
7 at this time would be confined to a NEPA type cost perhaps?

8 MR. JOHNSON: That's the context.

9 JUDGE FOSTER: Thank you.

10 JUDGE KELLEY: That may be, but in a NEPA analysis -- I  
11 assume it is true, but in a NEPA analysis about impacts, we're  
12 talking about reactor safety. If you already have a reactor ten  
13 miles down the road I assume you could say something about that,  
14 it's there, it's part of the landscape I would think.

15 Mr. McGarry?

16 MR. MCGARRY: Several observations. First of all, in  
17 talking about this additional risk, this additional cost, I maintain  
18 if one is going to focus on additional risk or additional cost,  
19 then it's appropriate for one to also focus on the additional  
20 benefit because that individual who may be located midway between  
21 Catawba and McGuire is going to get that benefit, and based on the  
22 existing cost benefit, balance has been struck in McGuire and  
23 already proved and the instant cost benefit balance has been struck  
24 in this case. The answer is simple, it's a tradeoff.

25 What I'd really like to inquire into is the status. Where



L2pw

1 are we? We have an old contention, we have a new contention and  
2 we have what we will characterize as an invisible contention. We'd  
3 like to just get things straight. With respect to the old conten-  
4 tion, that was dismissed by the Board. The intervenors are now  
5 making a motion for reconsideration and the basis for their motion  
6 for reconsideration as I understand, but let me ask them, that's  
7 what I suspect they're doing -- the basis for that motion for  
8 reconsideration is the staff has utilized a methodology they  
9 attempted to convey to the Board in the first instance and they  
10 didn't convey. Well, -- so we get things clear, let's just make  
11 sure the first contention -- the first action of the Board remains  
12 in effect. That contention is not before the Board, it's incumbent  
13 upon the intervenors to take appropriate action to bring it  
14 before the Board.

15           With respect to the instant contention, that contention  
16 has absolutely no bearing to the DES. Intervenors as much as  
17 admitted that. So if you are looking at this new contention in  
18 terms of DES, which is exactly what we're looking at, then that  
19 contention must be denied. Now if there is a new, the invisible  
20 contention, if there is going to be a contention, let's have that  
21 filed in an appropriate fashion so we can come to grips with it.

22           The important thing, and the reason I stress this, is  
23 that we go back and look at the initial contention. There is  
24 absolutely no reference made in McGuire whatsoever and yet the  
25 intervenors did go to some length to talk about transport and

L3pw

1 storage and decommissioning and now for the first time we hear about  
2 McGuire.

3           So I'm just stressing from the applicant's point of view  
4 for consistency and an orderly process, I think we ought to deny  
5 the contention that's before the Board inasmuch as it is not based  
6 upon the DES, and leave it to intervenors to take whatever  
7 appropriate steps to bring the contention to the Board's attention  
8 and we'll have an opportunity to respond to it.

9           JUDGE KELLEY: I thought their position was absent DES,  
10 I thought they were saying DES was deficient. They show some  
11 signs of promise because they're beginning to understand the  
12 concept but they don't have McGuire in for example in their  
13 analysis; therefore, there's a gap.

14           MR. MCGARRY: I don't disagree with that, but the test  
15 here is wholly dependent, and the answer is absolutely no because  
16 they filed the first contention and what they're telling you is  
17 you misunderstood their first contention and what they meant to  
18 say in their first contention is what they're saying now. So the  
19 DES in no way serves as either dependent or wholly dependent basis  
20 for the contention.

21           JUDGE KELLEY: That's a separate point. Why don't we  
22 adjourn, it's 20 of six and just to repeat -- oh, it's not  
23 available at 8:30; 9:00 then is the starting time at the library.  
24 Does everybody have the address of that place? I stated it  
25 earlier, I'll do it once more. Auditorium, Public Library of

L4pw

1 Charlotte-Mechlenburg County, 310 North Tryon Street, Charlotte.  
2 9:00 tomorrow morning.

3 (Whereupon, the pre-hearing conference was adjourned  
4 to reconvene at 9:00 a.m. on Friday, October 8, 1982.)  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the

Atomic Safety & Licensing Board

in the matter of:

Date of Proceeding: October 7, 1982

Docket Number: 50-413 & 50-414

Place of Proceeding: Charlotte, N. 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)