

ORIGINAL

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of:

DUKE POWER COMPANY, et al

(Catawba Nuclear Station,
Units 1 & 2)

Docket No. 50-413 OL
50-414 OL

Telephone Conference

Location: Washington, D. C.

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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

3
4 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

5 TELEPHONE CONFERENCE

6 - - - - - X
7 In the Matter of: :
8 DUKE POWER COMPANY, et al. : Docket Nos. 50-413 OL
9 (Catawba Nuclear Station, : 50-414 OL
10 Units 1 and 2) : ASLBP No. 81-463-01-OL
11 - - - - - X

12 Tayloe Associates
13 1625 I Street, N. W.
14 Washington, D. C. 20006

15 Friday, February 3, 1984

16 The telephone conference in the above-entitled
17 matter convened, pursuant to notice, at 11:05 a.m.

18 BEFORE:

19 JAMES L. KELLEY, ESQ., Chairman
20 Atomic Safety and Licensing Board
21 U. S. Nuclear Regulatory Commission
22 Washington, D. C. 20555

23 RICHARD F. FOSTER, Member
24 Atomic Safety and Licensing Board
25 U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

PAUL W. PURDOM, Member,
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

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15 HENRY J. MCGURREN, ESQ.
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18 Office of the Executive Legal Director
19 U. S. Nuclear Regulatory Commission
20 Washington, D. C. 2055521 On Behalf of the Intervenors:22 ROBERT GUILD, ESQ.
23 Palmetto Alliance
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P R O C E E D I N G S

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THE OPERATOR: Judge Kelley?

JUDGE KELLEY: Yes.

THE OPERATOR: Judge Purdom?

JUDGE PURDOM: Yes.

THE OPERATOR: Judge Foster?

JUDGE FOSTER: Here.

THE OPERATOR: George Johnson?

MR. JOHNSON: Here.

THE OPERATOR: Mr. McGarry?

MR. MCGARRY: Yes, here.

THE OPERATOR: Mr. Guild?

MR. GUILD: Yes, ma'am.

THE OPERATOR: The court reporter?

COURT REPORTER: Here.

THE OPERATOR: Brad Jones.

MR. JONES: Yes.

THE OPERATOR: Mr. John Clewett?

MR. CLEWETT: Yes.

THE OPERATOR: Go ahead, please.

JUDGE KELLEY: Can you keep trying Mr. Riley,
Operator?

(No response.)

JUDGE KELLEY: I assume she will.

Well, as you just heard, gentlemen, we have the

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1 people we need, except we don't have Mr. Riley. He is just
2 not home, but with nine of us on the line, I think we
3 should go ahead.

4 MR. JOHNSON: Judge Kelley, I have also J.
5 McGurren, an attorney from the Staff on the line and he is
6 going to be making an appearance in the case.

7 JUDGE KELLEY: Thank you.

8 MR. MCGARRY: And Al Carr is here on the line
9 and Ron Shearin who has entered an appearance is on the
10 line for Duke.

11 MR. JONES: And Virgil Brownlee is in the office
12 with me also.

13 JUDGE KELLEY: Okay. Well, I hope the operator
14 finds Mr. Riley, but I think we ought to go ahead. I will
15 get back in touch with him in any event.

16 MR. GUILD: Judge, let me just mention that
17 Jesse Riley is sending a submittal to the parties as of
18 yesterday on the motion for bifurcation, an affidavit, and
19 I am certain that that matter is of interest to him when we
20 get to that item on the agenda.

21 JUDGE KELLEY: Yes. Well, okay. I am glad to
22 know that he is doing that and we can entertain that
23 certainly. Maybe you can, when we get to that, speak for
24 Palmetto and we will have is written submission and
25 hopefully that will tell us what we need to know. But that

1 was a little further down the line and maybe we will find
2 him by that time.

3 MR. GUILD: Yes, sir.

4 JUDGE KELLEY: Let me first just read off the
5 list of things that I understand to be before the house and
6 it is pretty much the same list you heard the other day,
7 but also I have a sequence that we could I think best take
8 this in and also some time suggestions.

9 From what was said earlier, I know we all have
10 some time pressures and we have got an hour or so for this
11 purpose, but we don't want to spend a lot more than that
12 and we do have a way of running on if we don't kind of
13 watch ourselves.

14 Here is my agenda list.

15 First of all, a couple of evidentiary points
16 that are still open from the main hearing and I can just
17 announce rulings on those in a couple of minutes or so.

18 Secondly, Mr. Guild's point about an In Camera
19 matter.

20 By the way, the reporter should know that this
21 one piece I am talking about right now we will have to bind
22 up separately and treat it as In Camera.

23 MR. GUILD: Judge, if I can just interrupt, John
24 Clewett will be taking care of that matter.

25 JUDGE KELLEY: All right, fine, but I thought

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1 around five minutes for that.

2 The third matter is the business of the
3 rebuttal on the diesel generators contention point, and we
4 had previously said around 10 minutes for that.

5 The fourth point is Mr. Clewett's motion for
6 discovery of the underlying basis of the staff reports, and
7 that might run about 10 minutes for responses by the staff
8 and the applicant and then 5 minutes ---

9 MR. CLEWETT: I also haven't had any chance to
10 make my pitch on the record. So I am for that.

11 JUDGE KELLEY: Mr. Clewett, I assume we would
12 have some discussion, but I think your pitch is on the
13 record. You filed a motion that goes at some considerable
14 length and that I gather is your basic pitch.

15 Now you have asked for expedited consideration
16 of this well in advance of what the rules require, and we
17 are going to try to do that, but the next people at bat I
18 would think would be the staff and the applicant and then
19 we will see where we go from there.

20 After that the bifurcation matter, and here we
21 have a motion from the applicant. So we would allocate 4 or
22 5 minutes apiece for the staff and Palmetto to speak to
23 that and then maybe 5 minutes or so for discussion.

24 Following that Mr. Guild mentioned a number of
25 points he wanted to raise about emergency planning

1 discovery. I am not sure really what is involved there, we
2 never really got to it, but we can spend some time on it.

3 MR. GUILD: I would mention, Judge, I spoke with
4 Ron Shearin yesterday and just ran over briefly the points
5 I intended to make. So applicants at least have heard a
6 little bit about that.

7 JUDGE KELLEY: That will be helpful. Okay.

8 And then whatever other matters are before us,
9 but that is my list and my time breakdown. If we stick to
10 the times I indicated more or less, and I don't mean
11 something rigid, but fairly close, that is going to run us
12 over an hour right there.

13 There may be other matters I know, but that is
14 what the Board has in mind for now and why don't we go
15 ahead with those matters and then we will see what else
16 there may be and how much time we have got.

17 First of all as to the evidentiary points.
18 There were two offers of evidence and two objections that
19 the Board just didn't get around to ruling on back in
20 December or thereabouts, and so we took those disputes
21 home with us.

22 Now the first one relates to NCI No. 13955. It
23 is Applicant's Exhibit No. 35 and more particularly it is
24 Attachment No. 3 to that NCI. It is a memorandum to Mr.
25 Grier signed by Mr. Collings and approved by Mr. Underwood

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1 and it was objected to as hearsay. It is hearsay and so is
2 most of the evidence in this case.

3 We are going to overrule the objection and
4 allow that in. Its hearsay character as we see it goes to
5 weight just as is the case with the other hearsay in the
6 record.

7 We did look at the Federal Rules in that
8 connection and the rule on hearsay, Rule 803, Subpart 6.
9 803(6) provides for admissibility of, among other things,
10 reports of events, conditions, opinions or diagnoses made
11 at or near the time via information transmitted by a person
12 with knowledge all in the course of the regularly conducted
13 activity, et cetera.

14 We are not strictly bound by those rules, but
15 we look to them for guidance and it seems to us it supports
16 the admission of this document.

17 We would just add that we are of course mindful
18 of that San Onofre ruling which was the basis of our
19 excluding the staff report on the damage in the diesel
20 generator room. We are not reading that ruling to reach
21 these kinds of routine papers. It seems to us if we did
22 that it would be extremely difficult if not totally
23 impractical to try a case of this kind. So that is our
24 ruling on that.

25 The second point related to a series of tables

1 in what we were calling the Sandia Report. The title of
2 that particular document is "Technical Guidance for Citing
3 Critiera Development," and it is NUREG CR-2239. This came
4 up when Mr. Riley was cross-examining a panel of staff
5 witnesses and he referred them to a series of tables in
6 this report.

7 The tables at issue, and I am going to read
8 them off and the pages on which they appear in that
9 document.

10 Table A3-1 appears on page A-13.

11 A3-3, page A-17.

12 A4-1, page A-21.

13 B1-1 appears on page B-3.

14 B2-1 appears on page B-4.

15 B2-2 appears on page B-5.

16 And B2-3 appears on page B-6.

17 So there are seven tables in all which set
18 forth a variety of data.

19 The request by Palmetto was that the Board take
20 official notice of those tables and that was objected by
21 applicant and staff on the ground that a sponsoring witness
22 was necessary.

23 As to the first six tables, we are granting the
24 request for official notice. We will do that and the effect
25 of that is that those tables and that data are in as

1 evidence of the truth of the matters they refer to.

2 We are denying the motion for official notice
3 as to the last table B2-3 appearing on B-6. The reason is
4 is that the first six tables are pretty straightforward
5 data, things like wind blowing and I can't even recall what
6 all of them are, but it is pretty straightforward stuff and
7 not as we saw it likely to be a matter for substantial
8 debate.

9 The last one, B2-3 on B-6, is somewhat more
10 complicated. It gets into some CRAC code consequence
11 predictions and it seemed to us that that is just not
12 suitable for official notice.

13 Now as to the first six, official notice was
14 asked and has now been granted. I call the parties'
15 attention to Rule 2.744, subpart (i), entitled "Official
16 Notice."

17 It says, and I will read it, the pertinent
18 part. "Each fact officially noticed under this subparagraph
19 shall be specified in the record with sufficient
20 particularity to advise the parties that the matters have
21 noticed or brought to the attention of the parties before
22 final decision." We have already done that. We just
23 specified it. "And each party adversely affected by the
24 decision shall be given an opportunity to controvert the
25 fact."

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1 So that if the applicants and/or the staff do
2 what to controvert the matters contained in those tables
3 that we have noticed, they can offer whatever they want to
4 offer and just do it along with their findings.

5 Now as to the seventh one, we are denying
6 official notice because of the complexity of the matter. We
7 are allowing the table in for the limited purpose to show
8 its authenticity. Nobody questioned authenticity.
9 Therefore, those data are in just to show that in fact
10 those data were contained in that report, but they are not
11 in for the truth of matters they cover.

12 Those are the Board's rulings on those two
13 points, and as far as I know there are no outstanding
14 evidentiary rulings that haven't been ruled on.

15 MR. GUILD: Judge, can we, as we have
16 customarily done, receive that last table as an offer of
17 proof to the extent that it is not in?

18 JUDGE KELLEY: Yes. Well, it is in for a limited
19 purpose, Mr. Guild.

20 MR. GUILD: Yes, I understand.

21 JUDGE KELLEY: So it is there in the record.

22 MR. GUILD: Yes, sir.

23 JUDGE KELLEY: It is a little bit better than an
24 offer of proof, as I see it.

25 MR. GUILD: Yes, sir.

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JUDGE KELLEY: Okay.

Now, secondly ---

MR. GUILD: Judge, before you get to that, I didn't want to pass from your comment about the evidentiary points remaining. At the end I just a few clean-up matters that relate to that subject, evidentiary points, exhibits that kind of hanging and that sort of thing.

JUDGE KELLEY: Let's raise it at the end.

MR. GUILD: Thank you.

MR. JOHNSON: Judge Kelley?

JUDGE KELLEY: Yes.

MR. JOHNSON: I would like to point out that Mr. McGurren hasn't executed an affidavit. He can either get off the line or, if need be, he can sign an affidavit at the conclusion of the call.

JUDGE KELLEY: why doesn't he sign an affidavit at the end of the call.

MR. JOHNSON: All right.

(At this point, 11:20 a.m., the open proceedings recessed and the parties commenced in an In Camera session.)

1 (The telephone conference resumed in open
2 proceedings at 11:50 a.m.)

3 JUDGE KELLEY: The next subject, the diesel
4 generator matter.

5 Now what we have heard so far, and I just want
6 to summarize this for a little context, and correct me if I
7 am wrong, but we had a contention put forward in the record
8 and we have heard argument both from Palmetto and from the
9 applicants and the staff which really addressed the
10 so-called five factors, and I think we all know what that
11 means.

12 Mr. Guild has requested an opportunity to rebut
13 on the five factors' opposition that we heard a couple of
14 weeks ago on the phone.

15 I understand then, Mr. Guild, that you would be
16 ready to proceed on that point; is that right?

17 MR. GUILD: Yes, sir, that is correct.

18 JUDGE KELLEY: Now just a footnote. I have a
19 separate question or problem maybe about the contention,
20 but let's go ahead and hear you on the five factors
21 rebuttal for five to ten minutes, if you want to take that
22 time.

23 MR. GUILD: Judge, would invite your question at
24 the outset. I certainly don't want to, you know, just talk
25 into the wall. If you have a question and then I can focus

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1 my argument, please let me hear it.

2 JUDGE KELLEY: Okay. I will put it up front
3 then. Here is my problem. I look at the contention that was
4 initially put forward and it is at page 9620 and 9621.

5 MR. GUILD: 9620, 9621 and 9659, Judge.

6 JUDGE KELLEY: Well, 59, too, all right, but
7 let's just look at 21.

8 MR. GUILD: Yes, sir.

9 JUDGE KELLEY: And I am starting at the bottom
10 of the page and this is you talking.. "I do at this time
11 move that the Board entertain a new or amended contention
12 on the quality assurance at Catawba on the issue of whether
13 or not the reasonable assurance that the safe operation of
14 the emergency diesel generators is sufficiently impuned
15 because of the failure to adequately address the three
16 matters which are the subject of Board notification
17 83-160."

18 And just to paraphrase, the document will speak
19 for itself, which I incorporate by reference, but the three
20 matters being the QA problems at TDI, the manufacturer, the
21 numerous what I characterized as minor operational failures
22 of TDI diesel generators in service and, third, the failure
23 of the crank shaft at the Shoreham facility, the TDI crank
24 shaft, and then it trails off. But that is basically what
25 is there.

1 Now you say 9660 is another one?

2 MR. GUILD: On 9659 we pick up the trail again,
3 Judge, but get to your point. Those are the right
4 citations for certain.

5 JUDGE KELLEY: My point is this from reading
6 that one at least. It seems to me that I have got sort of a
7 specificity problem. The contention as stated on the record
8 incorporates the entirety or a great, big, thick Board
9 notification.

10 I am used to contentions of about 50 or 60
11 words which say things like there is no reasonable
12 assurance that the crank shaft at Catawba will not fail in
13 service there are design defects, something like that. But
14 a reference to a great, big staff document troubles me on
15 specificity grounds.

16 I am also troubled, frankly, by the QA at TDI,
17 at Transamerica DeLeval. It is one thing, it seems to me,
18 to have a crank shaft problem at Catawba, and I don't know
19 whether they do or they don't, but based on the papers we
20 have seen there is some basis for concern apparently. That
21 is one thing. It is another thing to litigate QA at
22 Transamerica, and I had a problem with that.

23 It seems to me that the problem was it came up
24 in a context that didn't lend itself to careful drafting of
25 contentions and I am not faulting you on that. Then we went

1 ahead and argued it on five factors. Then there was even
2 some talk toward the end of a stipulation with the
3 applicants and I gather that fell through.

4 But now we are homing in on this contention and
5 whether it ought to be admitted, and it just seems to me
6 that there are drafting problems with it. It is too broad
7 and too big and that is my problem.

8 MR. GUILD: All right, let me see if I can
9 address it.

10 JUDGE KELLEY: Okay.

11 MR. GUILD: I think the key point that was
12 attempted to be communicated orally on the record was that
13 there are questions of whether or not the Catawba
14 emergency diesel generators will perform their safety
15 function and whether there is reasonable assurance that
16 they will perform effectively in service.

17 I have sort of rephrased a contention, a text
18 that essentially is what I said at both of those references
19 in the transcript, and it would go as follows. Applicants
20 have not demonstrated reasonable assurance that the
21 emergency diesel generators at the Catawba Nuclear Station
22 can and will perform their safety function in service.

23 Now that is the issue, that is the contention
24 and that is the allegation, if you will. The basis for that
25 contention is the staff conclusions that are reflected in

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1 the Board notification of October 21st, 1983 as
2 supplemented by the November 17th, 1983 Board notification,
3 first being 83-160 and the second 83-160A.

4 Then there is further information that has just
5 been made of record in the January 26th meeting that we
6 alluded to on the record of the hearing in Charlotte, and
7 that was the meeting with Mr. Denton and staff with the TDI
8 Owners Group including representatives from Duke and the
9 manufacturer, Transamerica DeLaval.

10 So I think, Judge, that I accept your criticism
11 or the oral statement of the contention, but the bottom
12 line point is the reasonable assurance that the generators
13 will function safely in service.

14 JUDGE KELLEY: I still have a problem with that.
15 You stated it up to that point, and I follow all that, and
16 then I am looking for the word "because," and then I am
17 looking for something like because the crank shaft is not
18 designed right or something.

19 MR. GUILD: Well, let me give you the "because "
20 The "because" includes, as I had referenced, the three
21 factors that were identified in the initial Board
22 notification, and those three factors were, and this is a
23 paraphrase, but they are contained in the document which
24 speaks for itself.

25 JUDGE KELLEY: I am saying again, Mr. Guild, I

1 am not going to take a contention based on a
2 cross-reference to some voluminous document.

3 MR. GUILD: Well, let me highlight the factors,
4 and I did the first time I raised this point. The first
5 factor, the first "because", the first basis is inadequate
6 design of the TDI crank shaft.

7 JUDGE KELLEY: Okay.

8 MR. GUILD: And that is reflected in the failure
9 at the Shoreham facility where there were actual cracks and
10 failures of the crank shaft in testing.

11 Now that design inadequacy, the crank shaft
12 design inadequacy was confirmed by LILCO, Long Island
13 Lighting Company's survey by Failure Associates that has
14 now been ---

15 JUDGE KELLEY: You don't have to prove it to me.
16 You just stated that you are concerned about the design of
17 the crank shaft.

18 MR. GUILD: The design of the crank shaft.

19 JUDGE KELLEY: That is pretty specific, and I am
20 just speaking for myself. I understand that.

21 MR. GUILD: All right, sir.

22 JUDGE KELLEY: Go ahead.

23 MR. GUILD: The design of the crank shaft is the
24 first point. The second point is the TDI, Transamerica
25 DeLaval operational history. In the record, the first

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1 reference that you cited and quoted, I alluded to numerous
2 minor operatoral problems. Now that is the staff's
3 language. They were minor at the time they viewed them, and
4 there were some 60 non-conformances, or 60 deviations and
5 violations.

6 The actual listing of those deviations and
7 violations came to us through the January 26th staff
8 meeting. Just to highlight the three viciations, they are
9 violations of the Transamerica DeLaval people's reporting
10 obligations under Part 21 to the Nuclear Regulatory
11 Commission. In other words, significant deficiencies
12 identified in the manufacture, design and procurement
13 process by Transamerica DeLaval not reported as required to
14 the NRC, and that raises a very big question about whether
15 the NRC even knows what is out there.

16 That point is the Transamerica DeLaval quality
17 assurance record. That is the record that the NRC has found
18 through a process of enforcement and inspection at the
19 manufacturer and it included those three violations that I
20 alluded to.

21 The reason why that point, that second point,
22 that second "because" if you will, the reason why that is
23 important for Duke Power Company in this particular case is
24 as Mr. Denton pointed out in the January meeting. Each of
25 the members of the Owners Group, each of the people who are

1 going to use TDI diesel generators at their facilities has
2 an obligation under Appendix B to do vendor quality
3 assurance and to essentially perform whatever necessary
4 audits or surveillance of equipment and processes
5 performed by others to assure that the equipment and
6 materials that they use at Catawba will perform in service.

7 So, as we have discussed, Judge, when you hire
8 a vendor at Catawba to do some work, and there aren't very
9 many out there ---

10 JUDGE KELLEY: Okay. Again, I understand.

11 MR. GUILD: --- Duke has an obligation to see
12 that the QA program of the people they rely on works.

13 The third "because" is the poor operational
14 performance. The poor operational performance is reflected
15 in a very limited operational history with these machines
16 in nuclear application.

17 The January 26th meeting included handouts
18 reflecting the experience at San Onofre ---

19 JUDGE KELLEY: You mean the performance at
20 different generating plants.

21 MR. GUILD: Yes, sir, including particularly the
22 performance in testing at Grand Gulf. Grand Gulf has been
23 identified as a facility, along with Shoreham, where the
24 TDI diesel generator is on the critical path to licensing.

25 JUDGE KELLEY: Okay, I understand.

1 MR. GUILD: I point out that the Grand Gulf
2 machine appears to be of the same model as the Catawba
3 diesel generator.

4 JUDGE KELLEY: Okay, I get it.

5 MR. GUILD: The DSRV-16 as at Catawba.

6 All right, sir. So those are the three
7 "because" that support the three bases in fact for
8 supporting the reasonable assurance question as to the
9 safe operation.

10 MR. CLEWETT: If I can interrupt for one second.
11 I am trying to take notes out here. Are the three the
12 inadequate design of the crank shaft, TDI's operational
13 history and the third one being TDI's quality assurance ---

14 MR. GUILD: Those are the three, that is right.

15 JUDGE KELLEY: Okay. Well, that clarifies it for
16 me, Mr. Guild. So why don't you pass on to the five
17 factors.

18 MR. GUILD: All right, sir.

19 Now let's address the good cause first. I think
20 that intervenor can be faulted no more than the Nuclear
21 Regulatory Commission staff itself in terms of tardiness or
22 lateness or failure to have identified this safety concern
23 earlier.

24 Mr. Denton didn't identify it until at least
25 the first Board notification went out and probably didn't

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1 reach a conclusion about what needed to be done and how
2 serious the problem was until he communicated to the Owners
3 Group last week, the 26th of January, 1984. So it is hard
4 to fault an intervenor for not having been more present
5 than the NRC was about this safety concern.

6 Be that as it may, after making their pitch on
7 the record, or the record of the conference call on this
8 subject, applicants' counsel, Mr. McGarry, submitted a
9 letter discovering a transcript allusion by Mr. Riley to
10 the subject of the Shoreham crank shaft failure, and hangs
11 his hat on the notion that well, we the intervenors, unlike
12 the NRC staff, should have jumped on that IE bulletin and
13 the event of the crank shaft failure at Shoreham and
14 formulated a contention.

15 Of course, if we had done so, it would have
16 been opposed on lateness grounds, but it would also have
17 been opposed on grounds that it was premature and that we
18 had stated no basis in fact because at that time the NRC
19 simply said it happened and let's check it out. They had
20 reached no conclusions and they had done no investigation.
21 The LILCO people had not retained their consultant, Failure
22 Associates, to figure out that there was a design failure
23 in the crank shaft.

24 It could well have been that some workman at
25 Shoreham just forgot to put oil in the thing or something.

1 It could have been a very limited event with no
2 implications for Catawba.

3 So we maintain very clearly that our obligation
4 arose to pursue the matter when we did pursue it and that
5 we raised the matter on the record in the proceeding.

6 Now we have a quality assurance contention
7 here, and our contention has been litigated as an attack on
8 the adequacy of Duke Power's quality assurance program in
9 its organization and in its implementation.

10 As all the parties understand, we have
11 litigated such diverse things as welding inspection to the
12 question of the flooding of the diesel generator room, the
13 four foot of water, if you will, and the adequacy of the
14 corrective action to keep the thing from happening again
15 and to see that the diesel generator worked.

16 Quality assurance covers all aspects of seeing
17 that nuclear components will perform their function and
18 service at the Catawba facility and they don't just relate
19 to what Mr. Grier does or to a welding inspector.

20 So we raised the point initially on the record
21 in this proceeding as an aspect of the then existing and
22 the presently existing Contention 6. I think it was an
23 appropriate comment, one we disagreed with, but the
24 presiding officer, the Chairman, said no, no, that is not
25 in Contention 6 and, you know, this is a matter that has to

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1 be pursued, if at all, separately.

2 Having made that call, which we may have
3 disputed at the time, the point remains now that you can't
4 close the record on either Contention 6 in the aspect of
5 the diesel generator matter now that this new information
6 has come to light, or you can't close the record on
7 Contention 6 as amended to include very explicitly the
8 matters we have asserted, or, thirdly, you can't close the
9 record on a new contention that focuses on quality
10 assurance in the diesel generator, the safe operation of
11 the diesel generator in the three aspects that we have
12 alluded to.

13 Either way you cut it in terms of pleading
14 technicalities, the basic bottom line point is we the
15 intervenors, Palmetto Alliance and Carolina Environmental
16 Study Group, dispute the assurance that these machines will
17 work safely and work effectively in operation for the
18 reasons stated.

19 We believe we have brought that matter to the
20 Board's attention as promptly as it could be brought and
21 that it should be litigated.

22 Now we are informed that this matter has been
23 accepted for litigation in the Shoreham licensing
24 proceeding. I don't have a pleading or an order ---

25 JUDGE KELLEY: We can check it. I don't need an

1 order.

2 MR. GUILD: All right, sir. But I am informed
3 that that is the safety issue that remains pending at
4 Shoreham. Of course, there are emergency planning matters
5 that are being pursued as well there, but there will be a
6 hearing. There has been a statement that there will be an
7 evidentiary hearing on the issue of the fix, if you will,
8 or the problem at Shoreham.

9 We have just been informed that it is
10 essentially not fixable, that the Shoreham situation is
11 going to require a major rework or replacement.

12 JUDGE KELLEY: We can look at that. Let me ask
13 you a question, Mr. Guild.

14 MR. GUILD: Yes, sir.

15 JUDGE KELLEY: On the question of the, or
16 actually there are three or four or whatever it is, the one
17 that speaks to the likely contribution that is already
18 advanced in the contention. On that point if you got this
19 contention into the case, would you contemplate retaining
20 an expert?

21 MR. GUILD: Yes, sir, absolutely.

22 JUDGE KELLEY: Take the subject of crank shaft
23 failure. I assume it would take an automotive design
24 engineer or somebody like that to address the point.

25 MR. GUILD: Well, of course, Mr. Hunt, the NRC

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1 Staff's witness on this subject, his expertise was based on
2 the fact that he fixes his car. So, you know, what is good
3 for the goose ought to be good for the gander in terms of
4 the degree of expertise that a party has to have to make a
5 contribution on the issue or whether the crank shaft will
6 work or whether the diesel generator will work.

7 MR. JOHNSON: We would object to that.

8 MR. GUILD: We have limited resources and we
9 rely much on volunteer effort, but I have been in touch
10 with those people who are available to this side of an
11 issue, the organization at the national level who assists
12 people in the public interest community and they know that
13 one of the two places in the country where the TDI diesel
14 generator matters are before a Licensing Board is in the
15 Catawba proceeding and we are actively seeking technical
16 assistance on this.

17 So, yes, we would intend to seek expert
18 technical assistance, including witnesses, and I would
19 suggest that on the issues that do not specifically require
20 engineering or technical expertise with respect to the
21 significance of the operational history and the
22 vendor quality assurance issue that the record I think
23 should reflect that Palmetto has made a significant
24 contribution to the development of a sound record on those
25 and similar matters on Contention 6 as admitted.

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1 JUDGE KELLEY: Okay. I think that a little more
2 than covers our allotted time and I think that covers the
3 points.

4 I would like to move on to Mr. Clewett's
5 motion.

6 MR. CLEWETT: Yes, sir.

7 JUDGE KELLEY: Just for the record, it is
8 Palmetto's motion for discovery of underlying bases of NRC
9 Region II reports.

10 Now we have Mr. Clewett's motion before us.
11 Normally under the rules you get 10 days in the case of a
12 party and 15 days in case of the staff reply. We didn't
13 indicate the other day that we would like to speak to this
14 today. I think the most orderly way would be for us to turn
15 to the applicants and the staff and hear them in response
16 on the record and then we can follow that with some
17 discussion.

18 Mr. McGarry, are you prepared to speak to this
19 motion?

20 MR. MCGARRY: Yes, sir.

21 JUDGE KELLEY: Go ahead.

22 MR. MCGARRY: We oppose the motion essentially
23 for four points, four reasons.

24 First, we view that the Board has already ruled
25 on this matter as well as the Appeal Board in its rulings

1 on other discovery motions in the January 14th through
2 16th, 1983 time frame. Therein intervenors sought discovery
3 from both applicant and the staff and the Board said that
4 such was not appropriate at this late date.

5 A second reason is the uniqueness of the staff
6 document in relationship to this proceeding. The Board
7 examined the In Camera issues and determined that it need
8 not hear from the staff except on several discrete items.

9 The Board then in essence instructed the staff
10 to evaluate the particular concerns and report back to the
11 Board. In essence the Board said they wanted to hear from
12 the staff. Everybody knew what the ground rules were. The
13 record was left open simply to hear back from the staff. Of
14 course, the staff would be subjected to cross-examination
15 and they were.

16 Third, this is a Board issue. The In Camera
17 witnesses are Board witnesses and we believe that the Board
18 can appropriately establish and fashion ground rules as it
19 sees appropriate. In this instance we think the ground rule
20 was let's hear from the staff and then we will have a
21 complete record.

22 Fourth, in any event, the staff did provide
23 background material prior to the hearing to the intervenors
24 and that was a stack of information that was an inch or so
25 thick. I think the only item that was not included were

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1 some notes of Mr. Uryc's and it is our position that those
2 notes, and I think the staff took this position at the
3 hearing, are not discoverable.

4 So, therefore, there is no substance to the
5 motion and it should be denied.

6 JUDGE KELLEY: Thank you.

7 Mr. Johnson

8 MR. JOHNSON: It is the staff's position that
9 this motion was made in an oral fashion I believe by Mr.
10 Guild or Mr. Clewett, I don't remember who exactly, at the
11 hearing on Tuesday, the 31st, and at page 12,335 it was
12 rejected.

13 JUDGE KELLEY: Wait a minute. Let's get that
14 straight. Are you talking about just the other day?

15 MR. JOHNSON: Yes, sir.

16 JUDGE KELLEY: Mr. Clewett filed three motions
17 and we ruled on two.

18 MR. JOHNSON: I understand, sir. Maybe I
19 confused it unnecessarily. What I meant was that a very
20 similar motion was made by Palmetto Alliance and there was
21 extensive argument with respect to the availability of all
22 the individual welders who were interviewed by Mr. Uryc and
23 Mr. Economos.

24 On the morning of the 31st we had extensive
25 discussion about whether the confidentiality was granted in

1 an appropriate fashion.

2 JUDGE KELLEY: We did indeed speak to the notion
3 of confidentiality and it seems to me that that discussion
4 and our rulings have some bearing on the motion that we
5 are now talking about. I don't think it covers the whole
6 thing.

7 MR. JOHNSON: Well, if I may just read from this
8 transcript at 12,335.

9 JUDGE KELLEY: All right.

10 MR. JOHNSON: This is Judge Kelley speaking.
11 "The second motion was a motion to provide the names of the
12 people who were interviewed by these two panel members in
13 connection with their work and these interviews are
14 summarized in the appendix. We are going to deny that
15 motion as well."

16 JUDGE KELLEY: Right.

17 MR. JOHNSON: "It does seem to us that this is
18 the nature for the discovery. We don't have to belabor the
19 fact that the Board feels that formal discovery would be
20 entirely inappropriate in this setting." Then it goes on.

21 So it is our position that the equivalent to
22 this written motion was made I believe on the morning of
23 the 31st and has already been denied both as to the
24 question of whether the staff had proffered enough basis
25 and whether discovery was warranted to delve into the

1 underlying bases of the staff's support or whether there
2 was something inherently wrong with the way in which the
3 confidentiality question was handled, assuming that that is
4 relevant to discovery.

5 So it is the staff's position that the
6 equivalent to this motion has already been made and denied.

7 JUDGE KELLEY: Well, let me just say, Mr.
8 Johnson, that I think the rulings you are referring to, as
9 I recall them, I think have some bearing on this motion.
10 That is true enough.

11 when we made those rulings at that time it was
12 not our intention to deny or even rule on it anyway this
13 particular motion.

14 MR. JOHNSON: I understand that, sir.

15 JUDGE KELLEY: I think we are clear on that.

16 MR. JOHNSON: I do understand that, but I think
17 the same questions are raised and I believe the same
18 results should apply. We agree with Mr. McGarry that in the
19 context in which this is raised it is too late. The context
20 of the staff's testimony is unusual and to the extent there
21 are questions in this written motion going to whether the
22 staff's conclusions were founded adequately, that goes to
23 the weight that should be given to that testimony as to the
24 basis of the staff's findings and we argued previously that
25 that went to the credibility and there was an opportunity

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1 to cross-examine these individuals on that. So we believe
2 that no new grounds really have been offered here.

3 JUDGE KELLEY: Okay.

4 Mr. Clewett, would you like to make a response?

5 MR. CLEWETT: Yes, sir. Thank you very much.

6 I guess that I would like to put this in
7 context, which is that the function of these licensing
8 hearings are supposed to be to get at the truth. Now it may
9 be that for one reason or another there are some leads that
10 have become available to us relatively later in time than
11 would have been ideal if the world were perfect.

12 But I still think that in order for these
13 hearings to do the job for which they were created under
14 the Atomic Energy Act that it is important for this Board
15 to be interested in following up these leads when they
16 appear, and when they appear is significant as the ones
17 that have become apparent recently.

18 Now that argument also goes to some of the
19 motions of mine that you have summarily denied, but it is
20 in particular very important with respect to the staff's
21 recent submission for a couple of reasons.

22 JUDGE KELLEY: Let me just interject, Mr.
23 Clewett, that because this was focused at the staff's
24 recent submission was one strong reason that the Board
25 decided to hear parties on this and give it more

1 consideration.

2 The motions that you are complaining about were
3 absolutely nothing but a retread of things we had done time
4 and time again, and that is why we tossed them out
5 summarily.

6 You may proceed.

7 MR. CLEWETT: Thank you.

8 I want to make a couple of points about the
9 staff report then in particular, and this is in the context
10 of what we heard from the staff on the stand on Monday and
11 Tuesday.

12 Now it appears from what has been put on the
13 record that the staff has not done a very thorough job of
14 investigating the leads that have come its way. For
15 instance, they didn't take any action to interview a single
16 one of the people that one of the witnesses said could
17 support his side of the story. They accidentally happened
18 to talk to one of them because of their supposedly random
19 interviewing process. But they didn't make any effort to
20 follow up on the leads he gave them.

21 Similarly, when they were asked to go to the
22 other end of a penetration sleeve to scrape the paint off
23 to determine whether the laminar indications that took so
24 long to eliminate from the one end were also apparent at
25 the other end, they promised they would do that and they

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1 did not do it.

2 Now if the staff is saying to the Board trust
3 us and let us go away and resolve this and we will come
4 back later with a Board notification if we find anything. I
5 think it is true of Palmetto, but I think it is also true
6 of the Board, that this Board should be skeptical of that
7 and the Board should want to satisfy itself that it is not
8 getting set up, because if it turns out that someone down
9 the road through a continued investigation by GAP or
10 through any other means, if it comes out that these
11 hearings have been a big cover-up, the Board is also going
12 to be embarrassed.

13 So I think there is a real interest to the
14 Board to not be so quick to trust the staff's assertions
15 that they are doing a thorough job of evaluating these
16 matters.

17 Now this bears on a couple of specifics. It
18 bears in particular on the matter that I won't go into
19 again that we just discussed In Camera concerning welder
20 "B," but it also has reference to this document as a whole.
21 I think that the Board would want to give Palmetto Alliance
22 some opportunity at least to engage in some discovery on
23 this so that we can bring to the Board's attention our
24 evaluation of whether this series of staff reports is such
25 as to be worthy of being given any credence.

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1 JUDGE KELLEY: Mr. Clewett, we spent some time
2 the last couple of days on Monday and Tuesday conducting
3 cross-examination on the staff reports and the adequacy
4 thereof. Why isn't that a sufficient way to test their
5 accuracy and completeness?

6 MR. CLEWETT: Because of the fact that it has
7 been impossible to pierce the governmental veil, if you
8 will, to determine what really went on. They apparently
9 engaged in the same improper use of confidentiality that
10 the Licensing Board came down so hard on the staff for in
11 the Comanche Peak case. They offered confidentiality on a
12 blanket basis to all of these witnesses.

13 JUDGE KELLEY: I do think, Mr. Clewett ---

14 MR. CLEWETT: Apparently the person who is being
15 asked ---

16 JUDGE KELLEY: Mr. Clewett, I am running this
17 and you are going to let me run it or you are going to get
18 off. I am asking you a question or rather I am telling you
19 something and that is that we went round and round on
20 confidentiality the other day. We made a ruling and we
21 don't need to hear any more on that subject.

22 Now when I ask you for a response, Mr. Clewett,
23 it was my expectation that you would have something
24 specific in response to what the two attorneys on the other
25 side said against your motion.

1 Do you have anything to say about their
2 arguments?

3 MR. CLEWETT: Yes, sir. I am sorry if I have
4 been drawing in other things, but it is just that they all
5 seem to be related, sir.

6 JUDGE KELLEY: If you could focus rather briefly
7 on the responses of Mr. McGarry and Mr. Johnson.

8 MR. CLEWETT: Yes, sir.

9 JUDGE KELLEY: Go ahead.

10 MR. CLEWETT: with respect to Mr. Johnson,
11 first, he said that in his opinion the same motion was made
12 orally and then he corrected it to say that a very similar
13 motion or that the equivalent of this written motion had
14 already been decided on.

15 Now the quote that he read, however, showed
16 that Mr. Guild had mentioned something about the names of
17 all of the witnesses interviewed by the staff. He had not
18 addressed the broader question of discovery rights to be
19 able to test it. I think in any event, it is more important
20 to reach the right result.

21 Now Mr. McGarry offered his view that since
22 these are Board witnesses that essentially any ground rules
23 are appropriate as the Board decides. I think, however,
24 that there are still overriding legal and constitutional
25 principles that have to be met.

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1 In particular, I don't think that it is an
2 adequate at according due process to Palmetto to say that
3 they have absolutely no interest or any right of any kind
4 in questioning the staff statements that purport to address
5 these issues.

6 Now there has been ---

7 JUDGE KELLEY: If that were our posture, Mr.
8 Clewett, I assume we wouldn't have let Palmetto
9 cross-examine the staff; isn't that right?

10 MR. CLEWETT: Well, Palmetto may have had 12 or
11 13 minutes, I don't recall, sir, but there is also a
12 separate need for discovery. I mean the question of access
13 to these witnesses through either some sort of anonymous
14 letter or through being given their names or through having
15 the Board ask them to answer certain questions or asking
16 them to testify, things of this nature also are very
17 important because I don't think that the basis that we have
18 seen thus far indicates really, sir, that these reports are
19 likely to really be dispositive.

20 JUDGE KELLEY: Okay. Anything else?

21 MR. CLEWETT: Just a couple of minor points.

22 Mr. McGarry referred to the staff document as
23 being unique, and in some ways it may be because the staff
24 apparently didn't follow their ordinary procedures in this.
25 But it is certainly presented as a typical staff report and

1 I just wanted to correct that minor point.

2 Also, he stated that the record was left open
3 just for the staff. It was my understanding that it was
4 also left open for other purposes. I do recall seeing a
5 couple of very large panels from the applicant in this past
6 couple of days.

7 I just would observe overall that the hearings
8 and the exploration of where the truth lies is still
9 continue and I hope that the Board will grant our motion. I
10 will shut up now and let us get on with our other business,
11 sir.

12 Thank you very much.

13 JUDGE KELLEY: Okay. Thank you.

14 I suggest, gentlemen, that we take a few
15 minutes to maybe go to another room and then come back and
16 leave your phones off the hook. I would like to stretch
17 myself. Be back in about three or four minutes.

18 (Short recess.)

19 JUDGE KELLEY: Kelley is back on.

20 MR. RILEY: Riley is here.

21 MR. MCGARRY: McGarry and Carr are here.

22 MR. CLEWETT: Clewett here.

23 MR. GUILD: Guild is here, too.

24 JUDGE KELLEY: Mr. Johnson?

25 Sounds like we are back, except George Johnson.

1 MR. RILEY: While we are waiting for Mr.
2 Johnson, Judge Kelley, I would like to make one very brief
3 observation, and that is that we are very interested in
4 this and discussed it with Palmetto and we held our fire
5 until we saw how serious it was because we don't want to
6 involve the Board or the parties in unnecessary exercises.

7 JUDGE KELLEY: By the way, is CESG, Mr. Riley, a
8 cosponsor of this contention?

9 MR. RILEY: Yes, it is.

10 JUDGE KELLEY: Because I wasn't sure from
11 looking at the record. It may be in there somewhere.

12 All right, go ahead.

13 MR. RILEY: Okay. That is all I had to say. We
14 don't like to take up frivolous matters. We like to take up
15 substantive ones. It was not until recently that we
16 realized that this is a very substantially substantive
17 matter.

18 MR. JOHNSON: Are we back on the record?

19 JUDGE KELLEY: George Johnson?

20 MR. JOHNSON: Yes.

21 JUDGE KELLEY: Yes. Mr. Riley was making a
22 comment about his special interest in the diesel matter.
23 You can see it in the transcript. I don't think we have to
24 go back over it. That is really all that was said.

25 I think then everybody is back on.

1 Now how about this bifurcation question. We
2 have a motion from applicants to bifurcate which I won't
3 restate.

4 Mr. Riley, Mr. Guild indicated earlier that you
5 were going to send in a filing on that. Is that right?

6 MR. RILEY: I did yesterday.

7 JUDGE KELLEY: So that is in the mail now?

8 MR. RILEY: It is.

9 JUDGE KELLEY: Okay. How about as a matter of
10 procedure -- well, let me go to the staff and they can give
11 us a FEMA report and some other things and then we can go
12 to Mr. Guild and then if Mr. Riley wants to add anything he
13 can do that.

14 Mr. Johnson, what can you tell us about the
15 usual consideration?

16 MR. JOHNSON: If you would like, I will start
17 with the FEMA schedule.

18 JUDGE KELLEY: Sure.

19 MR. JOHNSON: It is our understanding that the
20 present situation is that both the North and South Carolina
21 revised emergency response plans have been submitted for
22 review by FEMA and that process has started.

23 JUDGE KELLEY: I just got mine in the mail the
24 other day. Did everybody get a big thick package?

25 MR. JOHNSON: Yes, I did.

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1 MR. GUILD: I haven't seen mine yet, Judge.

2 JUDGE KELLEY: I just took a glance at it, but
3 that is what it appeared to be.

4 Go ahead.

5 MR. JOHNSON: I believe that is the document
6 that responds to earlier suggestions for revision or
7 changes that were made by FEMA.

8 Under the current situation FEMA tells me that
9 they would anticipate what they call to be an informal
10 finding concerning these off-site plans about March 1st.

11 JUDGE KELLEY: Is that what has also been called
12 an interim finding?

13 MR. JOHNSON: Right. The staff calls it an
14 interim finding and they call it an informal finding.

15 JUDGE KELLEY: The formal finding is the Part
16 350 finding that they do on their own requirements.

17 JUDGE KELLEY: Yes.

18 MR. JOHNSON: And leading to the preparation of
19 the prefiled testimony by a FEMA witness who would appear
20 at the hearing with a date of April 1st.

21 THE OPERATOR: we were just told that Mr.
22 McGarry just got cut off.

23 JUDGE KELLEY: Oh, he did.

24 THE OPERATOR: That is what your secretary told
25 me. Can I take a roll call and see who else is cut off?

1 JUDGE KELLEY: Yes.
2 THE OPERATOR: Judge Kelley?
3 JUDGE KELLEY: Here.
4 MR. RILEY: Judge Purdom?
5 JUDGE PURDOM: Here.
6 THE OPERATOR: Jesse Riley?
7 MR. RILEY: Here.
8 THE OPERATOR: Judge Foster?
9 JUDGE FOSTER: Here.
10 THE OPERATOR: George Johnson?
11 MR. JOHNSON: Here.
12 THE OPERATOR: Robert Guild?
13 MR. GUILD: Here.
14 THE OPERATOR: The court reporter.
15 THE REPORTER: Here.
16 THE OPERATOR: John Clewett?
17 MR. CLEWETT: Here.
18 THE OPERATOR: Okay. I will get him back in.
19 JUDGE KELLEY: well, I assume he will be right
20 back on. Why don't you go ahead, Mr. Johnson. He is going
21 to get the transcript anyway in terms of what was said.
22 MR. JOHNSON: Okay. Dealing with an April 1st
23 date for the prefiled testimony being available, we are
24 talking something about like an April 10th or April 15th
25 hearing as a feasible date with respect to FEMA's

1 presentation of testimony.

2 JUDGE KELLEY: Okay. Insofar as FEMA might be on
3 the critical path, you are saying that it looks like they
4 can be available in that time frame?

5 MR. JOHNSON: That is correct.

6 JUDGE KELLEY: Well, that is helpful to know.

7 MR. JOHNSON: If you would like me to address
8 the motion, I will wait my turn or whatever.

9 JUDGE KELLEY: Is McGarry back on yet?

10 (No response.)

11 JUDGE KELLEY: we don't have Carr either I
12 assume.

13 (No response.)

14 JUDGE KELLEY: I am sure he would have an
15 interest, and the more I think about it maybe we ought to
16 wait a minute.

17 Let me check with my secretary and see if they
18 aren't getting somewhere in patching him back in. Would you
19 all just hold a minute.

20 (Pause.)

21 THE OPERATOR: Mr. McGarry.

22 MR. MCGARRY: Yes, McGarry is here.

23 JUDGE KELLEY: we lost you.

24 MR. MCGARRY: I don't know what happened. It was
25 not here at this end. I am sorry.

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1 JUDGE KELLEY: Mr. Johnson was just saying how
2 things looked from the standpoint of FEMA.

3 Maybe you could summarize it again, Mr.
4 Johnson.

5 MR. JOHNSON: To summarize very briefly, FEMA
6 lets me know that they will have their informal finding
7 approximately by March 1st, and that they would be
8 prepared to present testimony by April 1st based on its
9 position.

10 As a result, if FEMA is the critical path item
11 on this, then a hearing could be had in the April 10th to
12 15th time frame.

13 JUDGE KELLEY: Okay. Why don't you go ahead
14 then, Mr. Johnson, and just address the motion.

15 MR. JOHNSON: The staff does not oppose the
16 motion to bifurcate and we have a number of points with
17 respect to that.

18 The staff believes that the fuel date of the
19 applicant, we accept the representations made by Mr. Owen
20 in support of the motion.

21 JUDGE KELLEY: That is the May 1 date in the
22 affidavit, right?

23 MR. JOHNSON: Yes, sir, I believe so.

24 However, it is also the staff's position that
25 even if there were some slippage with respect to that first

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1 date, the fuel load date, that without bifurcation there
2 would likely be some delay in licensing occasioned by an
3 October or November date for an initial decision on a full
4 power license. What I mean to say is that if they didn't
5 quite meet the fuel load date and it slipped somewhat,
6 there still would be an opportunity to make the time up and
7 reach the point where they could go above the five percent
8 power at the end of August.

9 JUDGE KELLEY: I think that, too, and I don't
10 have it right open in front of me, was a projection by Mr.
11 Owen; isn't that right?

12 MR. JOHNSON: Yes, sir. Therefore, we believe
13 that the applicant's representation of two to three-month
14 delay is a reasonable representation.

15 JUDGE KELLEY: I had one other question kind of
16 along the same line. When you assessed time frames and
17 delays here I think it is sometimes assumed that if the
18 Licensing Board reaches a favorable decision on safety
19 issues and authorizes low power operation that then
20 low-power operation will commence or fuel loading will
21 commence, and sometimes it has been my observation that the
22 staff doesn't get around to issuing the license until some
23 significant time after the Licensing Board decides the
24 case.

25 Are you saying that if there is a fuel load

1 date of somewhere in the first half of May, and if this
2 Board decided the case favorably that the director would
3 then issue a license or would it take longer?

4 MR. JOHNSON: I am not really prepared to answer
5 in detail that question, but I have representations from
6 the staff in the Licensing Branch that they are gearing up
7 to meet the schedule.

8 MR. CLEWETT: Mr. Johnson, I am sorry, could you
9 speak up, please. I really can't hear you.

10 MR. JOHNSON: I am sorry. What I said was what I
11 have heard from the Licensing Branch is that they are
12 prepared to gear up to meet this schedule.

13 JUDGE KELLEY: Okay.

14 MR. JOHNSON: Now there are a couple of other
15 points that are relevant to the decision on the motion to
16 bifurcate. We have not taken into consideration the
17 question of whether a new contention would be admitted on
18 the Transamerica DeLaval diesel generators. So we have not
19 factored that into our calculations and our assumptions on
20 this position.

21 JUDGE KELLEY: What about the somewhat different
22 question. Does the staff have a fix on this problem such as
23 to indicate to it that it will hold up licensing for some
24 significant period of time whether it gets in this case or
25 not?

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1 MR. JOHNSON: Yes, sir. The staff cannot speak
2 with great precision on that question, but at this time we
3 believe that it is possible that the licensing review with
4 respect to the Transamerica DeLaval diesel generators at
5 Catawba will be completed so as not to impact on the fuel
6 load date. It is hard for us to say with authority while
7 the review is in process.

8 JUDGE KELLEY: Well, you are basically
9 supporting the motion?

10 MR. JOHNSON: Yes, sir. We have looked at the
11 various staff commitments and obligations and believe that
12 they can be met in conjunction with a bifurcated proceeding
13 with a Board appointed so as to reach the hearing stage
14 for emergency preparedness issues earlier than anticipated.

15 The staff has one other point it would like to
16 make and that has to do with the prejudice that might be
17 shown by the intervenors.

18 It is our position that the Board would have to
19 consider the possibility of prejudice of the intervenors
20 and that under the statement of policy fairness is of
21 course a consideration. We haven't heard any showing of
22 prejudice, but that is an element that should figure into
23 the Board's decision.

24 JUDGE KELLEY: But you don't have any specific
25 kind of prejudice in mind when you say that?

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1 MR. JOHNSON: What I mean by prejudice is I mean
2 in terms of fairness under the statement of policy.

3 JUDGE KELLEY: I understand that, but you don't
4 have anything specific in mind?

5 MR. JOHNSON: No, I don't.

6 JUDGE KELLEY: I am sure Mr. Guild and Mr. Riley
7 may have and we will hear from them.

8 In that connection I would just like to make
9 some observations. One is about this notion of the policy
10 statement and Boards attempting to decide cases inside of
11 fuel load dates.

12 I did find upon my return here the other day a
13 copy of a letter from several of the witnesses and Ms.
14 Garde and a couple of other people, and I don't remember
15 all, to the Commission dated I think the 26th
16 misrepresenting the Chairman's views, not so much the Board
17 as the Chairman. The quotations were taken out of context
18 and distort what I have said several times.

19 My position on this is very simple. We argued
20 the matter at some length a year ago in January or February
21 in a scheduling conference and we simply pointed out at
22 that time that the policy statement tells Boards to make an
23 effort to get these cases heard in that time frame inside
24 the fuel load date, but it stresses that it is to be done
25 with fairness to the parties, and if fairness requires more

1 time, more time should be taken. That of course is our
2 attitude and we will take such time as we need take.

3 I will say once more that we have been
4 attempting to get this case tried and decided before fuel
5 load, but we may not make that and it may take longer. If
6 it takes longer for us to get to a reasoned and adequate
7 and fair decision, then that is the way it is going to be.

8 Now I am not going to respond to that
9 one-sided, slanted letter that I just referred to, but I
10 thought I would say something in the record for the sake of
11 setting that straight.

12 Now, Mr. Guild, do you want to speak to the
13 point?

14 MR. GUILD: Yes, sir. I had hoped that you
15 would have received that letter at the time we had the
16 hearing, Judge, on Monday and Tuesday and apologize if it
17 didn't get circulated to you in advance of your return to
18 Washington. I certainly wanted you to have our views
19 directly in front of you and not feel that we were saying
20 something to someone that we weren't saying to you
21 directly. I appreciate your comments and response.

22 Yes, sir, we, if you recall, met this issue of
23 bifurcation once before. It was in a conference call that
24 was not transcribed. So the views of the parties are not of
25 record, if you will. You will recall then that we opposed

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1 the device, the suggestion or what-have-you. We think at
2 that point Your Honor had felt motivated to propose the
3 device feeling that we would find ourselves unable to meet
4 that fuel load date without a separate hearing board on
5 emergency planning.

6 I think I pointed out that the suggestion had
7 been previously raised in a paper from the applicant, a
8 scheduling comment that bifurcation might be necessary.

9 well, the suggestion or the device was rejected
10 at that time and we believe it should be rejected now. Now
11 that the cards are on the table and it is a formal motion
12 by Duke Power, we want to go on record, and I speak for
13 both Palmetto and CESC, as opposing bifurcation.

14 Mr. Riley has prepared an affidavit that speaks
15 to a number of points that will be circulated and I won't
16 try to speak for him on that or to represent his position,
17 except to say that it contests the representations of fact
18 made by Mr. Owen with respect to the financial consequences
19 of not meeting the schedule that is set forth in a formal
20 affidavit from him that is attached to the applicant's
21 bifurcation motion.

22 We ask that that affidavit of Mr. Riley's be
23 considered in support of Palmetto's and CESC's position on
24 this motion.

25 JUDGE KELLEY: Right.

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1 MR. GUIDO: Prejudice is clear, Judge. It is
2 just the phenomenon of not being able to ring any more
3 blood from this turnip, this turnip being the resources of
4 largely volunteer organizations that have tried diligently
5 to meet time obligations and to participate as responsible
6 parties in this case. We simply cannot do more than what we
7 are doing now. We are really stretched to the absolute
8 limit.

9 It is nice to have the assistance from Mr.
10 Clewett from time to time, but Mr. Clewett is not an
11 employee of Palmetto and has only been able to do what he
12 has done on a very special basis. He is not available to us
13 on the kind of basis that applicants have maybe six or
14 seven counsel. They keep adding new appearances in the case
15 as the level of activity cranks up, not to mention the vast
16 technical and financial resources that they have to support
17 the actual litigants.

18 I spoke with George Johnson a week or so ago on
19 this point of bifurcation, and without sort of, you know,
20 telling tales out of school on George Johnson, the point
21 that he alluded to this morning is that he has got himself
22 another lawyer to work with him and maybe that solves some
23 of the staff's problems that would have been occasioned by
24 Mr. Johnson ---

25 JUDGE KELLEY: Let me get clear on the resource

1 problem, Mr. Guild, in terms of this case of how it is
2 running and how it is scheduled. Let's say that your
3 findings are in later this month and then other things will
4 come up in discovery I assume on emergency planning, but
5 what difference does it make whether you go to hearing in
6 April or July?

7 MR. GUILD: Well, it makes a difference because
8 of preparation time, Judge. I simply cannot be doing all of
9 these things at the same time. Presumably if you add a set
10 of new judges to consider emergency planning matters, which
11 I think would be a mistake, those judges are not going to
12 be sitting around twiddling their thumbs while the rest of
13 us take care of the safety and environmental record or
14 decision with all of the paper that needs to be generated
15 on that, nor will they be twiddling their thumbs while we
16 pursue matters that we intend to raise to the Commission if
17 the decision of this Board is adverse.

18 We have certainly tried diligently to preserve,
19 as we think the precedent says we have to, to preserve our
20 procedural or interlocutory, if you will, objections by
21 raising them as request for certification when they arise.
22 We don't hoard them. As one of the precedents said, we are
23 not allowed to hoard objections until the end of the case.
24 We try to raise them in as timely a fashion as we can. That
25 obligates time of counsel and obligates the limited

1 resources that we have.

2 For example, Judge, when we completed the
3 Monday and Tuesday hearings, all of the other participants
4 I suspect shifted back to doing their findings. Well, I
5 couldn't do that because I had to shift to trying to spend
6 about 15 hours working on emergency planning discovery
7 which is fast drawing to a close.

8 Our resources don't allow us to have a separate
9 counsel that handles emergency planning matters such as Mr.
10 Shearin who is doing it for the applicant or the FEMA
11 people who apparently are taking care of these sorts of
12 things for the NRC staff.

13 So if, for example, the convenience of the one
14 party like the staff with matters like FEMA in having their
15 direct testimony in by a certain date is an issue, and I
16 think it should be, then in fairness to all participants,
17 our ability, intervenors' ability to effectively
18 participate should be a very strong consideration as well
19 and we think that is consistent with the policy statement
20 and what the Chairman just said.

21 JUDGE KELLEY: I think that is a consideration.
22 Let's say as we are sitting here today and discussing this
23 point, what time would you propose as a fair time to go to
24 hearing from your standpoint?

25 MR. GUILD: Well, sir, the time that I

1 understand is available to this Board, and there are
2 reasons for hearing these issues that I want to touch on,
3 but I think the time I understand for -- well, applicants'
4 bifurcation motion suggests that we wouldn't reach hearing
5 on emergency planning matters until -- let me see if I have
6 got this correct -- does it say June I think. Yes, it says
7 "It appears that the emergency planning hearing cannot
8 commence until June 1984."

9 All right. Let's assume that as the outside
10 case. Let's assume that this Board issues an initial
11 decision on safety environmental issues sometime in May and
12 we go to hearing in June on emergency planning matters. I
13 would like to do something other than the Catawba
14 proceeding like all the rest of us sometime in the rest of
15 my life, but I am prepared to go forward at that point
16 certainly. I am prepared to go forward in the May time
17 frame if this Board has a decision that is done and has
18 finished its work on that and then is prepared to go to
19 hearing.

20 JUDGE KELLEY: Let's make it clear that this
21 Board could not hear emergency planning before June. I just
22 don't see how that is doable.

23 MR. GUILD: Well, we are prepared to go forward
24 on emergency planning hearings in that time frame. That
25 gives us the opportunity to first clear the deck on safety

1 issues in terms of findings. Even though at this point
2 discovery on emergency planning is now slated to close the
3 6th of February, we still have to shift gears and use
4 whatever devices or tools that are available to us, if not
5 formal discovery, then the preparation time and informal
6 discovery to be prepared to go to hearing.

7 Judge, just to interject a note that I think is
8 a fairness consideration, I haven't been home literally
9 except for one day in four months and, you know, I have
10 other obligations and other work to do. I think the
11 participants all have an obligation and a right to be able
12 to have some opportunity to do something other than
13 literally 18-hour days day in and day out working on this
14 one proceeding.

15 Now let me address a couple of our legal
16 objections to this.

17 we are aware of no precedent that supports
18 bifurcation in these circumstances. The only precedent that
19 has been cited to us is the Shoreham example, and I would
20 suggest that the Shoreham example is totally in opposite to
21 our situation here.

22 First, in Shoreham the device of using a
23 separate Licensing Board was a device that wasn't thrust
24 upon the participants at a late stage in the case where the
25 one Board had already done considerable litigation on

1 related matters, including the safety of construction and
2 then suddenly they decided they couldn't reach fuel load so
3 they added a separate board. They have been following
4 separate tracks for quite some time.

5 The parties in that case are multiple and they
6 are parties with a distinct interest in the emergency
7 planning issue as opposed to the only safety issue I am
8 aware that exists at this point which is the diesel
9 generator question. That case involves very, very knotty
10 emergency planning issues where there are participating
11 local governmental entities.

12 Now no other case has been referred to us at
13 all offers any further support. They are even more remote.
14 There are hearing officers being appointed to look at TMI
15 cheating issues. There is a separate board being set up to
16 look at the issue of shutting down Indian Point. So there
17 are no precedents for doing this that we think support a
18 belief that has been thought.

19 Judge, there is a very, very overriding
20 importance, in our view, to this Board hearing the
21 emergency planning issues that it has accepted for
22 litigation in this case and let me address that briefly.

23 JUDGE KELLEY: Okay, and then we are going to
24 have to wrap up because we are way overtime and we have
25 still got business to do. So make it short.

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1 MR. GUILD: Fine. Judge Kelley, you and I
2 personally have, you know, we have gone around and around
3 and there have been some moments of acrimony not
4 infrequent. And, yet, with all of that said, I as a
5 litigant have an interest. And win, lose or draw, the tryer
6 of fact that has gone the nine yards so far on this case
7 being the tryer of fact that hears the second aspect of
8 this case, there are first obvious advantages to
9 understanding the parties, the litigants, the counsel and
10 the participants, but in this case there are some very
11 clear crossovers.

12 First, you already heard evidence on an issue
13 that is going to bear very directly on the emergency
14 planning part of the case and that is the DES Contention 17
15 that relates to the unique circumstances with respect to
16 meteorology for likely accident impacts and the emergency
17 planning implications of that set of circumstances.

18 Second, you have heard all of the argument
19 supporting admission of revised emergency plan Contention
20 11, the Charlotte issue. You have considered factual
21 matters that were not in the nature of disputed facts, you
22 know, drawings, maps, demographics and decided in the
23 unique facts and circumstances that were in the confines of
24 the emergency planning rules that it is a fair game for
25 litigation in this case.

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1 Having done so, Judge, we think it is only fair
2 to an orderly litigation of these issues and fair to the
3 parties to have this Licensing Board consider litigation of
4 that issue and emergency planning that considers these
5 local circumstances.

6 Now I think there is a due process aspect to
7 that as well. Frankly where applicants and the NRC staff
8 have challenged the litigability of that contention and
9 have been turned aside, it is highly inappropriate for
10 Duke Power Company to then say we want another set of
11 judges to consider the issue that over our objection has
12 been admitted for litigation by this Licensing Board.

13 So we argue very strongly that it would be not
14 only a prejudice and a burden to this party and to CESC to
15 be forced to follow two tracks at the same time, but
16 irreversible error for this Board to step down from
17 considering a series of issues that it has admitted based
18 on its understanding of the record where applicants and the
19 staff have opposed those issues and applicants not seek to
20 find other tryers of fact to consider them.

21 JUDGE KELLEY: Okay.

22 Mr. McGarry, do you want a brief response?

23 MR. MCGARRY: Very brief. On that last point I
24 would trust that the Board holds applicants' counsel in
25 higher regard than to think that we are trying to

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1 circumvent the Board's ruling.

2 I can represent that our motion for bifurcation
3 has absolutely no connection with the Board's ruling on the
4 City of Charlotte. We take our appeal to the Appeal Board
5 and we let the chips fall where they may.

6 Our motion is premised solely on one point. We
7 don't think we can get to a timely licensing decision given
8 this Board's constraint. This Board has to take time to
9 deliberate on the safety phase of the case. When that phase
10 is over, which now the record is closed and proposed
11 findings will all be in in a month of February and maybe
12 flip over a little bit to March. Thereafter the parties
13 have nothing to do, but the Board does. Let's get another
14 Board and let's proceed further with the emergency plan
15 hearing. That concludes our response.

16 JUDGE KELLEY: Okay.

17 Now I have a separate topic marked here.

18 MR. RILEY: Judge Kelley?

19 JUDGE KELLEY: Excuse me, Mr. Riley?

20 MR. RILEY: I would like to make a ---

21 JUDGE KELLEY: I have got an affidavit coming,
22 right, from you?

23 MR. RILEY: You do.

24 JUDGE KELLEY: I do. Okay. I would ask you to
25 make it brief, Mr. Riley. We have now spent about a half an

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1 hour on this topic. Go ahead if you want to make a brief
2 comment.

3 MR. RILEY: I appreciate it. It is a practical
4 consideration.

5 JUDGE KELLEY: All right.

6 MR. RILEY: The TDI development has now taken
7 place and the pace of resolving this TDI thing on diesel
8 generators for the applicant I don't think is going to be
9 spectacularly fast. I think the thing that keeps fuel
10 loading off the critical path or is the critical path for
11 fuel loading is going to turn out to be at least the
12 staff's consideration of the diesel generator problem. So I
13 think we should view the scheduling talk in that time
14 light.

15 I very much support Mr. Guild's observations
16 and have independently arrived at very much the same thing.

17 JUDGE KELLEY: Okay.

18 MR. GUILD: Judge, in lieu of a formal pleading
19 in response, I hope you will accept our response on the
20 phone today as ---

21 JUDGE KELLEY: Oh, absolutely. This is going to
22 wrap it up because we are going to decide it as far as we
23 are concerned.

24 MR. GUILD: I would just say this, that we think
25 this is a very important matter and if the Board is

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1 amenable to the applicants' motion to bifurcate, we would
2 ask with all respect that the Board make specific findings
3 of fact and conclusions of law and we would intend to seek
4 immediate certification of the issue because we think it is
5 a very important policy issue and we don't want to have the
6 informality of this conference call suggest that we are not
7 prepared to take this all the way up because we are very
8 seriously of the view that it would be error to grant it.

9 JUDGE KELLEY: well, we will consider that. I
10 should just add one point, and that is, as I think I have
11 said before, a bifurcation motion is kind of a peculiar
12 beast in the sense that it is addressed to this Board and
13 yet it is a joint thing by this Board and the management of
14 the panel.

15 The Board doesn't have the authority to set up
16 another Board. It is Chairman Cotter that does that. So
17 what you get is sort of a joint judgment. I frankly don't
18 know what has been done in some of these other cases where
19 they have bifurcated, whether they have written an opinion
20 on the subject or whether they just issue a little piece of
21 paper saying there is hereby a different Board. But I do
22 want to mention that it is not entirely in our hands.

23 MR. GUILD: Yes, sir.

24 MR. JOHNSON: Judge Kelley, I would just like to
25 state that we said that we would file a written document,

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1 but in light of this phone call we would not anticipate
2 filing it.

3 JUDGE KELLEY: Yes, I think we might have been
4 clearer before. Can everyone agree? We have got Mr.
5 McGarry's written motion and now we have had all this
6 discussion from all sides and I would think the Board could
7 decide the matter without any further filings.

8 Now Mr. Guild indicated, apart from this
9 bifurcation business we have just been talking about, that
10 he had some matters in the area of emergency planning
11 discovery that he wanted to raise.

12 MR. GUILD: Yes, sir.

13 MR. MCGARRY: Your Honor, is this going to get
14 into emergency planning?

15 JUDGE KELLEY: Yes, I think so.

16 MR. MCGARRY: Can we try to call Mr. Shearin and
17 plug him in because when we were cut off he was cut off.

18 JUDGE KELLEY: Well, try to get him.

19 MR. MCGARRY: If everyone stays on the line I
20 think I have the capability of doing it.

21 JUDGE KELLEY: All right, I will be right back.

22 (Pause.)

23 JUDGE KELLEY: This is Kelley back. Who all is
24 on the line?

25 MR. MCGARRY: McGarry is back with Shearin.

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1 JUDGE KELLEY: Did you get Mr. Shearin?

2 MR. MCGARRY: Yes, sir.

3 JUDGE KELLEY: Mr. Guild?

4 MR. GUILD: Yes, sir.

5 JUDGE KELLEY: Mr. Riley?

6 MR. RILEY: Here.

7 JUDGE KELLEY: Purdom and Foster?

8 JUDGE PURDOM: Here.

9 JUDGE FOSTER: Here.

10 JUDGE KELLEY: Is Mr. Clewett still around?

11 MR. CLEWETT: Yes, sir.

12 JUDGE KELLEY: Okay. Well, I guess we are all
13 back on.

14 Well, Mr. Shearin, you just joined us and Mr.
15 McGarry may have told you that we are about to start some
16 discussion of some emergency planning discovery matters
17 that Mr. Guild wanted to raise. So we had you join us.

18 Mr. Guild, could you just first of all describe
19 in sort of a captioned way what you have got in mind that
20 you want to raise?

21 MR. GUILD: All right, sir. We are fast
22 approaching the February 6th deadline, and with the Board
23 on the line to the extent there are some matters that
24 cannot be agreed to, I wanted to either see if we could get
25 a decision or see if we could use this as a very, very

1 short conference to resolve matters that might be contested
2 and then to just kind of reflect on the status of where we
3 are in approaching the 6th of February on emergency
4 planning.

5 I mentioned a number of points to Mr. Shearin I
6 think yesterday or the day before now and I was just going
7 to quickly run down a list of things that were on the table
8 and flag the ones that I think are disputed.

9 JUDGE KELLEY: Okay.

10 MR. GUILD: If I can just jump in, Judge?

11 JUDGE KELLEY: Yes, I guess so. I think we will
12 sort of see how it goes. We have run up now a couple of
13 hours instead of one, and that is okay, but if it gets us
14 enmeshed into a lot of sort of detailed argument, I am not
15 sure we are going to want to do it this way.

16 MR. GUILD: Yes, sir.

17 Let me just allude to the fact that as the
18 Board is probably aware, we have done some informal
19 discovery in the emergency planning area. We had a
20 conference when we took a break in the fall during the QA
21 hearings and the applicants have been very helpful in
22 making available documents essentially that are in their
23 possession and sort of collecting documents from the
24 various state and local government participants.

25 we have examined a number of these and sort of

1 are in the process of copying a number, and I want to thank
2 Mr. Shearin and the people at the company that have been
3 helpful in making those things available.

4 We now come to the point where we are getting
5 close to the expiration date for discovery. I was informed
6 the other day that the applicants will take the deposition
7 of Jesse Riley on the 8th of February by consent, and I
8 have informed Mr. Shearin of our desire to on the same day
9 take the deposition of Mr. Michael Glover who is the
10 applicants' planning coordinator or the man who was the
11 central figure, if you will, in doing the planning for
12 Catawba at Duke Power.

13 That was a request and a note to Mr. Shearin
14 that he has neither acquiesced in or commented on, but I
15 told him about that and didn't know whether it would be a
16 disputed matter but wanted to raise it. Perhaps it is not
17 disputed so there is no need to take that further. But, if
18 so, I wanted to let the Judges know that we seek a
19 deposition as do they.

20 The second matter that is sort of a matter of
21 controversy is we have sought from applicants the
22 opportunity to gather information concerning the conduct of
23 the drill yet to come. That is the February 15th exercise
24 drill and what-have-you involving state and local
25 government and Duke Power.

1 we have been informed that Duke has invited
2 observation by a committee of citizens in Charlotte whose
3 charge is to make recommendations about emergency planning
4 in Charlotte for the Catawba Nuclear Station, but they have
5 refused voluntarily to allow observation at that same point
6 by representatives from intervenors.

7 I made a request the other day to Mr. Shearin
8 that we be allowed to observe in whatever fashion was least
9 intrusive but would give us the maximum amount of
10 opportunity to gather information about the effectiveness
11 of the drill and he sort of said that he didn't think that
12 was likely that they were going to agree to that. So I
13 wanted to put that matter similarly before the Board.

14 Then the last matter on emergency planning was
15 I simply wanted to seek the guidance of the Board on the
16 question of whether after the discovery period closes, as I
17 think the rules suggest, applicants and the staff would
18 commit to supplementation of the discovery as intervenors
19 have been asked to do until they actually go to hearing on
20 the matter.

21 That covers the issues I wanted to raise I
22 believe.

23 JUDGE KELLEY: Okay.

24 Shall we ask Mr. Shearin to respond or Mr.
25 McGarry?

1 MR. MCGARRY: I will jump in. As I understand
2 it, there are three items. One is a deposition of Mr.
3 Glover, second is the drill and third is the continuing
4 obligation to supplement discovery.

5 MR. GUILD: Yes, sir.

6 JUDGE KELLEY: Is this Mr. McGarry?

7 MR. MCGARRY: Yes, sir.

8 JUDGE KELLEY: Okay. I thought so. Go ahead.

9 MR. MCGARRY: with respect to the third item, of
10 course we have the responsibility to supplement discovery
11 and we will act accordingly.

12 With respect to the first item, which is the
13 deposition of Mr. Glover, my understanding is that Mr.
14 Guild thought to take that on the same day as Mr. Riley. We
15 have no objection to taking Mr. Glover's deposition shortly
16 after February the 6th and I think the discussions were
17 focusing on February the 9th.

18 MR. GUILD: I think the 8th, Mike, is the day
19 that Jesse is going to be deposed.

20 MR. MCGARRY: Jesse is the 8th. We can't do them
21 both at the same time. So we would suggest the 9th, but we
22 have no opposition, as I said, to Palmetto's taking Mr.
23 Glover's deposition in the very close proximity of the
24 close of discovery date which is February the 6th. That
25 would be normal business hours and normal time.

1 MR. GUILD: Mike, if I might interject here.
2 Judge, we had anticipated, and I told Mr.
3 Shearin that what we wanted to do was do a non-stenographic
4 deposition under the same housekeeping agreement that we
5 used in the QA session. You know, if the applicants want to
6 get a court reporter, fine, well and good, but we would
7 plan only to have a tape recorded deposition.

8 MR. MCGARRY: We have no problem with that with
9 that with the same ground rules as before. I think the key
10 now is just to set a date and I think February the 9th was
11 the date we were talking about.

12 MR. GUILD: we can discuss that later. That
13 would be fine.

14 JUDGE KELLEY: That doesn't sound like a
15 problem.

16 JUDGE KELLEY: What about the observation part?

17 MR. MCGARRY: The observation part we oppose.

18 JUDGE KELLEY: Can you define a little more
19 clearly -- I recall, for example, and this is just a dim
20 recollection and may be wrong, that there was a dispute
21 about intervenor observation at Indian Point.

22 MR. GUILD: Yes, sir.

23 JUDGE KELLEY: The dispute I think was the
24 control room. I don't know, but that kind of thing comes
25 up. It is one thing to observe in the control room and

1 another thing to stand next to the fence I suppose. I am
2 not sure what you are asking for and so forth.

3 Mr. Guild, when you say you want to observe,
4 where do you want to be?

5 MR. GUILD: well, I am mindful of the decision
6 in the Indian Point matter, Judge, and what, frankly, I am
7 trying to do is to avoid whatever objection there might be
8 that is founded on that set of circumstances at Indian
9 Point, and if that objection is that the control room
10 represents too intrusive of a place to be that implicitly
11 interferes with their conduct of the drill, all well and
12 good.

13 I don't have enough factual information about
14 how they set this thing up to be able to say.

15 MR. RILEY: May I jump in, Bob?

16 MR. GUILD: Say that again?

17 MR. RILEY: May I jump in?

18 MR. GUILD: Yes, sir.

19 MR. RILEY: In a meeting before the citizens
20 committee, Mr. Carter, who is the Community Relations
21 Director, indicated there was ---

22 MR. GUILD: For Duke Power, right?

23 MR. RILEY: Duke Power Community Relations
24 Director. --- indicated there were going to be four
25 positions that would involve Duke. One is in the corporate

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1 office, another is in the control room and the other two I
2 am not sure of, but quite possibly includes the South
3 Carolina National Guard Armory which is to be the forward
4 emergency operations center.

5 Now there is a fifth place for observation, and
6 that is in the Police Department Coordination Office here
7 in Charlotte. I have received from Mr. Broom an invitation
8 to be an observer there. So that is no problem.

9 MR. GUILD: Okay, good.

10 MR. RILEY: I have no problem in desiring to be
11 in the control room or being in an intrusive position, as
12 Mr. Guild said, but it certainly seemed to me that the
13 forward emergency operations office in the National Guard
14 Armory would be a different matter.

15 MR. CLEWETT: May I also at some point make one
16 brief additional observation on this?

17 JUDGE KELLEY: What we are trying to get now is
18 as good a fix. I mean if it is a disputed matter, and I
19 gather that it is, we need to know from the intervenors
20 just exactly where they want to be so that we can make an
21 intelligent assessment.

22 Now we have heard Mr. Guild on this subject in
23 general terms and Mr. Riley was talking about a couple of
24 specific places.

25 Mr. Clewett, do you want to add something along

1 those lines?

2 MR. CLEWETI: Yes, if I may, sir. On the basis
3 of my assumption not knowing that much about this ongoing
4 litigation, there will be questions that arise during the
5 course of the hearing on the effectiveness of things from
6 one perspective or another.

7 It seems to me that it is suggestive of the
8 approach that should be followed, that when matters are in
9 litigation the procedure has been followed at other nuclear
10 plant locations around the country that if the applicant
11 provides the NRC, particularly the Commission, with, for
12 instance, a tour of the plant, that they also invite
13 intervenors to participate.

14 Now it seems to me that the situation here is
15 not strictly on all fours the same situation, but it seems
16 to me reasonable to follow the perspective that if, for
17 example, Duke Power Company has recruited a bunch of people
18 who are possibly going to be said to be a cross-section of
19 the community who observe this, that there be some
20 provision to factor into that those community groups that
21 are actively actually involved in litigating these issues.

22 It seems to me that if Duke is going to have
23 people at four different places to be the eyes and the
24 ears of what happens, that there is an obligation to
25 consider also having representatives of the intervenors

1 there.

2 Now I assume that this isn't going to be
3 hanging off the back of a fire truck or something like
4 this, but if it is as an official observer under ground
5 rules that have been set out, that if there are going to be
6 people observing from, for instance, the control room and,
7 for instance, the command post of one particular
8 organization or another that is responding, that the
9 intervenors should be given the opportunity to be there.

10 Now it may be that just because of manpower
11 questions that, you know, for instance, Jesse Riley can't
12 be in more than one place at one time and neither can Mr.
13 Guild, but that there be that option available. So that is
14 my only point that the Board should consider that
15 perspective as well.

16 JUDGE KELLEY: Okay.

17 MR. GUILD: I think the reason we think it is
18 appropriate to consider under these circumstances if we
19 understand that Duke has essentially invited
20 non-participants but observers from this so-called Nerkin
21 Committee of citizens in Charlotte to observe at those four
22 locations.

23 we simply ask for the least intrusive
24 opportunity to observe where we are at the same time
25 gather the most amount of information, and we would say the

1 best measure of that should be the kind of observation
2 opportunity that is being given to members of this
3 committee who have no other official role in the drill.

4 JUDGE KELLEY: Let me get one other thing clear.
5 When you say you want to participate and be represented,
6 how many people are you asking for?

7 MR. GUILD: Well, I think if you say there are
8 four locations, Judge, that are being observed, no more
9 than one representative in any one place.

10 JUDGE KELLEY: One apiece.

11 MR. GUILD: Yes, sir.

12 JUDGE KELLEY: All right. Now just once more let
13 me get clear, and maybe Mr. McGarry can help, on exactly
14 what these places are. I know the control room. That is
15 one.

16 MR. CARR: Your Honor, this is Al Carr. It is my
17 understanding that none of these four people will be in the
18 plant at all and maybe perhaps Mr. Shearin can confirm
19 that.

20 MR. SHEARIN: That is correct. None of them will
21 be at the plant.

22 JUDGE KELLEY: From this committee you mean?

23 MR. CARR: That is right.

24 JUDGE KELLEY: Nobody is in the plant. Well,
25 tell me where they are again.

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1 MR. CARR: Ron, why don't you go ahead. Do you
2 know the four locations?

3 MR. SHEARIN: Yes, I have the four locations
4 here. One of them is with the field monitoring team.

5 JUDGE KELLEY: They just sort or drive around in
6 their trucks, right? Field monitoring, that is not a fixed
7 place, right?

8 MR. SHEARIN: That is correct.

9 JUDGE KELLEY: So that is just somebody that
10 goes along with the radiation monitor people. All right,
11 that is one place.

12 MR. SHEARIN: The second one is the News Crisis
13 Center in the Power Building.

14 JUDGE KELLEY: News Crisis Center, and what
15 building is that?

16 MR. MCGARRY: That is the Power Building in
17 Charlotte, North Carolina. That is Duke's corporate
18 headquarters.

19 JUDGE KELLEY: Okay. It is a media place, right?

20 MR. SHEARIN: That is correct. Actually there
21 are just three locations where they would be, the third one
22 being the Recovery Manager's Facility.

23 MR. RILEY: I beg your pardon? Please repeat
24 that, Mr. Shearin.

25 MR. SHEARIN: Do you want the three locations?

1 MR. RILEY: No, just the last one, please.

2 JUDGE KELLEY: The third one.

3 MR. MCGARRY: Ron, the last location.

4 MR. SHEARIN: The last one is the Recovery
5 Manager's Center which is in the wakugia Building across
6 the street from the Power Building all in Charlotte.

7 JUDGE KELLEY: What kind of function gets
8 performed at the last one?

9 MR. SHEARIN: That is where the decision-making
10 function is carried out.

11 JUDGE KELLEY: Decisions by who?

12 MR. SHEARIN: By the Recovery Manager for the
13 exercise.

14 MR. GUILD: That is a Duke Power representative
15 I understood.

16 MR. MCGARRY: Yes.

17 JUDGE KELLEY: The Recovery Manager. What about
18 the so-called EOC, where is that?

19 MR. GUILD: That is in Clover, Judge. That is at
20 the National Guard Armory.

21 JUDGE KELLEY: That is the National Guard Armory
22 and that is where Mr. Riley has been invited, right?

23 MR. GUILD: No, sir. He has been invited to the
24 Police Department in Charlotte. The FEOC, forward emergency
25 operations center is in Clover, South Carolina in the

1 National Guard Armory and that is where the representatives
2 of both North and South Carolina gather to coordinate the
3 accident.

4 JUDGE KELLEY: Right. Now I think we have got
5 clear now where the city committee representatives are
6 going to be, the three places Mr. Shearin just named. Now
7 are those same three places the three places you were
8 asking for?

9 MR. GUILD: Yes, sir, and we would add the
10 fourth which is the FEOC, the Clover National Guard Armory.

11 JUDGE KELLEY: Plus Clover?

12 MR. GUILD: Yes, sir.

13 JUDGE KELLEY: All right. Well, I think we
14 understand it.

15 Any questions, Judge Purdom?

16 JUDGE PURDOM: No questions.

17 JUDGE KELLEY: Judge Foster?

18 JUDGE FOSTER: No.

19 JUDGE KELLEY: Okay. I think we can get a grip
20 on that.

21 Now it is about lunchtime.

22 The other note I have is a short time, namely,
23 that I received today a letter dated yesterday concerning
24 the subject of the control room design review. You will
25 recall, gentlemen, there was a discussion of that and

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1 whether there were contentions to be coming in on that at
2 the end of the hearing the other day and we asked Mr.
3 McGarry to essentially pull together the transmittal
4 letters and give us some background on what had happened
5 here. He has done that and some of you may not even have
6 it. I have looked at it and I would just say this, Mr.
7 Guild, if you want to respond to Mr. McGarry's letter ---

8 MR. GUILD: We did get it and we do want to
9 respond. We don't think that represents an accurate view of
10 things.

11 JUDGE KELLEY: Okay. Well, if you could serve
12 something by, today is the 3rd, by the 10th.

13 MR. GUILD: Fine, Judge.

14 MR. CARR: Judge Kelley, let me just say that
15 that letter was nothing more than an overall, just a basic
16 background and transmittal of the correspondence that had
17 gone back and forth reflecting the service.

18 JUDGE KELLEY: Yes.

19 MR. CARR: We want an opportunity to be heard if
20 an argument comes in.

21 JUDGE KELLEY: Right. Let us have an
22 understanding, gentlemen, that we weren't asking you for an
23 elaborate pleading and argument and all that. We just asked
24 for the sort of basic information that is really a file
25 search kind of a thing.

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1 Mr. Guild, you can come back with the same kind
2 of a thing. You can come back with more of an argument if
3 you want to, but we would expect to give both sides some
4 further opportunity to be heard.

5 MR. GUILD: Yes, sir. Thank you.

6 JUDGE KELLEY: what we might do in that regard
7 -- now we have got pending in front of us several matters.
8 Let me ask again when this exercise is going to take place?

9 MR. RILEY: February 15th through the 16th.

10 JUDGE KELLEY: what days are those, the middle
11 of the week?

12 MR. RILEY: Yes, I believe a wednesday and a
13 Thursday.

14 JUDGE KELLEY: I was going to say, gentlemen, in
15 my own person case after today I am going to be out in
16 Reno, Nevada next week attending a judicial college thing.
17 So I am kind of out of pocket.

18 We will have to give you a decision on the
19 observation stuff next week sometime so you know one way or
20 the other whether you have got a right to go.

21 The other matters also should be decided pretty
22 soon. Would a telephone conference be okay?

23 Let me ask my colleagues first if they think
24 they can find a little time a week from next wednesday, say
25 the 15th?

1 JUDGE PURDOM: No problem.

2 JUDGE KELLEY: Can you do that, Dick?

3 JUDGE FOSTER: Foster is available.

4 JUDGE KELLEY: We could use that occasion and we
5 will announce rulings on whatever we have heard today that
6 we haven't rule on which is I guess is most of today's
7 discussion.

8 MR. CLEWETT: May I ask that you consider having
9 that telephone conference not on the days that is
10 going to be used for the emergency planning exercise just
11 because that is a conflict that people are going to be
12 trying to be focusing on the exercise itself then.

13 JUDGE KELLEY: Yes. That was the 15th and 16th I
14 think I just heard?

15 MR. RILEY: Right.

16 JUDGE KELLEY: well, is the 17th all right?

17 MR. MCGARRY: Yes, sir.

18 JUDGE KELLEY: Okay. Let's go ahead and set a
19 time now and we can mark it on our calendars so we don't
20 have to call you back again. The 17th is Friday, and at 11
21 o'clock in the morning again?

22 MR. GUILD: Fine, Judge.

23 MR. MCGARRY: Yes, sir.

24 JUDGE KELLEY: Now as to the other point, we
25 will try to talk a little bit today about this

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1 representation problem and we will just simply have to get
2 back to you, but one way or another we will get you a
3 ruling as soon as we can. It will probably be next week.

4 MR. GUILD: Thank you.

5 MR. CLEWETT: May I ask one other thing?

6 JUDGE KELLEY: Yes.

7 MR. CLEWETT: There is one other minor matter I
8 wanted to bring up. It won't take but a minute and it may
9 not be controversial.

10 we would be interested in having a list of
11 everyone who has signed the affidavit of non-disclosure. I
12 don't know whether the easiest way would be for each party
13 to provide a list to the others of who has signed or
14 whether the Board would find it objectionable to undertake
15 to circulate under the same In Camera circumstances if
16 necessary a list of who has signed that since it is my
17 understanding that the affidavits themselves are submitted
18 to the Board.

19 JUDGE KELLEY: That is correct. well, we can
20 probably do that. It will take a little time, but I think
21 we can do it.

22 MR. CLEWETT: Okay. Thank you very much. That
23 was my only point.

24 JUDGE KELLEY: Okay.

25 Gentlemen, then we will get back to you next

1 week on the representation business and the following week
2 on Friday we will try to get back and rule on everything we
3 talked about today.

4 MR. GUILD: Judge, one housekeeping piont that I
5 tried to flag early, and that is I am trying to get copies
6 and circulations of the exhibits from the Monday and
7 Tuesday hearing out to everybody and I have a couple of
8 points in that regard.

9 First, can you just tell me, Judge Kelley, if I
10 want to have the record copies sent, do I just send them to
11 you or should I send them to the docketing and service.

12 JUDGE KELLEY: I think docketing and service
13 gets them usually.

14 MR. GUILD: Okay, and then a copy to everybody
15 on the list to make sure.

16 JUDGE KELLEY: Yes.

17 MR. GUILD: Okay, and in that regard if I can
18 maybe talk with maybe Mike McGarry.

19 Mike, are you in D. C.?

20 MR. MCGARRY: Yes.

21 MR. GUILD: I just wanted to get some of the
22 numbering straight. I went back and frankly couldn't make
23 heads or tails out of our discussions about renumbering
24 them.

25 The third point was we had hanging this

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1 request to include the informal discovery materials from
2 the applicant.

3 JUDGE KELLEY: Oh, yes.

4 MR. GUILD: What I would like to ask is if I
5 could submit simply one copy of that for the formal record,
6 maybe one to docketing and service and one to any party
7 that doesn't have one. But what I want to do is just have
8 it in the record what I can represent as what we have had
9 available, not for substantive evidence, but simply to
10 reflect what was circulated to support our position on the
11 need for discovery, et cetera. I think that everything we
12 want to rely on has been pulled from that pack and
13 individually introduced as an exhibit by one party or the
14 other.

15 To do this last point, to include that pack as
16 an identified exhibit, I am going to ask for the
17 assistance from Al Carr that I sought before which was to
18 get a good, clean set of them.

19 MR. CARR: Bob, as I told you, I have got
20 somebody working on that, but I won't be back in Charlotte
21 until next week. It will take ten days or so to get all of
22 that together.

23 MR. GUILD: That suits me fine, Judge, if that
24 is okay.

25 JUDGE KELLEY: Okay.

1 MR. MCGARRY: Our position on that last point is
2 the applicant doesn't agree that that entire informal
3 package should be evidence.

4 JUDGE KELLEY: Well, I think, if I hear Mr.
5 Guild correctly, it is being offered for the limited
6 purpose of showing almost the thickness of the stack. Is
7 that correct, Mr. Guild.

8 MR. GUILD: Yes, sir, and to the extent that
9 there are documents in there that relate to particular
10 subjects, I want to be in a position to indicate, you know,
11 the paucity, if you will, of information provided on those
12 things.

13 But I think it is fair to say that to the
14 extent that items were specifically dealt with in the
15 hearing, they were either read from by the witness on the
16 stand so there was no need to put it in, or they were
17 offered independently as exhibits.

18 So I am offering the stack only for say
19 identification purposes, if you will.

20 JUDGE KELLEY: All right. Any objection on that
21 basis?

22 MR. MCGARRY: For identification purposes, no.

23 JUDGE KELLEY: Okay, granted.

24 Okay?

25 MR. GUILD: Yes, sir.

1 JUDGE KELLEY: All right, gentlemen, I
2 appreciate your time and participation and we will be back
3 in touch with you as we said.

4 (Whereupon, at 1:20 p.m., the telephone
5 conference concluded.)

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CERTIFICATE OF PROCEEDINGS

This is to certify that the attached proceedings before the U. S. Nuclear Regulatory Commission, a telephone conference in the Matter of Duke Power Company, et al., (Catawba Nuclear Station, Units 1 and 2), commencing at 11:05 a.m., on Friday, February 3rd, 1984 in the Offices of Tayloe Associates at 1625 I Street, N. W., Washington, D. C., were held as herein appears, and that this is the original transcript for the files of the Nuclear Regulatory Commission.

Mary C. Simons

Official Reporter - Typed

Mary C. Simons

Official Reporter - Signature

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