

10/4/82

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

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Docket Nos. 50-413
50-414

NRC STAFF STATEMENT OF POSITION ON
DRAFT ENVIRONMENTAL STATEMENT CONTENTIONS

I. INTRODUCTION

On December 9, 1981, Intervenors Palmetto Alliance, Carolina Environmental Study Group (CESG) and Charlotte-Mecklenberg Environmental Coalition (CMEC) filed separate submissions containing their proffered contentions in the proceeding. A number of these contentions dealing with long-term health effects^{1/} and severe accident impacts^{2/} were conditionally admitted in the Licensing Board's March 5, 1982 Memorandum and Order (LBP-82-16) subject to the requisite specification and revision or withdrawal following the availability of the Staff Draft Environmental Statement (DES). The Board provided a thirty day period following receipt of the DES within which to file appropriate revisions to cure the specificity defects in the denominated contentions. Memorandum and Order at 40.

The DES issued in mid-August 1982 contemporaneous with the rendition of ALAB-687 accepting Licensing Board referral of certain contention

1/ Palmetto Alliance Contention 1, CMEC Contention 4.

2/ Palmetto Alliance Contentions 2 and 10; CESG Contention 9.

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rulings contained in the Board's March 5 Memorandum and Order and remanding the matter for reconsideration. On September 1, 1982, following a telephone conference with the parties on August 31, the Board issued a scheduling order which, among other things, directed the intervenors to file any revised or new contentions based upon new information in the DES by September 22.

On September 19, 1982, CMEC filed a revision to its contention 4 supplying particularity absent in the contention as originally pleaded and putting the issues addressed therein in the context of the analysis in the DES. The Staff would not object to admission of CMEC revised contention 4, if limited as set forth below.

On September 22,^{3/} Palmetto Alliance and CESG filed a joint supplement to their intervention petitions containing proposed new contentions regarding the DES. This pleading does not revise the conditionally admitted environmental contentions denominated above and, accordingly, those should be deemed withdrawn under the above-referenced terms of this Board's March 5 Memorandum and Order. A number of the proposed new contentions are not dependent on "new information" contained in the DES and are, hence, untimely,^{4/} constitute impermissible challenges to Commission regulations,^{5/} are more in the nature of informational comments on the DES rather than posited matters in controversy,^{6/} and/or

^{3/} The Staff did not receive this filing until September 24.

^{4/} See proposed contentions 2, 3, 5, 6, 7, 8, 11, 20, 21. See ALAB-687, Slip op. at 16 and discussion infra at 3-6.

^{5/} See proposed contentions 6, 8, 18, 22, 23.

^{6/} See proposed contentions 4, 9, 12, 13, 14, 15.

otherwise lack the requisite basis or specificity as required by 10 CFR § 2.714.^{7/} The Staff position on each follows.

II. DISCUSSION

As relevant to the proposed new contentions, and as emphasized in the September 22 Staff response to Board questions^{8/}, the Appeal Board ruled in ALAB-687 that a contention cannot be rejected on timeliness grounds if the contention is "wholly dependent" upon a document associated with the license application or the Staff prehearing review thereof, could not therefore have been advanced with any degree of specificity in advance of the document's availability, and is tendered promptly after the document becomes available.^{9/} In the present context, proposed new environmental contentions not "wholly dependent" upon the content of the DES are untimely and are thereby objectionable given the intervenors' failure to address the late-filing factors in 10 CFR § 2.714(a).^{10/}

The precise meaning of the term "wholly dependent" is not articulated in ALAB-687 and its import must be gleaned from the decision in its entirety. In this regard, the Appeal Board observed that an intervention petitioner had an "ironclad obligation" to carefully review all publicly available licensing documents to discern any information that could serve as the foundation for a specific contention and to plead such contention on a timely basis.^{11/} The Appeal Board continued

^{7/} See, e.g., proposed contentions 1, 11, 17, 21, 22.

^{8/} See Staff response to Board questions on ALAB-687 at 2-3.

^{9/} ALAB-687, Slip op. at 16.

^{10/} Id.

^{11/} Id. at 13.

that, where the unavailability of a relevant application review document made it impossible for a sufficiently specific contention to be asserted on a timely basis, this factor is controlling and obviates the necessity to otherwise balance the five factors for late-filing in 10 CFR § 2.714(a).^{12/} In a later portion of its decision, the Appeal Board emphasized that the referred rulings did not encompass any Licensing Board determination respecting whether there was sufficient publicly available information to enable the formulation of an adequate contention on a particular subject on a timely basis, namely, prior to the first prehearing conference.^{13/}

In furtherance of the Appeal Board prescription regarding proposed contentions based on later available documents, the Licensing Board permitted the present submission of contentions based on "new information" in the DES.^{14/} This is consistent with the long-standing precedent wherein new information contained in a previously unavailable document has been found to constitute good cause for leave to amend contentions accordingly.^{15/} The Staff position on the timeliness of the proffered new contentions is founded on this standard.

There is some language in ALAB-687, however, implying that, if a proposed contention is premised solely on the adequacy of the Staff

^{12/} Id. at 17.

^{13/} Id. at 18 n.17.

^{14/} September 1 scheduling order at 3.

^{15/} See Wisconsin Electric Power Co. (Koshkonong Nuclear Plant), CLI-74-45, 8 AEC 928, 929 (1974); Indiana and Michigan Electric Co. (Donald C. Cook Nuclear Plant, Units 1 and 2), CLI-72-75, 5 AEC 13, 14 (1972).

environmental impact statement, it can be advanced following the issuance of the impact statement without being objectionable on timeliness grounds.^{16/} The Appeal Board observed that without the opportunity to examine the document, a petitioner could not be expected to plead an adequately specific contention on the adequacy of the review therein.^{17/}

Most of the newly proffered contentions are couched in terms of the sufficiency of the DES or Staff evaluations therein and are arguably timely if the above proposition is controlling. Some of the proposed contentions, however, pertain to subject areas upon which the intervenors could have framed an adequately particularized contention prior to the special prehearing conference on the basis of then available environmental documentation.^{18/} In this context, they are not "wholly dependent"^{19/} upon the content of the DES for their advancement or based on "new information" therein.^{20/}

While ALAB-687 admittedly is not free from ambiguity, the Staff believes that, viewed in its totality, the better interpretation of the Appeal Board ruling in ALAB-687 on justifiable post-environmental statement contentions is that they are not rendered untimely if an adequately particularized contention on a "particular subject"^{21/} could not have been advanced prior to that document's availability and is thus "wholly

^{16/} ALAB-687, Slip op. at 13-14.

^{17/} Id.

^{18/} Id. at 18 n.17.

^{19/} Id. at 16.

^{20/} Licensing Board September 1 scheduling order at 3.

^{21/} ALAB-687, supra, at 18 n.17.

dependent on the content" thereof.^{22/} If this were not the case, the Appeal Board decision in ALAB-687 would have the effect of postponing the obligation to submit any contentions until the issuance of Staff review documents for a petitioner whose sole professed interest is in the adequacy of the Staff evaluation therein. This would have an obvious and adverse effect on the orderly and efficient conduct of the Commission's licensing proceedings contrary to Commission policy^{23/} and possibly necessitate accelerated preparation of Staff review documents in such a way as to compromise their thoroughness. Nonetheless, the Staff has not overly stressed timeliness objections to the proposed new environmental contentions which it believes are mostly deficient on other grounds as well. The Staff position on the proposed new contentions follows.

A. Analysis of Severe Accidents

Palmetto/CESG Contention 1

This contention asserts that the risks associated with severe accidents have been understated in the DES because the Staff assumes only one serious accident (TMI-2) per 400 reactor years of operation. The contention cites accidents at Fermi 1 and Browns Ferry 1 and 2 as overlooked accident examples. However, the accidents at Fermi 1 and Browns Ferry 1 and 2, do not constitute a valid basis for this contention. The DES provides that the accident analysis therein is directed toward uninten-

^{22/} Id. at 16.

^{23/} Commission Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452 (1981).

tional events that result in the release of radiation to the environment and is focused predominantly on events that can lead to releases in substantial excess of permissible limits for normal operation. DES, § 5.9.4.2. The DES considers the accident impacts, risks and mitigation for both design basis (§ 5.9.4.5) and beyond design basis (§ 5.9.4.6) accidents. First, neither the Fermi nor the Browns Ferry accident resulted in release of any radioactivity to the environment. DES, 5.9.4.3; NUREG-0050, "Recommendations Related to Browns Ferry Fire", 1976, p. 2. Thus, they do not qualify for express consideration as severe accidents within the objective of the Staff Chapter 5 analysis.

Second, contrary to the assertion in contention 1, the Fermi 1 accident was considered in the DES. DES § 5.9.4.3. However, "Fermi 1 was a sodium-cooled fast breeder demonstration reactor designed to generate 61 MWe." DES, p. 5-30. Its dissimilarity to large light water commercial reactors makes it inappropriate for inclusion in assessment of risks of operation of power reactors such as Catawba (whether releases occurred or not).

Third, with regard to the Browns Ferry fire, that type of event is not beyond design basis. As noted in NUREG-0800, Standard Review Plan, pp. 9.5.1-9 - 9.5.1-11, fires are expected to occur, and the Commission has instituted numerous requirements intended to assure that fires will be prevented, detected and suppressed, and, in any event not prevent essential plant safety functions from being performed. Id. Since the Staff evaluation assumes fires are going to occur, and the Commission requires that plant safety systems be designed to withstand fire, the occurrence of fire is a design basis accident and is not a basis for

challenging the DES statement concerning the risk of very severe (beyond design basis) accidents.

Fourth, as made abundantly clear in Section 5.9.4.5(7) and Appendix E of the DES, the accident analysis in chapter 5 does not rely only upon the RSS. In any event, the contention furnishes no other bases to support its assertion that reliance on the RSS has led to understating serious accident probabilities. In short, it is the Staff's view that no bases have been provided for this contention and that the contention therefore, should be rejected.

Palmetto/CESG Contention 17

This contention states that accident consequences should be calculated for the extreme meteorological condition of inversion and very slow air movement, and that the DES is deficient "in not considering extreme, but frequently encountered weather conditions." This is incorrect. The DES has considered the representative annual meteorological conditions in its site-specific accident analyses. DES, § 5.9.4.5; Table 5.9. The Staff has indicated that it is performing further calculations based, in part, on worst-case meteorological conditions pursuant to its implementation of 10 CFR Part 100 provisions. DES, Section 5.9.4.5. A license will not be issued unless the results of these calculations meet the dose limits in 10 CFR Section 100.11. Id. Intervenor can review these calculations upon their completion. In any event, there is no requirement that the DES make its evaluation of consequences based on the most pessimistic assumptions, only that it consider the reasonably foreseeable impacts. Public Service Co. of Oklahoma et al. (Black Fox Station, Units 1 and 2) ALAB-573, 10 NRC 775,

778-9 (1979). The DES does consider all meteorological conditions, and, to the extent inversion and slow moving air frequently occur, they are weighted in the Staff's methodology. Thus, there is no basis for Intervenor's contention that extreme weather conditions are not considered or that environmental consequences should be calculated considering only extreme conditions. This contention should therefore be rejected as lacking the requisite basis.

Palmetto/CESG Contention 18

This contention states that "an evaluation of the availability of facilities for relocation and the non-monetary impacts of the location are not considered." The availability of facilities for relocation is a matter relating to emergency plans, and need not be evaluated in the DES. For purposes of the present evaluation, the Staff has, as it entitled to do, assumed that the Commission's emergency planning requirements will be met. See 10 CFR § 50.47(b)(8); 10 CFR Part 50, Appendix E, ¶ E. In evaluating a range of environmental consequences for severe accidents, the DES assumes a variety of protective responses, as well as economic costs associated with them. DES, Appendix F, p. F-3. Further, the contention is not sufficiently specific as to what it means by "non-monetary impacts of location," and should be rejected as failing to provide adequate notice as to the subject of concern. If the contention is concerned with environmental impacts of relocation, these are addressed by the consequence model in Appendix F. To the extent Intervenor's seek to raise psychological stress issues, this is precluded by the Commission's Statement of Policy, issued July 16, 1982. 47 Fed. Reg. 31762 (July 22, 1982) as so noted in the DES (§ 5.9.4.1).

In sum, it is the Staff's view that this contention is objectionable as lacking in bases, in certain respects, as insufficiently specific, and as potentially deficient on legal grounds.

Palmetto/CESG Contention 22

This contention also challenges the Staff's assessment of the environmental impact of severe accidents, particularly its reliance on the Reactor Safety Study (WASH-1400) and its inclusion of an assumption of "complete evacuation of the plume pathway and relocation of all persons on the pathway out to 25 miles and the full availability of medical care for all persons exposed in excess of 200 rems."

With respect to the extent of reliance on the Reactor Safety Study, Intervenors have furnished no basis which suggests that the DES fails to comport with the Commission's Statement of Interim Policy, 45 Fed. Reg. 40101 (June 13, 1980). The Commission therein reiterated its acceptance of "the findings of [NUREG-0400, "Risk Assessment Review Group Report to the U.S. Nuclear Regulatory Commission," (Lewis Report), September 1978] both as to the Reactor Safety Study's achievements and as to its limitations." Statement of Interim Policy, supra. That Report includes the following statement:

Despite its shortcomings, WASH-1400 provides at this time the most complete single picture of accident probabilities associated with nuclear reactors. The fault-tree/event tree approach coupled with an adequate data base is the best available tool with which to quantify these probabilities.

Lewis Report, at p. VIII. In addition, the Commission noted there "will likely remain for some time to come many uncertainties in the application of risk assessment methods and it expects that its Environmental Impact Statements will identify major uncertainties in its probabilistic estimates." Statement of Interim Policy, supra.

Intervenors' contention does little more than refer to the way in which the Staff has incorporated advances in probabilistic risk assessments in its current analysis, in recognition of more recent findings and policy. Intervenors ignore the statements in Appendix E of the DES indicating that the Staff has not relied upon the reference reactor analysis of WASH-1400, but upon a rebaselining thereof, based, in part, on the assumption of use of hydrogen control measures similar to those planned for Catawba. Nor does it explain why the use of a model incorporating use of hydrogen control measures is inappropriate, where such measures are to be employed at Catawba.

With respect to evacuation and relocation assumptions, Intervenors ignore the inclusion of a much more pessimistic case concerning evacuation and relocation in addition to the one referred to by Intervenors wherein no early evacuation is assumed and all persons are assumed to be exposed for the first 24 hours following an accident and then relocated. See Appendix F, p. F-3; Figure 1. Intervenors seek to require the "impossible" by demanding that the Staff analyze now a scenario for evacuation and relocation based on specific local emergency plans that are not finalized. This is clearly contrary to the standard for reviewing the adequacy of environmental impact statement analyses in Black Fox, supra, 10 NRC at 779.

The Staff analysis performed is more than adequately conservative and bounding, particularly given the eventual need to fully meet applicable emergency planning standards. To the extent Intervenors seek to require more than the Commission itself requires, such a contention is a challenge to Commission regulations prohibited by 10 CFR Section 2.758.

Thus, Intervenor's furnish neither a basis for finding that the DES does not comply with the Commission's policy statement, nor a basis for waiver or exception to the Commission's emergency planning requirements if such is contemplated. As a result, this contention should be rejected.

Palmetto/CESG Contention 10

This contention asserts that the consequences of severe accidents involving transshipment of spent fuel from Oconee and McGuire to Catawba are not expressed in quantitative terms. As the Commission has noted, however, "[d]etailed quantitative considerations that form the basis of probabilistic estimates of releases need not be incorporated in the Environmental Impact Statements but shall be referenced therein." Statement of Interim Policy, supra, 45 Fed. Reg. 40101. As noted in Appendix G of the DES, at pp. G-2, 3, the accident analysis is based on the Environmental Impact Appraisal Related to Spent Fuel Storage of Oconee Spent Fuel at McGuire Nuclear Station -- Unit 1 Spent Fuel Pool," December 1978. The DES conclusion is that since the risk involved in transshipment in the Oconee-McGuire case was found to be small, and since the spent fuel which would be shipped from Oconee or McGuire to Catawba would be cooled for a much longer period, the consequences of the shipments proposed here would be no greater than in the earlier appraisal, which in turn contains the pertinent quantitative materials. As a result, this contention lacks basis required by 10 CFR § 2.714 and should be rejected.

B. Dose Commitments and Health Effects From Normal Operation/Accidents
Palmetto/CESG Contention 11

This contention is ambiguous, but appears to assert that the DES fails to consider the possible cumulative risks of accidents for that part of the population "placed at risk by nuclear operation" of both Catawba and McGuire. There is nothing "new" in the DES about McGuire, and, although this contention is couched in accident analysis terms (a Staff responsibility), the introduction of the issue at this date is arguably untimely. A party cannot wait until it sees whether a concern is addressed by the Staff to determine whether it wishes to raise a matter as to which it has notice and the requisite information to frame a particularized contention on a timely basis. McGuire is located approximately 27 miles from Catawba. There is no basis for the supposition that some cumulative effects of simultaneous accidents at McGuire and Catawba is reasonably probable so as to warrant environmental consideration. See Black Fox, supra.

In sum, it is the Staff's view that this contention is untimely, without cause, and that, in any event, is unsupported by any bases as required by 10 CFR § 2.714.

Palmetto/CESG Contention 21

Intervenors claim that long term somatic and genetic health effects of radiation releases from the facility from normal operations and from the uranium fuel cycle have been underestimated, but have provided only the vaguest of statements as support. No basis at all is suggested as to why the manner in which the discussion of the impacts of the uranium fuel cycle in Appendix C of the DES is claimed to be deficient. With

respect to health effects of radiation releases from the facility, Intervenor's suggestion that "the linear hypothesis may seriously understate health effects at lower dose rates, and the Commission's food chain analysis may minimize the uptake of soil borne radiation by plants and thereby underestimate concentrations in milk and meat" fails to address any specific statement or conclusion reached in the DES. It is simply not specific enough to define a concrete issue and provide adequate notice thereof. Therefore, the contention lacks basis and reasonable specificity. 10 CFR Section 2.714(b).

Finally, there is nothing in the contention, except for the references to the DES, which could not have been raised 10 months ago. In the absence of any excuse for filing this contention at this late date, it should also be rejected as untimely.

CMEC Revised Contention 4

The Staff believes CMEC has stated a basis with reasonable specificity with respect to the bases provided in numbered paragraph 1 and 4. However, inasmuch as the DES clearly states that "the NRC Staff used somatic (cancer) and genetic risk estimators that are based on . . . information compiled by the National Academy of Sciences' Advisory Committee on the Biological Effects of Ionizing Radiation (BEIR I) (1972)", DES, p. 5-17, which uses the "linear hypothesis", paragraphs 2 and 3 of the CMEC contention do not provide a basis for challenging the validity of the DES risk estimates. As a result, if admitted, these two paragraphs should be struck as bases for the contention. In short, the revised CMEC Contention 4 provides the basis with specificity lacking in its original Contention 4, and the Staff does not object to its admission as limited above.

C. External Hazards

Palmetto/CESG Contention 16

This contention states that the DES fails to consider the effect of the crash of a heavy aircraft on the fuel pool structure. This contention is completely lacking in basis, since, contrary to Intervenor's contention, the DES notes that the Staff has performed an evaluation of the risk associated with "nearby. . . transportation. . . facilities that might create explosive, missile, toxic gas or similar hazards" and they were "found to be negligibly small." DES, p. 5-33.

An environmental statement is not required, in any event, to consider the hypothetical effects of the proposed action which are as remote and improbable as that postulated by Intervenor. See Black Fox, supra. That is a matter more appropriate for safety consideration, as necessary. As noted in the DES and the Standard Review Plan (NUREG-0800, Section 3.5.1.6) more detailed analysis of such hazards is to be found in the Staff Safety Evaluation Report.^{24/} In short, it is the Staff's view that this contention should be rejected.

D. Miscellaneous Drafting Comments Framed As Contentions

Palmetto/CESG Contentions 13, 14 and 15

These items are not contentions, but rather comments, and should be treated as comments on the DES. Intervenor appears to want to argue whether "continuous monitoring" with thermoluminescent detectors

^{24/} As discussed in the Staff's response to Contention 9, the impacts of spent fuel pool accidents are small compared to those associated with postulated accidents considered by the Staff.

performs the same function as real-time monitors. Although the Staff believes there is no possible confusion as to these different functions, the point to be made here is that this is not a contention.

Similarly, with respect to "Contention 14", Intervenors express nothing more than "doubt" about the correctness of statements in the DES. No basis whatsoever is offered as to why the DES statements are incorrect, or the DES dose estimates inappropriate. Intervenors appear to have ignored the conservative assumptions for dose calculations identified in Appendix D, p. D-3.

Finally, Intervenors claim that the DES statement that "the noble gas effluents act primarily as a source of direct external radiation emanating from the effluent plumes" is misleading because it does not in itself mention very minor doses attributable to decay products of those gases. Doses from these decay products were in fact considered in determining the significant pathways of exposure, DES, Section 5.9.3.1, but were not found to be significant. Intervenors do not assert that they are. Thus, there is no disagreement between the Staff and Intervenors on whether they should be considered. Intervenors' contentions 13, 14 and 15 appear to raise no concrete issues and should not be admitted as contentions in this proceeding. The Staff will, as appropriate, treat them as comments on the DES for response in the FES.

Palmetto/CESG Contention 9

Intervenors state that the environmental consequences of routine operation and fuel pool accidents should be more explicitly considered. This, too, is more in the nature of comment than a contention. With respect to accidents, Intervenors fail to address the determination

reached in Appendix E, p. E-2, that the impacts of these spent fuel pool accidents are well below the impacts of the reactor accidents presented therein. The Staff has considered a range of limiting severe accidents in its analysis. Explicit consideration of less severe accidents is both unnecessary and superfluous. This being the case, Intervenors have failed to offer any reason why explicit consideration of those accidents should be necessary.

With respect to routine operation, Table D.1, of Appendix D explicitly notes that "the Staff has included releases resulting from spent fuel from Catawba and the spent fuel from Oconee and McGuire that may be stored at Catawba" in the source terms which form the basis for dose estimates in the following Tables D.6, D.7, D.8, and D.9. There is thus no foundation for Intervenors question regarding the consideration of doses resulting from routine releases from spent fuel pool. The Staff submits that this "contention" does not identify any specific inadequacy in the DES, and provides no basis for a contention; it therefore should be rejected.

Palmetto/CESG Contention 12

This "contention" is a question: whether statements made in the DES, at p. 5-19 regarding nitrogen-16, are correct. This is a comment, and neither frames a litigable issue nor provides any basis for any issue it may raise. It should be rejected as a contention. But, since the DES is somewhat unclear, it can be clarified in the FES.

Palmetto/CESG Contention 4

Intervenors speculate that the "general public will be confused and possibly mislead (sic), by the variety of units, not simply English and metric, by which flow rate for water and chemicals are presented." This, too, is simply a comment, to be considered when drafting the FES. It should be noted, in this regard, that this is the only public comment on the DES expressing such a position thus seeming to belie the risk perceived by Intervenors. In any event, it is the Staff's view that this "contention" does not raise a concrete, litigable issue and that it should be rejected.

E. Validity of S-3 Table

Palmetto/CESG Contention 23

This contention asserts that the costs associated with the "back end of the nuclear fuel cycle" have not been sufficiently considered in light of the recent federal court decision on the validity of the Table S-3. To the extent this contention challenges the use of Table S-3, it is an impermissible challenge to Commission regulations. 10 CFR § 2.758. The Staff notes the following ruling in Carolina Power & Light Company and North Carolina Eastern Municipal Power Agency (Shearon Harris Nuclear Power Plant, Units 1 and 2), September 22, 1982, slip op. at 25 wherein the Licensing Board stated:

CHANGE 38 alleges that use of the S-3 table is improper because of the ruling in Natural Resources Defense Council v. Nuclear Regulatory Commission, No. 74-1586, Slip Op. (D.C. Cir., April 27, 1982). The mandate of that case, however, has not issued, and until it does, this Board must consider the S-3 rule to be in effect. CHANGE 38 is a challenge to the S-3 rule; it is therefore rejected.

The same result should follow in this case.

F. Cost/Benefit - Need For Power

Palmetto/CESG Contention 5

This contention appears to suggest that the benefit to be derived from operation of Catawba has been overstated. No plausible basis is offered, however, for this assertion. The stated differences in power levels between those given in the CP-FES and OL-DES are insignificant. The contention further cites the present 75% operating restriction upon McGuire due to steam generator matters for the proposition that the Catawba cost-benefit balance must assume that such power level restrictions will be imposed upon Catawba operation. Even assuming that McGuire remains in derated condition, the suggestion that Catawba will experience a similar derating if and when it is ultimately licensed to operate is speculative and too remote to warrant environmental consideration. See Black Fox, supra.

In any event, the Staff cost-benefit balance assumed a 60% annual average capacity factor in its analysis. DES, ¶ 6.4.1. This is more conservative than the 75% capacity factor Intervenor's assert should be employed. Thus, this contention lacks the requisite basis and fails to present a genuine issue for resolution.

Finally, this contention could have been raised after issuance of Applicants' Environmental Report and is not based upon any information newly found in the DES. It is, therefore, untimely. Lacking basis, and being unjustifiably late, this contention should be rejected.

Palmetto/CESG Contention 6

This contention raises two different issues. The first is whether the benefit attributed to electrical production is overstated by 25

percent based on "the present derating of McGuire." The Staff position on this is as stated in regard to Contention 5 above.

The second aspect of this contention is in essence, a need for power contention and is barred from being considered at the OL stage by Commission rule. 10 CFR Section 51.53(c). In issuing this rule, the Commission explained that even assuming the new power is to be used to replace existing power, need for power and alternative energy issues need not be reconsidered at the operating license stage because such reconsideration would "not likely. . . tilt the cost-benefit balance" against issuing the license. 47 Fed. Reg. 12940, (April 26, 1982). Thus, the Commission has removed from this proceeding the issue whether substituting new nuclear plant power for existing less economical means of power production results in additional costs or reduced benefits. Since this contention raises precisely that issue it is an impermissible challenge to Commission regulations contrary to 10 CFR Section 2.758. Further, this issue could have been raised with the information available in the Applicants' Environmental Report, and thus is neither "wholly dependent", nor substantially based upon "new information" and in the DES, is untimely. For these separate reasons, this contention should be rejected.

Palmetto/CESG Contention 8

Like Palmetto/CESG Contention 6, this contention seeks to inject, as a cost/benefit consideration, costs assertedly associated with substitution of Catawba-generated power for existing power. For the same reasons noted in the Staff response to Contentions 5 and 6, this contention raises a need for power issue barred by Commission regulation.

It should, therefore, be rejected as a challenge to Commission regulations barred by 10 CFR Section 2.758. Similarly, the contention is also untimely.

Palmetto/CESG Contention 7

This contention seeks to inject fixed, capital costs into the cost/benefit assessment. However, it is well-settled that the costs of construction are not considered in the cost/benefit analysis at the operating license stage inasmuch as they are "sunk" by the time authorized construction has been completed. As recently noted in Shearon Harris, supra, slip op. at 32-33, and in this Board's March 5, 1982 Memorandum and Order, at 29, only operating costs are relevant at this stage. This contention should be rejected as going beyond the scope of this proceeding.

Palmetto/CESG Contention 20

This contention suggests that the benefit to be derived from the Catawba facility is overstated due to steam generator tube problems experienced at reactors having Westinghouse Model D steam generators, and that costs associated with repair and replacement, resulting worker exposure rates and increased risk of radiation exposure to the public have been understated. Such considerations, however, are speculative, with respect to Catawba. There is no reason to believe that this generic problem, which is being currently addressed at other operating facilities (e.g. McGuire, Summer), will not be corrected by the time Catawba is licensed. Such remote and speculative impacts need not be considered. See, Black Fox, supra 10 NRC at 779. In addition, inasmuch as this subject could have been raised prior to the issuance of the DES, it should also be rejected on grounds of untimeliness.

G. Cooling Tower Drift

Palmetto/CESG Contention 2

Intervenors' concern here is with the damage to property which could be caused if there is sulfuric acid in the cooling tower drift. The DES, it asserts, "either overlooks these consequences or fails to indicate that the excess of sulfuric acid in the cooling water will be neutralized." First, the cited amounts of sulfuric acid and sodium hypochloride usage were included in Applicants' Environmental Report at ER Section 3.6.2.3, and the subject of this contention could have been raised at the time the original petitions were filed. It is thus untimely without good cause.

Second, although the DES does not discuss in detail the manner in which the sulfuric acid is to be neutralized, it should be noted that control of excessive amounts of alkaline or acidic substances in cooling system effluents is an important element in the use of these chemicals (DES, Section 4.2.6.2) and is limited by the Catawba NPDES permit (DES, Appendix I) to a pH between 6.0 and 9.0. Thus, there is, in fact, no basis for a concern over excessive drift of sulfuric acid onto area property. Therefore, this contention should be rejected as untimely and for lack of basis.

Palmetto/CESG Contention 3

The focus of this contention is the alleged inadequate consideration of deposition of chlorine gas vapor through cooling tower drift. The contention is related to Palmetto/CESG 2, and, similarly, could have been raised based on information presented in Applicants' Environmental Report. Further, Intervenors state no basis for their assumption that chlorine

gas vapor will be found in the cooling tower vapor discharge. Moreover, while the contention states that the DES does not address possible impacts from cooling tower drift, the Staff has specifically recommended the inclusion of a cooling tower drift monitoring program in Section 5.14.1 of the DES, for the detection of any impacts from cooling tower drifts. This contention should be rejected as untimely and for lack of basis.

H. EIA For Transshipment of Spent Fuel From Oconee and McGuire To Catawba Palmetto/CESG Contention 19

This contention challenges the adequacy of the Environmental Impact Appraisal of Applicants' proposal to transship and store at Catawba spent fuel from Oconee and McGuire. Specifically, it is asserted that the need for and benefit from the proposal are not analyzed, various costs and the risk of severe accidents are underestimated, and alternatives to the proposal are not considered.

Though not specifically required in NRC environmental appraisals,^{25/} the Staff will address the need for transshipment and the benefits to be derived therefrom, in the FES. The Staff disagrees that the environmental costs and other impacts, particularly from severe accidents, are not properly considered. The mere assertion of inadequacy, however, does not provide a basis with requisite specificity to warrant admission. This is so particularly in view of the extensive analysis provided in the EIA for Oconee-McGuire discussed in Appendix G of the DES. The Staff accident evaluation is based largely on this previous EIA and

^{25/} 10 CFR § 51.7(b).

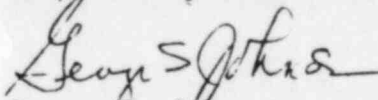
the Staff's basis for reliance thereon is provided. No basis is offered for challenging that reliance.

Finally, the Appeal Board, in considering the transshipment of spent fuel from Oconee to McGuire ruled that "neither Section 102(2)(c) nor Section 102(2)(E) of NEPA obligates the federal agency to search out possible alternatives to a course which itself will not either harm the environment or bring into serious question the manner in which this country's resources are being expended." (citation omitted) Duke Power Company (Amendment to Materials License SNM-1773-Transportation of Spent Fuel from Oconee Nuclear Station for Storage at McGuire Nuclear Station), ALAB-651, 14 NRC 307, 321-322 (1981). The Staff, therefore, believes no basis for a litigable issue has been presented, and this contention should be rejected.

III. CONCLUSION

Having reviewed each of the environmental contentions proffered by Palmetto/CESG and CMEC, the Staff believes that CMEC's Revised Contention 4 supplies the requisite specificity for admission, but that each of the Palmetto/CESG contentions should not be admitted for the reasons set forth above. Inasmuch as Palmetto Alliance and CESG have chosen not to revise those contentions conditionally admitted subject to further specification or withdrawal after publication of the DES, Palmetto's original contentions 1, 2, 10 and 15 and CESG's original Contention 9 should be considered to have been withdrawn.

Respectfully submitted,


George E. Johnson
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 4th day of October,

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

DUKE POWER COMPANY, ET AL.

(Catawba Nuclear Station,
Units 1 and 2)

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)
)
)

Docket Nos. 50-413
50-414

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF STATEMENT OF POSITION ON DRAFT ENVIRONMENTAL STATEMENT CONTENTIONS" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, or, as indicated by double asterisks, by hand delivery, this 4th day of October, 1982:

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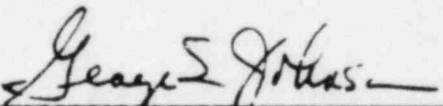
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