

# 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: Bethesda, Maryland

Pages: 12,536 - 12,579

Date: Friday, February 17, 1984

*Please return original to Jack Whetstone,  
EPW-439 - Distribution: TR 01  
0/1*

### TAYLOE ASSOCIATES

Court Reporters  
1625 I Street, N.W. Suite 1004  
Washington, D.C. 20006  
(202) 93-1950

8402220577 840217  
PDR ADOCK 05000413  
T PDR

1 UNITED STATES OF AMERICA  
2 NUCLEAR REGULATORY COMMISSION  
3 BEFORE THE ATOMIC SAFETY & LICENSING BOARD PANEL  
4 TELEPHONE CONFERENCE  
5 -----  
6

7 In the Matter of:

8 DUKE POWER COMPANY, et al.

9 (Catawba Nuclear Station,  
Units 1 & 2)  
10 -----

Docket No's.

50-413 OL

50-414 OL

ASLB No. 81-463-01

11 1625 I Street, N. W.  
12 Suite 1004  
13 Washington, D. C.

14 Friday, February 17, 1984

15 The telephone conference call in the above-  
16 entitled matter was convened at 11:00 a.m., pursuant to  
17 notice.

18 APPEARANCES:

19 Board Members:

20 JAMES L. KELLEY, Esq., Chairman  
21 Administrative Law Judge  
Atomic Safety and Licensing Board Panel  
U. S. Nuclear Regulatory Commission  
Washington, D. C. 20555

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

## 1 APPEARANCES, Cont'd:

2 PAUL W. PURDOM, Member  
3 Atomic Safety & Licensing Board Panel  
4 U. S. Nuclear Regulatory Commission  
Washington, D. C. 20555

5 On Behalf of the Applicants:

6 J. MICHAEL MC GARRY, Esq.  
7 Debevoise & Lieberman  
1200 Seventeenth Street, N. W.  
Washington, D. C.

8 ALBERT V. CARR, Esq., and  
9 RONALD L. GIBSON, Esq.  
Duke Power Company  
10 422 South Church Street  
Charlotte, North Carolina

11 On Behalf of the NRC Staff:

12 GEORGE JOHNSON, Esq.  
13 Office of the Executive Legal Director  
U. S. Nuclear Regulatory Commission  
14 Washington, D. C. 20555

15 On Behalf of the Intervenor, Palmetto Alliance:

16 ROBERT GUILD, Esq.  
P. O. Box 12097  
17 Charleston, South Carolina

18 JOHN CLEWETT, Esq.  
236 Tenth Street, Southeast  
19 Washington, D. C. 20003

20 On Behalf of the Intervenor, Carolina  
21 Environmental Study Group:

22 JESSE RILEY  
Charlotte, North Carolina

23 On Behalf of the State of South Carolina:

24 RICHARD WILSON, Esq.  
Assistant Attorney General for  
the State of South Carolina  
25 Columbia, South Carolina

## C O N T E N T S

## AGENDA ITEM

## PAGE

Rulings on Pending Matters

12,539-  
12,565

New Matters Raised by the Parties

12,566-  
12,580

Adjournment

12,580



## P R O C E E D I N G S

JUDGE KELLEY: Good morning, gentlemen.

The Board has considered I think all the matters that are before us right now, of a procedural nature, including the motion for extension for filing findings.

And I believe we are ready to announce a series of rulings on those matters, which I will proceed to do; and we can take questions at the end and what other things might need to be brought up.

If I can, I'll just walk through this: first of all, on the motion for extension of time, the motion was for a two-week extension.

We are granting that motion in part.

The present due-date of February 22d is being extended one week to February 29.

The motion, insofar as the second week, is denied.

Palmetto's findings on those five in camera contentions are now due March 7; they remain due on March 7.

If Palmetto wants to put them in with the earlier finding, that's fine; but we're holding to that date of March 7th.

The next change is affecting corresponding changes in Staff's main filing which is due on the 2nd of

1 March; that is extended to the 9th.

2 Staff's findings on the in camera matters are  
3 now due on the 15th.

4 And the Applicants' will be due on the 15th.

5 And those numbers I read off are simply the  
6 affected dates.

7 In addition, as I said the last time, these filings  
8 are to be in to the Board on the specified dates; this is  
9 not a mailing date.

10 Now, the reason for this resolution of the motion  
11 is it seemed to us that the showing of support fell somewhat  
12 short of the extraordinary cause we referenced in our  
13 original setting of these dates. Nevertheless, we acknow-  
14 ledge it is a big job; and, generally speaking, we believe  
15 that Palmetto's resources are not as steep as the other  
16 parties'.

17 We were also influenced by the somewhat uncertain  
18 timing on the resolution by the Staff of the diesel  
19 generator problems.

20 From our present perspective and in light of  
21 Mr. Johnson's description of the ongoing Staff review,  
22 yesterday--that's transcript 12,523-to-27--it seems that the  
23 issues about the diesels cast at least some uncertainties  
24 on the fuel-load date.

25 And, under all these circumstances, we think a

1 one-week extension is reasonable.

2 We would add only that we do not contemplate  
3 granting any further extensions on filing findings. The  
4 due-dates we have now we consider graven in stone.

5 Moving to the next point:

6 We have pending before us what I will call  
7 compendiously the "diesel generator contention"--it's really  
8 three contentions.

9 Let me get clear, Mr. Guild: Is CESSG and Mr.  
10 Riley, are they cosponsors of this?

11 MR. GUILD: Yes, sir.

12 I'm trying to remember the exact language--but it  
13 seems to me that Jesse Riley was sitting at counsel table  
14 when the matter was first raised; and he explicitly said  
15 it was a CESSG contention, as well.

16 JUDGE KELLEY: Okay.

17 That was my impression, and I just wanted to  
18 clarify it. I'm sure that somewhere in the record we'll  
19 find such an indication, but I wanted to ask the question.

20 Now, the contention is in three separate conten-  
21 tions, or in three parts, depending on how you want to phrase  
22 it. Mr. Guild described them most recently, I think in one  
23 of our recent conferences as 12,439 to 12,442.

24 And, paraphrasing, there is the crankshaft  
25 design contention; there's a QA contention, that is to say,

1 at the Trans-America-Delaval end of the line; and, thirdly,  
2 there's an operational-performance contention. And the  
3 transcript spells-out more fully just what that means, and  
4 I'll just reference them in that sort of a code way for  
5 purposes of talking about them.

6 We can say at the outset that if there had been  
7 a timely--"timely" in a technical sense--submission of these  
8 contentions that we would have granted all three of them,  
9 at least in some form; maybe not exactly as put forward, but  
10 in some form.

11 When I say "timely," I mean way back in January  
12 of 1982--

13 TELEPHONE OPERATOR: Excuse me, Judge Kelley?

14 JUDGE KELLEY: Yes?

15 TELEPHONE OPERATOR: This is the operator.

16 Mr. Richard Wilson is on the phone.

17 JUDGE KELLEY: All right, thank you.

18 Mr. Wilson?

19 MR. WILSON: Yes, sir.

20 JUDGE KELLEY: Good morning.

21 MR. WILSON: How you doing?

22 JUDGE KELLEY: I'm fine. I'm sorry we got to you  
23 late.

24 We--what we've done, we had a motion for an  
25 extension of time from Palmetto for two weeks; and we granted

1 one week. We've been over that part. But now we've just  
2 started talking about diesel generators; so you didn't miss  
3 a great deal so far.

4 Now, under the Commission's ruling of last  
5 summer in what was originally this Board's certified question,  
6 these contentions are late and must be viewed under the  
7 five factors--and I think we all know what that means.

8 So that's the process we went through initially.  
9 And we heard oppositions from the Staff and Applicants.  
10 And we heard a reply from Mr. Guild. And essentially all of  
11 it's directed to the five factors.

12 And we are prepared to address those factors  
13 and give you our balancing and our results on these three  
14 contentions.

15 First of all, there's the factor that was spelled  
16 out by the Appeal Board in ALAB 687, what it took to meet  
17 that; and we think Palmetto-CESG meet that good cause  
18 factor in this matter.

19 There were some indications of it a bit earlier,  
20 but the Board Notification in late October is what really put  
21 it on the table.

22 It was advanced formally by Mr. Guild on  
23 December 5. At that time there was some talk about nego-  
24 tiating some sort of contentions. And it just seems to us  
25 that it's within the meaning of the first factor, the good

1 cause factor.

2 Secondly, I think we can lump together factor-  
3 number-two and factor-number-four.

4 Factor-number-two speaks of other means by which  
5 a party's views or position might get presented; and factor-  
6 four talks about some other party representing the proponent's  
7 position in some fashion.

8 And I don't think we have to ponder long over  
9 factors-two-and-four. It seems to us that the Appeal Board  
10 decision, ALAB 747 involving the so-called WOOPS (phonetic)  
11 facility is really if not completely dispositive, then pretty  
12 close to it on these two points.

13 That decision rejects the idea that the avail-  
14 ability of the 2.206 petition is inadequate, other means  
15 within the meaning of factor-two, and it also rejects the  
16 idea that the Staff will represent the Intervenor and,  
17 therefore, the Intervenor doesn't need to be heard.

18 And what we then conclude is that factors-one,  
19 two and four, good cause, other means--except there's a  
20 footnote on other means, I'll come to that in a minute--  
21 but at least insofar as the 206 argument, and also the  
22 other parties' factors weigh in favor of admitting these  
23 contentions.

24 That brings us to factors-three and five, in which  
25 we find more debatable. Let us focus first on the



1 crankshaft design contention. I'll just give a transcript  
2 page reference, 12,439. Now, there are, of course, other  
3 references to that contention, but just to make clear what  
4 I am talking about, I'll give you that one for present  
5 purposes.

6 We are going to admit that contention under an  
7 accelerated discovery schedule, and subject to a condition  
8 --both of which I will now describe:

9 As to the discovery schedule, discovery is open  
10 beginning today, beginning now.

11 There will be--I'll try to say this slowly and  
12 precisely--and you can get it all out of the transcript.  
13 Mr. Guild, I'll get you a free transcript the first of the  
14 week.

15 MR. GUILD: Okay, sir.

16 JUDGE KELLEY: This has various rulings in it,  
17 I think you're entitled to one.

18 But we are issuing an order here and we are  
19 issuing a ruling with some specifics, so I want to be pretty  
20 careful in what I say.

21 Discovery schedule, just to start off, is number  
22 one, discovery is open now.

23 Secondly, there will be one round of interroga-  
24 tories for each party.

25 The interrogatories are to be in the hands of the



1       answering party by March 12th.

2               Responses are to be in the hands of the  
3       interrogator by March 26th.

4               Thirdly, each party may take depositions of no  
5       more than two witnesses, except that more depositions may be  
6       taken on good cause shown to the Board.

7               Depositions shall be completed by April 10th.

8               Fourth, any motions for summary disposition  
9       shall be in the Board's and parties' hands by April 20.

10              Fifth, responses to those motions shall be in  
11      the Board's and parties' hands by April 30.

12              Now, we think that under this discovery schedule  
13      that I have just read off, the admission of this contention  
14      should not delay the decision of the case if the  
15      Applicants--at least if the Applicants can prevail on a  
16      summary disposition motion.

17              And if they can't prevail on a summary disposition  
18      motion, then there would appear to be some good reason for  
19      delay.

20              So that's our reasoning on the delay factor on  
21      this particular contention.

22              Now, there's a separate consideration that bears  
23      on this contention, and that is the satisfaction of factor-  
24      number-three. Factor-number-three goes to the likeli-ability  
25      of the Intervenor to make a substantial contribution to the

1 resolution of the issue.

2 Now, again, we think that the Appeal Board's  
3 decision in 747 that I referred to a minute ago, sets this  
4 forth pretty clearly.

5 I'll read you just a few sentences from page  
6 18 of that Decision. The Appeal Board says this--and they  
7 are talking about factor-three:

8 "Almost a year ago we observed that because of  
9 the importance of the third factor, 'when a petitioner  
10 addresses this criterion, it should set out with as much  
11 particularity as possible the precise issues it plans to  
12 cover, identify its prospective witnesses, and summarize  
13 their proposed testimony.'"--citing Grand Gulf, Greenwood,  
14 and picking up with the text--"in our very recent opinion  
15 in Shoreham we noted that observation in the course of  
16 ruling the attorney petitioner there had failed to sustain  
17 his burden on the factor."

18 Now, we had some discussion in the course of  
19 hearing from the parties on these contentions about this  
20 factor. I don't think anybody directed us to this particu-  
21 lar language. This sets some rather specific standards for  
22 an Intervenor to meet.

23 We have looked again at the transcript and I  
24 remember I asked you, Mr. Guild, whether you were going to be  
25 a witness. And you said, "yes."

1                   And there was some other discussion about getting  
2 in touch with a national organization. But we don't have  
3 any names; we don't have any outlines of testimony, which  
4 the Appeal Board decision, as we read it, requires.

5                   So we are going to give you an opportunity to  
6 meet that requirement. And, again, I suggest if you haven't  
7 read 747, you do so. That's the quote we're focusing on.

8                   And we are in that connection, though, imposing  
9 a condition, namely: that Palmetto-CESG by April 2nd,  
10 --and that's shortly after the interrogatory round--you are  
11 to do two things:

12                   One, file with the Board and parties the names  
13 of the expert witnesses, and a statement of their qualifi-  
14 cations; and, secondly:

15                   Summarize their proposed testimony.

16                   And we are going to admit the crankshaft design  
17 contention conditioned on your satisfaction of the condition  
18 I have just cited.

19                   You should realize that the work you do in the  
20 meantime on discovery is going to be done at your own risk,  
21 unless you are fully satisfied you can get experts and put  
22 in an outline that you're sure is satisfactory.

23                   In other words, it's your risk, I suppose, that  
24 your submission will not be adequate; and if it's not, then,  
25 we at that point would dismiss the contention.

1 But we think that, all things considered, that is  
2 a reasonable approach.

3 Now, that's all as to the crankshaft.

4 As to the other two contentions, QA at  
5 TransAmerica, and operational experience--we are going to  
6 reject those two contentions for basically two reasons:

7 In the first place, looking at factor-five, it  
8 seems to us that they portend a very substantial delay in  
9 the whole case, particularly the QA contention.

10 We don't see how in the world we can try a QA  
11 case on Trans-America-Delaval in a short time frame.

12 So we think factor-five is very heavily against  
13 our taking this matter up.

14 Secondly, we have more confidence in your ability  
15 to come up with experts and make a case on a narrow issue  
16 like crankshaft design than we do in operational experience  
17 and QA. We are not in any sense criticizing your perfor-  
18 mance in the case; we've heard it at such great length.

19 What I am saying is, this looks like an area that  
20 requires a lot of expertise; and we are not certain that  
21 you could come up with it--come up with enough expertise to  
22 satisfy criterion-three.

23 Moreover, we are strongly influenced by the fact  
24 that these issues are generic in character, generic in the  
25 sense that they affect a number of different plants; they are

1 in a number of different cases.

2 I happen to know--I'm not sure it's comprehen-  
3 sive--it's been injected, obviously, into Shoreham, Perry,  
4 Comanche Peak--and we just think that it would just make no  
5 sense for all these separate Boards to hold trials on QA  
6 at Trans-America-Delaval.

7 So we think that that duly supports the conclu-  
8 sion that we will not undertake these contentions.

9 Having said that, and having made the rulings  
10 that we have made, we concede that these rulings are  
11 debatable. We found them difficult to decide. We note that  
12 they do affect many plants, as I just said a minute ago.

13 And we think it makes sense to certify the  
14 question; and that's what we propose to do. Sometime next  
15 week we're going to do that in a written order.

16 We are going to certify how these--the question of  
17 how these diesel generator problems in these circumstances,  
18 with the Staff doing all these reviews, and this popping up  
19 in five or six different cases--how it ought to be done.  
20 We frankly are not sure.

21 So you can expect to see from us sometime next  
22 week a certification. I am not sure whether we'll certify  
23 it to the Appeal Board or the Commission; but we're going to  
24 certify it some place.

25 That covers the diesel generator matter.

1 In summary, we admit the crankshaft design part  
2 of it, subject to an accelerated discovery schedule which  
3 we set forth, and subject, also, to Palmetto's further  
4 demonstration of its ability to make a contribution with  
5 expert witnesses.

6 We have excluded the Trans-America QA and  
7 operating experience contentions, which we will certify.  
8 That is to say, our exclusion of them we will certify, whether  
9 we are right in doing so.

10 Our next point--we didn't try to arrange these  
11 in order of importance or the alphabet or anything else--they  
12 are just going to be read off:

13 The next point I have in my outline, anyway,  
14 concerns Witness "B"; and Witness "B" you will all recall  
15 had some testimony about foreman override, and testimony  
16 about departures from procedures. I won't describe it any  
17 more than that.

18 We heard argument the other day from Mr. Clewett  
19 on the point, and the other parties; and we have before us  
20 essentially two issues as to Witness "B".

21 First of all, we were asked by Palmetto that they  
22 be given the identity of Witness "B" and an opportunity  
23 to interview him.

24 We see this as in the nature of a further  
25 discovery request. We are going to deny that request.



1 We denied an identical request at the hearing. And we are  
2 going to deny this one, too.

3 It seems to us that we've been over some several  
4 times our reasons for not having formal discovery in this  
5 situation; and we think they largely apply to this point.

6 Beyond that, the witness has been given a promise  
7 of confidentiality by the Staff in connection with that  
8 interview; and we believe that promises like that ought to be  
9 kept in the absence of some very strong reason to break them,  
10 which we haven't seen here.

11 So we determined that his confidentiality should  
12 be preserved, Witness "B".

13 Now, there's a separate issue about whether the  
14 Witness "B" testimony and its existence, what that ought to  
15 have to do with closing the record on the issue of foreman  
16 override; and we believe that Witness "Bs" testimony does  
17 indicate some possibly significant concerns; and we are not  
18 prepared to dismiss it as an isolated instance on this  
19 record.

20 The Staff indicated that they were going to under-  
21 take a further investigation of the matters that Witness "B"  
22 raised; and we would ask them to do that as soon as possible.  
23 I assume they'll have a report on it. And we would ask them  
24 to, when they develop their report, to serve it on the Board  
25 and the parties.



1 We are going to hold open the record for  
2 receipt and inclusion of the Staff's report in the record.

3 The Board will decide at that point what, if  
4 anything, further is required, whether in the way of  
5 comments on the report, or some further hearing; but we are  
6 not implying that any further hearing would take place.

7 We are simply saying: wait until we see the  
8 report; then we'll decide what we are going to do; except  
9 to say that we are going to include it in the record.

10 Now, in the meantime the parties are to go ahead  
11 and submit proposed findings on the subject of foreman  
12 override based on the present record.

13 We are not putting over the findings on that at  
14 all. And we expect that if there are further findings on  
15 this matter, we will deal with that when that happens.  
16 But we want findings on the present record under the present  
17 deadline.

18 That is what we have on Witness "B".

19 Turning next to the subject of bifurcation, we  
20 have, of course, a motion from the Applicants to bifurcate  
21 and what that really means, of course, is a separate Board  
22 be established and that Board would go ahead and hear the  
23 emergency planning case while this Board decides the safety  
24 case.

25 The purpose really is to accommodate the holding

1 of a hearing before this Board's expected initial decision  
2 sometime in May; and, as we have said before, this Board  
3 can't hold a hearing--this Board, if it goes ahead and does  
4 its work, can't hold a hearing before June. We're just not  
5 available until then.

6 I might just add that, speaking for myself, I am  
7 not sure I am available in June.

8 So this suggests, if we waited for this Board to  
9 hear the case, it suggests a sort of mid-fall decision from  
10 this Board. We can't be certain, of course, but it appears  
11 that the Applicants may be in a position to load fuel in  
12 May; and they may be ready for a full-power license in the  
13 late summer.

14 And this all means that for a couple of months  
15 or so there may be a couple of months where the plant would  
16 just sit idle if we don't turn emergency planning over to a  
17 different Board, assuming that Board could go right into  
18 business and they'd have to get a hearing underway in  
19 April.

20 We will just note that the Staff supports this  
21 motion.

22 The opposition to it comes from Palmetto-CESG.

23 And so we think that there's a clear possibility  
24 of some significant delay, and, that being so, we balanced  
25 that against any possible prejudice to the Intervenor, who

1       opposed the motion.

2               And we have taken the arguments into considera-  
3       tion and weighed them; and we don't believe that the  
4       Intervenors have shown a prospect of significant prejudice  
5       by the bifurcation proposal.

6               We would be concerned about piling simultaneous  
7       obligations on the Intervenors, but we don't see that that's  
8       happening.

9               In the first place, the findings have to be  
10      filed by the 29th of this month, all but a small piece.  
11      Emergency planning discovery is closed.

12              Therefore, there's a window of a couple of  
13      months to put the testimony together and do other things to  
14      get ready for the case.

15              The crankshaft issue we see as quite narrow  
16      and not impinging significantly on an effort to gear up  
17      for the EP case.

18              There are two groups here involved, not just one.  
19      We think a lot of this work would be--I would be the last  
20      to underplay the importance of lawyers in this world--but  
21      I still think that a lot of this preparation on some of these  
22      straightforward issues particularly can be done by non-  
23      lawyers, or, at least, they can be a lot of help.

24              So we don't see that the propsoect of an April  
25      hearing works to Intervenor's prejudice now.

1           Now, we are looking at this just in gross  
2 terms, obviously: if a new Board is established, anybody can  
3 go to that Board and try to adjust schedules and make more  
4 particularized claims, and that would be their business, not  
5 ours.

6           But as we see it in an overview way, we don't  
7 see significant prejudice.

8           The one thing that Palmetto pointed to that we  
9 looked at closely in the way of prejudice on the way this  
10 case has developed, has to do with Contention No. 17, which  
11 had to do with wind directions.

12          And the point was made that that case may be  
13 relevant to the case that the Intervenor would have on their  
14 Contention 11, which, of course, is about the need for  
15 emergency planning in Charlotte.

16          And it just seemed to us that, in the first place,  
17 let's assume that there is some overlap, and that some of  
18 the record from 17 is relevant to No. 11 later on: well,  
19 if you took the whole record, it isn't a very big record.  
20 That's a pretty small issue as developed in the fall.

21          It seemed to us that a Board, if you wanted to  
22 transfer all that evidence without further cross-examination,  
23 just use it from the other case, the other Board could read  
24 it.

25          Now, if we were talking about thousands of pages,

1 that would be different. But we're not. It's fairly  
2 small.

3 Moreover, it's not clear to us that the findings  
4 of that record will be relevant to Contention 11.

5 So the notion that this Board heard some evidence,  
6 therefore, they should be around for the disposition of  
7 a related issue, is not in these circumstances persuasive  
8 to us.

9 I might just add that, you know, it isn't neces-  
10 sarily written anywhere that the same person has to hear  
11 every single word, anyway; Judges die, Judges get sick;  
12 some of these antitrust cases get handed around time and time  
13 again.

14 So we don't find that point ultimately persuasive.

15 There was a separate point about the facts under-  
16 lying Contention No. 11, when we let that contention in.  
17 It's true we heard a fairly lengthy presentation last August  
18 from the Intervenor about why we should let that contention  
19 in.

20 And I remember the Applicants objected, but be  
21 that as it may, we were hearing pleadings. We weren't hearing  
22 facts. We weren't adjudicating anything.

23 The opinion letting that contention in, I might  
24 just add, explicitly notes that we are dealing in pleadings;  
25 we are not dealing in facts; we are not dealing in evidence.

1 In other words, Contention 11 hasn't been heard  
2 at all, so far as we are concerned. So we think our  
3 presence at the pleading presentation doesn't bear on this.

4 So we conclude that the motion to us has merit  
5 and to summarize, we are going to find, and we do find as  
6 follows:

7 That significant time may be saved, and no  
8 significant prejudice will occur by establishing a new Board  
9 for emergency planning issue; assuming that that Board can  
10 get underway, let's say, in mid-to-late-April; that's the  
11 premise on which we make these findings.

12 I should add, as I have indicated before: this  
13 Board does not have the power to go around setting up other  
14 Boards. That's done by the Chairman of the Atomic Safety  
15 and Licensing Panel.

16 But what we are going to do--in the first place,  
17 we've discussed it with them; we've gone to them and said,  
18 hey, have you got people for a Board in case we decide we  
19 should do this.

20 And they said, yes.

21 So we are going to go and present them with our  
22 findings, and we are going to recommend that they establish  
23 a separate Board.

24 And I assume they will do so. But the ultimate  
25 grant of the motion in the sense of there being a new Board



1 is not up to us, it's up to the Chairman of the Panel.  
2 That's the approach we are taking.

3 The next matter I have is a motion from Mr.  
4 Clewett, the discovery motion going to the underlying  
5 bases of the Staff's report at our last hearing. We've  
6 heard argument on that motion.

7 We are denying that motion.

8 It seems to us that the essential thrust of  
9 that is not that different from motions we have denied in the  
10 past. We have said several times--we have ruled several  
11 times--we are are not going to allow formal discovery in  
12 this context. And we won't repeat all the reasoning that  
13 underlies that.

14 It seems to us that what happened here was  
15 we had motions that were denied in the past, denying dis-  
16 covery in advance of certain things; and then after the  
17 Staff's reports came in, the motions are in effect renewed  
18 now, saying, look at the Staff reports: we need discovery.

19 We are not persuaded by that. It seems to us  
20 that what you had, what the Intervenor--what everybody had--  
21 was a chance to ask questions. The Staff came in with a  
22 report; and it may have been a good report, it may have been  
23 one with holes in it; but, then, that's the purpose of  
24 having cross-examination.

25 We note, also, that there seems to be underlying



1 this motion the idea that a concern expressed by  
2 in camera witnesses is kind of like a contention; and that  
3 once an in camera witness says that something or other is  
4 wrong, we're sort of off at the beginning again; and we are  
5 going to have discovery and interrogatories and all the  
6 rest of that.

7 It seems to us that insofar as that does underlie  
8 this kind of motion that it is misplaced.

9 Contentions are relatively broad, certainly  
10 Contention 6 in this case is very broad. These in camera  
11 witnesses were asked to come in and be very specific.  
12 They were asked to come in and say, you know, "what did you  
13 see at the plant that bothered you?"

14 And then he or she--or he in this case, I guess  
15 they were all "he's"--would say, "well, you know, the third  
16 weld from the left at elevation-560 has a defect on the  
17 right side."

18 And all we really expect people to do then is go  
19 out and see if that weld is defective or not.

20 You know, if you find some indication of a generic  
21 problem, sure, you look beyond.

22 But, basically, you are out there looking at  
23 particular matters, pretty specific matters.

24 And that's why we think that when we hold a  
25 hearing on this, and we get Staff reports, and we get

1 Applicants' reports, cross-examination generally speaking  
2 ought to be enough to disclose flaws in the presentation,  
3 to explore how good a look was taken.

4 But we think that it's not warranted to launch  
5 off into another discovery round at this stage of the game.

6 So with those considerations in mind, and as  
7 a basis, we deny the motion.

8 I have one further matter in my notes. And that  
9 is the control room design review matter.

10 By way of background, when we were talking about  
11 closing the record, Mr. Guild referred to some contentions  
12 they had once had in this area, and again, indicated that  
13 his view of the matter it was still open.

14 We asked Mr. McGarry to at least for openers,  
15 get out his covering letters.

16 Mr. McGarry essentially said that they had  
17 followed through as the Board directed and served these  
18 control room design reviews on everybody; and no contentions  
19 had been filed; so, as far as they were concerned, that was  
20 the end of that.

21 So we asked him to get out his transmittal letters.  
22 And he got out the transmittals. And a motion made at one  
23 time and served on everybody.

24 And we didn't really discuss this last time on the  
25 phone, or time before last, I guess; but we all had just

1 gotten Mr. McGarry's letter.

2 And I said to Mr. Guild, well, would you like to  
3 respond?

4 And, Mr. Guild, you said that you wanted to.  
5 So I asked you to respond by the 10th, which  
6 was a week ago.

7 We haven't got anything.

8 Did you respond?

9 MR. GUILD: Judge, it just slipped my mind,  
10 frankly. I meant to and I sort of anticipated that you are  
11 ready to make a decision in light of not getting something  
12 from me. I have to just say it got lost in the shuffle.

13 I did review some of my correspondence on the  
14 subject, and, frankly, what I was left with, Judge, was  
15 the notion that there was a promised submittal to the  
16 Staff; and a Staff evaluation of the adequacy of the human  
17 factors consideration in control room design.

18 That, we have never seen. And I've confirmed  
19 that from reviewing my files.

20 This is the same point that Commissioner  
21 Gallinsky raised in the TRIP (phonetic) report, the organi-  
22 zation of the consoles and that sort of thing.

23 And I cannot find, you know, anything that indi-  
24 cates that Duke's commitment to circulate to the parties  
25 the product of that detailed control room design review has

1 in fact been submitted to the parties; and that the Staff  
2 has signed-off on that.

3 The latest think I saw, Judge, was a piece of  
4 correspondence that simply said--projected some date still  
5 off in the future for completion of the Staff's analysis  
6 of that issue.

7 So I apologize for not having responded to the  
8 specific time that you suggested, but the status, from our  
9 perspective, is that we stand by our position that the  
10 Applicants have not made full circulation of that control  
11 room design review to the parties; nor has the Staff com-  
12 pleted its review of that matter.

13 And we believe it's still very much of an open  
14 question.

15 That motion by Applicants that asked us to file  
16 a contention on the subject, I reviewed that, as well; and  
17 I've concluded that, well, first, there was never any  
18 response or ruling on that motion; and that the basis for that  
19 motion was simply the submittal of some plan for review,  
20 not the review, itself, but the plan preceded that motion  
21 by a month or so.

22 We never saw the actual product of that plan or  
23 the Staff's response thereto.

24 So right now, our view is that we've accurately  
25 conveyed the substance of this point, and that is, when we

1 last discussed it; and that is the control room design  
2 review matter remains very much open.

3 MR. CARR: Mr. Chairman, this is Al Carr.

4 JUDGE KELLEY: All right.

5 MR. CARR: Concerning Mr. Guild's response that  
6 he was supposed to file on the 10th--could we be heard on  
7 that?

8 JUDGE KELLEY: Well, I'm not sure, gentlemen--  
9 from our perspective, we got Mr. McGarry's--and I let you  
10 state what you wanted to state, Mr. Guild; but I'm not  
11 persuaded that that's--you know, it's awfully late in the  
12 day.

13 And we gave you a specific response date, and you  
14 forgot it. Well, you know, that happens; I understand that.  
15 But I read Mr. McGarry's filing, and it looked pretty  
16 satisfactory to me.

17 And to keep it alive now--you had a bit at the  
18 apple--seems to me unwarranted.

19 MR. GUILD: Judge, all I can say is I can't offer  
20 you anything more precise right at this point.

21 But I just would hate to see a matter of obvious  
22 safety significance that was acknowledged by this Board as  
23 having safety significance, simply go by the board as a result  
24 of, you know, what I will characterize as, you know, as my  
25 neglect.



1 And I can see that that deadline got lost in the  
2 shuffle.

3 But I would just like the opportunity, Judge,--  
4 you don't need to give me a time--but if you could simply  
5 say that I can have an opportunity to make a showing, and  
6 that subject to making some persuasive showing, you find that  
7 the Applicants have satisfied the question, that would suit  
8 me fine.

9 I am just afraid there's a very big piece out  
10 there that's not being addressed, and I would like an oppor-  
11 tunity to confirm that.

12 And I am certainly away from my files right now,  
13 and was during the point of that period when that response  
14 date past; and I would like a chance to go back and track  
15 this matter.

16 JUDGE KELLEY: Well, I guess my colleagues and I  
17 can't discuss things on one of these arrangements, obviously;  
18 but my own disposition, Mr. Guild--but I want to talk to  
19 them--would be to just say: you had a deadline and it  
20 passed.

21 And Mr. McGarry's filing of February 2nd appears  
22 to be satisfactory. And that's the end of that.

23 But we will at some point when we have a vehicle  
24 to talk about it, we will do so.

25 Okay, I guess I don't have anything else.

1 Dick, do you have anything?

2 JUDGE FOSTER: No, I don't.

3 JUDGE KELLEY: Okay.

4 Paul?

5 JUDGE PURDOM: No.

6 JUDGE KELLEY: Okay.

7 I'll go around the room: anything else you want  
8 to raise, Mr. Guild?

9 MR. GUILD: Judge, I think one point with respect  
10 to the Witness "B" issue--I think John Clewett is still on  
11 the line?

12 MR. CLEWETT: Yes, I am.

13 I just had one suggestion, Judge Kelley, about  
14 Welder "B", which would be consistent with the notion of  
15 maintaining his confidentiality as it was offered to him by  
16 the Staff: is if the Staff could, either on their own or  
17 the direction of the Board, give Welder "B" the name and  
18 address and phone number of Mr. Guild; and convey to  
19 Welder "B" that--the fact that Mr. Guild would like to talk  
20 with him.

21 I think that would be a way of, you know, to give  
22 us an opportunity to talk with Welder "B" without in any  
23 way compromising his confidentiality.

24 Then he would have the option of whether he chose  
25 to make contact or not.



1                   So, I don't know if there would be objection to  
2                   that; but if there is, I would frame it as a motion.

3                   JUDGE KELLEY: Well, I'll ask Mr. Johnson?

4                   JUDGE PURDOM: Judge, as far as the record goes,  
5                   should it show the occupation of Witness "B"?

6                   MR. CLEWETT: I believe he's a welder?

7                   JUDGE PURDOM: Well, I say, should the record  
8                   show that?

9                   JUDGE KELLEY: I don't know.

10                  JUDGE PURDOM: Does it affect confidentiality?

11                  MR. JOHNSON: I think it does identify him as a  
12                  welder.

13                  JUDGE KELLEY: I think his complaint is about  
14                  welding; it can probably be inferred.

15                  Mr. Johnson, do you have any objection to that  
16                  suggestion?

17                  MR. JOHNSON: Well, I'm not sure that I would  
18                  agree to it.

19                  I would want to talk with the Regional Counsel,  
20                  Mr. Jones; it certainly wouldn't be the basis for a motion.  
21                  My position would be that the Staff would decide whether  
22                  that is appropriate or not; but that as far as the rulings  
23                  of the Board, the Board has now ruled that this matter is not  
24                  subject to further discovery; and our report will be submitted;  
25                  and we will go from there.

1 JUDGE KELLEY: I think that's right.

2 I don't think we're going to take the motion,  
3 Mr. Clewett. You made your request, and we ruled on it.

4 Now, you can make a further request that the  
5 Staff do that, if it's okay with the Staff; it's okay with  
6 the Board.

7 MR. CLEWETT: Can we ask that the Staff let us  
8 know what it decides?

9 JUDGE KELLEY: Well, you can do that, can't you,  
10 Mr. Johnson?

11 MR. JOHNSON: Yes, either I or--

12 JUDGE KELLEY: Mr. Jones, sure.

13 MR. CLEWETT: Thank you.

14 JUDGE KELLEY: Okay.

15 Mr. McGarry?

16 MR. MC GARRY: The only question I have is  
17 the due date of our proposed in camera findings?

18 JUDGE KELLEY: Oh, I thought they were in?

19 MR. MC GARRY: Not all of them.

20 JUDGE KELLEY: They're not? Okay.

21 MR. MC GARRY: And that would be the 22nd of  
22 February.

23 Those in camera dates have not changed, that's  
24 my understanding?

25 JUDGE KELLEY: That's correct.

1 MR. MC GARRY: All right, fine.

2 JUDGE KELLEY: Right, yuh; okay.

3 MR. JOHNSON: What was the last point--the  
4 in camera dates have not changed?

5 JUDGE KELLEY: Right.

6 MR. JOHNSON: I have a point--my turn?

7 JUDGE KELLEY: Sure?

8 MR. JOHNSON: There were some exhibits of  
9 Palmetto Alliance that were going to be distributed  
10 subsequent to the last day of hearing, which I don't believe  
11 have been circulated.

12 Maybe Mr. Guild would circulate them?

13 MR. GUILD: Yes, I will.

14 One problem I am finding, Judge, is that the  
15 --I've gone to the PDR and just to flag this matter briefly--  
16 the PDR does not maintain copies of any exhibits in  
17 proceedings. They are kept in Docketing, upstairs.

18 JUDGE KELLEY: Yes?

19 MR. GUILD: Docketing does not have a whole set  
20 of exhibits in this case. It does not have Applicants'  
21 full set of exhibits, at least as of the last time I checked  
22 about a week ago. And it doesn't have Staff's full set of  
23 exhibits.

24 And I am finding it very difficult getting access  
25 to, you know, copies for my own use and also to reproduce

1 you know, in some cases where one was submitted and I made  
2 a commitment to copy it for the other parties.

3 So maybe I could--if, Judge Kelley, if you could  
4 suggest somebody I could take this up with, or maybe if at  
5 some point in the next day or so I could call your office  
6 and maybe ask for a phone call or something to help clear  
7 up any problems there are with that?

8 I have noticed that they are a little bit  
9 erratic in filing all this stuff.

10 JUDGE KELLEY: I am not sure what you are asking  
11 us to do?

12 MR. GUILD: Well,--

13 JUDGE KELLEY: What do you want me to do?

14 MR. GUILD: Well, Docketing and Service seem to  
15 have a lot of holes in the materials that were transmitted  
16 to them. And I don't know who's responsible. I assume the  
17 court reporters--and the parties--and if I could flag--check  
18 with them, and just get back to you, maybe I could get some  
19 help from the Board to see that that's done. That will help  
20 me to get those things to Mr. Johnson as well as get a full  
21 set of exhibits for my own use.

22 JUDGE KELLEY: Yuh, well, my personal files are  
23 not the neatest in the world; if you called me for Exhibit  
24 No. 83 it might take me a while to find it.

25 What is it that I've got that you--

1 MR. GUILD: Nothing you have, Judge, that I  
2 expect.

3 I guess what I am thinking is that somewhere  
4 lodged in some court reporter's file there may be some  
5 documents that have not yet found their way to Docketing  
6 and Service; or they may be in Docketing and Service but  
7 have not yet gotten into the official record and been logged  
8 in the Docket sheets.

9 And I don't know how to go about figuring out  
10 where things are, but in responding to Mr. Johnson's request,  
11 I just might need assistance from somebody official in the  
12 NRC to help me straighten the thing out.

13 JUDGE KELLEY: Well, if I can be of some  
14 assistance if you're having trouble with some functionary  
15 downtown, if you think my calling would do any good, let me  
16 know.

17 MR. GUILD: Okay, fine.

18 JUDGE KELLEY: But, of course, what I have out  
19 here is not in great shape; and I'm not much of a resource,  
20 I think.

21 Okay.

22 MR. MC GARRY: Judge, this is the Applicant  
23 again:

24 I had one other matter--

25 MR. CARR: I'll interrupt you for one second, Mike,

1 if I could?

2 We have got what is a complete set up in  
3 Washington if you need copies, of the exhibits--

4 MR. GUILD: Great!

5 That would be helpful, if Mike has a full set,  
6 perhaps I could just drop by and that would save us having  
7 to hassle a lot with Docket and Service; I'll, you know,  
8 make copies of what I'm missing and get those to George  
9 and do all the rest of this.

10 JUDGE KELLEY: Sounds good.

11 MR. MC GARRY: Okay. I had one more matter:

12 We hand-delivered to Mr. Guild and to Judge Kelley  
13 today a letter pertaining to diesel generators.

14 JUDGE KELLEY: Okay.

15 I haven't got it.

16 MR. MC GARRY: It explains--well, it speaks for  
17 itself; I just wanted the record to reflect--

18 JUDGE KELLEY: Okay.

19 MR. MC GARRY: --that you got that.

20 JUDGE KELLEY: Okay.

21 MR. CARR: Judge, if it's my turn, I just  
22 need a clarification; this is Al Carr.

23 JUDGE KELLEY: Yes?

24 MR. CARR: On the witnesses in the part of the  
25 record held open in foreman override--



1 JUDGE KELLEY: Yuh?

2 MR. CARR: And then Mr. Gibson has one matter  
3 briefly, and that's all we have.

4 JUDGE KELLEY: Okay.

5 MR. GIBSON: Judge Kelley, this pertains to  
6 in camera Witness No. 3.

7 The protective order requires, as you are aware,  
8 that the parties bring to the Board's attention any poten-  
9 tial breach of confidentiality.

10 And I just wanted to bring now to the Board's  
11 attention something that has transpired and get some direc-  
12 tion from the Board in terms of how to proceed?

13 JUDGE KELLEY: Okay?

14 MR. GIBSON: On January 31st--I believe that  
15 would be a Tuesday--the husband of a Duke employee found  
16 a copy of the Affidavit of Witness No. 3 in a restaurant  
17 in the NCNB Overstreet Mall; I believe it's KSOS.

18 JUDGE KELLEY: Yuh?

19 MR. GIBSON: The husband took the document to  
20 his wife's supervisor, who he also knows--

21 JUDGE KELLEY: Yes?

22 MR. GIBSON: That supervisor then contacted the  
23 legal department, and this occurred while I was out of the  
24 office; and upon returning I talked with the people who were  
25 aware of it; received the affidavit; and I have instructed

1 the two people, the employees, not to discuss the matter.

2 They read the affidavit just to the extent neces-  
3 sary to determine it involved Catawba and the fact they ought  
4 to call the lawyers.

5 JUDGE KELLEY: Yuh.

6 MR. GIBSON: The question that comes to mind is:  
7 should those two employees execute an affidavit? And should  
8 we perhaps send the affidavit to the Board?--since it con-  
9 tains some handwritten notes that are, basically, illegible,  
10 on the front.

11 JUDGE KELLEY: Yuh.

12 This is the witness that's still in camera.

13 MR. GIBSON: Yes, Witness No. 3.

14 JUDGE KELLEY: Yuh, I understand. All right.

15 MR. GUILD: This is Guild. I am just trying to  
16 be clear now:

17 There are two who are still in camera--maybe  
18 Mr. Gibson can give me a little hint so I can figure out which  
19 one this is we are talking about?

20 MR. GIBSON: Well, it's Witness No. 3--

21 MR. GUILD: Did he appear and testify on the  
22 31st?

23 MR. GIBSON: Bob, it's in John Clewett's motion,  
24 in one of the attachments to his motion.

25 One of the in camera witnesses' name begins with a

1 letter very early in the alphabet; it's not him.

2 MR. GUILD: Okay.

3 This man actually appeared and testified in the  
4 resumed session in January?

5 JUDGE KELLEY: Sound like it.

6 MR. GUILD: Well, my only question is this: if I  
7 am in some way in touch with him, and he would be concerned,  
8 of course, about persons who are not, you know, on the list,  
9 if you will, having seen this information.

10 And perhaps I could ask for the identity of the  
11 persons who, you know got this affidavit. I can imagine  
12 how this might have happened: he probably just left the  
13 thing sitting in the restaurant during the luncheon break  
14 or something on that last day of hearing.

15 MR. GIBSON: The employees are in a department  
16 that doesn't have anything to do with licensing or  
17 construction, to the extent they would be aware of this.

18 In fact, they called two different lawyers in the  
19 department trying to figure out who might be involved.

20 MR. GUILD: I guess my point, Judge, is the  
21 witness ought to be entitled to know, you know, who has  
22 come into possession of his affidavit, in short.

23 And I would ask that Applicants supply the names  
24 of those two people?

25 JUDGE KELLEY: Any problem with that, Mr. Gibson?

1 MR. GIBSON: Well, it just seems to strike me  
2 as sort of unnecessary. The witnesses don't know the names  
3 of all the people who filed affidavits. And to ask these  
4 people to file an affidavit and get them involved, give them  
5 more information than I think they have now. They looked  
6 at the thing, they said, this is confidential, it is involved  
7 with Catawba, let's call the lawyers and figure out what  
8 we can do with it.

9 JUDGE KELLEY: Well, my own reaction, Mr. Gibson,  
10 is that what you did was fine. I commend you for your  
11 handling of the matter. And I guess, speaking for the Board,  
12 I wouldn't ask for a separate affidavit.

13 Mr. Guild, in this regard has served as this  
14 gentleman's counsel from time to time, so they have a  
15 separate request about letting the man know who it is that  
16 found the statement.

17 So I just would ask you whether there's any real  
18 problem with granting that?

19 MR. GIBSON: I guess our only reaction is  
20 involving some employees who really have no involvement in  
21 the case.

22 Let me reiterate: it was found by the husband  
23 of an employee. The husband was an employee of the restaurant.  
24 And I understand, in clearing off the table, he found the  
25 document.

1 JUDGE KELLEY: Yuh.

2 MR. GIBSON: It was laying there.

3 JUDGE KELLEY: Yuh.

4 MR. GIBSON: And as I understand it, he didn't  
5 even talk to his wife; he took it to her supervisor in a  
6 building two blocks from the restaurant.

7 And her supervisor contacted the legal department.

8 JUDGE KELLEY: Well, I appreciate your bringing  
9 this up.

10 We're spending what seems to me to be quite a  
11 bit of time on a pretty small matter.

12 MR. GIBSON: I agree.

13 JUDGE KELLEY: I'm just thinking, you know,  
14 if it will satisfy this witness' lawyer if you give him the  
15 names of Joe Smith and Harry Jones--how does that really  
16 hurt anything?

17 MR. GIBSON: We'll do that. We'll talk to  
18 Mr. Guild separately, unless there's some problem I am not  
19 aware of.

20 JUDGE KELLEY: Okay.

21 MR. GIBSON: Okay, should we just hold on to this  
22 copy? It does have some notes on it.

23 JUDGE KELLEY: Why don't you hold on to it for  
24 the time being; yuh? All the rest of us already have copies.  
25 Just hold on to it.

1 Okay?

2 MR. GIBSON: Okay.

3 MR. GUILD: If I could just ask Ron Gibson to  
4 contact me. I can leave him the number where I'm at.

5 JUDGE KELLEY: Okay.

6 MR. GUILD: Thank you.

7 MR. MC GARRY: Thank you, your Honor.

8 JUDGE KELLEY: Does that take us around the  
9 table? I think it does.

10 I'll ask my colleagues to hold on for a minute.

11 Okay. Thank you very much.

12 MR. GUILD: Judge Kelley, can I pass on this  
13 number where I am to Mr. Gibson?

14 JUDGE KELLEY: Yuh, do that.

15 By the way, Mr. Guild, I will send you that--I  
16 think you got the thrust of what we said here; and the imme-  
17 diate question in your mind, I assume, is what your new  
18 deadline is; you know that?

19 MR. GUILD: Yes.

20 JUDGE KELLEY: So I will send a Xerox copy of  
21 the transcript. I could send it down to the desk at the PDR  
22 in an envelope with your name on it.

23 MR. GUILD: That would be fine, Judge.

24 JUDGE KELLEY: Okay.

25 I'll do that, probably on Monday.



1 MR. GUILD: Okay.

2 Mr. Gibson, it's 202--

3 MR. GIBSON: Just call me at the office, Bob.

4 MR. GUILD: Okay.

5 JUDGE KELLEY: Okay.

6 (Chorus of: "Thank you, your Honor.")

7 JUDGE KELLEY: Goodby.

8 (Whereupon, at 12:00 noon, the telephone  
9 conference was adjourned.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF PROCEEDINGS

This is to certify that the attached proceedings before the  
NRC COMMISSION

In the matter of: DUKE POWER COMPANY, et al.

Catawba Nuclear Station, Units 1 & 2

Date of Proceeding: Telephone Conference, Friday, 2-17-84

Place of Proceeding: Telephone Conference

were held as herein appears, and that this is the original  
transcript for the file of the Commission.

JAMES R. BURNS, JR.

Official Reporter - Typed

  
Official Reporter - Signature