

ORIGINAL  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of:

DUKE POWER COMPANY )  
)  
Catawba Nuclear Station, ) DOCKET NO. 50-413  
Units 1 and 2 ) 50-414

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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 In the Matter of: :  
 :  
 DUKE POWER COMPANY : Docket Nos. 50-413  
 Catawba Nuclear Station, 2 Units : 50-414  
 1 and 2 :  
 -----X

Friday, October 8, 1982  
 Auditorium, Main Library  
 310 N. Tryon Street  
 Charlotte, North Carolina

The PREHEARING CONFERENCE in the above-entitled matter  
 convened, pursuant to adjournment, at 9:00 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. STER, Member  
 Administrative Judge  
 Atomic Safety and Licensing Board

APPEARANCES:

On behalf of the Applicant:

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(Continued)

## 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  
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RA al

P R O C E E D I N G S

1  
2 JUDGE KELLEY: Good morning. We are back on the record.  
3 We are going to take up this morning where we left off yesterday  
4 afternoon, and I believe we will begin with Contention number  
5 12. Let me just state our expectations, planning what we want  
6 to do this morning, and that is to finish going through the  
7 contentions and then spend a little time talking about discovery  
8 and we want to quit by 12 o'clock.

9 Now, let me ask whether quitting at 12:00, is that going  
10 to create any airplane problems for anyone? How does that sound?

11 MR. MCGARRY: Fine.

12 JUDGE KELLEY: Is 12:00 okay?

13 MR. GUILD: Yes, sir.

14 MR. JOHNSON: Let me ask, there were three or four  
15 items that were left hanging yesterday that we were going to  
16 investigate and reply on., and they will be very brief.

17 JUDGE KELLEY: Please do.

18 MR. JOHNSON: The first question that you asked us to  
19 reply was whether, if an issue was admitted after the DES, and --  
20 what our policy would be. I don't think there is any set policy  
21 but we believe the issue as gone over, I expect we would do some-  
22 thing in connection with that.

23 Secondly, you asked whether the I & E reports were to  
24 be a public document or below a public document, and our feeling  
25 is it would be a public document. They are sent to the local

1 public document where I feel should be available, although I can't  
2 swear to it, in fact, but they were sent there.

3 JUDGE KELLEY: Are they sent to the mini-public document  
4 room?

5 MR. JOHNSON: To Rock Hill, yes.

6 MR. GUILD: Judge, under past discovery, we can relate  
7 our experience with local public documents. There are mini-document  
8 rooms in Columbia.

9 JUDGE KELLEY: Yes, I would like to know about that  
10 situation before the end.

11 MR. JOHNSON: The next point, the contention that was  
12 discussed toward the end yesterday on human doses, etc., and we  
13 did some inquiry and the staff did not consider the McGuire list  
14 in the DES. It is our position that we are only required to look  
15 at Catawba in this context, and, secondly, the staff is of the  
16 position that there wouldn't be likely an impact in the event  
17 of an accident--let me strike that.

18 I think that the contention was not that they be simul-  
19 taneous accidents, at McGuire and--we weren't contending that  
20 they would be simultaneous.

21 JUDGE KELLEY: Right.

22 MR. JOHNSON: One final point and that was whether S-4,  
23 Table S-4 was used in the analysis in Appendix G, and we can answer  
24 it was not. The staff did those calculations on the specific--  
25 those calculations on the specific routes involved, and the staff

1 had used S-4 significantly less than the exposures that were  
2 calculated as a result of using Appendix G, and Appendix G,  
3 as I mentioned yesterday is based on assumptions in WASH-1258.

4 JUDGE CALLIHAN: Back to your McGuire that you mentioned,  
5 is the mention of McGuire a matter of policy or a matter of  
6 geography in this particular--why was McGuire not considered?

7 (Brief pause.)

8 MR. JOHNSON: According to the staff, it was consulting  
9 with the Accident Evaluation Branch people, it is not likely to  
10 be an impact from both facilities due to wind direction so that  
11 if there was an accident at Catawba, the wind direction wouldn't  
12 be going in either way since they are at opposite--Catawba is  
13 at one end and McGuire is at the other end, the wind would not  
14 have created any radiation in both directions, both directions  
15 at one time.

16 JUDGE KELLEY: I am willing to stipulate you would  
17 not have a simultaneous accident at both reactors. But if you  
18 throw that one out and we are just talking about people who live  
19 in the same general vicinity, within a 20 mile radius, within  
20 20 miles of the reactor, maybe 10 or 20 miles, then isn't my risk  
21 a little higher because I have got one here and one there, rather  
22 than just one there? I suppose the answer is yes?

23 MR. JOHNSON: The reactor I believe is the policy  
24 and I started to mention this point but I realize it is not res-  
25 ponsive to the contention that you were then pointing out, but

1 I believe the staff is using this based on another assumption,  
2 I mean the staff was consulted between the two assumptions and  
3 I believe we would stick by our position that it is not that  
4 policy at McGuire.

5 JUDGE KELLEY: Just one other question, if I might, on that  
6 Another questions comes up fairly often I suppose when that kind  
7 of question is asked if the reactors were a hundred miles apart,  
8 but is there anything that you could point to in terms of  
9 some Commission Policy Statement or some NUREG that speaks to  
10 this, or just how is that handled in that particular matter?

11 You can let us know, you don't need to answer the question  
12 now but if there is anything in addition to what you have told  
13 us that explains the establishing a policy in this regard, could  
14 you let us know?

15 MR. JOHNSON: I will be happy to do that.

16 JUDGE CALLIHAN: The obvious corollary what is the  
17 policy distance or what is the distance beyond which you don't  
18 consider if you are this close together (indicating), it is one  
19 thing?

20 MR. JOHNSON: Okay, well, obviously if you have got  
21 two facilities at the same site, that's one situation. I will  
22 double check.

23 JUDGE KELLEY: You do aggregate risks, unit 1 to unit  
24 2, I presume, when you are talking about risks if the person lives  
25 across the road from Catawba. I mean you wouldn't just take

1 the risk for 1 and the risk for 2 and look at it separately and  
2 say that's--you add them together, don't you; per unit?

3 MR. JABBOUR: I presume so. We will have to get back  
4 with you on that.

5 JUDGE KELLEY: All right.

6 JUDGE FOSTER: A question relative to your Table S-4,  
7 Appendix G calculations, you said that the calculations were based  
8 on the previous analysis for Oconee and McGuire, I didn't understand  
9 whether you said the result of that calculation was greater or  
10 less than would have been shown in Table S-4?

11 MR. JOHNSON: It was greater.

12 JUDGE FOSTER: It was greater. In other words, the  
13 impact would be greater than Table S-4 would have indicated?

14 MR. JOHNSON: Yes, sir.

15 JUDGE FOSTER: Thank you.

16 JUDGE KELLEY: But is that because of the rather--I  
17 mean the facts here are a little bit different--the facts under-  
18 lying S-4 to me. Have you uncovered evidence suggesting S-4  
19 was wrong or are the facts here different so you come up with  
20 different numbers?

21 MR. JOHNSON: I think the answer would be that this  
22 is a particularized analysis based on the particular amounts--  
23 various stages you would use to specify geography and population.

24 JUDGE KELLEY: I suppose the population factor is some  
25 kind of average number that has been cranked into S-4, it had



1 to be.

2 MR. JOHNSON: I don't think it indicates the validity  
3 of S-4 at all.

4 MR. JABBOUR: In appendix G, there was an assumption  
5 of 300 shipments made and the number calculated were 19 person-  
6 rem's based on that 300 shipments. Now, the assumption in S-4  
7 is different because it presumes the reactor is operating normally  
8 and therefore the fuel is shipped out at such a rate that is  
9 definitely different from this 300 shipments we have here in Appen-  
10 dix G and therefore, the two bases are different. That doesn't  
11 necessarily mean in S-4, the basis for the calculation in Appendix  
12 G is different from S-4.

13 JUDGE KELLEY: Wouldn't the normal reactor per year  
14 be closer to three in 300? Or six, I don't know, but some very  
15 low number?

16 MR. JOHNSON: What number?

17 JUDGE KELLEY: Trucks driving in and out.

18 MR. RILEY: I would say something like 7.

19 MR. JABBOUR: It would be about 4 to 17 out of that  
20 300.

21 JUDGE KELLEY: Okay, that's helpful. Thank you.

22 MR. McGARRY: We would just like to make one observation  
23 for our position here. We don't think that Appendix G should  
24 have been included at all in the DES. This matter is covered  
25

1 by Table S-4.

2 JUDGE KELLEY: Correct. I understand.

3 Does that cover your points?

4 MR. JOHNSON: Yes, sir.

5 JUDGE KELLEY: Thank you very much. We appreciate your  
6 diligence in getting back to us and getting it brought into this  
7 transcript. It is very enlightening, very helpful.

8 Mr. Riley, 12, nitrogen-16, you've read the papers in  
9 response, maybe you would like to comment on them?

10 MR. RILEY: I have read the staff's paper. I have  
11 not read the applicant's paper in view of the time constraints.

12 JUDGE CALLIHAN: Line 4, there is a word missing I think.

13 MR. RILEY: I think perhaps a hyphen is missing. I  
14 think it should read: "Nitrogen-16 is also said to be the primary  
15 source of within" hyphen "plant radiation." Is that responsive?

16 JUDGE CALLIHAN: Primary source of what?

17 MR. RILEY: Within hyphen plant.

18 JUDGE CALLIHAN: All right.

19 MR. RILEY: Well, on page 19, Nitrogen-16 is identified  
20 as a radionuclide produced in the reactor core and the technical  
21 information on nitrogen-16 shows a 7.2 second half-life and is  
22 very energetic in terms of emitting radiation. It also is identi-  
23 fied as the primary source, as we have just indicated, of within-  
24 plant radiation and it seems a bit surprising that it is omitted  
25 from the inventory of radionuclides in Table 5.8 of the DES,

1 and we are here seeing it as being an important factor in one  
2 part of the DES and then omitted from the table given as signifi-  
3 cant degree sources. Now the reason for that--oh, incidentally  
4 that is page 5-76 and 5-77 for the table and page 5-i9 as indicated  
5 in the contention for the statement about its existence and  
6 importance. We think the staff may have omitted it from the table  
7 because of the short half-life. If so, this would be a thing  
8 they would explain in the footnote. Its importance would not  
9 be so much I suppose in routine emmissions as in the event of  
10 an accident involving containment 3 and the rapid transmission  
11 of nitrogen-16.

12 We would be, in all likelihood, satisfied if the staff  
13 made a competent revision of this material in the Final Environ-  
14 mental Statement. At the present time, it would be difficult  
15 to draft a contention -- but not something that we would be in  
16 position to litigate or not litigate with the present information.

17 JUDGE KELLEY: Okay.

18 JUDGE CALLIHAN: I would also ask the staff how  
19 they define core on Table 5.8?

20 MR. JOHNSON: Would you explain to me how this is  
21 reactor involved?

22 JUDGE CALLIHAN: What do you mean by core?

23 MR. JABBOUR: I cannot answer these questions.

24 MR. RILEY: May I suggest, Judge Callihan, that the  
25 inventory may be in the coolant.

RA a9

1 JUDGE KELLEY: Looking at the staff response to number

2

3 MR. JOHNSON: Well, I believe rather than say this  
4 contention, it seems to me it is a comment and since we are  
5 pting to respond to each of the contentions that we consider  
6 comments in the FES, the inclusion of an answer in that  
7 would serve equally as well as the footnote, as he suggest,  
8 ems to me that this should take care of--he is essentially  
9 g we should consider this factor. We've considered this  
10 r and he mentions a very short half-life of Nitrogen-16,  
11 r 2 seconds, it is just not going to have any impact beyond  
12 site and there is nothing inconsistent with the statements  
13 ined on page 5-37 and it states on page 5-37, the first full  
14 raph, halfway down, "The 54 nuclides shown in the table",  
15 "represent those (of the hundreds actually present in an  
16 ting plant) that are the major contributors to the health  
17 conomic effects of severe accidents. They were selected  
18 e basis of the half-life of the original nuclide, considera-  
19 of the health effects of daughter products, and the approxi-  
20 relative offsite dose contribution." I think the short  
21 r is this could be clarified by the vehicle that I made in  
22 r to the company.

23 JUDGE KELLEY: Maybe so, a distinction between a comment  
24 contention is sometimes a rough spot in my mind.

25 Here, they are saying Nitrogen-16 is dangerous stuff

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ou really to discuss it in the Impact Statement more  
 RA a10 you do a response is well, it really isn't, it has  
 ct half- maybe you are right, but that is certainly  
 f the me it really doesn't get your attention at  
 stage. Well be that you can make some revisions  
 an put idiscussion in response to this contention  
 pat will re of it.

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MR. : That is the way I understood it. It is  
 sition th is really a question of challenge, I would  
 ay it is ntion at all. It is a contention challenging  
 we conside the impacts of Nitrogen-16.

End

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Blpw 1 MR. RILEY: Let me put it in perhaps a more concrete  
2 form. If you started with just a few curies of Nitrogen-16 in the  
3 cooler, and there is some in the core because there's oxygen in  
4 the core, it's an oxide core, then one could calculate the amount  
5 of time that reasonable men would carry things to the plant site  
6 and say there's no possibility of a dangerous dose here. On the  
7 other hand, if it turns out there's ten to the seven curies in  
8 the core, then that small fraction is still going to be a awful  
9 lot of curies in the dose. That's why I would like to reserve  
10 formally the contention until after we know what the actual  
11 inventory is.

12 JUDGE KELLEY: The intervenors are saying as far as  
13 they're concerned right now this is a contention and a comment.  
14 Now you're going to be doing some revising, what do you think we  
15 should do -- and I'll ask Mr. McGarry shortly what the applicant's  
16 position is and Mr. Riley can give a summary of it at the same  
17 time -- what do you think we should do in ruling on this breakdown?

18 MR. JOHNSON: I would recommend that you dismiss the  
19 contention because all he has said is there may be -- we don't know --  
20 he doesn't have a basis for a contention here, that would be our  
21 position.

22 JUDGE KELLEY: Mr. McGarry? Well, let me ask Mr. Riley,  
23 is there something -- well, let's raise the question I want to  
24 really ask all of you because this appears to be an omission in  
25 the case and it gets back to the case of new information and what's

1 new here. You're saying, I gather, that there's a gap.

2 MR. RILEY: That's correct.

3 JUDGE KELLEY: Mr. McGarry, how do you deal with gaps  
4 under the rubric of new information?

5 MR. MCGARRY: My initial reaction would be if there's a  
6 gap if an intervenor could set forth with specificity and basis  
7 at the outset and this was a significant matter and an important  
8 matter that warranted examination, that would be the subject of  
9 a contention. However, if it's a subject that will be further  
10 inquired into, that then brings us to ALAB 687. Do you follow my  
11 line of reasoning there or --

12 JUDGE KELLEY: I think I need another sentence or two.

13 MR. MCGARRY: The ingredient I left out was in the first  
14 instance if the position of the other parties is that there has  
15 not been an omission, there hasn't been a gap or the gap isn't  
16 significant, then it's incumbent upon the intervenors, at least  
17 in the first instance, to satisfy that threshold burden of  
18 demonstrating that it is significant and warrants your attention.  
19 The premise is the other parties are saying there isn't. If the  
20 other parties recognize there is a clear gap, that warrants further  
21 attention I think with reference to emergency planning. At that  
22 point in time, ALAB 687 would come into play.

23 JUDGE KELLEY: But you're saying in order to allow a  
24 contention with regard to the gap or an alleged gap in the Impact  
25 Statement, the Board has to make a threshold determination of

B3pw

1 significance?

2 MR. MCGARRY: Let's just parcel it out. If the  
3 contention is saying there is a gap in the DES, that's a contention.  
4 Our position all along has been that -- let me just stop for a  
5 second, I know where you're going and I want to make sure I give  
6 you the clear answer to your question.

7 (Brief pause.)

8 MR. MCGARRY: I made reference to the threshold burden,  
9 and I'll come back to that. It's not a question of determining  
10 significance or non-significance; the key ingredient is, has  
11 the intervenor satisfied the threshold burden. There are many gaps,  
12 as you pointed out, in the FES because of the nature of the FES,  
13 you do have to make some judgment that they satisfied the  
14 threshold burden that raised the matter that warrants further  
15 attention. Is this gap something that warrants further attention,  
16 that's what I was alluding to and I think that's a reasonable  
17 burden you do have. You can use your judgment in that regard.

18 And I come back to really the rock of this entire  
19 environmental exercise, the rule of reason governs. So it's  
20 appropriate for you to use some judgment with respect to the gaps.

21 JUDGE KELLEY: Mr. Pressler?

22 MR. PRESSLER: I have a thought on this. I believe that  
23 the period of comment on the DES has expired, has it not?

24 MR. JABBOUR: It will expire on October 11 or 12.

25 JUDGE KELLEY: It's pretty late in the day. Go ahead.



B4pw

1 MR. PRESSLER: I was wondering if it would be possible  
2 perhaps to extend that period for maybe a week. And if so, then  
3 in respect to perhaps some new contentions that might ultimately  
4 have come out of the DES -- if the staff were allowed to consider  
5 comments that came in say in the next week, that some of these  
6 matters might be dealt with in that manner.

7 JUDGE KELLEY: You yourself have some specific comments  
8 to make, or is this just a general suggestion?

9 MR. PRESSLER: Well I was thinking in particular in regard  
10 to certain discovery question that I have been thinking of addressing  
11 to the staff in the next couple of weeks, I think they might be  
12 better treated as comments on the DES, perhaps, and perhaps the  
13 questions like this Nitrogen-16 question. If the staff could  
14 receive a comment on it after the present expiration period, then  
15 they might be able to prepare or at least address the problem that  
16 Mr. Riley has in this particular case, in the final draft.

17 JUDGE KELLEY: Does the staff want to comment on the  
18 suggestion?

19 MR. JOHNSON: I don't think there would be any problem.  
20 We don't -- as a policy matter, we don't extend the date but we  
21 normally would consider comments that come in in a given reasonable  
22 period after the cutoff.

23 JUDGE KELLEY: I think I know what you're saying. If  
24 you extend the date, then the guy over at the Department of whatever  
25 just thinks he has another month to work on it, so who knows when

B5pw  
1 he's going to write you a letter. But with the intervenors in  
2 the case, if there could be an understanding that we would consider  
3 comments that come in within the next -- couple of weeks after the  
4 deadline or whatever you might be able to work out. Does that  
5 sound like a reasonable approach?

6 MR. GUILD: Judge Kelley, I point you to Section 51.25,  
7 which is with respect to comments on the DES, it says, "The  
8 Commission will endeavor to comply with requests for extension of  
9 time of 15 days." There's an express provision that will allow  
10 for such an extension. If it will be of help, as Mr. Pressler  
11 suggests, but I mean -- it requires it seems to me a commitment  
12 by the staff to address some of these more technical concerns.

13 JUDGE KELLEY: 51.25?

14 MR. GUILD: Yes, sir.

15 JUDGE KELLEY: Where is your 15 days? Oh, I see it.

16 MR. GUILD: I'd give you the page number, but I have  
17 the burgundy edition.

18 JUDGE KELLEY: Well the rules just says if somebody comes  
19 in and wants an extension of up to 15 days, the Commission will  
20 try to go along with that. That's the kind of thing we're talking  
21 about, I think. Is the staff concerned about putting something  
22 in the FEDERAL REGISTER, giving the whole world another 15 days?  
23 I can see where you might not want to do that unless somebody  
24 asks you. This appears to be a request by a particular person to  
25 come in and say I need a few more days, how about it and the

B6pw

1 staff says okay. It sounds to me like you could work out an  
2 understanding and maybe you can state it on the record later if  
3 you want to, but I don't know that it's necessary. Certainly on  
4 the basis of this conversation I understand already that the  
5 staff stands prepared to consider comments coming from the inter-  
6 venors at some time after the normal expiration date. Certainly  
7 it's an attractive idea from our standpoint if you can work out  
8 some of these disagreements on that basis, makes our life a little  
9 easier.

10 JUDGE FOSTER: I'd like to ask Mr. Riley a couple of  
11 questions to help clarify in my mind the real thrust of this  
12 Contention 12. Because of the nature of Nitrogen-16, I would  
13 presume that this concern is associated with people who are living  
14 close to the exclusion boundary of the plant at the time of an  
15 accident relative to their dose. Now I would also feel that the  
16 staff in calculating what the dose under accident conditions would  
17 be to that set of people, would include in their calculation those  
18 elements which were major contributors to a dose full body not to  
19 exceed 25 rem regarding the first short interval of time.

20 Now is it a part of your contention here that the  
21 Nitrogen-16 was not considered in the computation of the dose that  
22 those people would be receiving at the boundary of the exclusion  
23 area?

24 MR. RILEY: That would be inherent in the contention.  
25 In other words, there is no information that was dealt with and

B7pw 1 lacking an explicit dealing with, it makes that an open question.  
2 You're seeing precisely what our concern was.

3 JUDGE KELLEY: Just a procedural point. We will be  
4 sitting ourselves down to write up a Memorandum and Order and I  
5 might just say now that I don't see us issuing any decision today  
6 on these contentions. There has been too much on too many points  
7 and this is going to have to come later. But regarding the  
8 possibility that you might be able to work out some of these points  
9 between the staff and the intervenors on how to word the Impact  
10 Statement, I don't want to make this unduly complicated, but if  
11 you've got something pretty well worked out at some point and  
12 we're sitting here trying to decide what to do with this thing  
13 that is in contention, it would be nice if we could find out  
14 fairly quickly how that process is coming along.

15 Now you can talk to the staff and work out a date and  
16 send us a letter. An alternative that's informal would be my  
17 just calling Mr. Johnson and saying are you working some of these  
18 things out and if so what are they, and then we won't concern  
19 ourselves with writing an opinion on those. Now I don't want to  
20 get into an ex parte thing, I would just like to know, you know,  
21 if Contention 15 might be the subject of an informal agreement,  
22 so I can just find out. Is that agreeable with the intervenors  
23 if I just call Mr. Johnson and ask him?

24 MR. RILEY: I was going to suggest Judge Kelley that  
25 we might carry on some formal discovery with the staff to find

B8pw

1 out what the inventories are of this particular material in the  
2 core and in the cooler, and do some calculations with it and  
3 decide whether or not this is a basis for an actual contention.

4 JUDGE KELLEY: I understand I think what you're saying.  
5 Part of my concern is how long is all that going to take. And do  
6 you want us to just wait on these contentions and not rule while  
7 you discuss the things with the staff in that process?

8 MR. RILEY: Well I don't know that it would be time  
9 consuming, it just depends on the staff, it would be their burden  
10 primarily. It's conceivable that one could take a contention  
11 like this and have an appendage memorandum that came out after  
12 other memorandum did.

13 JUDGE KELLEY: I guess what we're talking about generally  
14 is a lot more paper, we've got quite a bit already. This is an  
15 informal way of resolving it through revising the DES. Why don't  
16 you just work with this as you can and see if it is going to work  
17 or isn't going to work. If you agree and can make a change, that's  
18 fine; if you don't agree and you can't work it out, we'll just  
19 resolve it. But we will be checking -- I'd like to check with the  
20 staff in another ten days and see if there is a promise of  
21 resolving some of these points on an informal basis that we've  
22 been talking about. We'll take it from there. I certainly don't  
23 intend to discuss the merits of any of these things, just, you  
24 know, what's going on, are you getting anywhere with this. That's  
25 what I'd like to find out. I'd just as soon not have to go through

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1 pleadings and all the rest just to find out that status report  
2 really. I don't want to police the process, I'm not interested in  
3 that.

4 MR. RILEY: Would it be useful, if it looks as though  
5 the matter is about at a conclusion to have a conference call as  
6 a possible mechanism?

7 JUDGE KELLEY: I don't know what role the Board has in  
8 this, either the staff changes it to your satisfaction or they  
9 don't -- I think. I quite frankly am not prepared to discuss the  
10 merits of Nitrogen-16, I don't know what we would say.

11 MR. RILEY: We'll be glad to work with the staff.

12 JUDGE KELLEY: I think it's just pretty much between the  
13 two of you, I hope it works out, fine. If it doesn't, we'll just  
14 rule.

15 MR. JOHNSON: I see no problem in discussing the matter  
16 with Mr. Riley if he'd like to discuss the matter with staff. He's  
17 free to call me up at any time.

18 JUDGE KELLEY: Fine. Well why don't you proceed  
19 informally and we wish you luck in working out some of these points.

20 MR. MCGARRY: We've never been heard on 12. Let me just  
21 give you our position.

22 JUDGE KELLEY: Sure, we need your observation.

23 MR. MCGARRY: I come back to the reference I made in our  
24 discussion of gaps and that is the threshold burden. The threshold  
25 burden that has to be met here with respect to Contention 12, what

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1 is the problem with Nitrogen-16, how is it going to impact the  
2 public, what is wrong with those calculations that have been used  
3 by the staff relative to Nitrogen-16? None of that has been  
4 addressed. All this Board is faced with is a statement that  
5 Nitrogen-16 hasn't been considered in the DES. Our observation  
6 is, so what. That's what's missing. Because that is such a  
7 critical defect, this contention, as stated, has to be dismissed.

8 JUDGE KELLEY: We'll take just a moment to read it.

9 (Brief pause.)  
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1 JUDGE KELLEY: Thank you. Mr. Riley, the last sentence  
2 -- I'm not sure about that. I'm on the last contention 27, is  
3 this the revision of 27 or an expansion on 27?

4 MR. RILEY: This is related to Contention 27 which is  
5 concerned about having real time monitored, yes.

6 JUDGE KELLEY: Okay.

7 MR. RILEY: And our problem as stated is that the language  
8 continuously monitored might mislead a lay person to think that a  
9 bell rings if the level exceeds certain values. It isn't so. This  
10 little device is continuously receiving whatever radiation is there  
11 and has to be taken into the lab and heated up to find out how much  
12 it would go.

13 JUDGE KELLEY: But 27 we did allow in, right?

14 MR. RILEY: Yes, sir.

15 JUDGE KELLEY: That's litigation -- so your thrust of that  
16 is you really need something more than the TLB -- you need to full  
17 time monitoring?

18 MR. RILEY: That's right.

19 JUDGE KELLEY: But that's already the case.

20 MR. RILEY: And your concern is that the DES statement  
21 is misleading -- quite possibly unintentionally, but nevertheless  
22 misleading,

23 JUDGE KELLEY: I don't think we need to rediscuss -- I  
24 don't see any point.

25 MR. RILEY: Judge Kelley, would the Staff be able to



JT C2 1 commit itself to matters we're discussing here. For instance, such  
2 as Contention #4, this Contention 13, be considered as comments and  
3 -- in terms of being sufficient stipulous to generate a Staff  
4 response to a final DES?

5 JUDGE KELLEY: Yes, sir, right. I think we talked to  
6 that yesterday.

7 MR. RILEY: We differ with the response by the Staff  
8 that no basis whatsoever was offered as to why the DES statement  
9 is incorrect, or the DES is inappropriate. To restate the substan-  
10 tive contention longer life radionuclides which are being continu-  
11 ously contributed to by routine releases are going to accumulate  
12 at higher levels over the life of the plant, so you're going to  
13 find in the soil at year 30, it's going to be different than you  
14 are going to find in the year zero.

15 Now because of this continued build up we don't think  
16 that the averaging of all of the doses is the appropriate thing  
17 because the levels of exposure are obviously going to be higher  
18 farther along from these accumulative continually longer life  
19 materials toward the end. That's what we've been trying to say and  
20 we don't think that this point in time is the right type of data  
21 to pick as the mid point --

22 Well, integration I think would be the appropriate way  
23 to do it. That will take into account the various half lifes --

24 JUDGE KELLEY: I think I understand.

25 JUDGE FOSTER: I've got a couple of questions here. To

1 start off with, in your contention itself, you make reference to  
2 DES 5.4.3.1. It would seem to me that I had found the material you  
3 were looking for not in that section, but the one which is DES  
4 5.9.3.1. Could you tell us which one you really mean?

5 MR. RILEY: I believe 5.9.3.1 elicits -- I'm sure it's a  
6 typographical again.

7 JUDGE FOSTER: All right, thank you. I have a question  
8 or two, perhaps more appropriately addressed to Staff. Am I  
9 correct in assuming that this calculational method which is -- the  
10 question here is contained in Reg Guide 1.109?

11 MR. JOHNSON: Sounds right, Your Honor.

12 JUDGE FOSTER: My basic question is with respect to Staff  
13 making this calculation, was the Staff plowing new ground or  
14 whether they were following fairly established procedures?

15 MR. JOHNSON: I'm quite sure that this is standard pro-  
16 cedure, but I do believe that this Reg Guide 1.109 was --

17 JUDGE FOSTER: All right, and is that relatively new or  
18 has that been in existence for quite some time?

19 MR. JOHNSON: Well, the one that's being used is  
20 Revision 1, October, 1977.

21 JUDGE FOSTER: So then we would assume that the method  
22 that was being used here is one which has been around for quite a  
23 while?

24 MR. JOHNSON: Yes, sir.

25 JUDGE FOSTER: That answers my question. Thank you.

1 JUDGE KELLEY: Any comments from the Staff? Further on  
2 that.

3 MR. JOHNSON: I believe that our comments are contained  
4 in our papers, however, I would reiterate that I believe that  
5 there is nothing really inconsistent with the Staff's DES and  
6 the statements contained in the contention. We have in fact done--  
7 performed these calculations as stated on Page 5-15 of Section  
8 5931, and there's nothing that's been stated in this contention  
9 that challenges that methodology in any way that we find contains  
10 any basis with any specificity.

11 The reference certainly doesn't provide that.

12 JUDGE KELLEY: Any comments from the Applicant?

13 MR. MCGARRY: I think that our position is clearly  
14 stated in our response and we won't belabor the point, but we  
15 would like to mention one fact and that is with respect to the  
16 build up of radionuclides. This is not a matter that is new to the  
17 Intervenors. Back in 1973, at the time of the construction permit  
18 proceeding, CESG raised the contention, Contention ee which spoke  
19 to this matter of build up. Given that as a basis and given the  
20 fact that our ER references those calculations and how one treats  
21 those commitments, we think it is incumbent upon the Intervenor  
22 if they had a contention it should have been made at that time and  
23 not now.

24 JUDGE KELLEY: All right, Contention #15. Mr. Riley,  
25 yesterday I asked you what a bus bar was, and my colleagues told

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1 me what ever it is, everybody knows what a bus bar is, but this  
2 morning I'm going to ask you what a cation is C-A-T-I-O-N(spelling).

3 MR. RILEY: Cation.

4 JUDGE KELLEY: Cation?

5 MR. RILEY: Right.

6 JUDGE KELLEY: What's that?

7 MR. RILEY: Well, it's something that a large part of  
8 chemical agents is concerned with, but to be more liberal about it.  
9 -- are you familiar with the use of the expression of sodium chlor-  
10 ide as the representation of table salt?

11 JUDGE KELLEY: Yeah.

12 MR. RILEY: Well, with sodium chloride, which can form a  
13 single molecule is placed in water it divides into two particles.  
14 The sodium is the positive charge, the chloride has a negative  
15 charge, and the result is if you put in a couple of electrical  
16 attachments which are called anode cathode. Anode being the posi-  
17 tive, cathode being the negative, that the anode which in this case  
18 is chloride will seek the positive anode as being negative and the  
19 cation will seek the cathode.

20 In other words it is a positively charged ion.

21 JUDGE KELLEY: Okay, thank you. Go ahead, Mr. Riley,  
22 if you want to comment or the parties.

23 MR. RILEY: The synopsis given by the DES statement,  
24 they take into consideration something called ground shock. Are  
25 you familiar with that term?

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1 JUDGE KELLEY: No.

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2 MR. RILEY: Well, the radioactive gases Krypton and  
3 zircon when they give off their electrons called beta particles,  
4 turn into other elements, Libidium and cesium respectively, and  
5 Libidium and Cesium are not gases. They are solids and they will  
6 be cations, and they absorb on to the first solid thing they reach,  
7 or if there is mist in the air, they absorb on to the mist and then  
8 the mist drops to the ground and contacts something, they absorb  
9 that site. The result is that we have a very thin layer of radio-  
10 active materials on the ground, vegetation and so forth which is  
11 giving off radiation.

12 The DES concerns itself with that dosage, the ground  
13 shine dosage. Now if an individual inhales the released radio-  
14 active kryptons and zircon, there is going to be problems in the  
15 lungs first, some radioactive libidium and cesium and I sketch out  
16 in the contention, which isotopes are involved and what their  
17 lives are. Some are perfectly innocuous, others are not.

18 I am saying that this involves the dose commitment  
19 because unlike the cloud of krypton and zircon which is exhaled and  
20 you're done with it, the libidium and cesium is going to be with  
21 you for a while, and I feel that there is going to be a dose about  
22 that, the Staff has it's concept and notion that the dose is going  
23 to be negligable, and I'm not so sure that it is. I think the Staff  
24 has the responsibility of saying what the dose is, if it's going to  
25 another part of the DES, pay attention to the ground shine effect,

1 JUDGE KELLEY: Thank you. Comment from the Staff?

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2 MR. JOHNSON: Well, #13 and #14, we believe these are in  
3 the nature of comments to the extent that they will be treated as  
4 comments in the FES statement and will be answered. It's our  
5 contention that these matters were considered and dose commitment  
6 was considered to be negligable, as Mr. Riley mentioned. Also  
7 intricate pathways, exposure pathways were considered and that's  
8 so stated in the reference, and that there isn't any other basis  
9 for the contention.

10 I would just like to make a reference that I was looking  
11 for during the last discussion on 14 that I relied on and I was  
12 looking for, and couldn't find it. It was in Appendix D, Page  
13 D-3, where it states that a 20 year period which shows in these  
14 calculations and it does reference one guide, Reg Guide 1.109 as  
15 representing the mid point of plant operations and factors, as to  
16 the dose models, by allowing for build up of other-- greater  
17 radionuclides in the soil, so I just -- that's just my thought  
18 there.

19 JUDGE KELLEY: Okay. Mr. McGarry?

20 MR. MCGARRY: We'll stand on our pleading one observation  
21 that we haven't heard today and we haven't seen in the contention  
22 itself. What is the basis for the Intervenor saying Staff is wrong  
23 in stating that the dose commitments is negligable? There's been  
24 a lot of discussion about what goes on and how these elements break  
25 down, but why is the Staff wrong in saying the dose commitment is

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1 negligable. That point hasn't been addressed.

2 JUDGE KELLEY: #17 -- that seems to be a fairly straight  
3 forward statement.

4 MR. JOHNSON: That's a fact.

5 JUDGE KELLEY: Could you give me a summary then of your  
6 response to #17?

7 MR. JOHNSON: Yes.

8 MR. RILEY: I would appreciate it if the Staff would give  
9 us a page reference because --

10 MR. JOHNSON: Page reference to what?

11 MR. RILEY: Your pleading.

12 MR. JOHNSON: Page 8.

13 MR. RILEY: Thank you.

14 MR. JOHNSON: To summarize our position is that we did  
15 consider the type of meteorological conditions and the diversions  
16 and very slow air movement in the cite specific accident analysis,  
17 Section 5.9.4.5 -- 5.9, which was based on hourly readings over a  
18 year's time. To the extent that these types of conditions occur,  
19 they were factored in and weighed accordingly. In addition, for  
20 the purposes of Part 100 -- for purposes of Part 100, the Staff  
21 is performing further calculations based on the worst case met in  
22 meteorological conditions, and since the license will not be issued  
23 as the result of these type dosages which are basically contained  
24 in Section 100, there really is no problem, no analytical issue  
25 here. We have done in fact what they say we should be doing.

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1 JUDGE KELLEY: If you would expand a little bit on how  
2 you've done that though and I'm not questioning that you have,  
3 I would just like the indication, and what I'm thinking of is  
4 suppose you -- in light of the answer what are the weather con-  
5 ditions that are particularly unfavorable to a nuclear power  
6 plant accident? Would you say that that only happens six times  
7 a year, or whatever it is, and then factor all of this into a  
8 computer code and come out at the other end with a something  
9 number about likelihood of an accident can produce so many  
10 rems off site.

11 That's one way and maybe that's the best way. I'm not  
12 sure, but virtually I suppose you could say, well, we do have a  
13 certain kind of weather around here that's unfavorable and  
14 happens frequently, but when it does, this is what would happen.  
15 Sort of a separate look -- that kind of a scenario.

16 It's a pretty cluttered question, I admit, but could  
17 you characterize your analysis?  
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RA dl 1 MR. JOHNSON: I really can't give more detail than  
2 I already gave. I think my first responses, responses to your  
3 subsequent question that the first analysis that I referred to  
4 does in fact take a realistic view of what the weather conditions  
5 are going to be at any given time and the likelihood of any  
6 particular occurrence is considered and weighted.

7 But, in addition, a much more conservative approach  
8 is taken, which takes that second category situation where you  
9 had just assuming conversion or a stacking error, whatever it  
10 is, for purposes of determining whether those calculations are  
11 going to be within departmental limits.

12 JUDGE KELLEY: So you have to take references in the  
13 DES for all of that.

14 MR. JOHNSON: 5-35, I believe. Right in the middle  
15 of the page, the second full paragraph. The whole paragraph.

16 JUDGE KELLEY: Basically, you are saying you did do  
17 that.

18 MR. JOHNSON: That's part of it.

19 JUDGE KELLEY: It is in there. Any comment, Mr. McGarry?

20 MR. MCGARRY: We agree with the staff. We have set  
21 forth our position in our pleading and we would just like to make  
22 one further observation that gets to the timeliness of the conten-  
23 tion, and CESG raised the adverse meteorological contention  
24 concerning the susceptibility of this area to atmosphere and  
25 convergence specifically in a pleading of McGuire, 1981--January

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1 of 1981.

2 MR. RILEY: I think you proffered it but it wasn't  
3 litigated.

4 JUDGE KELLEY: I am sorry, I didn't hear what you said.

5 MR. RILEY: That point was not litigated.

6 MR. McGARRY: Our point is, was the Intervenor on notice  
7 about atmosphere conditions in this area and obviously they were  
8 on notice because they raised that concern in January of 1981.

9 JUDGE KELLEY: Okay.

10 MR. GUILD: Judge Kelley, if I could make two observa-  
11 tions. The first is, the staff made an analysis of the worst  
12 case weather for the purpose of proving the appropriateness of  
13 this site giving population, concentration, etc. for safety  
14 purposes, but that does not excuse failure to consider this factor  
15 when they are weighing environmental costs of those actions which  
16 is what they had to do in this analogy, so to say they will do  
17 it later in another context does not excuse them not having done  
18 it here, and further the fact that Mr. Riley knew when he was--  
19 when he moved to Charlotte, North Carolina that it has temperature  
20 convergence or weather does not prompt an obligation to raise  
21 his hand and say to the NRC you had better consider a contention  
22 based on it.

23 The threshold, the triggering mechanism for raising  
24 this problem is the publication of DES in August which failed  
25 to account for this and simply said we consider average weather,

1 and on the basis of average weather calculate that the cost of  
2 a severe accident will be X as opposed to X plus under more  
3 adverse weather conditions.

4 MR. RILEY: There is some very interesting language  
5 in the pleading by the staff. It says that in the event there  
6 is no requirement that the DES take its evaluation consequences  
7 based on most pessimistic assumptions, only that it consider  
8 the reasonably foreseeable impacts.

9 Well, I can see two ways to go. One would be no  
10 problems or no events to speak of and the other is to recognize  
11 the full range of possible impacts and the staff has already  
12 committed to that by turning out the probability tables of  
13 reasonably severe accidents.

14 I feel that in this context as well as in the other,  
15 the Draft Environmental Statement should indicate a potential  
16 in this direction.

17 JUDGE KELLEY: Okay. Let me take a second here and  
18 read 18.

19 I think I know what it means, but could you define  
20 interdiction?

21 MR. RILEY: I have trouble with it too, sir, but it  
22 is used in the DES language. What it means is that you don't  
23 let people live in an area anymore because it is too dangerous,  
24 they have got to stay out. Agriculturally, the land is spoiled,  
25 crops wilt, and the rest of it.

1 JUDGE KELLEY: 5-40?

2 MR. RILEY: Yes, sir.

3 It is about one-third of the way up the page and  
4 the sentence starting, "The last-named costs would derive from  
5 the necessity for interdiction to prevent the use of property  
6 until it is either free of contamination or can be economically  
7 decontaminated."

8 JUDGE KELLEY: I think I would join you, at least as  
9 an editorial comment. I really didn't know what interdiction  
10 meant and in that context, I think I sort of know what it means.

11 Okay. Mr. Riley, are we planning on getting an  
12 Emergency Planning contention here?

13 MR. RILEY: Perhaps so. My best understanding is  
14 that there is no requirement on the part of any of the agencies  
15 involved to take up the matters related to interdiction in  
16 emergency planning.

17 JUDGE KELLEY: But in any event, it is treated in the  
18 impact statement.

19 MR. RILEY: Yes.

20 MR. GUILD: Judge Kelley, this subject will arise later  
21 because the staff makes certain presumptions about the effectiveness  
22 of emergency planning as a basis for predicting the consequence  
23 of an accident. In other words, X number of people will move  
24 out of the way in Y hours and therefore receive Z dose and with  
25 the consequent health effect. This interdiction presumption is

1 a premise behind their calculation of accident effects and, of  
2 course, it does inter-relate with emergency plans.

3 MR. RILEY: Well, the staff may have been hampered  
4 here by the lack of emergency plans, because unless it is discussed  
5 in emergency planning, there is no one that one can talk about  
6 the environmental impacts of the interdiction and something else  
7 called crisis relocation.

8 JUDGE KELLEY: Let me ask the staff, the dollar number  
9 here, you have got the economic cost dollar number, the range,  
10 but that is for all of those costs aggregated, is that right?

11 MR. JOHNSON: Referring to the numbers in the table  
12 or--

13 JUDGE KELLEY: I am looking at, I am reading 5-40.  
14 The table is --

15 MR. RILEY: 5.7.

16 JUDGE KELLEY: What page is that on?

17 MR. RILEY: 5-63.

18 MR. JOHNSON: The last column on the right. Cost of  
19 offsite mitigating accidents in millions of dollars.

20 JUDGE KELLEY: What page is that?

21 MR. RILEY: That is 5-80.

22 JUDGE KELLEY: 5.11.

23 Your costs are concerning mitigating accidents, which  
24 aggregate a whole bunch of different things, right?

25 MR. JOHNSON: That would appear to be the case, yes.

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JUDGE KELLEY: Can you tell us whether the cost of interdiction are included in 5-11?

MR. JOHNSON: That's the way I understand that discussion.

JUDGE KELLEY: The contention is an evaluation of the availability of facilities for relocation, is that in there, that dollar number?

MR. JOHNSON: I don't think so. I don't think it is included in one of those categories.

Would you state again the type of temporary relocation site?

JUDGE KELLEY: Well, I might not want to go into that but relocation would be taking people from one place and putting them some place else for some period of time, whether it is 48 hours or who knows what beyond that. There are costs involved and as I read the contention, you are rather saying you didn't consider relocation costs.

MR. JOHNSON: That is not the way I read this contention. I read the contention as general availability of those facilities and non-monetary.

JUDGE KELLEY: Maybe I am confused.

MR. JOHNSON: It didn't seem to be challenging.

JUDGE KELLEY: You may be right.

The second sentence says, "The cost of interdictin are considered" and the third sentence says, "an evaluation

1 of the availability of facilities for relocation are not considered".

2 Are we talking apples to oranges rather than talking costs or  
3 what are we talking about?

4 MR. RILEY: We are saying that the staff went part  
5 of the road but didn't go all of it. I mean it is one thing to  
6 talk about how much something will cost and it is another thing  
7 to know whether it is available to buy.

8 JUDGE FOSTER: Mr. Riley, is this concern that you have  
9 now basically the same concern that you had in your original  
10 contention number 10?

11 The one that you submitted last December?

12 MR. RILEY: Yes, sir.

13 JUDGE KELLEY: When you say "non-monetary impacts of  
14 the relocation", you are referring to what kinds of things?

15 MR. RILEY: That part of the country in which they were  
16 born and lived and so forth. Generally people don't like to be  
17 displaced. The Palestinians, for example, seem rather unhappy  
18 about it and I would say that if you displaced a substantial part  
19 of the population or all of it of Charlotte--

20 JUDGE KELLEY: Do what now?

21 MR. RILEY: If you displaced all of the population  
22 of Charlotte.

23 JUDGE KELLEY: Could we assume that that could happen?

24 MR. RILEY: I think it is within the realm of possibility,  
25 yes. This is the reason that I am concerned about the slow air

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movement, circulating air, southwest, northeast during all parts  
of the year, convergence, various southern velocities, and so  
on.

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1 MR. GUILD: Judge Kelley, do you think it is implicit  
2 in the staff's analysis of what they presume to happen in the event  
3 of a severe accident, that they presume a plume direction toward  
4 Charlotte, they presume a relocation of people out to a 25-mile  
5 radius from the plant, and they presume the introduction and  
6 mitigating elements which they relate in this narrative. Those  
7 have costs, some of them we've identified and we say that some of  
8 them they haven't and one is what Mr. Riley has just alluded to,  
9 and that's the cost of permanently having to leave your home, for  
10 a matter of years. I don't think they identify a specific time  
11 frame for when you can return.

12 JUDGE KELLEY: I think we ruled against you on the idea  
13 of a matter of years or a matter regarding the time, earlier, in  
14 terms of the emergency planning, but --

15 MR. GUILD: Yes, but this is in the context of course of  
16 what underlies their calculations about the costs of an accident.

17 JUDGE KELLEY: Mr. Johnson, can you tell me whether your  
18 Table 5-11 costs -- does that include the evacuation of Charlotte?

19 (Brief pause.)

20 MR. RILEY: While the staff is looking for this, although  
21 their Figure 5.6 provides a basis for relocation up to 25 miles --

22 JUDGE KELLEY: What page are you on?

23 MR. RILEY: That is page 5-62.

24 JUDGE KELLEY: Uh-huh, it goes out 25 miles.

25 MR. RILEY: Right, and I should note that most of

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1 Charlotte falls within that 25-mile radius.

2 JUDGE KELLEY: Maybe I can ask a separate question. Does  
3 Chart 5.6, up in the legend, the little box in the upper righthand  
4 corner it says evacuation to ten miles and then it says evacuation  
5 to ten miles plus relocation ten to twenty-five miles. What is  
6 the difference between evacuation and relocation?

7 MR. JOHNSON: I think it's a reference to a discussion  
8 in Appendix F, which discusses the consequences under which this  
9 is used and the difference is that what they're assuming is that  
10 after the plume there will be an evacuation if there is a  
11 substantial release and there is discussion in that appendix of  
12 the movement of the cloud and movement of the population away from  
13 it. The relocation that they're talking about is this assumption  
14 that after the plume has passed, in order to avoid continuing  
15 exposure from the deposition of the radiation deposited on the  
16 ground, that the population will be temporarily moved for a period  
17 of time. That's discussed in Appendix F, that's the relocation.

18 JUDGE KELLEY: Evacuation means everybody in the general  
19 area gets out of the way and then after the plume is gone it's  
20 the contaminated area you avoid, from which you relocate people?

21 MR. JOHNSON: You relocate away from that area.

22 MR. JABBOUR: The relocation would not be the full area  
23 between 10 and 25 miles, it would be only where the plume passes  
24 over.

25 JUDGE KELLEY: The footprint.

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1 MR. JABBOUR: The footprint, yes.

2 MR. GUILD: : Judge, if you would look on page 5-65  
3 there is an isopleth of the -- some assumed plume stretching in  
4 the direction of Charlotte, North Carolina.

5 MR. JOHNSON: There is still a question that's out-  
6 standing.

7 JUDGE KELLEY: Yes, the question was whether your  
8 numbers on your dollar figures and so on and your rem figures  
9 contemplated evacuation of Charlotte, North Carolina. You can  
10 let us know later if it's hard to find.

11 MR. JOHNSON: I believe when you talk about the section  
12 that's contained on 5-40, page 5-40, you are also considering the  
13 discussion in Appendix F, and the Appendix F discussion discusses  
14 the model and uses the economic costs associated with implementa-  
15 tion of evacuation that's assumed in that model, but there isn't  
16 any evacuation assumed, I don't believe, in Charlotte.

17 If you look on page F-3, there are three cases that are  
18 considered and in the first full paragraph it states "Figure F-1  
19 shows a pessimistic case for which no earlier evacuation is  
20 assumed and all persons are assumed to be exposed for the first  
21 24 hours following an accident and have been relocated, and a  
22 case for which evacuation at the same speed as above was assumed  
23 to take place to 15 miles. For evacuation to 20 miles, the  
24 calculation would predict near zero early fatalities. So the  
25 model would appear to take into consideration these situations, but

E4pw

1 beyond that I would have to restudy this.

2 MR. GUILD: And Judge, at that same page, at the top of  
3 that paragraph, it states clearly all people beyond the evacuation  
4 distance who would be exposed to the contaminated ground would be  
5 relocated within 25 miles.

6 MR. JOHNSON: But again, that's relocation and not  
7 evacuation.

8 MR. GUILD: That's Charlotte.

9 JUDGE KELLEY: This staff has just been doing these  
10 statements for a year or so, right? I mean, after all, this is  
11 a pretty hard thing to do, this discussion on these big accidents.  
12 You haven't had any guidance from the Commission except go do it,  
13 as far as I know, and it hasn't been to the Appeal Board or  
14 any place like that. This isn't a maiden effort, but it's a hard  
15 job and it's something with a lot of experience accumulated. Is  
16 that fair to say?

17 MR. JOHNSON: I think that's a fair characterization.  
18 You'll find similar types of analyses in recent DES's for other  
19 plants. This may be slightly different.

20 JUDGE KELLEY: Mr. McGarry, any comment on this?

21 MR. MCGARRY: Yes. We've looked at this contention  
22 and if we bear in mind the observations made by the intervenors, the  
23 basis for this contention is that there is not adequate permanent  
24 relocation facilities. The Board has already ruled on that and  
25 rejected that issue. Otherwise, we stand on our pleading.

E5pw 1 JUDGE KELLEY: Why don't we take ten minutes. Does  
2 anybody know where you can get a cup of coffee close by here?

3 (A short recess was taken.)

4 JUDGE KELLEY: Why don't we do this, we have a little  
5 discussion to do in the area of discovery that will involve the  
6 lawyers.

7 The main thing that we want to address this morning, the  
8 most significant thing in that area we believe, we have a motion  
9 from Palmetto asking the Board for a protective order with regard  
10 to interrogatories allowed by the applicants and also by the NRC  
11 staff. For purposes of our ruling I don't think it's necessary to  
12 go into a great deal of detail, but Palmetto responded to some  
13 degree to those interrogatories mostly by providing some publica-  
14 tions that they had containing certain points.

15 But Palmetto's responses to a goodly number of those  
16 interrogatories were not really responsive, they weren't answers.  
17 References and one or two word responses, but not responses to  
18 the questions in any full sense.

19 The Palmetto motion, again paraphrasing, was based on  
20 the argument that the interrogatories are oppressive and that they  
21 seek to intrude into attorney-client and other confidential type  
22 communication and that therefore a protective order should be  
23 granted in their favor and against the staff and the applicants  
24 with respect to the questions that were not answered. The staff  
25 and the applicants both filed responsive pleadings in opposition to

E6pw

1 the request for the protective order and one ground in particular  
2 struck us as persuasive and decisive. We are going to deny that  
3 request and the reason we're going to deny it is that Palmetto  
4 did not provide us with particularized objections interrogatory-by-  
5 interrogatory explaining why they should be relieved from answering.  
6 What we got was just a general objection to whatever didn't get  
7 answered. As we understand the rule and as we can point to some  
8 case law, it seems to us just common sense if you object to an  
9 interrogatory you should file specific objections saying what's  
10 wrong with it.

11 Now that isn't to say you can't group some, sometimes  
12 there are three or four or however many that have the same objection  
13 in your opinion and you can state that and encompass several  
14 interrogatories under one argument. Nevertheless, it is not for  
15 the Board to go through I don't know how many but a lot of  
16 interrogatories and try to figure out what's wrong with them. It  
17 does seem to us having looked at the interrogatories that at least  
18 some of them appear to be legitimate and on that basis we think  
19 the burden ought to be on the party who seeks relief from responding,  
20 to explain why.

21 Now technically I suppose we could at this stage say  
22 a motion for protective order denied, answer the questions.  
23 Another option which we would prefer to take and which we're going  
24 to take is to allow Palmetto an opportunity now to file particular-  
25 ized objections to particular interrogatories, or answer them, one

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1 or the other. And then it just remains to set a time limit within  
2 which that will be done.

3 I was looking through -- let me just ask the staff, is  
4 there a specific number of days under the rules for answering  
5 interrogatories? I couldn't find it this morning.

6 MR. JOHNSON: Fourteen days plus five days for service  
7 by mail, 19 days.

8 JUDGE KELLEY: Well this is an awful lot of interro-  
9 gatories, that's true. There's also some history. We are, Mr.  
10 Guild, going to require you to either file objections or answers.  
11 How much time do you think you need to do that?

12 MR. GUILD: We'd sort of like to be heard before you  
13 make a ruling on the question because there are a number of  
14 matters which you've observed that I think the record does not  
15 bear out and a number of matters that we think need to be put in  
16 some context before the Board considers putting further burdens  
17 on the intervenors on these subjects.

18 JUDGE KELLEY: Well let me just say, Mr. Guild, inter-  
19 rogatory matters and discovery matters generally are handled on  
20 paper.

21 MR. GUILD: Yes, sir.

22 JUDGE KELLEY: And I've got lots of paper. We've  
23 discussed it and we have an opinion but we've made a ruling. We're  
24 willing to hear from you briefly on some points that you may choose  
25 to make, but we're not here this morning to hear extended arguments

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on this subject.

MR. GUILD: I understand.

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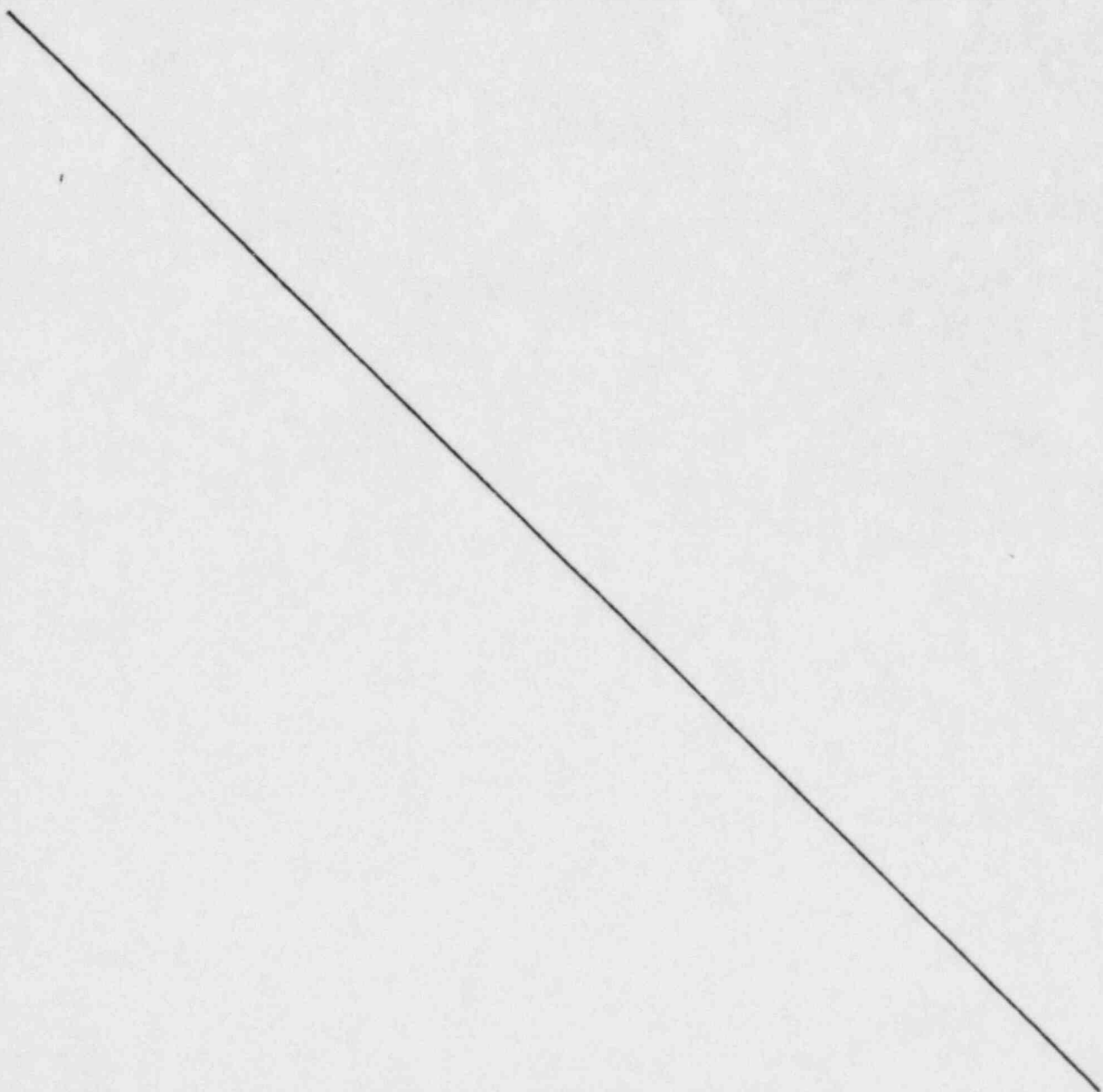
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JUDGE KELLEY: If you have some points to make go ahead.

MR. GUILD: Let me -- all right, sir, I think that you should put into context first that most of the protective orders have been filed twice by the Applicant. I didn't hear the Board mention that.

JUDGE KELLEY: We're going through them one at a time, Mr. Guild.

MR. GUILD: Based on the same general objection almost verbatim you criticise us for having asserted. Now the motion for



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1 protective order that is outstanding from Palmetto does not assert  
2 objections to individualized interrogatory questions. We answered  
3 each and every one of them. We asserted objection to producing  
4 files under the work product protection and that same objection  
5 and protective order request was made by Duke Power Company in  
6 response to our sets of interrogatories.

7 Now the general objection or criticism that the Appli-  
8 cants have of us on the subject of the first -- on sets of interr-  
9 ogatories that they filed and we answered was that when we made the  
10 generalized answer we don't know, they are unhappy with it, and  
11 they have proposed either to sanction us by throwing our conten-  
12 tions out or asserted that we are somehow being less than truthful,  
13 or lying when we say we don't know. Well, we cite case law on our  
14 motion for protective order to the effect that an honest answer  
15 saying we don't know is sufficient, and I would ask you to put it  
16 in the context of this, Judge Kelley, you told us that we had 90  
17 days to do discovery on certain contentions. We set out to do that.  
18 We first had to respond to several hundred interrogatories by the  
19 Staff and the Applicants on those discovery related contentions.

20 We answered to all of those. They then objected and  
21 said we want a stay while we appeal these questions, and they did  
22 appeal, but we answered sets of interrogatories on those discovery  
23 questions from Duke Power and the Staff to the best of our ability.  
24 We then got a second set of interrogatories from them, and we  
25 responded to them. Not one question was objected to on the basis

1 of relevance or on the basis of the scope of the question. We  
2 answered every one of them.

3 We moved for protective order on the basis of confiden-  
4 tial word product. They did the same thing when they responded  
5 to ours. We've received one response to our discovery from Duke  
6 Power Company which is the subject of a Motion to Compel, that we  
7 filed that's available to the Board. We've received nothing else  
8 from neither the Applicant nor the Staff.

9 Now, Mr. Johnson has very recently filed a pleading  
10 saying the Staff will voluntarily respond to our most -- to our  
11 discovery set #2 and he tells me yesterday that he intends to  
12 voluntarily respond to our discovery set #3 and that's appreciated  
13 because that's the first real information that we've actually  
14 gotten about the subject of our contentions that have been admitted  
15 in controversy, but Judge, I've spent the last six months respond-  
16 ing to discovery about my contentions, but yet, I have no, or al-  
17 most no substantive from the Applicant or the Staff who possess  
18 all of the evidence that I'm going to get to prove these contentions  
19 so, Judge, I would ask that if you are focusing on the set #2,  
20 because set #1 is the subject of stay pending appeal, resulting in  
21 ALAB 687, consider set #3 from us -- set #2 and #3 that are to  
22 come from the Applicants and the Staff, in the whole context of  
23 discovery and not simply focusing on one protective order motion  
24 that we've filed outside of the context of #2 that the Applicants  
25 have filed, and a whole set of responses that we've already sub-

1 mitted to them, sir.

JUDGE KELLEY: I guess what we're trying to focus on here  
2 this morning is what's the most important and the most relevant,  
3 and maybe we should take this piece by piece. You're saying that  
4 the motion denied in particular -- we're talking about the answer  
5 filed on August 30th and we've got about ten pages here, essen-  
6 tially not answered -- what is common need -- and you know, these  
7 are one liners. They don't say anything. And that's what we're  
8 saying -- that you should particularize -- when you are saying that  
9 you have answered those interrogatories, we're saying that no,  
10 you didn't.

12 MR. GUILD: All right, sir, but --

13 MR. MCGARRY: May I be heard Judge Kelley?

14 JUDGE KELLEY: Just a moment. The trouble is I'm not--  
15 all right, go ahead.

16 MR. MCGARRY: The Intervenors, Palmetto Alliance filed a  
17 motion for protective order. We responded to that motion for  
18 protective order and we also moved to compel him, because like the  
19 Board, we viewed these answers as non-responsive. In these answers  
20 there are no objections set forth for these answers. These are the  
21 answers Palmetto Alliance gave us, and I don't think any additional  
22 time should be provided for them to file objections, because they  
23 didn't object to any of these interrogatories. There was just a  
24 general objection with respect to the Attorney-Client and the  
25 Attorney-Work Product. Those were the two objections, and we've

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1 addressed that matter and the Board has ruled on that matter, but  
2 as to answering these interrogatories, I think what is at the  
3 moment, is our Motion to Compel because I understand that the Board  
4 now is directing them to Compel. What we had was an alternative  
5 motion in that Motion to Compel which was they -- they either  
6 weren't telling us everything that they knew, and so moved to  
7 compel them, or (b), this is all -- if this is all they had, then  
8 there is no specificity and basis for the contention and we move  
9 to dismiss the contention.

10 JUDGE KELLEY: Yes, and we're not reaching that this  
11 morning. What we're saying is we're going to give you a break --  
12 we're going to give you another chance to particularize your ob-  
13 jection. We don't have to do that but that's what we're going to  
14 do. Now we'll see what that produces and then we'll get to the  
15 requests.

16 MR. GUILD: Well, and --

17 JUDGE KELLEY: Let me ask you this. The matters that  
18 you're referring to, we had a discussion on them only a few weeks  
19 ago and you were unhappy about not getting some answers to your--  
20 some of your interrogatories and we discussed that and I came away  
21 with an impression that these were interrogatories that related to  
22 contentions on which discovery was focused, right?

23 MR. GUILD: Judge, the first round of interrogatories  
24 was at the direction of the Board. I'm one person, Judge, and on  
25 this entire litigation, with respect to the legal work that gets

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1 done for any of the Intervenors that are doing this, I have the  
2 burden of the entire litigation, so I responded to your direction  
3 and I tried to do discovery within the 90 day time period to  
4 support five contentions or thereabouts that were conditions.

5 Now I got discovery back from them, questions from them  
6 which I endeavored to answer, and I tried my best to answer them  
7 and respond to them. They didn't answer any of mine because they  
8 got a stay from this Board while they appealed, and yes, sir, I was  
9 unhappy about that and expressed an unhappiness about having done  
10 all of that work and not getting any answers from them.

11 JUDGE KELLEY: I can appreciate that.

12 MR. GUILD: That's set one.

13 JUDGE KELLEY: Now let me tell you something now --  
14 let's take it point by point. You've got no legal complaint about  
15 the fact that they haven't answered those interrogatories because  
16 discovery is not open on those contentions. As we sit here this  
17 morning, they have no obligation to answer those interrogatories,  
18 isn't that correct?

19 MR. GUILD: Yes.

20 JUDGE KELLEY: Fine.

21 MR. GUILD: I'm just simply trying to give the Board  
22 some -- if the allegation is that somehow we're being uncooperative  
23 or unresponsive for lying to people about this --

24 JUDGE KELLEY: Nobody has said that.

25 MR. GUILD: They think we're lying, Judge, is what it boils

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1 down to.

2 JUDGE KELLEY: Nobody has said anything of the sort, Mr.  
3 Guild.

4 MR. GUILD: I'm sorry, Judge, but that's the way I read  
5 the tenor of your introductory remarks, sir, was that somehow we  
6 were at fault, and by the grace of this Board, you were going to  
7 allow us some opportunity to get out of some fault on this, and  
8 I think that really puts the shoe on the wrong foot, sir.

9 JUDGE KELLEY: Then maybe it's on the wrong foot.  
10 You're at fault for filing these one liners. We think that's a  
11 faulty response, and we're asking for further specification of  
12 objections and -- let me follow up on one further point -- and then  
13 we'll see what that produces and if you answer all of the questions  
14 or you can come in with some answers and we can objectively rule  
15 on those -- and if you come in -- if you don't answer the question  
16 or come in with good objections, you may lose this contention,  
17 that's possible, so you've got an obligation to respond in this  
18 hearing.

19 MR. GUILD: All right, well I just asked -- I asked for  
20 some fundamental fairness and balance in this because let's face  
21 it, we're at the stage now -- we're -- having gotten no where on  
22 round 1 and you say and I observed correctly, Judge, that we had  
23 no legal right to claim --

24 JUDGE KELLEY: True enough.

25 MR. GUILD: Just understand our practical though. As to

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1 set 2 we were trying from the very first to gather evidence in  
2 support of our contentions, okay. At the first round of discovery  
3 before we get responses to ours, and it's true, as a matter of  
4 technical law our responses were due before the Company's response  
5 was due, but we responded in a total vacuum, sir, and you heard  
6 what we knew about those contentions at the prehearing conference,  
7 without knowing anything more, we were asked hundreds of inter-  
8 rogatories and frankly, sir, at that time, I'll say in good faith, I  
9 thought I responded as best I could.

10 Now, I'm not disputing your ruling on this.

11 JUDGE KELLEY: You're not disputing our ruling?

12 MR. GUILD: I mean, sir, if you ruled against me on that  
13 and you disagree with me on that, then I'll live with that, okay.  
14 I'll do what you tell me to do. All I'm telling you is that I  
15 don't agree with you and that's enough said.

16 JUDGE KELLEY: I thought you were referring to some round  
17 back in the spring?

18 MR. GUILD: No, sir. But your observations today, sir.

19 JUDGE KELLEY: All right.

20 MR. GUILD: Then what happens is this. We get our very  
21 first set of responses from Duke on the contentions that have been  
22 admitted, and our response is if ours are unresponsive, theirs are  
23 unresponsive and we have a Motion to Compel as to that too. That's  
24 the first substantive answer we've gotten to any interrogatories,  
25 any discovery, about our contentions so --



1 JUDGE KELLEY: What's the date of your Motion to Compel?

2 MR. MCGARRY: It's very recent, Judge, it's October 4th.

3 MR. GUILD: And the response to that is not due yet.

4 There's no question about that. Just to bring you uptodate. There  
5 is a set number two of our interrogatories relates to operator  
6 qualifications and real time monitors. Two of the first several  
7 contentions that were admitted unconditionally, and the Motion to  
8 Compel addresses 8 and 27, plus 16, which is the spent fuel,  
9 safety and spent fuel storage on site. We have a Motion to Compel  
10 -- I take that back.

11 We have a Motion to Compel as to 8027, operator quali-  
12 fications. We got an answer back as to that which we consider  
13 unresponsive and which contains objections to -- and we challenge  
14 those, with some particularity in our Motion.

15 JUDGE KELLEY: We will be responding to that.

16 MR. GUILD: I understand -- their time to respond has  
17 not passed yet. We have since filed a third set of interrogatories  
18 on the subjects of the other two remaining contentions that have  
19 been admitted so far and that's spent fuel and \_\_\_\_\_, and  
20 the answers are not due to those yet. They're just not due, so  
21 the context of all of this is, we have what we consider the unre-  
22 sponsive answers to two contentions, and we've got a Motion to  
23 Compel, which is not yet ripe for a decision by the Board. We  
24 have discovery on two other contentions. The only other two  
25 contentions that have been admitted and the time for response to

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1 them has not yet been reached, so we expect something back, and  
2 then what is -- what is ripe for decision -- the only thing that  
3 is ripe for a decision, is our second set which you view as  
4 unresponsive.

5 JUDGE KELLEY: Right.

6 MR. GUILD: And I'm prepared to deal with that, sir, but  
7 I just wanted to try to place it in the context of what discovery  
8 has happened so far and we've got to be able to provide in answer  
9 -- you know, what we told you at the last prehearing conference on  
10 these things.

11 JUDGE KELLEY: Well, it may be that up to this date you  
12 have had to do more work than they did. That's sometimes the way  
13 it works.

14 MR. GUILD: Yes, and I -- something that I want to state  
15 for the record, is I can meet the obligations or litigation as a  
16 part of this, but the thing as a practical matter that is most  
17 burdensome for the Intervenors in this case, so far, is detailed  
18 response to discovery, and literally, sir, in addition to filing  
19 all of the answers on the appeal that is pending in this matter,  
20 which I have been the sole counsel representing the Intervenors  
21 in that phase, and responding to preparation -- trying to keep up  
22 with my other work, discovery is very, very burdensome as a  
23 practical matter, and I'm not saying that I'm not legally obligated  
24 to do that. I'm just trying to tell the Judge that it's not because  
25 of lack of diligence or me sitting around twittling my thumbs that

1 you haven't gotten more than you have, and I'm committed to telling  
2 you and the other parties anything that I know or have in my  
3 possession on these subjects. I'm not holding stuff back, Judge,  
4 is the point I'm trying to make. And if you think I didn't do  
5 good, tell me and I'll try better.

6 JUDGE KELLEY: We just would like to see more responsive  
7 answers to point by point objections --

8 MR. GUILD: I've tried not to assert objections either,  
9 not because I wanted to hide behind unresponsive answers, because  
10 I want to tell them everything that I know.

11 JUDGE KELLEY: Now, let me just clarify one point, I  
12 think it's a small point. You have a motion filed against the Staff  
13 because the rule was written in such a way as to require some kind  
14 of finding before you had the answer to the request, and the Staff  
15 -- the Staff objected to --

16 MR. GUILD: They objected to the answer.

17 JUDGE KELLEY: Correct.

18 MR. GUILD: They objected, but Mr. Johnson has assured  
19 me that they will voluntarily attempt to provide this information  
20 and I appreciate that and that's where we stand right now. I  
21 don't think there is anything to decide there.

22 MR. JOHNSON: Let me respond. I did indicate to Mr. Guild  
23 that we would voluntarily respond to the second set of interro-  
24 gatories that he filed and that was on paper. We also reiterated  
25 some objections to the request for assistance which was included

JATF12 1 in each of his three motions to require answers from the Staff.  
2 Those -- all three of those motions were objected to, and I don't  
3 think that needs to be reiterated, but I think that one ruling  
4 on any of those motions would clarify the situation on that, and  
5 the second two sets, we are going to attempt to respond. That  
6 doesn't waive our right to object as appropriate.

7 I think though that there is only one that we formally  
8 responded to, the due date hasn't come yet, and we will -- in  
9 anticipation of that filing date, will not -- we will voluntarily  
10 reply. As a result, maybe I should memorialize this with a letter  
11 of some sort.

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2 JUDGE KELLEY: Let me just ask if whether we can't  
3 simplify this a little so far as interrogatories. Isn't it  
4 your practice to not stand on defining, but answer preserving  
5 your right to object to any particular interrogatory?

6 MR. JOHNSON: What we do is on the subject of  
7 interrogatories, we are talking about a step by step basis,  
8 we do not waive for all time or until we rest the case our  
9 right to require that they go through Section 2.720 but that our  
10 policy is we try to answer voluntary without requiring a Board  
11 order, that's true.

12 JUDGE KELLEY: Looking for a reduction in paper work  
13 which is always desirable.

14 If you file interrogatories, can't you then look them  
15 over and say they look okay, so you can let him know, he doesn't  
16 need to file a motion?

17 MR. JOHNSON: I would agree that in the future that  
18 practice would be super, of course, we don't waive our right  
19 to require that, but on the other hand, that procedure that you  
20 suggested is more expeditious.

21 MR. GUILD: Judge, I would like to suggest this with  
22 respect to the staff. We have pending motions that require  
23 staff answers and I certainly don't think it is necessary for  
24 the Board to take that motion up for decision while Mr. Johnson  
25 has an outstanding offer to voluntarily respond. Unless Mr.  
Johnson wants to press a decision on those matters, I would just

1 as soon informally communicate and try to resolve it.

2 JUDGE KELLEY: I think that is fine with us. I would  
3 point out those two motions that we all have copies of, we will  
4 regard as not withdrawn but in sort of a limbo at the moment pending  
5 informal discussion and hopefully we can avoid the motion in the  
6 future except in the case where you may want invoke, where you  
7 may want to raise your defense of the rule issue and we will go  
8 through that procedure.

9 Well, we need to set a time, is that pressing at this  
10 point? 30 days?

11 30 days within which to either answer the question more  
12 fully or provide a specific objection to the question or parts  
13 of the question and then we will see what that process produces.

14 The applicants motion to strike or reconsider the  
15 objection, however you want to paraphrase, we'll then append for  
16 the time being to see what this whole approach produces.

17 MR. MCGARRY: Judge Kelley, for orderly process in my  
18 mind with respect to the outstanding motions, the Intervenors  
19 motion for protective order has been denied?

20 JUDGE KELLEY: Correct.

21 MR. MCGARRY: The applicant and the staff have outstanding  
22 Motion to Compel Answers. As I understand it, that has been  
23 granted, except for that part of Applicant's motion which asks  
24 in the alternative that the contentions be reconsidered and  
25 dismissed.

1 JUDGE KELLEY: It is not a grant of a motion to compel  
2 answers of all those questions because they are being given an  
3 opportunity to lodge a specific objection.

4 MR. MCGARRY: My reason for asking, as this Board well  
5 knows, 30 days hence we get answers that are very similar to this,  
6 then we are going to go through another Motion to Compel Answers?

7 JUDGE KELLEY: I guess that's right.

8 MR. MCGARRY: So I am just simply asking now it seems  
9 more orderly to rule on that Motion to Compel, which I understand  
10 in essence you have, you are saying I am granting the Motion to  
11 Compel, I am giving you 30 days to answer these interrogatories  
12 and then if they don't answer the interrogatories--

13 JUDGE KELLEY: I will say you can also file specific  
14 objections if he has got some.

15 MR. MCGARRY: Understood.

16 JUDGE KELLEY: Drop the Motion to Compel, I had rather  
17 you would answer them all.

18 MR. MCGARRY: The point being, as the Board well knows,  
19 in 30 days hence, if they haven't been responsive, then it is  
20 appropriate for us to move for sanctions. I am just trying to  
21 save time to go through that exercise, it would be more appropriate  
22 to rule on that motion, grant the motion as it relates to responses  
23 recognizing they can file objections if they particularly arise  
24 and then we can deal with them as they come up.

25 JUDGE KELLEY: What bridge do you want to cross, Mr.

1 McGarry, we haven't already crossed? I am not clear.

2 MR. MCGARRY: It is procedural. I want you to grant  
3 our Motion to Compel.

4 JUDGE KELLEY: All right, what--take it piece by piece  
5 what elements -- we have directed answer and four objections,  
6 what's missing?

7 MR. MCGARRY: That you specifically say, we are  
8 directing answers or objections and in that action, we are granting  
9 the applicant's Motion to Compel which has the effect we need.

10 JUDGE KELLEY: Fine. Granted.

11 MR. MCGARRY: Thank you.

12 MR. GUILD: Judge, let me ask this now, we have an  
13 outstanding motion for protective order with respect to work  
14 product. That work product will identify the code from every  
15 file we had, we gave him a list of everything we had specific  
16 to look at with the exception of the objective to work product.  
17 They were served the same work product objection in a much broader  
18 sense without identifying what it is in response to the set that  
19 is not yet before you, but if they are not going to give me their  
20 files, Mr. McGarry is not going to open his files to me and he  
21 so said.

22 JUDGE KELLEY: That motion isn't here yet, is it?

23 MR. GUILD: Yes, sir, our Motion for Protective Order  
24 asked to be protected from their production inspection of our  
25 files which I identified to you, sir.



RA g-5 1

JUDGE KELLEY: I thought you were getting over into the  
2 Motion to Compel which you have just filed.

3 MR. GUILD: No, sir, I am trying--I identified the  
4 work product and served a specific work product objection which is  
5 the only objection I asserted in response to Mr. McGarry's  
6 seven discovery that you found me to be unresponsive to. The  
7 protective order sought to be protected from, in that one objection,  
8 that was the point of the protective order.

9 MR. JOHNSON: I believe the main focus of his objection  
10 he has filed on his production comments, we had already filed  
11 pleadings. Your ruling now, it is not clear as to how it deals  
12 with that, that type of objection to a motion.

13 JUDGE KELLEY: Lets make this simple and it is late in the  
14 day. We will rule now on the questions, and I will tell you which  
15 ones they are. Looking at Mr. Guild's response, dated August 30,  
16 there is a three-page cover document, page 4 begins with the  
17 caption of Request for Documents, it lists 29 documents under  
18 contention number 8; 23 under contention 27, and then on the next  
19 page we get over to questions captioned at the top, Palmetto Alliance  
20 Contention 8, - 1, 2, 3, 4, 3 pages up to number 84 and the next  
21 one it begins with number 1 and says Contention number 16 and there  
22 are 48 references. There doesn't seem to be 48 answers and then  
23 concerning contention 27, there are three pages, from 1 to 100;  
24 that is the focus of our concern. We thought that was the focus  
25 of your concern and do you want an answer to those questions, more

ra g-6

1 than you got? The motion covers that.

2 MR. MCGARRY: That is correct.

3 JUDGE KELLEY: Okay, now does your motion only speak  
4 to the document disclosure?

5 MR. JOHNSON: No, I was just saying as I understood,  
6 you had ruled only on -- it sounds to me like you were only ruling  
7 on the interrogatory responses and not on the documents in question.

8 JUDGE KELLEY: Yeah.

9 MR. JOHNSON: Okay, if that is what it is.

10 JUDGE KELLEY: That is what we are talking about and I thought  
11 that took care of the bulk of what's before us and you are saying  
12 you have a work product objection with reference to the production  
13 of document request?

14 MR. GUILD: Yes, sir.

15 JUDGE KELLEY: Okay, we will get to that later. We are  
16 not going to do it this morning.

17 Lets go back to the contentions. It is twenty minutes after  
18 eleven, or thereabouts, we have got--

19 MR. GUILD: May I please, one other point on discovery  
20 before you leave that?

21 JUDGE KELLEY: Yes.

22 MR. GUILD: We have answered the staff and the applicant's  
23 interrogatories on contentions subject to revision after discovery.  
24 They have not answered ours and we would ask that they be directed,  
25 they are under stay now; at some point I would like to address this

ra g7 1 question of lifting the stay and getting some answers to our dis-  
2 covery which has not yet been forthcoming.

3 JUDGE KELLEY: Okay, what they are saying is when  
4 they say there is nothing to discover because the contentions are  
5 gone, that is their position. That may or may not turn out to be  
6 the case, but that I understand is their position.

7 MR. JOHNSON: I think that has to wait for your ruling  
8 on that.

9 JUDGE KELLEY: Yes. I think that was their response.

10 (Brief pause.)

11 I was just looking a little bit at the paper. There  
12 are five more contentions here to discuss. It is twenty-five  
13 after eleven. I think we had better try for around five minutes  
14 apiece, two minutes perhaps.

15 MR. JOHNSON: If I understand Mr. Guild, he said he  
16 wants to go back to 19.

17 MR. GUILD: I was going to say that, Mr. Johnson. I  
18 think maybe we have already covered the substance of them, Judge,  
19 so you will find that is going to go very quickly. There are a  
20 few that are unique that we should--

21 JUDGE KELLEY: Have we already covered 19?

22 MR. GUILD: Yes.

23 JUDGE KELLEY: All right, fuel storage.

24 MR. GUILD: 20, Judge, we have referred to it at least  
25 in passing and it is similar to an earlier contention. It is

1 reduced benefit from lower levels of operation at Duke to steam  
2 generator problems and--

3 JUDGE KELLEY: We talked about another one that discussed  
4 the de-rating of McGuire and sonon?

5 MR. GUILD: That is correct.

6 JUDGE KELLEY: This is at least relative with the other?

7 MR. GUILD: Yes, that's correct.

8 JUDGE KELLEY: Mr. Riley, do you want to expand on this one  
9 in light of the earlier discussion or do you think you need discussion?

10 MR. RILEY: I would like to defer to Mr. Guild on it.

11 JUDGE KELLEY: Okay. Fine. You are fine as far as  
12 you are concerned?

13 MR. GUILD: Yes, this focuses specifically on the  
14 absence of an analysis in the DES on that reduced level of operations.

15 JUDGE KELLEY: Okay. Fine. Any comment, Mr. Johnson?

16 MR. JOHNSON: I would agree that it isn't substantively  
17 very different from the earlier contentions 5 and 6, dealing with  
18 de-rated McGuire and its generating capacity.

19 MR. MCGARRY: We stand on our pleadings.

20 JUDGE KELLEY: Okay, 21.

21 MR. GUILD: Judge, number 21 is sort of present of  
22 Charlotte-Mecklenburg Environmental Coalition health effects  
23 contention as a group. It is a revision of one of the December  
24 '81 Palmetto contentions, I think the first one.

25  
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End Take

Hlpw 1 JUDGE KELLEY: Is there an element in 21 derived from  
2 the Impact Statement that is new information?

3 MR. GUILD: Yes, sir.

4 JUDGE KELLEY: What would that be?

5 MR. GUILD: Every place you see a page reference on the  
6 text of 21 is a specific critique of the staff's health effects  
7 analysis as contained in the DES, and the substance hasn't altered  
8 from the '81 version of the contention. The Board raised a number  
9 of questions about what we meant by an element of the original  
10 contention. We've looked in the DES to see whether there were  
11 staff positions on those questions, some were, some weren't; and  
12 those were addressed in the body of this contention. Staff  
13 admits itself to relying on BEIR I, that was not clear at the time  
14 of the original contention since there hadn't been an environmental  
15 statement at the OL stage.

16 They continued to rely, in our view, on the linear  
17 hypothesis which we assert understates the long-term health effects  
18 from exposure to low levels of radiation.

19 JUDGE KELLEY: How close a relationship is there between  
20 21 and Charlotte-Mecklenburg's Number 4? You indicated there was  
21 one, I just wondered.

22 MR. GUILD: Beyond simply saying the subject matter is  
23 generally the same, I can't tell you more in detail. Palmetto's  
24 Number 1 from the December filing is a health effects contention and  
25 as elaborated in Number 21 now, and I think it's just very close to

H2pw 1 what Charlotte-Mecklenburg has filed as Revised Number 4.

2 JUDGE KELLEY: Have you read this, Mr. Pressler?

3 (A document was handed to Mr. Pressler.)

4 MR. PRESSLER: Well I think insofar as the conclusion  
5 it is essentially the same as my general concern, that the health  
6 effects from the routine operation of the plant have been under-  
7 estimated by the DES. Other than that similarity, we didn't so  
8 to speak work these out together. I wouldn't say that my particular  
9 contention -- I would not be able to say that my contention is in  
10 agreement with the sentence, for example, "BEIR III's reliance on  
11 the linear hypothesis seriously understates health effects at lower  
12 level dose rates." I wouldn't be able to say that, and also I  
13 haven't addressed myself to the whole question of foodchain  
14 analysis either.

15 JUDGE KELLEY: Well I wanted to get an idea, thank you.  
16 Does the staff have any comments?

17 MR. JOHNSON: I'd just like to highlight it. There is  
18 a dichotomy of position between CMEC 4 and Palmetto Alliance 21.  
19 I think they're opposite positions, one is saying the staff is  
20 incorrectly relying on BEIR I and the other says that it should  
21 have relied on BEIR I.

22 JUDGE KELLEY: You can't win, can you?

23 MR. JOHNSON: No. But I think the problem really here  
24 is that there is no specificity, no basis is supplied in  
25 Contention 21 that really wasn't already stated in the original

H3pw

1 contention, there really isn't much of an improvement over  
2 Palmetto's original Contention 1. BEIR III is referenced in their  
3 original contention and the idea that they are now addressing  
4 through citations where BEIR I and III are mentioned, cited in the  
5 DES, doesn't make it new information. Since they obviously were  
6 aware of these studies and the fact of reliance in my opinion is  
7 not significant enough to make it new information, so our position  
8 is that this is untimely.

9 But mainly our position is that there is no substance,  
10 no specificity on which we can address what it is that they're  
11 talking about here and we think it lacks basis.

12 JUDGE KELLEY: Mr. McGarry?

13 MR. MCGARRY: The staff has articulated our position.  
14 I would just further mention on the timeliness issue that CESG has  
15 been litigating the linear hypothesis question for years,  
16 starting back in 1973.

17 JUDGE KELLEY: 22. It's kind of long, could you  
18 summarize this and kind of get to the core of this?

19 MR. GUILD: Number 22 is a severe accident contention  
20 and we've talked about the subject before in other contentions  
21 and I won't belabor the previous observations except to say that  
22 here the Board took a contention that we had in our December '81  
23 filing and they said it's premature, in substance, that the staff  
24 is obligated under the interim policy statement to address severe  
25 accidents and evaluate the cost of them. We expect, you said, the

H4pw

1 staff to address the criticisms that Palmetto raised in that  
2 contention or explain why they shouldn't. The staff has a lengthy  
3 analysis of severe accidents in the DES, probably the single most  
4 the single lengthiest subject of the document. We've read the  
5 DES on this subject and found it inadequate in several very impor-  
6 tant respects and we tried to take our original contention on  
7 severe accidents that was sort of anticipatory and withdraw the  
8 portions of it that have been solved by the DES, which weren't any,  
9 and specifically deal with the analysis that the staff does put  
10 forward. And that's in short what we do, and it is a lengthy  
11 analysis but the point of it all is you charged us with doing that.  
12 You said come back and revise it if there's a revision needed, or  
13 drop it, and we revised it.

14 JUDGE KELLEY: Staff?

15 MR. JOHNSON: We'll stand on our pleading. We do not  
16 emphasize the timeliness objection but rather lack of basis, the  
17 basis for finding that we did not comply with the Commission's  
18 policy statement and that the statements raised here raise any  
19 issue concerning such evaluation and its reliance on the updated  
20 RSS.

21 JUDGE KELLEY: Is there a timeliness objection to this  
22 kind of a contention?

23 MR. JOHNSON: I'm sorry?

24 JUDGE KELLEY: Is there a timeliness objection to this  
25 kind of contention? I would have thought this analysis was sort of



H5pw

1 ipso facto --

2 MR. JOHNSON: We did not object on a timeliness basis.  
3 There are two elements to this contention; one emphasizes the  
4 reliance on the modeling for serious accidents themselves and the  
5 other part has to do with the evacuation and relocation assumptions.  
6 But I think we can stand on our pleading.

7 MR. MCGARRY: Our objection goes to specificity and basis  
8 and we spent quite a bit of time going through this long contention  
9 so we'll stand on it, but just highlighting it very quickly, it's  
10 broken into four parts; one is Reactor Safety Study and again  
11 it's mere criticisms, generalizations, problems with the Reactor  
12 Safety Study, no specificity whatsoever. We have never been told  
13 what is the problem area with the Reactor Safety Study. Another  
14 point I draw your attention to, the second aspect in the contention  
15 is there is a difference in design between the Catawba design and  
16 the Reactor Safety Study, therefore it's improper to use the  
17 Reactor Safety Study in relationship to Catawba. That precise  
18 point was raised by CESG in the petition to reopen Catawba and  
19 was disposed of by the Director's decision in January, 1981, so  
20 this is not a valid criticism. So we make reference to that.

21 The third aspect is the hydrogen control system and I  
22 think if you go through our response, we're basically saying that  
23 issue lacks specificity and the fourth point is the emergency  
24 plan aspect of the contention, and we raise an objection to the  
25 attack on Regulation --

H6pw

1 MR. GUILD: I'll just highlight that, Judge, the  
2 Director's decision that Mr. McGarry has reference to on a similar  
3 subject does not dispose of the deficiencies in the staff's  
4 accident analysis here. The staff essentially says, in response  
5 to the criticism that the RSS doesn't adequately define probabilities  
6 for an ice condenser containment, that the Commission's application  
7 program using Sequoyah as a model, answers that criticism and we  
8 then say no it doesn't. The staff goes on to observe, after looking  
9 at the Sequoyah application document, that it simply underscores  
10 how important it is that the hydrogen control mechanism works  
11 right, to mitigate accident consequences. We don't think that  
12 lays to rest the problem at all or the dissimilarity between  
13 Catawba and the reference reactor used in the underlying Reactor  
14 Safety Study.

15 JUDGE KELLEY: Okay.

16 MR. GUILD: The last contention, Judge, if you'll go  
17 to that essentially raises the failure by the staff to adequately  
18 assess the costs of the back end of the nuclear fuel cycle as  
19 those costs would be incurred in the operation of the Catawba  
20 facility, and it cites reference to the recent decision of the  
21 Court of Appeals invalidating the S-3 rule, presumption shall we  
22 say, about the availability of waste disposal and the environmental  
23 costs of such unknown and untried and untested and unestablished  
24 waste disposal. We understand the position of the staff and  
25 applicants to be, well the Commission is trying to appeal that

H7pw

1 decision and so therefore we should go ahead without evaluating  
2 those costs. Technically the mandate of the DC Circuit has not  
3 yet issued. We think that that clearly doesn't settle the obvious  
4 question that there has been an invalidation of the S-3 table  
5 with respect to the rear end of the fuel cycle costs. And we think  
6 now is the time for the staff to address that.

End H

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JAT11

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1 JUDGE KELLEY: On the last point -- S-3?

2 MR. JOHNSON: We'll stand on our pleadings.

3 MR. MCGARRY: We'll stand on our pleadings as well.

4 JUDGE KELLEY: Let me ask Counsel, what other things  
5 they would like to raise -- left to right, -- that we haven't talked  
6 about this morning.

7 MR. MCGARRY: There are several matters that are still  
8 before the Board. We don't propose to raise them at this particu-  
9 lar point in time, the accident contention.

10 JUDGE KELLEY: The credible accident contention --  
11 that's before us and we will try to put that in with our ruling.  
12 Let me just speak for a minute -- we'll be issuing a memorandum  
13 and order I expect, ruling on the old contentions and the new  
14 contentions, I think that credible accident #7 should be a piece  
15 of that I would think.

16 MR. MCGARRY: I'm just raising that as an open item.

17 JUDGE KELLEY: That's fine.

18 MR. MCGARRY: The other open item that we have and again  
19 I don't want to raise it at this point in time, but there are  
20 various discovery motions before -- we've discussed one today, but  
21 there's other motions before you.

22 JUDGE KELLEY: Yeah, --

23 MR. MCGARRY: And these motions relate to the discovery  
24 that has been discussed -- we discussed one of them today, but  
25 there are about four or five other motions that relate to discovery

JATI2 1 which hasn't been scheduled -- and before the Board.

2 JUDGE KELLEY: Could you just discuss quickly what they  
3 are.

4 MR. MCGARRY: For consistency we would start from the  
5 beginning, because the Board let the discovery -- the stay of  
6 discovery on July 8th and since that time it was before the Board,  
7 but Palmetto's motion for protection which you've already addressed  
8 today. The Applicant and Staff's opposition to that protective  
9 order which has been discussed. The Applicant and Staff's Motion  
10 to Compel, which we've discussed today.

11 JUDGE CALLIHAN: Mr. McGarry, could you put the date on  
12 those please?

13 MR. MCGARRY: Yes. Palmetto's protective order is August  
14 30. The Applicant's response to protective order and the Motion to  
15 Compel is dated September the 9th. The Staff's response to Pro-  
16 tective order and Motion to Compel is dated September 15th.

17 Palmetto Alliance's response to the Motion to Compel was  
18 due October 4th and was never filed.

19 MR. GUILD: Judge, we maintain that that doesn't call for  
20 a response to the Motion to Compel. We asserted an objection, we  
21 moved for a Protective Order. The rule says you do those two  
22 things. If the other side is unhappy with it, they move to Compel,  
23 and to try to minimize paper, Judge, frankly, it just did not seem  
24 that there was any necessity for filing a motion, or responding to  
25 motions which the opposition which has already been stated in the

JATI3

1 record, got.

2 MR. MCGARRY: Now the next grouping is with respect to  
3 Palmetto Alliance's interrogatories upon Applicant. Applicant  
4 moved for Protective Order on September 22nd, and the Palmetto  
5 Alliance had filed a Motion to Compel dated October 4th. The  
6 Palmetto Alliance has not yet responded to the motion for a pro-  
7 tective order, but the time is not right at this time.

8 JUDGE KELLEY: Right.

9 MR. GUILD: Judge, a Motion to Compel is a response to  
10 an assertion of objection, and our Motion to Compel does again --  
11 to minimize paperwork, I'm not going to file a separate piece of  
12 paper unless the record by the Board says add another piece of  
13 paper to --

14 JUDGE KELLEY: Have we got a statement with both sides,  
15 just without a further pleading -- if you're satisfied -- you have  
16 the 1st --

17 MR. MCGARRY: We have, you know, we still have an oppor-  
18 tunity to respond to the Motion to Compel dated October 4th.

19 JUDGE KELLEY: All right.

20 MR. MCGARRY: Those are the outstanding discovery matters  
21 as we see them.

22 JUDGE KELLEY: I want to comment on the same exercise,  
23 this is the same exercise as a year ago in another case. There  
24 was a terrible rush to move this thing along and we tried to get  
25 -- to suspend with some of these pleadings, because they take so

JATI4 1 much time, but right now if you want to file another pleading,  
2 you can submit it. There won't be any harm.

3 MR. CALLIHAN: Mr. Guild, is there a September 27th  
4 Palmetto Alliance Motion to Staff -- is that outstanding?

5 MR. GUILD: Yes, sir, the rules require that in order to  
6 get discovery against the NRC Staff, you must file a motion, and  
7 those are the two motions that Mr. Johnson and I had reference to,  
8 but held in sort of abeyance while we try to get voluntary answers.

9 MR. CALLIHAN: I have nothing further.

10 JUDGE KELLEY: Staff, anything else you wish to speak  
11 to?

12 MR. JOHNSON: No, sir.

13 JUDGE KELLEY: Mr. Riley, anything else you want to raise  
14 this morning?

15 MR. RILEY: Just waiting for the fall.

16 MR. GUILD: I would just like to inform the Board if I  
17 may that we will not be responding to Applicant's motion for pro-  
18 tective order, it was directed at Palmetto Alliance's contention  
19 #80.7.

20 JUDGE KELLEY: Mr. Guild, anything else?

21 MR. GUILD: No, sir.

22 JUDGE KELLEY: Let me just ask -- discovery is being  
23 stretched out and insofar as being pressed for time, going to  
24 hearing -- well, basically, as far as going to hearing is concerned,  
25 I expect there will come a time when you might want to be a little  
more regimented in the way we proceed, whether it would be in terms

PT15

1 of a time limit around discovery -- I'm not sure which, but to make  
2 some kind of sense -- we know right now that we're getting staggered  
3 sets of contentions. We've got those for first three, that I hope  
4 are pretty well through discovery except for the disagreements on  
5 contentions -- the question on ruling. Presumably something will  
6 come out of this round. Way down the road emergency planning  
7 may produce some contentions, but we wouldn't want all of this  
8 discovery to come to a head at the end I wouldn't think.

9 We don't have to set anything this morning, but do you  
10 have any thoughts on -- I'll just pull a number out of the air --  
11 let's suppose that we let a contention in on Day 1, can you be  
12 through in 90 days, 120 days, or what do you think is -- or what  
13 do you think. Mr. Guild, what do you think?

14 MR. GUILD: Judge, we'd like at this point to keep the  
15 matter open, and for example, while 90 days and 120 days sounds  
16 reasonable in the abstract the supervening of that have come since  
17 the last admitted contentions, have occupied almost all of our  
18 time in litigation of this case, and so that was certainly not  
19 anticipated by the Board or by us. 90 days for the first set of  
20 conditional contentions have long expired because of all of the  
21 jostling that was going on, so I would just say that, first, I would  
22 like to keep the matter open at this point, and second, if we have  
23 a set of contentions that are now in, and those are the five, or  
24 four, or whatever they were that came out of the December filing,  
25 and we've exchanged a set of discovery and all of the motion papers



JATI6 1 have been acted on, I would like to have some kind of a status re-  
2 view and maybe time set when the Board's attention wouldn't be  
3 diverted to other subjects when we could sit down and try to facil-  
4 itate whatever --you know, the outstanding matters are, disputes  
5 there are, and I'm just suggesting a consideration of some kind of  
6 a mechanism that allows for everybody to kind of stand back in the  
7 formalities of throwing paper at the subject and sit down and just  
8 say, well what is it we're looking for here, and can't we facilitate  
9 that.

10 Somd kind of a settlement conference that might involve  
11 the Board Chair or some input by theBoard that would help us facil-  
12 itate exchange of information.

13 JUDGE KELLEY: Yes, that may be a good idea. Staff,  
14 what do you think?

15 MR. JOHNSON: Well, I would agree with some of the things  
16 that Mr. Guild said. For example, take the 90 days for CESG  
17 Contention 18, which is same as Palmetto Alliance's 44, it was  
18 admitted on July 8th, today is October 8th -- that's 90 days, and  
19 I drafted some interrogatories to send out quite a while ago, 45  
20 days ago and they never went out because of the intervening event.

21 I think that 90 days in the abstract is not really that  
22 workable and I think that the idea of sitting down and talking  
23 among the parties, or some means of communications as to what is  
24 the status of that contention, how much discovery, what's the dis-  
25 covery that's outstanding and what needs to be resolved, and how

JATI7

1 much more discovery is contemplated. I think that reasonable time  
2 limits would be a good idea. Right now this -- I know that in  
3 management that is a good idea.

4 JUDGE KELLEY: All right, Mr. McGarry?

5 MR. MCGARRY: We'd like to move through discovery as  
6 expeditiously as possible. We think that respecting contentions  
7 -- with respect to new contentions obviously time should be pro-  
8 vided but it's difficult to put a time frame on it, given the  
9 nature of the contentions that might be -- it may be a very simple  
10 contention, might not need 30 days, so we can't through a number  
11 out -- 60, 90 days time frame.

12 JUDGE KELLEY: But then you can always change for a  
13 particular contention. Just looking for some kind of self discip-  
14 line on all of us is the attitude is why we're here, while we're  
15 a year away from the hearing, to put priority on discovery matters,

16 MR. MCGARRY: We have in our hearing schedule that we  
17 provided, a discovery end on March 8th, and then as I explained  
18 yesterday we recognize that there is a potential for additional  
19 contentions being raised by virtue of the safety emergency plan,  
20 and the schedule that we make reference to has characterized some  
21 fat in it to accommodate a period of discovery on any new conten-  
22 tions and still get to hearing by this time next year, but I would  
23 like to echo the Board's comments that while we suggest a hearing  
24 is a year away, between -- there's a lot to be done between now  
25 and then. You can't let discovery drag.

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JAN 18

1 MR. RILEY: Judge Kelley, I do have an observation to  
2 make on discovery. I think that it may be hard for the Board to  
3 do anything about it but I have looked at a number of the discov-  
4 ery documents and interrogatories and there's a great number of  
5 differences in all of them.

6 And one picks up some such documents and they are just  
7 loaded with questions that really don't seem to advance the case,  
8 the least bit, and it's almost that they were putting a person  
9 to -- or to appoint, and I can't help but feel that the parties  
10 only solicited information in areas that there is a probability  
11 of being any use of, and there would be a much smaller volume  
12 of flow and we'd all be happier with one another.

13 JUDGE KELLEY: Yeah, I understand what you're saying.  
14 We're living in an age which a lawyer thinks discovery is just  
15 great stuff and it's been around a long, long time, and it's very  
16 broad. You don't merely have to show that a question will direct  
17 and get you evidence -- it will lean to evidence -- we all seem to  
18 do that, so it's kind of hard for the Board to throw something out  
19 on the relevancy ground due to discovery context. There is some-  
20 thing of a counter revolution going on, a lot of complaint about  
21 discovery, and we have some authority I suppose within the rules  
22 to control it too, but through observation there's a lot of ques-  
23 tions that don't seem to have too much to do with what's before the  
24 house, but it's kind of hard to do at least --

25 MR. MCGARRY: Judge Kelley, may I make an observation?

JAT A9 1

JUDGE KELLEY: Sure.

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MR. MCGARRY: I just want to go on the record as saying we don't enjoy discovery.

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JUDGE KELLEY: You don't what?

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MR. MCGARRY: Enjoy discovery, and our previous dealings with Mr. Riley we didn't engage in much discovery at all. We would take that position, that we did not deluge him with discovery. In this instance, and a problem we've had from the very beginning, the reason we went to the Appeal Board, because we're grappling with an octopus that we cannot put our hands on. We don't think we've still got the specificity and basis. All we have asked in the interrogatories -- we want to know what the contention means. All the interrogatories that we're asking are directed to what does this contention mean so that we can start to prepare our case and that's the tone of the interrogatories.

JUDGE KELLEY: Okay, how about enough said on the subject.

MR. RILEY: I certainly have no -- there's been a lot of discovery exchanged with that organization before, and we have had not too many problems with it. I don't want to prejudge what's going to happen.

JUDGE KELLEY: Mr. Johnson, do you have a comment?

MR. JOHNSON: I just realized that when you ruled on the Motion to Compel of the Applicant, we also had a Motion to Compel, we're talking about the rulings on these -- more complete answers or specific objections -- we also filed a much more limited set of

JATA10

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1 interrogatories on those same three contentions, Palmetta 81627,  
2 you did not address our Motion to Compel and we had requested  
3 answers or in the alternative reference in the answers to the  
4 Applicant's interrogatories, cross referenced to our questions,  
5 so that we knew what answers they were relying on to answer our  
6 questions. Do you follow? We had given them the opportunity to  
7 consider answering our interrogatories directly, to use the answers  
8 that they had previously given if they were responsive. We did  
9 not get substantive responses at all. We didn't get any answers  
10 directly at all. We would be satisfied if we got answers that  
11 incorporated as to all of our interrogatories with reference to  
12 the answers to Applicant's interrogatories, however, there was some  
13 of those in addition -- there was questions, interrogatories that  
14 we asked that were not asked by the Applicant, and we feel that  
15 we are entitled to the answers to those questions. You did not  
16 rule on that.

17 JUDGE KELLEY: Well, the answers that you got were I  
18 think essentially the answers that the Applicants got, --

19 MR. JOHNSON: There was only document that was filed,  
20 responsive to supposedly both sets.

21 JUDGE CALLIHAN: That's your September 15th motion?

22 MR. JOHNSON: That's right, we had a September 15th motion  
23 and the Applicant had a September 9th motion.

24 JUDGE KELLEY: Well, let's keep it very simply if possible,  
25 At the outset the motion should be Staff and the Applicant.

JATA11

1 Where the answer is not responsive we would direct that they be  
2 responded to or objected to in particular terms, with respect to  
3 both the Applicant and the Staff. Mr. McGarry asked for a particu-  
4 lar ruling and we said granted once or twice but what we really  
5 meant was the same relief above,

6 MR. GUILD: Just Kelley --

7 JUDGE KELLEY: Let me finish. And your reasonable  
8 suggestion that cross reference as to some, would be -- we think  
9 that takes some of the burden off -- go ahead.

10 MR. GUILD: Judge, we would like a ruling on both of  
11 our motions to Compel Staff answers. If cooperation is not the  
12 order of the day in fact, then we would like to have our motions to  
13 compel the Staff answer specifically, but I thought we were across  
14 that bridge, sir.

15 JUDGE KELLEY: You are referring now to motion to compel  
16 Staff answers with respect to which set?

17 MR. GUILD: To two sets of outstanding sets of discovery  
18 which Mr. Johnson says he will voluntarily comply with, however,  
19 if he's going back and insist on a response to his Motion to  
20 Compel, then I would like a response to my Motions to Compel as  
21 well. I thought we had resolved this by agreement. Apparently  
22 we haven't, so then we'll stand on our pleadings, sir.

23 MR. JOHNSON: Well, I think Mr. Guild is mixing apples  
24 and oranges.

25 JUDGE KELLEY: I think you're mixing apples and oranges.

1 MR. JOHNSON: First of all it's not a motion to compel.  
2 It's a motion to require submission to the Board.

3 JUDGE KELLEY: I think it's apples and oranges, Mr.  
4 Guild. Your motion is addressed to a technicality quite frankly.  
5 Your motion is addressed to some interrogatories that were served  
6 on you and which you didn't in our opinion give sufficient and  
7 responsive answers to.

8 MR. GUILD: Well, that technicality as you characterize  
9 it, Judge, shields the NRC Staff from advising Intervenors and the  
10 public information about their nuclear reactor regulations,  
11 according to what they know about the safety of this power plant.  
12 Now, sir, if the only way I can get that information from them  
13 is by their grace, that they have not extended to me so far,  
14 except in a promise that they will do in the future, and I have  
15 complied with my rule obligation and moved to get that infor-  
16 mation and I'm saying I'm not interested in pressing that motion,  
17 but they have the prerogative of discovering from me, and telling  
18 this Board how they insist a ruling on their motion to compel  
19 discovery from us, then, sir, it is not apples and oranges. They  
20 are getting discovery against the Intervenors and I'm saying to  
21 you, sir, that the only way that I can get discovery from them,  
22 is having passed on my motion. It's only fair that we have the  
23 same opportunity to ask questions of them, sir.

24 JUDGE KELLEY: I don't know what else I can say. To me  
25 the issues are different, and --

1 JUDGE KELLEY: I don't know what else I can say.

2 You are saying one is a motion and the other is a motion  
3 but they are the same thing. To me it is different. That is not  
4 the way I look at these things. The posture is different, the  
5 context is different, the burden is different and I think under  
6 the circumstances, I've been asked -- and he is fully justified,  
7 in asking for a ruling on their motion to get your answers to those  
8 questions. The other thing is that it is a nickel and dime thing  
9 that we shouldn't have to bother with quite frankly and I thought  
10 we were getting to the point where we didn't have to bother with it  
11 and now you want to reinstate. Okay, so we reinstate.

12 MR. GUILD: I am the one who has to pay the nickel and  
13 dime though. We are the ones who have had to jump through the hoop,  
14 sir.

15 JUDGE KELLEY: You are making work for yourself, you know.

16 MR. GUILD: Well, I don't want to, Judge. I promise you  
17 I don't want to.

18 JUDGE KELLEY: Are you saying that you don't want to  
19 negotiate with the staff on this, this motion that you filed to  
20 get them to answer, is that what you're telling me?

21 MR. GUILD: Sir, I want to negotiate with Mr Johnson if  
22 Mr. Johnson wants to negotiate with me and I hear him saying I don't  
23 want to negotiate with him on the subject of exchange of discovery  
24 information. That is how I read him saying I want a ruling on  
25 my motion.



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JUDGE KELLEY: All right, here is where we are going to leave it this morning, without any further discussion.

The staff's Motion, to Compel that we just discussed on the record is granted under the conditions referred to, including in particular your willingness to take the answers already given to the applicant. We are going to withhold and we will invoke the Palmetto motion and Mr. Guild and Mr. Johnson discuss that and if they are unable to work out mutually satisfactory arrangements, then inform the Board and we will rule on the motion.

Anything else?

(Brief pause.)

Thank you very much. Thank you, ladies and gentlemen.

(Whereupon, at 12:04 p.m., the above-entitled pre-hearing conference was concluded.)

NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the

Atomic Safety and Licensing Board

in the matter of: Duke Power Co., Catawba Units 1 & 2

Date of Proceeding: October 8, 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)