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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of:

DUKE POWER COMPANY, et al

(Catawba Nuclear Power Station
Units 1 & 2)

Docket No. 50-413 OL
50-414 OL
ASLBP No. 81-463-01 OL

Location: Rockhill, S. C. Pages: 1735 - 1962

Date: Wednesday, October 5, 1983

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY & LICENSING BOARD

In the matter of:	:	
DUKE POWER COMPANY, et al.	:	Docket No. 50-413 OL 50-414 OL
(Catawba Nuclear Station, Units 1 and 2)	:	ASLBP No. 81-463-01-OL

U.S. District Court
Old Post Office Building
Second Floor
Caldwell & Main Streets
Rock Hill, South Carolina

Wednesday, 5 October 1983

Hearing in the above-entitled matter convened, pursuant to notice at 9:25 a.m.

BEFORE:

JUDGE JAMES L. KELLEY,
Chairman, Atomic Safety & Licensing Board

JUDGE RICHARD F. FOSTER,
Member, Atomic Safety and Licensing Board

JUDGE PAUL W. PURDOM,
Member, Atomic Safety and Licensing Board

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I N D E X

ki 1:01

JUDGE KELLEY: Good morning. We're on the record again. This morning we have a short list of three things we would like to speak to before we get to our first witness, the Motion for Protective Order first; secondly the question of panels; then thirdly,the question of sequestration.

The latter two were discussed yesterday and the Board has considered those points, and we have some rulings on those points. We'd like first, however, to hear the Motion for Protective Order.

Mr. Guild, are you ready?

MR. GUILD: Yes, Mr. Chairman. Mr. Chairman, at this time, Palmetto Alliance moves for the adoption of Protective Order pursuant to provisions of 10 CFR 2.7.8, General Authority of the Presiding Officer, and 2.7.40(c), providing for Protective Orders to protect persons and parties from annoyance, embarrassment, oppression, or undue burden.

We seek a Protective Order to, in part, renew the request for remedial measures that Palmetto made in its March 30, 1983 motion to the Board which was granted, in part, essentially with respect to the issue of what we contend is an atmosphere of oppression and a chill upon the potential cooperation of workers at the Catawba Plant that prevents their cooperation with this Licensing Board in bringing to your attention concerns which they have about the safety of construction of the facility, compliance by

Applicants with applicable construction and quality assurance procedures.

At the time of the Board's ruling on our May -- March 30 motion, the Board expressed the view that the record at that time did not justify some of the specific requests for relief made then; essentially, on the basis of the record then before the Board, the Board could not find that, as a matter of fact, there was a chilling effect on the likely cooperation of potential witnesses based on what Palmetto then could bring to the Board's attention.

And, if I might, in short, what we brought to your attention then was largely some matters having to do with communication by Duke Management to a number of quality assurance employees orally, through group meetings, and through the device of a written letter. And the ruling of the Board, in short, was that on the face of those showings, a finding of chill could not be made, although the existence of a chill on workers' willingness to cooperate could not be excluded either, and that the Board provided for certain relief in the form of a posting of notices of employee rights and responsibilities.

At this time, on the basis of further information, that has come to Palmetto Alliance very, very recently from active workers at the Catawba facility, largely through contacts between representatives of the Government Accountability

ki 1:03

Project, which has, as the Board knows, been involved in an investigation of quality assurance issues at Catawba, and whistle blowers at Catawba, we are at the point where we feel compelled to bring this matter before the Board.

The Appeal Board in the Callaway decision, which presiding officers circulated to the parties and suggested was instructive of the -- providing guidance for litigation of this quality assurance issue -- amply reflects the importance of the free access by nuclear construction workers to this Commission and to this Commission's Licensing Boards in the conduct of operating license proceedings.

The sources of information available to a Licensing Board with respect to the important issues of the as-built condition of a plant are limited. You are forced to rely largely on the evaluative evidence from the NRC Staff. It has limited resources and largely gets its information from the Applicants, and principally from the evidence presented by the Applicants themselves, evidence which one would expect to be largely self-serving, and to the point that they deserve an operating license, the plant is built right.

The only independent source of information that this Board has with respect to quality assurance is from those who best know, and those are the workers themselves who are engaged day-to-day in the construction of the facility and in the conduct of the quality assurance program designed to

provide a level of confidence that the plant, as built, will operate safely.

As Callaway teaches, the existence of a pervasive chill, an atmosphere of fear, atmosphere of oppression, an atmosphere where workers who have concerns as a matter of fact, but are unwilling to voice those concerns to a Licensing Board or to the NRC Staff or to the management of the Applicant, an atmosphere of chill forecloses access to that critical source of information. And we believe an atmosphere of chill exists at the Catawba site.

The point we have reached, Mr. Chairman and members of the Board is, Palmetto through review of documentary evidence and through limited access to information from workers, has reached the point where we cannot adequately monitor, investigate, and bring before this Board critical evidence that we believe bears on the safety of construction of this facility.

We can't do that, because we don't have the resources, nor do we have the tools and powers available to undo the atmosphere of chill and repression that we believe exists on that site. And so we bring to the Board a request that this Board take the responsibility for intervening between the Applicants, Duke Power Company, which we believe has established this atmosphere of chill, and the Catawba workers who would seek to bring to this Board concerns about safety.

ki 1:05

I raise the request for relief -- renew the request for relief that we brought to you in March of this year, and I refer to the Board's order of April 27, 1983 at page 10, and that is specifically two points; first, a Board-ordered onsite meeting between Catawba employees and senior NRC Staff officials to brief employees about their rights and responsibilities; and second, an official Board notice communication directly from the Board to employees at Catawba explaining those employees' rights and responsibilities, and protections for those who wish to risk reprisal and face the fear of reprisal and come forward with information bearing on health and safety concerns.

We believe that there are two aspects to the chill that exists at Catawba. First, there are the aspects of the chill which is created by Applicants. We believe that now there is indisputable evidence of record as to the existence of past acts of reprisal and retaliation and as to the likely existence in the present day of an atmosphere of chill. First we would point to the prefiled testimony of Mr. Nolan Hoopingarner. He is a former builder at the Catawba facility, a long-time member of Palmetto Alliance, and I know a witness that the Chair and members of the Board are familiar with, since he has been disclosed since the beginning of this proceeding as a person who had complaints about construction quality, safety on the job, and most importantly, a long and

detailed documented history of harrassment and retaliation by Applicants and failure, most importantly,by the Nuclear Regulatory Commission Staff, Regional Staff, to adequately support him in his efforts to bring to the Commission his concerns.

Mr. Hoopingarner's case reflects, first, that he was discriminated against in transfers on the job for bringing complaints to Duke Management, to state and local labor officials, OSHA, Occupational Safety and Health officials, and to the NRC, that he was ordered directly not to speak to an NRC inspector, and that ultimately he was transferred to non-nuclear safety work, so that in his opinion, he would not be able to complain about safety-related matters.

Finally, he was fired, terminated by the Applicants for patently unsupportable and insubstantial reason, changed twice, flowing directly from his efforts to cooperate with the NRC. A month later the NRC issued an inspection report citing the Applicants with three violations which the NRC characterized as minor, but three violations of specific quality assurance procedures that were brought the attention of the NRC inspector by Mr. Hoopingarner.

That was after Mr. Hoopingarner tried on two previous occasions to bring complaints to the NRC inspector with no success. The inspector who finally cited Duke with violation was a visiting inspector, not the regular resident

ki 1:07

at the time. The welding inspector complaints, we think, in their own words now contained in proposed prefiled exhibit from the Applicants themselves, the task force reports, amply reflect the widespread fear amongst welding inspectors at the time they expressed those complaints of retaliation of harrassment for complaining about violation of QA procedures.

Without going through details on virtually each welding inspector's written complaint, it talks about lack of support by quality assurance management when they tried to bring violations of QA procedures to the attention of their superiors.

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But what are present state of affairs at the site? In the prefile testimony of Applicant's own witnesses, witnesses which were known to all the parties and who were ultimately going to be brought before this Board by Applicant's designation or by subpoena of Palmetto, are the testimony of their own witnesses, there continues and exists, as of the date of the signing of the prefile testimony -- the 23rd of September -- an atmosphere of fear of reprisal and harassment on the job.

I bring two examples to the Board's attention. First, a supervisor, Mr. G.E. Ross, R-O-S-S, referred to generally in the documents as Beau Ross, B-E-A-U, the original supervisor of welding inspectors on the site in earlier years, continues as a supervising technician, Level 1 supervisor of the welding inspectors. Was largely the supervisor of the key welding inspectors who brought their concerns to Duke management.

Mr. Ross states, as of the 23rd of September, present tense, "I do not feel free to express my concerns because of possible retaliation and discrimination against me." Page 3, line 11. "I have been adversely affected by submitting of concerns in terms of treatment from OSHA potential or transfer potential." Page 8, line 3. "I have been treated very badly on my evaluations and pay raises, negative treatment from J. Willis --" W-I-L-L-I-S "-- A. Allum --" A-L-L-U-M, "-- and to a degree, L.R. Davison, discriminated against

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in violation of 10 CFR Part 50." Page 8, line 5. "I will be kept on construction, not transferred to nuclear production, and then laid off because of my being vocal." Page 9, line 6.

Secondly, welding inspector John Bryant, B-R-Y-A-N-T. This is Duke's own prefile testimony. Page 8, line 2. Inspectors have been harassed, lack of support from middle management. "The inspector may forsake quality in the future, which may affect the safe operation of the plant." Page 9, line 14. If the company will allow Mr. Allum to retaliate against Mr. Ross, the other inspectors are highly susceptible to the same retaliation.

Mr. Chairman, this is testimony presented from the mouths of witnesses sponsored by the Applicants and I think the only fair inference to draw from that is that if these witnesses state, in these strong terms, under the control of a present employer, and presented through counsel for the Applicants, the full story that they may have to tell should be, by inference, as least as serious as it is presented in the testimony of Applicants themselves.

That is present tense.

Finally, with respect to the Applicant's activities, confidential information brought to Palmetto's attention by investigators from the Government Accountability Project makes clear that the level of chill extends beyond Messers. Bryant and Ross and pervades the site. The same unique organization

that Duke will crow about in this proceeding -- unique in the industry because they designed, built, and operates their own nuclear plants -- is the atmosphere which we believe creates the environmental potential for the absolute control that exists on that site.

I am informed by Ms. Billie Garde, who is an investigator of the Government Accountability Project, that within the last week she has had personal contact with a number of workers at the Catawba Nuclear Station, present and past. But each one of them authorizes her, and in turn Palmetto, to seek from this Board the protective order that we are requesting and to ask that this Board intervene to assure that workers, who they know to have concerns on the site, will feel free to come forward and cooperate with this Board.

Second, the atmosphere of chill is created by the Nuclear Regulatory Commission Staff itself. Pending today is a complaint by the Government Accountability Project, first to the NRC Commissioners. That's the 2.206 petition I refer to. Second, to the Office of Investigation and third, to the Office of Inspector and Auditor. We are informed that there is a pending OIA, Office of Inspector and Auditor, investigation of the Region II office process and handling of worker complaints at the Catawba site. Particularly mishandling of confidential information passed to NRC Staff by Catawba workers and in turn passed to Duke management, violation of confidence.

Ms. Garde has communicated, within the last several days, to Mr. Hayes and Mr. Cunningham of the Nuclear Regulatory Commission that she will not present complaining witnesses, Catawba workers, to the NRC Region II staff, because of their track record of betraying the confidences of nuclear workers. She has sought specific relief from the Commission staff to see that independent representatives of the Commission, outside of Region II, process the worker complaints that she has and wishes to bring to the Commission's attention.

We made clear that the track record of Region II is demonstrated by documentary evidence in this proceeding. There is evidence of communication between the NRC inspectors and Duke management, with respect to the ongoing investigation of the welding inspector concerns, direct communication of the results of inspector -- NRC inspector interviews with Duke workers to Duke management, release of draft or proposed findings and reports to Duke management by NRC Staff.

JUDGE KELLEY: We are focusing, are we not though, on the Licensee, the license applicants, and what has happened at Catawba? I'm not saying -- I'm not suggesting -- that what the Staff does on site might not be relevant. I expect it is. And at some point, we'll have some witnesses. There comes a point, though -- I'm not trying to draw that point. I'm just trying to make a general point that what happens in the NRC process, at some point up the line if you will, may or may not

be an example of good government. But it has got not much to do with this case. And I just want to suggest that you might shape your presentation than you have so far, focused more on the Applicant. I wouldn't put too much on that business. Ms. Garde is not here. That's what bothers me. I'm getting double hearsay.

MR. GUILD: Let me offer this, Judge. I appreciate your observation. I think the point is that the references to the Staff are not tangential or superfluous because if the Board rightly presumes, under normal conditions, that the Staff is the normal conduit for complaints, allegations, that are brought to the Board and that essentially this Board's responsibilities are limited to considering evidence brought before you by the parties -- which I think is the normal course and a fair presumption. In this case, that presumption is unwarranted and could result in a dangerous presumption that you are getting a free flow of information when a free flow is not available.

Now to just simply make this point, Ms. Garde has communicated to me that she is willing to be made available to testify under oath before the Board, in support of the motion for protective order. We are just asking, if I could just put this in some perspective, we are asking the Board to consider this request for protective order, essentially step in between the Applicants and the Catawba work force to see that there is

a free flow of information. We're asking that Palmetto be permitted to step out, in essence. We don't want a role in this because frankly, Mr. Chairman, we don't believe that we can thoroughly process and press this issue. We believe that it requires the authority of this Board.

Now Ms. Garde has informed me that she can be available on a day's notice to be here and to be sworn and to respond to questions. Questions about her contact with Catawba workers and aptly supporting what is, to me, information and belief as to her firsthand knowledge. Now we think that the evidence of the lack of diligence by the NRC Staff and in fact the strong suggestions of a collusive relationship between the Region staff and the Applicants, barring free flow of information, is amply supported by the first -- again, Mr. Hoopingarner's direct evidence of complaints that were not followed up and ultimate termination.

A month after he's fired he gets a letter from the NRC Staff saying thank you for bringing to us your concerns. We have found three violations. And he's left hanging in the wind. The welding inspector concerns themselves amply demonstrate this and we believe the documentary evidence produced through discovery and through FOI from the Commission Staff files, reflect the transmittal of information, pending investigation, interviews with welding inspectors, preliminary judgments about the course of an investigation directly from

NRC Staff officials to Duke management. We believe that violates the principle of independence of the NRC Staff and largely compromises the effectiveness of their investigation.

I might offer that I'm also informed that Ms. Garde is prepared to testify that a number of workers at Catawba have specifically told her that they have, in effect, tested the NRC Staff resident inspector, that they brought to his attention specific workmanship complaints in confidence, with a request for confidentiality, and that the very next day Duke management was out fixing the hardware problems that they had identified. They brought this to his attention as a test to see whether or not they could trust the NRC resident and he failed.

Now we believe that the only way that the prime source of information, which this Board must rely on in order to get to the bottom of the quality assurance problems at Catawba, the only way that that avenue can be reopened is for this Board to actively insert itself between the Applicants, who created this chilling effect, and the Catawba work force. We believe that Palmetto need not play a role in this. We are obviously an advocate. We are obviously opposed to the Applicant's operating license. Our position is the plant should not operate, but we think because of that adversary position we come to this task with handicaps.

We think the Board ultimately will have to face the

whistle blowers at Catawba and we think here, at the beginning of this proceeding, it is important that if this Board is to have confidence that it has a complete record, it must now take action to see that there is a new free flow of information from workers.

I stress again that our information is not that there is any doubt that there are concerns, there are concerns among the Catawba work force. Those concerns are not being voiced and will not be voiced because of the pervasive chilling effect that exists on that job.

Now Judge Kelley, and members of the Board, I would ask that the Board not decide this motion for protective order on the basis of simply argument or what I can offer from the record now. I would ask that this Board defer a ruling on this protective order and, in order to reach a decision on this matter, not rely on what counsel for Palmetto Alliance has to say, but question directly yourselves a number of whistle blowers who are all prepared to offer testimony to this Board under the in camera protection with protective orders, to directly enjoin Applicants and the NRC Staff from breaching their confidence, and from transmitting their names and complaints to Duke management. And that we are prepared to offer -- if the Board is interested -- the testimony of Ms. Garde within the next day or so, to support her -- to offer her direct evidence of contacts and chill on the Catawba

21b9

site. And to offer, thereafter in very short order, the testimony of Catawba -- present and former Catawba workers, whistle blowers, who will testify before this Board if provided sufficient protection.

So I ask that you not rely simply on my argument or my citations to the record. But I ask before we begin the presentation of evidence in this proceeding, which we are prepared to do as we have said before, that this Board set in process at the very earliest first, an inquiry into the present existence of chill through direct evidence from present and former Catawba workers who are available to you in confidence. Second, testimony from Ms. Garde, who can attest to her investigation and her conclusions concerning harassment and retaliation. And then third, we believe on the basis of that record and the argument authority that I have just cited, order the protection that we have sought earlier and which we believe are necessary in order to get to the truth of quality assurance at Catawba.

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JUDGE KELLEY: Let me pursue with you, Mr. Guild, one of the last points that you mentioned.

Mr. Guild was referring to our order of last Friday, court order issued September 30, 1983, captioned "Ruling on Objection, Prehearing Conference Order."

The pages, 4 and 5.

We were discussing the question of disclosing the names of witnesses in advance. And Palmetto had expressed a desire not to disclose certain names because those people feared harm or injury of some sort. Economic retaliation, I suppose, is the more prevalent concern.

So, in response -- I think I will just read this paragraph for the record so it's clear what we're talking about.

We said this: "If there are specific prospective witnesses for Palmetto who genuinely fear public disclosure of their names because of jeopardy to their jobs or for other substantial reasons, Palmetto may seek to invoke an in camera hearing procedure. That can be done initially by an in camera written disclosure to the Board alone of the names of these witnesses, the areas of their testimony, and the bases of their concerns about public disclosure of their identities.

"Confidentiality of the in camera hearing would depend largely on protective orders. The Applicant's attorney

and possibly another representative of the Applicants would attend, as well as the Staff.

"Therefore, the prospective witnesses should realize that confidentiality of their identities from the Applicants would not be complete.

"If Palmetto wishes to invoke this procedure, it may do so, as outlined above, and procedural details can then be discussed further."

Now, let me ask you, Mr. Guild, the people that you have referred to that Ms. Garde has been in touch with who have information but who are concerned about their job security -- if the procedure that we have outlined -- do you know if those people are willing to come forward on this basis?

MR. GUILD: Judge, I am informed that they are well -- first of all, they have a limited trust of the Nuclear Regulatory Commission, to be honest.

Second, they understand that by agreeing to cooperate, that they certainly run some rish of retaliation, regardless of the level of protection that can be given them. Any protestions are imperfect.

And third, I think they understand the general outline of this provision of the Board's order.

I understand that Ms. Garde had a copy of this order and communicated that portion directly to them, either

by reading it by reciting the substance of those provisions.

And I understand that a number of persons are willing to testify under those procedures.

I am informed that perhaps they might seek the additional protection of an in camera hearing at some place other than this courthouse in a very public sort of setting where their comings and goings would be noted.

JUDGE KELLEY: Certainly if you do that kind of a thing, you hold it in another place, announced, and so on. That all goes with the package.

I think what they have to realized is that the confidentiality feature does depend on protective orders. It has to. And they have to know what that is.

We have a lot of confidence in orders of that kind, and we think this kind of approach can be effective in getting the facts out.

But I think we all know that we cannot go around denying licenses on the basis of faceless informants that somebody cannot cross-examine. We all know that.

So, if somebody wants to get involved in this thing, then to some extent they have to run some risks. And they should do that with their eyes wide open.

MS. GUILD: Yes.

JUDGE KELLEY: But we have put this out on the table. That is in public. That is in Ms. Carde's hands.

So, that's one way that people can now come forward.

Now, I suppose a question the Board can discuss further -- I can put it on the table -- if your relief right now is that the Board should send a notice to the site that the Board should set up a meeting along the lines of your motion of last spring, I put it to you, could we hear out some people confidentially -- just the Board -- on the theory that we are not entering or denying applications or putting out decisions. We are just writing a letter.

Maybe we can do that. I don't know.

We have discussed it. You can think about it.

But in terms of testifying, that's the bare outline of what we can do for people who have information but also have concerns.

I don't know that we can do much else really in the hearing context.

So, that's out front. And I think this Board is going to have to say to itself, "Look, we adopted this in camera procedure; we made this order available. We said if you want to put facts on the record, here's a way for you to come in."

Will it add much for us to set up a meeting at the site? Will it add much for us to set out a letter detailing responsibilities and rights?

That's a fair question, I think.

MR. GUILD: Judge, we think that that's a question that this Board most appropriately cannot direct to Palmetto, Applicants, counsel, or the Staff, but should direct to the Catawba workers who are prepared to offer testimony to you with these protections. We think that's a fair question for them, because our belief is based on the information that has come to us that there is a pervasive level of fear, complete level of ignorance about one's rights, notwithstanding the dense legal prose of the notice that was ultimately published last spring with respect to the provisions of the Energy Reorganization Act of 1979.

But the point is that no one -- we are informed that there is a general level of fear and ignorance with respect to workers' rights and responsibilities, that the provisions of this order are not generally know, that even the workers involved here came forward and contacted Intervenors only because they knew this hearing was starting yesterday.

They saw it in the newspaper. They didn't come to the NRC. They didn't come to Duke management. And they certainly didn't come to the Board. They didn't understand the process and only learned of this by direct information that came through the GAP contact.

So, we do argue very strongly that our belief is that this Board must do more than simply issue an order if it

is to assure itself that there is a freer channel of communication, that the information contained in this order or protections that are available of similar import must be generally circulated at the site if it is to effectively inform Catawba construction workers of these protections, because they don't know about it.

And third, that one should reach the conclusion -- this Board should the conclusions on what specific remedies are required in order to free -- open the access to evidence -- that's what we're talking about -- on the basis of a record from workers, not from what I have to say.

JUDGE KELLEY: Okay.

A couple of points: Now, we are a little concerned -- not so much for this morning, but as the proceeding goes on -- I think there should be an understanding among all parties about oral motions and written motions.

There is a problem. The rules call for written motions basically. The Board has discretion to allow oral motions to be made at hearing, and often that's the best way to go. I'm not saying that we shouldn't do that from time to time.

However, when you get rather lengthy oral motions such as yours this morning, I don't know, for one thing, if the Applicants or Staff say they're not prepared to respond and want to read the transcript of the hearing, I can

understand that. They didn't really know in advance what was coming.

If they want to respond now, then we might as well go ahead and can hear them. And that's fine.

But I think they should have the option of responding later.

MR. GUILD: Mr. Chairman, I bring this in the only way I know how to do it, given the time constraints and other responsibilities we have. But I certainly have no objection to deferring a response or giving whatever time is necessary to Applicants and Staff to respond. We want to put this before the Board and --

JUDGE KELLEY: I just think as a general proposition we have this motion before the Board, and we will deal with it as a general proposition as we look down the road.

If any party has a motion of some complexity, they ought to either file it in writing or they ought to take it up with the Board and we'll decide just how we're going to handle it. Maybe we will do it orally, but we need some -- we would like to have notice. We might put a time limit on it. We will just have to see.

Okay. Enough said on that subject.

You asked the Board to supply a draft statement of worker rights and responsibilities.

Are you prepared to supply the Board with a

proposed draft?

MR. GUILD: Yes, sir. I don't have it with me, but I certainly can.

JUDGE KELLEY: I understand that.

We did, last spring, supply you, at your request, with a list of names and addresses of a number of people. I honestly forget -- were they all the welding inspectors?

MR. GUILD: There were, we understood, to have been a list, current as of January '83, of quality assurance personnel at Catawba and a list -- two other lists of those had formerly been quality assurance personnel and transferred to other departments and those who had formerly been quality assurance personnel and they had been terminated.

JUDGE KELLEY: Okay. But you got such lists. And I guess my question is, in terms of the need for the relief you seek now, could you briefly indicate your experience in talking with those people, getting evidence?

MR. GUILD: My experience is very limited. My experience essentially has been second-hand and has been to communicate with the staff of the Government Accountability Project, which largely has made the contacts. I might say I'm not an experience investigator; I'm a lawyer. The preparation work, I can, in terms of field preparation. In terms of processing detailed and specific communication from workers on technical subjects, I don't feel qualified to do

that. I am confident in the qualifications of Ms. Garde and the staff of the Government Accountability Project. As the Board will note, they have been involved in QA issues at Zimmer and a number of other facilities. And their processing of QA complaints has prompted significant remedial action by the Commission.

So, they have had contacts, Judge. I would, frankly, say that I am informed that those contacts have confirmed that there are concerns about procedural violations, with safety implications at the site, and that there is a widespread fear of retaliation for bringing complaints to the Board and the public.

I would, again, say that we are prepared to offer the testimony of Ms. Garde in support of her own contacts. But what Palmettc essentially has been able to do is to benefit from the expert investigative work of the Government Accountability Project in purusing contacts with the work force, present and former, at Catawba.

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I guess I would add on the last information that I had was as of a matter of days ago, each of the new whistle blowers who were contacted -- contacted themselves the Government Accountability Project -- authorized this request for Protective Order and stated that they were prepared to testify to the Board with protection as to the level of intimidation, fear of reprisal, willingness of themselves and others to cooperate in this proceeding or lack thereof.

JUDGE KELLEY: If we adopt these remedial measures and then that produces another large group of prospective witnesses from whom we had not heard before, how do they get factored into the case?

MR. GUILD: Judge, I think that we face the inevitable prospect of following one of two courses: either pretending somewhat artifically that the issues in this licensing proceeding as to the safety of the plant and the subject of quality assurance are already defined and limited, and the Board will just not hear any other evidence, and hope and trust and wish that concrete information from workers about safety-related issues gets processed adequately by the NRC Staff, independent of the licensing. I think that would be a mistake.

Second, we could choose the alternative and what I think is necessary, and that is tailoring, fashioning this proceeding to accommodate new evidence that is newly available.

I will represent to this Board that Palmetto is not sitting on evidence, any evidence that has not been disclosed to the Board and parties. The information from these workers is information that comes through the Government Accountability Project and is new in the sense it has come very, very recently. We're talking about the specific latest information and witnesses who are willing to testify, so we are prepared to meet whatever standard is required for offering new evidence, raising new issues, whatever is necessary.

I think the fundamental point, though, is that this process needs to accommodate that evidence.

Frankly, I think we all understand the parameters of historical problems that exist at the site and that's the subject of the cross examination that you will hear.

I think that as we move through this case, and I'm confident that the Board hears these witnesses --

JUDGE KELLEY: I just want to know about whether we're going to hear new witnesses, and your answer was yes.

MR. GUILD: I think the answer would have to be we would have to, yes.

JUDGE KELLEY: Yes. All right.

(Board conferring.)

Mr. McGarry, would you wish to respond now or later, or part of both? How do you want to proceed?

MR. MC GARRY: Your Honor, I think we are prepared

to respond now. In the event the Board has some questions, we might want to defer those. But I think we are prepared to take this matter up right now.

JUDGE KELLEY: Fine.

MR. MC GARRY: There has been an impression that has been created as a a result of this motion, and that is that there is a group of individuals at Catawba who are former employees of Duke that wish to come forward and voice concerns.

That impression is not bedded on a strong foundation. Rather, it consists of nothing but innuendoes, innuendoes that have been cast loosely in this proceeding since June of 1981 and the time has to come where these innuendoes are being made to members of the press and to members of the public, to this Board, and to these parties.

We have been trying for two years, 2-1/2 years, to find out precisely what the concerns are. We have done our best and we have presented them to the Board. If there are other concerns, let them come forward, let us stop engaging in innuendo.

Now, there is another impression that we would like to share with the Board. We draw on our experiences, both personally and through our readings on the national quality assurance experience as it relates to Intervenors and the Government Accountability Project. This experience consists of the following. At the outset there is innuendo. It is

dropped in the proceedings, smells of a dead rat, and that's what we have. We go to a hearing, and another innuendo is dropped in the proceeding.

Toward the very end of the hearing, another mysterious innuendo is dropped in the proceeding. And lastly, at about the time that a license is about to be received, yet another innuendo is dropped.

Now, if there are concerns, we think it is this Board's to ferret out those concerns and make appropriate decisions. We think it is our duty, since we have the burden, to make sure that those items are properly addressed. But our hands have been tied, and tied with this invisible innuendo string. We think that this motion today is grandstanding, simple grandstanding. This motion could have been made years ago when the Intervenors filed their original contention in July of 1981. It was based upon allegations, in part, of Nolan Hoopingarner. The Intervenors today, Palmetto today, relies on Nolan Hoopingarner and relies on Nolan Hoopingarner for the premise that there are individuals who are fearful of retaliatory actions by Duke Power Company, such that they will not come forward.

That has been their position since July of 1981. Why didn't they seek a Protective Order at that point in time? Let's move forward, though, in time. The Intervenors have had the list of all the quality assurance employees in the early

4:05 ki

part of this year. If they had done their work in discovery, they could have determined for themselves if indeed there were concerns by other individuals, and could have sought Protective Orders if the situation warranted.

Let's move forward a little further in time. It seems somewhat of a deja vu situation. We find ourselves now, at the close of discovery and almost on the day that discovery is supposed to be closed, we have an elaborate motion filed by Palmetto Alliance and supported by a Government Accountability Project affidavit. The innuendo: We need more time to take discovery because there are people out there that are fearful of retaliatory action. Who are they? Why couldn't they sought Protective Order at that time?

Let us move forward a little bit further. The conference call we had with the Board and the parties in late July or early of August, when the Intervenor alleges, because of what they style the speedup in construction, that there are serious deficiencies that have been brought to this attention by unknown people.

Well, we called their bluff on that. We filed a motion on the 15th of August and we asked precisely what are the serious construction deficiencies and who are the people, not because we want to take those people out behind the wood shed and beat the tar out of them; no, because what we wanted to do was find out what the concerns were, so we could bring

4:06 ki

those concerns, indeed, to the Board like we have done with the 31 concerns of the various inspectors.

What is curious, if I may move back just a little bit in time -- I apologize for the disjointedness of this presentation -- but because of the manner in which it came up. We should not lose sight of the fact that during the discovery process, the Intervenor knew the names of the inspectors who are now going to testify in this proceeding. They could have taken the depositions of those individuals. They could have satisifed themselves as to the extent of the concerns of those individuals and the extent of any fear of reprisal. But they did not.

Going back to our August 15th motion where we called their bluff, they never responded. They simply said we will stand on the record. We kept coming, pressing this Board, and asking what is that record? We got no response.

This Board, in an order of September, directed them indeed to file any specific instances of faulty workmanship arising out of this scenario. To date, they have not.

That's the basis for our grandstanding. We understand the use of the word "grandstanding," but we don't use that word lightly.

Another curious point that supports our grandstanding proposition, as Palmetto Alliance's counsel has told this

ki 4:07

Board today, and as the records will reflect, both the GAP, the Government Accountability Project records, and various statements in this proceeding, the Government Accountability Project refused to disclose names to the NRC because they didn't trust the NRC to keep the names confidential. This wasn't an occurrence that transpired yesterday. This was a position that they have taken for many months.

If that supposition they have taken for many months, obviously then they had some individuals, one would think, and if they had some individuals, why didn't they come forward to this Board and seek their Protective Order?

Simply put, we don't think the Intervenors have anything. We think it is near and continual innuendo. If we distill their position, it appears to us to be as follows: We don't have anything, Your Honor, but we think there are people out there at the plant who are being chilled, who are fearful to come forward because of retaliatory action on the part of Duke Power Company. We want to get our hands on them; we can't. We want you, the Board, to come out to the site, sprinkle the waters on the site, and have all -- then these people feel absolved and they will come forward with these concerns.

We don't think that that's the function. The function of this Board is to assure that indeed these individuals at the site have been properly notified of their

ki 4:08

rights. The notification process, according to the NRC regulations, requires us to post a notice. We have satisfied that regulatory requirement. The regulations do not say for the Board to come out and speak to the mass 4,000 workers.

In addition, this issue was raised in the spring of this year, and as this Board has noted today, we did file or post an additional document that clarifies even further the rights of individuals.

JUDGE KELLEY: Mr. McGarry, I don't remember whether you gave us a copy of the other filing.

MR. MC GARRY: Of the notice? Is that what you're talking about? That posting is contained in the testimony of Mr. Dressler, Mr. Davison, and Mr. Alexander, and it is Attachment F.

JUDGE KELLEY: Thank you.

MR. MC GARRY: Now, having made those statements, it seems to us that this Board has to establish a standard. What is the standard for a Protective Order? The Protective Order regulation is contained in 2.740(c), and that regulation requires a showing of good cause.

Let's examine now --

JUDGE KELLY: What's that citation?

MR. MC GARRY: 2.740(c).

End 4

JUDGE KELLEY: Thank you.

MR. MC GARRY: It says upon motion by a party, for whom motion is sought -- and this is in discovery sense -- and for good cause shown --

JUDGE KELLEY: What page are you on?

MR. MC GARRY: That's on page 83, right hand column, top of the page.

JUDGE KELLEY: We have different editions of the book.

MR. MC GARRY: This is the '83 edition.

JUDGE KELLEY: 83? Okay. I have it.

MR. MC GARRY: 83, top of the page, right hand column. It's the same section that counsel for Intervenor made reference to.

JUDGE KELLEY: All right.

MR. MC GARRY: And that is the standard, we believe, that should govern this Board, good cause. Have they made a showing of good cause? Let's examine the three, perhaps four, examples that the Intervenors raised as good cause.

JUDGE KELLEY: Let me ask you a question now. I would have asked Mr. Guild, too, but I didn't get to it. It strikes me that to call this request mostly a protective order, to me, is confusing. And I'll tell you why. Protective order usually means to me an order that says to some lawyer: don't talk about this to anybody else. Such as you've got an

51b2

in camera hearing. That's one kind. Then the NRC uses the term in discovery where you come in and seek protection from some interrogatory or other because it is too burdensome or who knows what. It's a very broad thing. Isn't this sort of a sui generis thing? This is an Intervenor coming in and saying that the sources of information are being chilled and are not available so grant us some relief. He could have called it just about anything. He doesn't have to call it a protective order. It's protection for the employees, in a sense, but it's not being used in the technical sense, is what I'm suggesting.

MR. MC GARRY: We would agree, Your Honor. I still think that this Board must establish a standard upon which to act.

JUDGE KELLEY: How about good cause.

MR. MC GARRY: The good cause standard seems to be the reasonable one and it's in your discretion.

JUDGE KELLEY: I'm just wondering whether the discovery standards really fit, once you get past good cause.

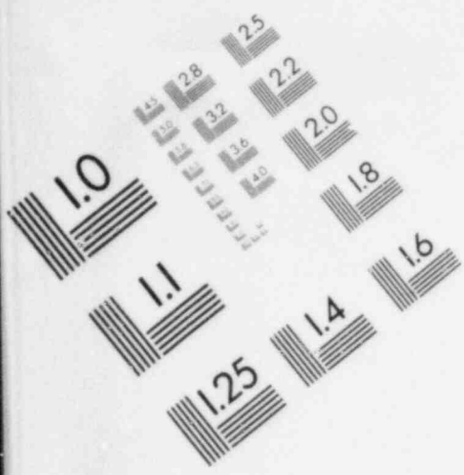
MR. MC GARRY: We would not stand firm in that position, Your Honor. However, let us examine the three factors that are raised by Palmetto Alliance in support of their motion. The first is Mr. Nolan Hoopingarner. He is a prospective witness for Palmetto Alliance. As I noted, his name was identified in July of 1981. It is alleged, in essence, if one

looks at the deposition, one looks at his statements, one looks at his prepared testimony, prefile testimony, I would think that the essence of the Hoopengarner allegation would be that he could not talk to the NRC. He was told he couldn't talk to the NRC.

Well, indeed, the facts reveal that there may have been some confusion with respect to that instruction. That confusion lasted, gentlemen, for one day because on the next day supervision clearly instructed him that he could talk to the NRC. Let's take it one step further. Did he talk to the NRC? Most assuredly. And the record clearly reflects, in fact, he walked around almost the entire plant on two occasions with NRC inspector Maxwell.

With respect to Mr. Hoopingarner being fired and such being styled as retaliatory action, we maintain that's a personal matter. If necessary, we will address it. But the facts are simple. He didn't show up for work. He was fired. He has taken his recourse, pursuing it in the legal setting outside of Duke Power Company. I believe the matter has lapsed. I'm not sure of that but I believe he has let that matter simply lapse.

We maintain there is absolutely no grounds for this Board, based on what it knows, to draw the conclusion A, that he has been harassed; or B, that there has been retaliatory action.



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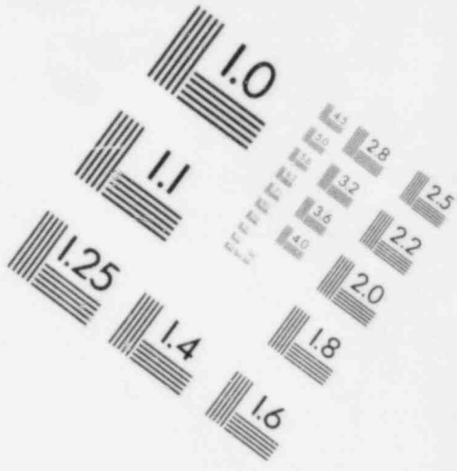

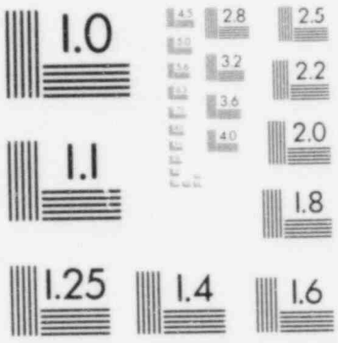

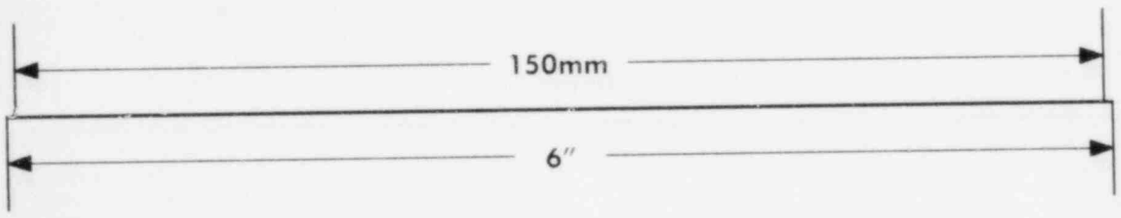

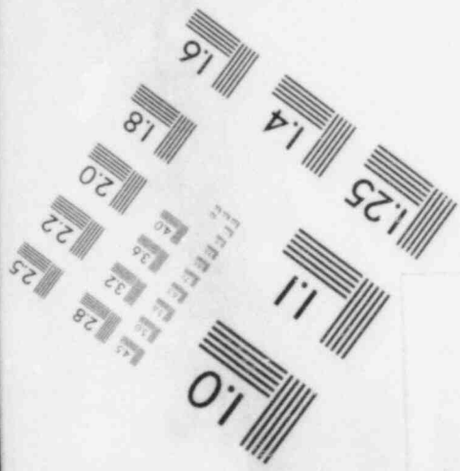

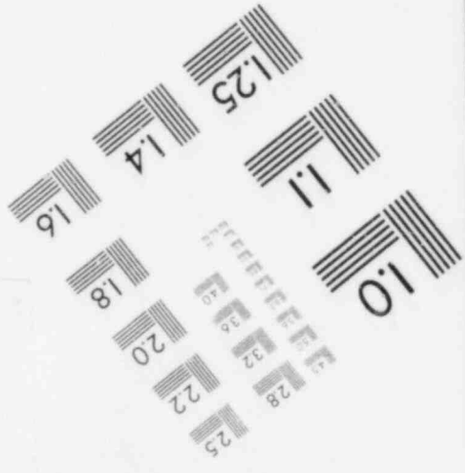

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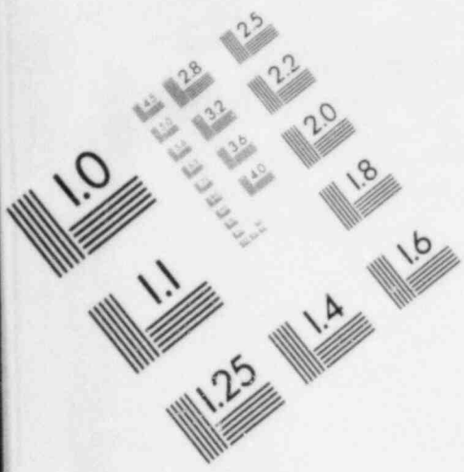

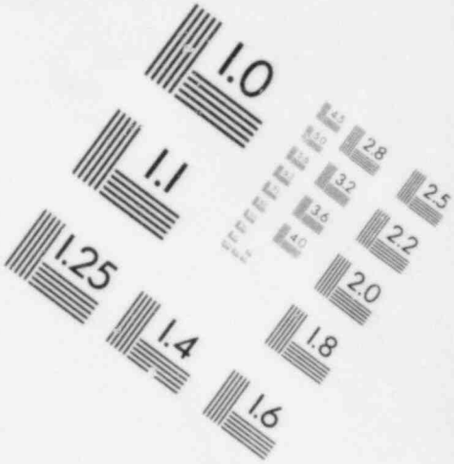

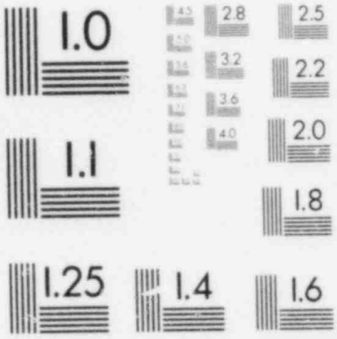

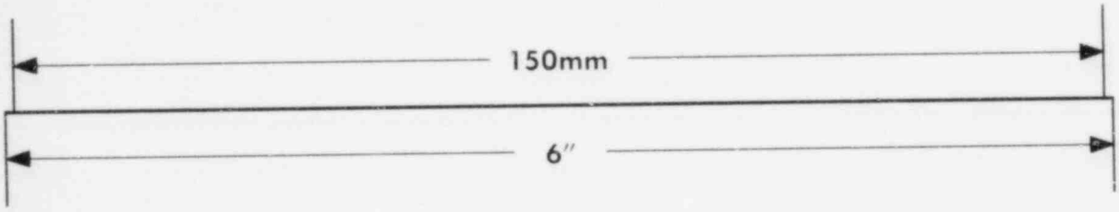

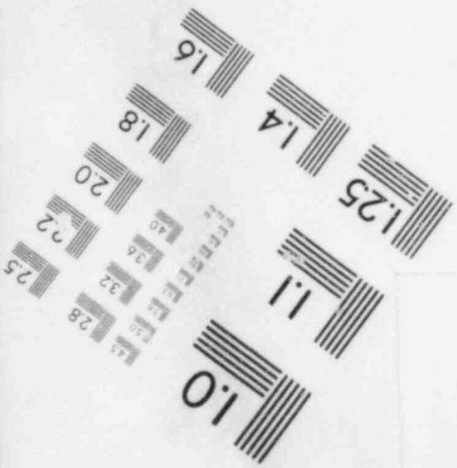

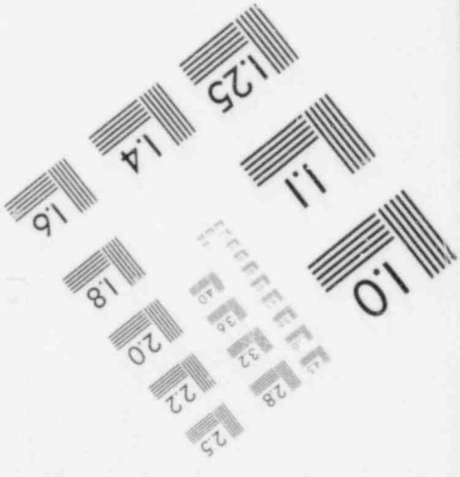

JUDGE KELLEY: Not yet, at least.

MR. MC GARRY: That is correct. And we maintain that this Board must act on facts and not act on innuendo.

JUDGE KELLEY: I only meant by that he's going to be called as a witness and we will hear what he's got to say. And if he claims that he was fired in a retaliatory manner, then I assume you will respond to it.

MR. MC GARRY: That is correct. The welding inspectors were raised as a second example to support this motion. Let us just state the obvious. Every welding inspector who expressed a concern to Duke Power Company, during the reclassification, will testify in this proceeding. Their testimony is on file and they have come forward. They do not fear reprisal. If, indeed, they did, they wouldn't have come forward.

Two examples were raised. One was Mr. Ross and one was Mr. Bryant. And let me just stop for a minute. We're not saying that all this testimony paints the rosiest picture. There are some rocky spots in the testimony but we've put these people -- or will put these people -- before this Board. We have absolutely nothing to hide and there will be no retaliation. And these people know it. And that's why they have come forward.

Now let's look at Mr. Ross. Mr. Guild read to you from page 3, lines 10 through 15, in response to the question "Did you feel free to express all your concerns?". And he said,

"No. I did not feel free to express my concerns because of possible retaliation and discrimination against me. The atmosphere at times were very negative and very demoralizing. Everyone seemed to be taking concerns lightly. Attitudes towards me suddenly changed." Line 16, question "Did you express all of your concerns?" answer "Yes. In spite of the circumstances, I did submit all of my concerns. In addition, despite this feeling of possible retaliation, to the best of my knowledge all other inspectors also expressed all of their concerns."

Let's look at Mr. Bryant. Page 3 of Mr. Bryant. "Did you feel free to express all of your concerns?". Answer on line 10, "Yes, because the best interest of the company was in mind." Question, "Did you express all of your concerns?" Answer, "Yes, all my concerns are contained in these two documents." Which are indeed attached to his testimony.

With respect to protection of individuals, as this Board recognizes, they are protected by federal statute. They can come to this proceeding and they can share with this Board and the parties their concern. And if we retaliate against them, which we will not, they are protected by federal statute and can take that matter to the Department of Labor. That is known to them. It's been posted. It's been posted subsequently pursuant to this Board's ruling.

We cannot, and this Board should not, assume that these individuals are not aware of their rights and it's

necessary for the Board to go out and inform of their rights. The regulations assume that the posting of that notice is sufficient to advise them of their rights. And yet, this Board has even gone a step further. That step has been taken.

Let us turn to the third document, that apparently supports this motion. That is, the filing of the statements of the Government Accountability Project. Before I turn to GAP, I would like to mention one other point. In addition to the notices, as the testimony of our witnesses will state and will show, we have procedures and policies which assure that if individuals have concerns: A, we want to know about it so we can correct them; and B, they can take this matter forward, up the chain of command, to assure that it is resolved.

We have harassment procedures in place to assure that no improper retaliatory action will be taken. Intervenors may question the effectiveness of these procedures. It's for this Board to hear the evidence and determine that for themselves.

Now let us turn to the Government Accountability Project. This is a group that has been coming in and out of this proceeding willy-nilly and quite frankly, we find it disturbing. Are they in or are they out? We read the newspapers. We read the cases. We assume the Board reads the newspapers and the Board reads the cases. The Government Accountability Project has some national visibility. Does that mean that we are supposed to bow down to the Government

Accountability Project? Does it mean that we are to elevate them to some sacred status? Does it mean that they can come in and say we're the Government Accountability Project and we're telling you things are bad out here? And we're supposed to accept that at face value? Absolutely not.

If they are in this case, let them show up. And if they're out of this case, let's put them beyond us and let's move on.

The last apparent of the project was, I think, several weeks ago. Actually, it was on the 12th of September, 1983, where they petitioned the Commission in a document, I would say, almost approaches the testimony. I'm showing it to the Board and it's about an inch, an inch and a half thick.

JUDGE KELLEY: We got a copy.

MR. MC GARRY: That document was raised in a conference call. It was thrown into this proceeding -- or attempted to be thrown into this proceeding -- but this Board would not permit that and rightly so. This Board said you tell us what you're going to rely upon, Palmetto Alliance, with respect to that pleading. They didn't. And yet now they are trying to resurrect precisely what was in that document.

Attached to that document is a letter, for instance, with names deleted, that alleged allegations of retaliatory actions. Why didn't they come forward at that time? There are

unsworn statements. They are uncorroborated statements.

JUDGE KELLEY: Isn't it true, though, that as to the GAP filing, what we asked for was specific construction deficiencies? We didn't ask for instances of harassment and the like.

MR. MC GARRY: That may be --

JUDGE KELLEY: I don't think there's any reason for them to file that kind of material in response to our request.

MR. MC GARRY: I would think yes, there is, Your Honor, for the following reason: not with respect to response to your request, but let us go back to our obligation as parties. And it's a different point.

JUDGE KELLEY: All I meant was in response to our request.

MR. MC GARRY: Yes, sir. I will acknowledge that. I was using that by way of illustration. In terms of a participatory role of GAP. But if I might pursue the thought that I was following here, they should have come forward with those matters because the parties have an obligation, to this Board, to present evidence and this Board instructed the parties that we were to file our direct case on a certain date in September. If Palmetto Alliance thought that their direct case consisted of more than Mr. Hoopingarner and Mr. McAfee and consisted more -- of more than subpoenaed -- they had an obligation to come forward at that time and raise those names with the Board. If

a protective order, or some appropriate order, was required, they should have taken the step at that time. If indeed GAP had individuals, Palmetto Alliance knew about that because GAP made such an allegation in the middle of September before the time when the testimony was filed. Presumably GAP didn't get the names of these individuals, if indeed they exist, on the 12th of September. No, they had them for many months before, if they existed, because that's the position they took with the NRC in the summer or late spring.

They had names but they wouldn't tell who they were.

Now let us tell you what we would like to see. We would like to see a stop to the innuendos. If there are names, let them come forward. Let us, or let the Board, establish a process and let us do it immediately. This, Your Honor, is one of the reasons that we indicated we had an objection to the prehearing conference order. The prehearing conference order permits the Intervenors to come forward on the 17th of October with these types of names. If indeed we knew of these individuals back in September when we should have known of these individuals, or if we had known about them in the spring and summer during discovery and the continuing obligation to update discovery, we could have prepared people on our witness panel to address the matter.

Now what will happen, if they are permitted to come in on the 17th, is take for an example Mr. Grier. Mr. Grier

51b10

will take the stand today. Hopefully, Mr. Grier's testimony will be completed by the end of this week. It may be that Mr. Grier is the appropriate person to address the subsequent allegation. We could have addressed it at that time.

JUDGE KELLEY: We understand that. It does disadvantage you. We appreciate that.

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MR. MC GARRY: Further -- if I have one moment, I think I can wrap up this presentation.

(Counsel McGarry, Carr and Gibson conferring.)

MR. MC GARRY: Your Honor, three points:

Number one, we think it's disingenuous of Palmetto Alliance to allege since the summer of this year that there were serious safety concerns and that there are people who will address these concerns, and not to have come forward yet.

And a second point, this Board has, indeed, set forth a procedure which Palmetto Alliance can follow, and that's the procedure that this Board read into the record today. We demand that the Intervenor be made to follow this procedure; we think it's a good one.

And our position is they should follow it yesterday.

We do want to be candid with the Board and the parties. We think that if, indeed, there are individuals, we have the right to know the names of those individuals and we have the right and the obligation to investigate those concerns, because we are the party with the burden. And to satisfy our burden, we have to know what those individuals are saying so that we can put on our case.

JUDGE KELLEY: At this point, with regard to this procedure we put in the order, the trigger step is pretty

spelled out. The notion is come forward in camera with the names and so on. It's there, in one sentence.

What we contemplate is that if that's done, then, beyond that, the lawyer is going to have to work out exactly how the rest of it works. We didn't attempt to spell out all the details here. Indeed, we wouldn't want to hear from you this morning on "let's do this" and "let's do that."

We did want to put in, as a bare minimum, that the guy out there who is concerned about his job, let's say, that we tell him right up front that this will lead to some disclosure of his name. And he ought to know that. And if he doesn't want that to happen, he ought to stay out there.

But otherwise, we would contemplate more detailed development of procedures among the lawyers.

MR. MC GARRY: Yes, Your Honor, we think that's a good suggestion.

Our point is, with respect to the first step that the Board has taken, we think that that is clear and it should be followed to the letter.

JUDGE KELLEY: I understand.

MR. MC GARRY: Now, you asked, of the Palmetto Alliance, whether or not the Board should talk to individuals. We say no.

JUDGE KELLEY: I wanted to ask you that.

MR. MC GARRY: We think it's appropriate that the

concerns be brought to you and you make that determination. We think it's improper, quite frankly, to go beyond that, for you to engage in a discussion with them without counsel being present.

JUDGE KELLEY: Let me be clear that you understand the question I had in mind when I asked that. I did not have in mind discussion with the people who would come in under the in camera procedure, discussion of any issue on the merits.

The only thing I was wondering about was the request for relief here is that we should set up a meeting on the site, that we should send out a statement of rights and responsibilities. Maybe you want to do something a little different.

And the underpinning for that request, as I understand it, is that there is an atmosphere of fear of retaliation that exists, at least among some people out there, and that unless steps of this nature are taken, that will continue and we will not receive information we should receive.

And could the Board then consider whether to do any of those things on the basis of talking with whoever would come in under the procedure and our deciding?

We could have Ms. Garde come as a witness, and we get then a secondhard, really, testimony about what it's

like out there in her opinion.

The firsthand testimony is the person who is there.

That's my question. And I'm not sure of the rights and the wrongs. I am just asking you what your reaction is, whether the Board can explore that kind of thing in camera?

MR. MC GARRY: Your Honor, we think that, again, you set up the process. And that process is for these people to come forward in a written disclosure.

JUDGE KELLEY: That's true. This would be one step further.

MR. MC GARRY: I understand that.

What is being suggested is how do you get the process to start, how do you get people to come forward with a written disclosure?

We think that people know to come forward with written disclosures. They know either through GAP's activities,or they know through Palmetto Alliance's activities, or they know through the notices.

And I think this Board has to presume that those notices satisfy the obligation of informing the members of the work force of their rights.

I don't think this Board should go down to that site. And if the Board shouldn't go down to the site, I don't think the Board should talk to people.

If the Board talks to people, I think that is in appropriate.

JUDGE KELLEY: I assume we can talk to them with you present.

MR. MC GARRY: Absolutely.

JUDGE KELLEY: That's the issue, with you present or not.

On the questions of interim relief, I don't know what term you use -- not the merits of the case, but the request that has been made this morning and the motion.

MR. MC GARRY: Your Honor, let's just step back a minute.

This is precisely the issue that was raised in the spring of this year. There is chilling effect, and they asked for a meeting on the site, and this Board rejected it.

Ask yourself today, have they presented a single shred of additional, substantive information, and you can only conclude the answer is no. And therefore, we maintain that this Board ought to stick to its guns.

Now, that aside, I think, with respect to talking to people, I think our position is that that's improper. And I think the reason is -- one of the reasons -- and you're catching us cold, but we're giving our reaction -- that these people may eventually be witnesses in the case. And I don't think you would be finding yourself talking to any of the

witnesses that are now identified out in the hall even if Mr. Guild were present or I were present.

JUDGE KELLEY: Okay. I just wanted to raise the point.

MR. GUILD: Mr. Chairman, if I could interrupt at that point or be heard on that later -- but I think that's a good suggestion. I would not want to be present.

JUDGE KELLEY: I'm just looking at the clock.

Are you about done, Mr. McGarry?

MR. MC GARRY: Yes, Your Honor. I think we have concluded our presentation.

Thank you.

JUDGE KELLEY: Mr. Guild, I believe I understood you to say it's okay with you if we talk to these people if they come in under the in camera session.

MR. GUILD: Our position, we think it would be healthy for no counsel to be present, no representative of the Staff, just members of the Board to hear these people.

JUDGE KELLEY: We don't have a position. I'm just asking the question. We haven't even talked about it.

What don't we take a coffee break. And then Mr. Johnson can speak for the Staff after that.

Okay. 10 minutes.

(Recess1)

end t.6

ki 7:01

JUDGE KELLEY: Back on the record.

Mr. Johnson, are you prepared to speak to the Motion for Protective Order?

MR. JOHNSON: Yes, sir. The Staff would agree that the best way to get to the bottom of all of these allegations of the availability of unnamed Duke workers is to adopt the procedure that was recomended in the Board's order, recent order, having an in camera session with the attorneys present under Protective Order.

We do not believe it would be proper to have what we would view as ex parte communication between these individuals and the Board only. And the reason for that is that there is -- to the extent what we're talking about fear of reprisal, intimidation, harrassment, where their job is at stake in such matters like that, there is a great overlap between the case in chief and these matters. It seems to me, to the extent they must be covered to determine whether protection is required, it should be with the parties represented. And a lot of the argument in fact that was presented really was, in a sense, a summary of Mr. Guild's case which is not evidence and cannot be judged until the evidence is heard.

And it seems to me that the truth or lack of truth of these allegations can be brought out at hearing and really only at hearing, and I don't believe that this is the proper forum to raise all these matters in the manner that he

has. In fact, the Staff has a hard time sitting here still, and listening to all the loose innuendoes that are being thrown about, challenging the integrity of the Staff. Allegations like the Staff is in collusion with the Company are totally unfounded.

To the extent that Mr. Guild believes that this is part of the case, we are prepared to address those items on cross examination. They were the subject of extensive deposition testimony by Staff witnesses, as Mr. Guild focused almost exclusively on the way in which the Staff did business, rather than on individual allegations of deficiencies in trying to get to the actual problems as they might or might not exist at the plant.

As the Board Chairman suggested, it is not the Staff that has the burden here, but the Applicant. And questions on Contention 6 as the resasonable assurance, whether the plant has been built properly, and to the extent that there are collateral matters that have been raised, those matters are not before this Board.

On that subject, there was an allusion to an OIA Office of Inspector and Audit investigation, and the suggestion -- and this is a type of innuendo -- was that there is some basis for that, a suggestion similar to if there is a charge, then the person is guilty. This is in the nature of a self-serving accusation because there was a request for

ki 7:03

this very investigation by the Government Accountability Project, and all it takes is for the parties or people working with the parties to make the allegation and suddenly it becomes proof.

Well, as we said in our opposition to the Motion to Reopen Discovery, this is not evidence and should not be given any weight. There are a number of other points I would like to raise.

Back in January 1982 when we had our initial pre-hearing conference, Mr. Guild raised the concern of unnamed personnel and relied only on Messrs. Hoopingarner and McAfee. He made allegations of the systematic deficiencies, pressure to improve, faulty workmanship, and the Board Chairman then said if you have serious concerns, then I think it would be appropriate to have them looked into by the NRC Staff, and the Board Chairman requested the Staff to follow up on these matters, and the Staff did.

However, in the process of looking into these matters which the Staff did, looking into all the material it had on the plant, past inspections and current activities, it attempted to contact Mr. Hoopingarner and McAfee to hear from them what it was that these serious concerns involved. And Messrs. -- we were informed by Mr. Guild that he would not permit these two men to be interviewed by the NRC Staff.

And it seems to me that what we are hearing here

ki 7:04

today is part of a piece that has gone on from the very beginning of the case.

As Mr. McGarry, I think has alluded to, it is sort of like hunt the peanut. The peanut is continually moving on the horizon, and we never are able to see what is under the shell. I would like to address certain of the specific matters that related to the NRC Staff. I think Mr. McGarry addressed many of the other items with respect to his witnesses and personnel, although I would like to add a few things there.

I think the fact that these individuals are still on the job, that none has been fired, as far as we know none has been transferred involuntarily, no retaliatory action has been taken, and this essentially will be brought out, is strong indication that, in fact, there is no reason to believe that further protection is needed. And, in fact, there are the tools available to deter it if it were to happen, if it were a problem. There is a Section 210 of the Energy Reorganization Act which provides relief for persons who wish to participate in the general category of whistle blowers. That was alluded to, I believe. But the NRC also can take action against the Company if it were to find serious breaches in this area, fine violations, and even can issue civil penalties. So there are tools available if one would want, and I am sure that a Company would not do this lightly.

With respect to Billie Garde's -- the offer of

Billie Garde and GAP to try to establish these matters, we believe that essentially to be hearsay, and it wouldn't be appropriate to hear what she has to say about what other people have to say, because we have to be able to examine the truth, by cross examination or other means, of the truth of what she heard. We can only hear what she heard

And I think as the Board Chairman recognized, if we're going to hear this information, we have to hear it from information, who would say that it has occurred to them.

With respect to the Staff role here, there was an allusion to this collusive activity. The only thing that comes to mind that Mr. Guild was alluding to was a December 20th meeting between Mr. Van Doorn, the resident inspector at Catawba, and Mr. Grier at the December 20, 1982 meeting. It came at the end of the Staff's review of the welding inspector concerns. Follow-up by the Company of its recommendations and implementations thereof, in which Mr. Van Doorn reported the findings, his conclusions. This is not extraordinary, this is quite normal for Staff to communicate its conclusions to the Company. What was discussed were the findings.

The important thing to remember here is that this communication is not evidence of any breach of confidence. The universe of persons in the welding inspector concerns, the inspectors who voice those concerns are well-known to the Company. Mr. Van Doorn interviewed each of these individuals

ki 7:06

and although I do not believe that this communication identified which inspectors voiced which concerns, it would not be material because all he was doing was discussing this universe of concerns and his conclusions about those concerns. No new names were brought up, and nobody was identified to the Company by Mr. Van Doorn.

With respect to Mr. Hoopingarner's allegations, the question of whether the Staff could be relied upon to do its job, although this is not the issue in this case, the situation with respect to Mr. Hoopingarner's expression of concerns is pretty clear and will be developed on the record.

Mr. Hoopingarner came to the NRC with the resident inspector, went around the plant with him. He was asked to express his concerns; inspection activity follow-up did result in -- I don't remember exactly, but I think a violation, one or more violations was issued, and I think also the record will show that Mr. Hoopingarner was not fired because of that.

In short, it is is our position that the allegations made by Mr. Guild are unsupported; particularly those against the Staff, Staff believes are egregiously unfounded -- excuse me, there was one other incident that Mr. Guild mentioned -- the supposed test of resident inspector which was supposed to show that Staff cannot be trusted to hold names in confidence.

I should back up and say that it is the policy of

ki 7:07

Staff never to reveal the names of witnesses or workers coming to the NRC inspectors with evidence of problems in the plant.

Those names are never revealed, and confidences are maintained. This particular suggestion does not support at all this allegation. All we heard was somebody came to -- one or more people came to the inspector, mentioned that there was some problem in the plant, and that the next day the problem was corrected. There is no evidence that any names were revealed, only the innuendo that somehow doing that compromised some individual.

I can assure you that the inspector would feel he was not doing his job if he came -- if someone came to him with an allegation or a concern that something was wrong in the plant, and he did not follow it up in some manner. And a more proper manner, appropriate manner, would be to mention it to the Company to see whether this was a concern, whether it could be fixed if it were a concern.

In short,the totality of what Mr. Guild has presented is unfounded. Although we would like to get to the heart of this matter by the in camera process, we feel that he has not supported his various innuendoes and allegations with respect to the Staff or the Applicant.

JUDGE KELLEY: Do I understand that the Staff does not object to the procedure that the Board's last order put

ki 7:08

forward, whereby people can come in and invoke the in camera process?

MR. JOHNSON: That's correct.

JUDGE KELLEY: We have pretty well gone over that topic, it seems to me. The Board will take it under advisement and try to issue a pretty prompt ruling.

Let me just say that with regard to the long list of things that we talked about yesterday, I think I already indicated that we are prepared to make rulings on panels and sequestration this morning, which we will proceed to do.

What we have in mind -- we now have yesterday's transcript and that will help us go back over what was said and decide some of these other issues. I suspect what we can do then is put on the installment plan, as it were, we will get over as much material as we can this evening and tomorrow morning announce some of these rulings probably tomorrow. Hopefully, we can get back to you with rulings by the end of the week on whatever got discussed, but certainly we don't expect to let too much grass grow before we get back to you. But that is, in general, our intention.

End 7

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The Board has magnanimously decided that it is warm in this courtroom and we will not require jackets in the courtroom if you wish to take them off.

On the subject of panels, we heard yesterday Mr. McGarry's description of what he intended to do in the way of panels and who he wished to present.

We do have an objection pending from Mr. Guild to the use of the panel device, and he would prefer our having a one-at-a-time procedure, rather than a panel procedure.

The general objective in using the panel device is to bring several people together who have overlapping areas of knowledge or expertise. And the theory is you can thereby develop a fuller and more manageable record, get a pretty comprehensive treatment of a topic at one time, rather than have it scattered out among a lot of different witnesses, and also to significantly expedite the presentation of testimony because of the knowledgeable people being together.

I might just observe that the panel device is very commonly used in NRC practice in appropriate circumstances. It has been blessed by the Appeal Board, I believe, in the opinion that Mr. McGarry brought to our attention yesterday.

But in any event, it's not a new thing.

Having made that general observation and bearing in mind what we were told yesterday, what we see ourselves

in the testimony, it does seem to us that panels are not an appropriate device for the welding inspector group. And we don't want to hear from them on a panel basis.

On the other hand, it does seem to us that the panel approach is an appropriate one with regard particularly to the corporate executives and perhaps more generally to those in supervisory or managerial positions.

The main legitimate concern that we see in the use of panels would arise if you had panels of people and didn't have prepared testimony.

And then, insofar as the concern about panels is couching and taking tips from your partner, shaping your testimony, that could be a problem.

But it just seems to us that in the case of prefiled testimony, especially while there is extensive prefiled testimony being filed by the executives and the managers and supervisors, their basic position on these issues is pretty well spelled out anyway. And there just isn't very much room for there to be tailoring of positions in an undesirable way.

In view of that fact, we do have a concern -- and I think it's a fair concern -- that Mr. Guild raised about the cross-examiner losing control of the cross-examination process.

And it seems to us that the ground rules are

important -- at least a few ground rules become important as we approach the use of panels.

There was reference made yesterday, using a quarterback system -- and I guess maybe the extreme form of that would be to have a panel of three or four people and then a designated leader, or quarterback if you will. And the cross-examiner would put a question, and then the leader or quarterback would decide who is going to answer it.

We don't think -- I don't know that that's been followed in NRC practice. But it is not being followed in this case. We think that takes too much control away from the cross-examiner.

So, we don't have an elaborate list of panel-questioning procedure rules to give you this morning. We think it would be a mistake to try to spell all that out. But we do want to indicate two or three guidelines that we intend to follow, and I will tell you now what they are.

In the first place, the cross-examiner would be entitled, when he is facing the panel, to designate which person is to answer the question.

We assume that most of these initial questions at least will be based on that person's prefiled testimony. Obviously, if he's asking about somebody's statement prefiled, it's that person that ought to answer the question.

We think, beyond that, that the cross-examiner

should be able to ask some follow-up questions, pursue it to some point.

But then, the purpose of having the panel -- and that is being able to supplement and bring in extra information -- ought to come into play there, so that when the original question answerer has said what he has to say and asked a follow-up, if there's somebody else on the panel that has got more light to shed on the question, he or she can speak up and say so.

And that would be the basic approach that we would like to take.

We think that should be on a speak up, in lawyer's parlance, sui sponte basis, rather than quarterbacking, really. We don't want anybody in there calling the shots on the panel. It's up to each panel member to decide whether he or she has got something to add, and they should speak up.

In addition, it would be perfectly appropriate from time to time for the panel members to confer among themselves about what ought to be said and search their memory. But that ought to be on the record so we have that process in, also.

That is about as much as we think we ought to say on this point.

We would like to add, merely, that we would like to see how the process works with those guidelines. It may

become apparent, after trying them, that we want to add another guideline or subtract one we just set. And we are free to do that.

And we will also be happy to have suggestions from counsel as we get into the process and get used to it.

But that is the approach that we are going to adopt for now.

JUDGE KELLEY: Okay.

There's a related point. A motion was made yesterday by Palmetto for sequestration of witnesses. And I should add at this point that we dind't have before us any detailed proposal for relief. And therefore, I think the record will be little less than crystal clear as to what we might have been exactly thinking about.

That is to say, for example, could a witness read a transcript, could a witness talk to the Company's lawyers, those things were not spelled out all that fully. Although I think they got adverted to eventually in the discussion.

There was a separate point, separate request for relief, which, on reflection, seemed to us to be not sequestration in the usual sense of the term. And that is there was a request that one named individual be excluded from the room when the welding inspectors were testifying.

Now, this, as I understand, was without regard to whether that person had testified yet or not. It was just

a request that he not be in the hearing room.

That we see as a somewhat different point.

The Applicant supplied us last evening with a Xeroxed copy of an Appeal Board decision in one of the many Midland cases. And I appreciate that. I have read it.

You just had the one copy. Mr. Guild got, I think, a glance at it.

But you don't have a copy yet, do you?

MR. GUILD: No, sir, I don't.

But I did read enough in it to offer an observation on that.

JUDGE KELLEY: Let me go through our points, and then we will see where that leads us.

The Appeal Board decision that I mentioned -- I think what is shows is kind of a complicated issue. And one cannot say, without qualification, sequestration is either good or bad under that rule of thumb and it purports to sequester witnesses apparently.

On the other hand, there are various showings that have to be made. That particular case involved Staff witnesses, and there was a distinction made between Staff witnesses and Licensee witnesses. So that it does require a little bit of thought qualification and not something one can describe in a phrase or two.

This motion for sequestration -- and we did

raise this yesterday, in the afternoon -- but it did seem to us, on reflection, that it could and should have been raised quite a bit earlier than it was.

I think if we had had a motion for sequestration, to argue about it at the prehearing conference, we would have been in considerably better shape than we are right now. And we don't see why that couldn't have been done at that time.

The fact that we had it yesterday afternoon in an oral motion form has disadvantaged us we feel. We are bound by NRC law and procedure. The Applicants happened to surface this case. I don't know if they know whether there are other cases on this point.

But in any event, we weren't in a position, really, to apply that law in the light of precedent, the way we would like to.

Questions of relief seem to us to be rather complex. You can't simply say "Sequestration motion granted." That doesn't get you very far.

You have got to figure out these things adverted to before, about transcripts and lawyers talking and all the rest. And that is something we don't think this Board ought to have to do in the first instance.

We do think parties seeking sequestration relief of this kind ought to propose a specific order for the Board and the parties to react to. Some of these procedural

differences can be significant. And until you see it down there in black and white, it is difficult to deal with.

We see a distinction between the corporate executives, on the one hand, and the welding inspector prospective witnesses on the other.

Once again, we already mentioned this problem or perceived problem of coaching among witnesses, and we can understand where that might be a concern with regard to the welding inspectors, given their situation and the kinds of problems that they were dealing with.

We don't see how that bears importantly on the situation of the corporate executives. Once again, they have written their testimony, they know what their position is. I assume they sat down among themselves and with their laywers and talked about their positions in great detail.

So that to say that we should keep them out of the hearing room lest they be influenced by testimony seems to us to be unrealistic.

Our ruling is this: We are denying the pending motion for sequestration. We are denying the entire motion on two grounds, timeliness and lack of specificity.

As to the corporate executives, we are denying the motion on the merits.

Now, as to the welding inspectors and other prospective witnesses, other than the corporate executive

level, if you want to specify them, we are going to leave Palmetto free to file a particularized motion for sequestration of those witnesses.

Now, we are sensitive to the resource problem and the fact that we are in the middle of hearing -- we haven't got typewriters about -- with us. We know about that.

We are not asking for an elaborate motion with an elaborate legal presentation.

What we do want though, if you want to pursue this, is two things:

We want a list of the names of the people that you want to sequester. And beyond that, we want a proposed order that would spell out just exactly what you mean by "sequestration."

That is to say he or she can't come into the courtroom until his predecessor has testified, whether they can talk to counsel, whether they can read transcripts. Those things are the things we want to see in print and to allow the other parties to see in print, also.

Now, there are really two other elements to such a motion:

One would be what are your specific reasons for asking that some specific person be sequestered?

And secondly, how does your request fit in with

the legal standards one finds in the Appeal Board decision?

We are willing to hear that on the record orally. We are not going to require that you write all that out.

If you would prefer to write it out, that, of course, is fine, too.

But if you would prefer the short-form approach -- that is to say the list of names plus proposed order -- then we can hear the rest of it on oral motion.

We believe though -- and we are going to require -- that if you want to make such a motion that the written elements, the list of names and the proposed order be filed by next Tuesday. And then we can set a time for the oral part.

Obviously, time marches on. Some of the people you are asking sequestration for are about to come up on the witness list.

So, if it's got to be done at all, it has to be pretty soon.

end 8

So, we would ask for the filing by Tuesday.

ki 9:01

Now, that filing, I have been using the term "sequestration," I think we know what that means. The kind of relief I referred to earlier, the exclusion of some particular individual from the hearing room, whether or not he or she has already testified, is not in our mind sequestration. However, if you want that kind of relief, put it in this request. Put it in by naming such a person and drafting a paragraph for the proposed order which says exactly what you want done.

Now, is my direction clear as to what we are authorizing you to do and when it needs to be filed, what needs to be filed?

MR. GUILD: Yes, sir. Let me ask a question. With all due respect, we take exception to the ruling and find it disadvantages us in serious ways.

JUDGE KELLEY: Let me just say once more, anytime you take exception and we rule against you, you've automatically got an exception to the rule.

MR. GUILD: The observation is that this disadvantages us seriously. What I am unclear about is what I perceive as a distinction that I think is a false and imprecise one between corporate management and welding inspectors. We are facing a panel that at the very first involves persons who directly supervise quality assurance function, and we have a personal involvement in investigating the welding inspector concerns,

ki 9:03

some doing face-to-face interviews. Two of the four panels have face-to-face interviews. A third have direct personal contact with a number of inspectors, and the fourth is a corporate QA manager who is ultimately the boss responsible.

Following that panel, we have a task force that actually did hands-on, face-to-face --

JUDGE KELLEY: Let me stop you on the first point now, the first people that you referred to. Why sequester such people? I mean our point is, look they're up in the corporate hierarchy, and of course they talk to each other. They've heard each other's testimony. What does sequestration add? It can inconvenience their presentation of the case, I know that. It can detract from the Applicant. What does it give you?

MR. GUILD: I think that the Board is correct in observing two fundamental differences that I think you called two fundamental aspects of sequestration or types. One is to avoid undue influence on another witness, and that's the presence in the room aspect that you alluded to as not fully sequestration, and that's probably what was criticized in the Appeal Board decision as I read it, the influence on potential testimony.

The second is the comporting or alteration, or coaching, if you will, of that person's own testimony to be. And as to these two aspects, this first panel let's look at,

ki 9:04

first I think this Board is going to have to evaluate the issue of what I'll characterize very generally, without trying to be judgmental, as misfeasance; misfeasance by a number of specific persons who happen to be not front-line construction workers, but persons with some managerial responsibility, the corporate QA manager, past and present, for instance. Their testimony, we would urge, will be altered and will be affected by the vehicle of, first, the panel and second, not being sequestered while the previous witness's cross examination questions are being answered.

That becomes even more difficult, Mr. Chairman, when we move to the second and third panels because then we move lower and lower on the totem pole, if you will. We're starting with the highest level people, what they had direct knowledge and involvement, and their, if you will, credibility and integrity is in issue. But when we get to the second, third, fourth, fifth and sixth panels, we start getting people who can be characterized as having some supervisory or managerial responsibility. They're hardly corporate executives. In any event, they have direct personal involvement in all of the issues, and the example I pulled yesterday, because it's come up before, is Larry Davison; he's the head of quality assurance at the project. But he is directly, intimately involved in his own acts with respect to allegations of misfeasance and his hands-on dealing with welding inspectors.

ki 9:05

I'm just saying, Judge, I don't know how to -- I hear your request and I plan to take it advantage of the vehicle that you offered. It's just that vehicle presents -- the need for that relief presents itself at the beginning. I'm prepared to do whatever the Board wishes me to do to take advantage.

JUDGE KELLEY: We've ruled out -- we used the term "corporate executive." That's not the most precise term in the world, but we've ruled them out. After all, we've already got them up here in a panel. As soon as you authorize a panel, sequestration goes about halfway out the window right there, doesn't it? You can't sequester members of the panel. They wouldn't be a panel, that's what I'm saying. It seems to me that's kind of obvious.

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We've said, on the other hand, if you want to request sequestration as to the welding inspectors, and they're in a somewhat different category, you can put forward an argument. We didn't draw a clean break line, if you will, as to exactly where we would let you ask for this.

We are saying that -- well, we start with the panel today, right, Mr. McGarry?

MR. MC GARRY: Yes, sir.

JUDGE KELLEY: With four people.

MR. MC GARRY: Yes, sir -- today we're going to start with two. That would be Mr. Owen and Mr. Grier. They

will give the overview of quality assurance. Then they will be joined by two others.

JUDGE KELLEY: Okay. And the two others coming in are who?

MR. MC GARRY: Mr. Wells and Miss Addis. They're going to inform us how the welding concerns arose, the welding inspector concerns arose.

JUDGE KELLEY: But they are both, if I may put it that way, corporate level people?

MR. MC GARRY: Yes, sir. Mr. Owen is the Executive Vice President of the Company. Mr. Grier is the Corporate Manager of Quality Assurance. Mr. Wells was a former Corporate Quality Assurance Manager, and Miss Addis is an official in the Employee Relation Department. She is the Director of Employee Relations.

JUDGE KELLEY: To move this ahead, as I say, we didn't draw a clean break line. I'm not sure we really need to, but in any event those first four we are going to rule will not be sequestered and will be in panel. We're saying you can file next Tuesday, specific people that you think ought to be sequestered, and we will see what your request looks like.

MR. GUILD: For the record, then, I didn't understand you had broken this panel up. Perhaps before we go forward, which I'm prepared to do, I would like to have a

ki 9:07

clear understanding that we're not taking the first four, which ones we are taking, and in what order, so I'll be able to anticipate, because I thought we still had a panel of four first off. That's what I see in the papers.

JUDGE KELLEY: I thought Mr. McGarry amended his paper yesterday. Maybe you could just restate it.

MR. GUILD: I probably didn't understand it.

MR. MC GARRY: That is correct. We did. Would you like me to go through it again, Your Honor?

JUDGE KELLEY: Why don't you do that? Were you going to restate?

MR. MC GARRY: I can either restate or it's in the transcript, and we can show Mr. Guild the transcript.

JUDGE KELLEY: Not the whole thing, but just for openers, the first two.

MR. MC GARRY: For openers, we have Panel 1, Mr. Owen and Mr. Grier. They are going to discuss, as I said a minute ago, the overview of quality assurance and the Company's compliance with appropriate quality assurance regulations. The next panel -- may I stop there? Mr. Owen's testimony will go -- will be the first 12 pages, up to line 22. Mr. Grier will be the first 34 pages.

MR. GUILD: I'm sorry. This is the first I'm hearing this. Owen is the first 12 pages of his pre-trial?

MR. MC GARRY: Mr. Owen is the first 12 pages up

line 22. Mr. Grier is the first 34 pages.

Panel 2 will be Mr. Owen, the remainder of his testimony; Mr. Grier, pages 34 through 46; Mr. Wells, total testimony; Miss Addis, total testimony. And they will discuss the history of welding inspector concerns and how they came about.

The next panel will be the task force panel, and that is identified in our document. That's Mr. McMeekin, Mr. Cobb, Mr. Neal Alexander, and Mr. Zwissler.

JUDGE KELLEY: Doesn't that take care of a couple of days? You said it yesterday, did you not? It's in the transcript.

MR. MC GARRY: I did. Yes, sir.

MR. GUILD: This breaking up of testimony wasn't mentioned yesterday at all. To the extent that now a witness's testimony is being broken up further and they are being added to double panels, at least with respect to Mr. Owen, that's the first I've heard of that.

JUDGE KELLEY: Okay. That's a good point. Yesterday -- I just remember your saying that different people would be in different panels. I don't remember, maybe you did break out the testimony, such as you just began to do.

MR. MC GARRY: Your Honor, we are checking right now, looking at the transcript. I thought I did. Let me just say, quite frankly, we prefiled -- we filed a letter with the

ki 9:09

Board identifying our panels. We're prepared to go forward with those panels. And if the Intervenor feels they're inconvenienced, we'll put on the first panel of four individuals. We thought, as we said yesterday, upon reflection it would be a little more manageable if we broke down two of the panels and indicated at least the first break.

JUDGE KELLEY: Do you have a preference, Mr. Guild?

MR. GUILD: I just want to know with some advance notice what I am expected to do, Judge. I heard him say yesterday he adjusted the panels, and I frankly didn't catch all of the details because he went through it rather quickly. Now I'm hearing for the first time how he's breaking it down, and I'm taking it down, and I will try to be prepared to go forward.

JUDGE KELLEY: Would you rather --

MR. GUILD: I'd rather have two witnesses on a panel than five, yes.

JUDGE KELLEY: So you prefer to go with the change, but you're just now getting the page reference?

MR. GUILD: Yes, sir. I must say I have a cross examination plan that is not reflective of that breakdown of their testimony.

JUDGE KELLEY: We can take that into account.

MR. GUILD: Mr. Chairman, what I was beginning to have reference to with respect to the issue of sequestration

ki 9:10

was, we would like an opportunity now, with maybe a 10-minute recess, to make a showing with respect to specific witnesses that they now tell us they intend to offer on the first panel, either the first panel as original or the first panel as amended. We have a specific request. I might only just state, before you rule on that request, that we only knew what their testimony was when it was served, which was after the 23rd, after the prehearing conference. We only knew of the panel proposal when it was transmitted, which was long after we had our opportunity face-to-face to raise these proposals.

JUDGE KELLEY: If you're asking us now to reconsider, we have already made a ruling as to what I have called the corporate executives as to the first couple of panels. We have crossed that bridge.

I listened to your motion yesterday on sequestration, and I wasn't that aware that it was keyed that much to exactly what was said in the testimony. I thought the thrust of it was you were concerned about people picking up clues, one from the other, and therefore you wanted the sequestration.

That is the sort of thing that we thought could have been argued a long time ago.

MR. GUILD: Mr. Chairman, all I can say, we didn't know who the witnesses were going to be until they were designated, which was not until the 19th --

JUDGE KELLEY: Mr. Guild, you came in here and said you wanted us to sequester every single one of their witnesses.

MR. GUILD: That's true. We believe it's an appropriate remedy generally.

JUDGE KELLEY: You should have known that six months ago.

MR. GUILD: Having denied that request, I'm prepared to within 10 minutes make a specific request and a showing individual witnesses on the first panel.

JUDGE KELLEY: Denied.

MR. GUILD: Then I would then ask that the Board exclude Mr. L. R. Davison from the hearing room, from the point where the first testimony of any witness on the subject of quality assurance at Catawba is offered, specifically that of Mr. Grier and Mr. Owen.

JUDGE KELLEY: This isn't that sequestration request in the sort of technical sense of the term, but rather a request that he be out of the room.

MR. GUILD: Yes, sir. And to be clear, my interest is in not allowing Mr. Davison to shape his proposed testimony, cross examination testimony, on the basis of responses to questions that I will direct to Mr. Grier, his superior, Mr. Owen, his second level superior, and to other witnesses with respect to the welding inspector incident of which I believe

ki 9:12

Mr. Davison to have personal involvement, and that his credibility and misfeasance will be the subject of evaluation by this Board. He should not be able to tailor his testimony or have the potential for tailoring his testimony to hearing or reading or being informed of the testimony of the witnesses before him.

JUDGE KELLEY: I was going to get to that. You're asking that he be excluded from the room. Can he read the transcript?

MR. GUILD: No, sir. I would be ask that he be enjoined not read the transcript of from having counsel advise him as to the testimony of others.

JUDGE KELLEY: Here we are at 11:55 on a Wednesday morning, ready to call these people. Is it news that you wanted Mr. Davison out of the room? Why wasn't this made a month ago?

MR. GUILD: They didn't designate their witnesses until the 19th, Mr. Chairman. They didn't file the testimony until the 23rd. You denied my motion to sequester all of them just now.

JUDGE KELLEY: This is just -- it is so disorderly to have to be focusing on this kind of thing at this stage. Is Mr. Davison your only concern at the immediate moment?

MR. GUILD: He is the witness that I can specify forever and ever and ever, ad nauseum, detail after detail

ki 9:13

after detail, him being pointed out by welding inspectors as the problem.

JUDGE KELLEY: I'll put it differently. We have denied your request as to corporate executives. But we haven't defined precisely, but I think we know what we mean. We have said you can file a motion next Tuesday as to welding inspectors and certain other people, if you see fit to do so. You may add in that motion people that you want to keep out of the room and keep from reading transcripts, whether or not they testify.

Now, my question is this. If we hear your motion on Davison right now, can you put the rest of your requests into your motion next Tuesday?

MR. GUILD: Yes, I will respond and put whatever I can in by next Tuesday. My only point now is to try to cure what I believe -- try to mitigate the harm that I believe will flow from the Board's ruling. I am asking that you exclude Mr. Davison before the first witness takes the stand. I don't know how else I can try to protect my witnesses on that matter.

JUDGE JOHNSON: Judge Kelley, just an observation. I have the written transcript, but I don't see that this is an item that was not spoken to quite fully yesterday. Mr. Davison's name was brought up. The request to exclude him was brought up. You're the best judge of what you're ruling

ki 9:14

on and what you considered. It seems to me this was made -- I'm assuming it was made available yesterday. He made the case as he had it, had adequate time yesterday to make this -- it seems to me that your ruling is adequate and fair with respect to allowing him to make any presentation next Tuesday.

I don't see any reason to relitigate and relitigate and let him control this thing so it delays the hearing in this case.

JUDGE KELLEY: Yesterday, my recollection -- I haven't read the transcript -- my recollection is that we heard the request about Mr. Davison primarily with respect to the welding inspectors.

Now Mr. Guild is saying he is concerned about Mr. Davison with regard to the corporate executive, which is a different class of people. These are people that are going to be here this afternoon, they're going to be here tomorrow, so it does seem to me to be a different request.

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(Board conferring.)

JUDGE KELLEY: All right. The Board just conferred on what we want to do. We have decided to hear Mr. Guild's request for the exclusion of Mr. Davison now. We do want to do this rather briefly. Is seems to us, consideration can obtain pretty straightforward and shouldn't take a lot of time. I would say five minutes apiece would suffice, bearing in mind we already talked about Mr. Davison somewhat yesterday. He is not a stranger to us, at least in the paper and presentations.

So Mr. Guild, if you want to make a motion that he be excluded, spelling out what you want and why, why don't you take about five minutes to do it and we'll hear from the other parties and the Board will rule after lunch.

MR. GUILD: Do I need to go forward now?

JUDGE KELLEY: Yes. Right now.

MR. GUILD: Mr. Davison is presently the Quality Assurance Manager at the Catawba Project. He formerly held the position of QA Manager Projects, plural, when there were more than one construction projects underway, and for a time was in the Charlotte office. But since the inception of construction at Catawba, he was a supervisor in the quality assurance function at Catawba. Mr. Davison's specific personal involvement in the subject matter of the welding inspector concerns comes up when we see Mr. Davison being the specific

individual to whom welding inspectors would take proposed Q1A forms, non-conforming item forms, having found deficient construction in their judgment, for failure to adhere to construction procedure or QA procedure.

Welding inspectors, pursuant to their understanding of then existing QA policy, would complete Q1A forms, non-conforming item forms, required under one of the criteria of Appendix B. This form would be carried to Mr. Davison, typically. He was the person who reviewed it. Mr. Davison allegedly, on a number of occasions, verbally voided the non-conforming items. In other words, without documentation he instructed the welding inspectors that they were in error or that the matter should not be documented as a non-conforming item, instructed them to throw the paper away, or do with as they will, did not log the non-conforming item as in the document control, did not make any written record to our knowledge, or according to the testimony in his deposition, as to the decision he had made as to the appropriate treatment of construction deficiency.

Mr. Davison continued performing that function, at the best of our understanding, from day one at construction through a period, I recall now, in 1981. I'm trying to remember this off the top of my head. When that function was handed over to a Mr. Charles Baldwin, who is also to be a witness in this case, Mr. Baldwin then held the position then held the

position of first line supervisor -- second line supervisor over welding inspectors. And he, learning at the knee of Mr. Davison if you will, according to his deposition testimony followed the practice of verbally voiding non-conforming item reports, overriding decisions of inspectors, to document construction deficiencies using the Q1A Form and not logging or documenting his decision, a practice we believe to have been not only a violation of Appendix B but bad QA practice and reflecting serious problems with the identification of construction deficiencies, the identification of root causes of construction deficiencies, the ability to note generic problems as they arose, and to take effective corrective action.

It also prevented the Nuclear Regulatory Commission from knowing of the deficiency, since as a practice the NRC resident received only the non-conforming item Q1A Form. If it was not documented on a Q1A, it was not handed up to the NRC. Further, it prevented the review of that deficiency for purposes of reportability under 50.55(e), a requirement of NRC regulation for significant construction deficiencies.

Mr. Davison's next involvement in the matter was in his response to the welding inspector concerns. Mr. Davison is reflected, in the documents that are available in the welding inspector concerns, as having discouraged inspectors from going to the NRC going back to 1980, long before the expression of welding inspector concerns. Mr. Davison is

accused of scapegoating welding inspectors when they brought up a problem. It would be the welding inspector who is targeted as the scapegoat, if you will, as the cause of the problem and not simply someone who had identified a construction deficiency. Mr. Davison was identified as consistently the source of failure of adequate management support for the QC function. He was largely the person who would acquiesce in the position of construction craft supervision over the welding inspectors.

Then Mr. Davison was actively involved in the process of investigating the welding inspector concerns.

JUDGE KELLEY: Your time is about up. Could you focus more on just exactly what you want, in the way of relief and what is that going to get you, on the assumption that Mr. Davison has already read all the prefile testimony?

MR. GUILD: Mr. Davison sits here in the room, listening to this discourse. Already it would seem he has the ability to focus and comport his likely cross-examination testimony, which we intend to offer when he takes the stand, on now at least three panels, offering judgments and opinions as to the adequacy of quality assurance.

The relief we're asking for specifically is to exclude Mr. Davison, henceforth, from the hearing, so that he will not hear the detailed give and take of cross-examination between Intervenor and Duke's witnesses, that he won't be

further comport his likely cross-examination testimony. There's no question about the fact that he is preparing himself for testimony. Of course he is. There's no question that he's read the documents. There's no question that he's read the prefiled testimony. But the fact that we cannot have a perfect remedy doesn't excuse or exclude the necessity for trying to frame a remedy, but produces the best, most spontaneous, most truthful and complete testimony once we get to him. And that's the point, Judge. We think that you will have to evaluate Mr. Davison's credibility, his integrity, his misfeasance -- if you will -- because that will be an issue, and his relationship to the whole welding inspector concern.

I don't think that you can accurately do that if Mr. Davison is able to sit in this hearing room, listen to each of the cross-examination witnesses, formulate his response when the questions are ultimately asked of him. That simply does not allow you to get a true picture of what his questions would be, uncoached by that additional information.

And so we would request that Mr. Davison be excluded from the hearing room, that he be enjoined from consulting with other witnesses or other persons about his testimony--his likely testimony. It's already prefiled, his cross-examination testimony. That he be enjoined from reading the transcripts of the testimony that goes ahead of him. We think it's a separate matter to deal with the welding inspectors and

I will accede to the Board's request to address that, in a filing, by Tuesday. But with respect to simply excluding Mr. Davison from the hearing room, that's an overview of his involvement and why I feel his character, his actions, will be the subject of evaluation and they may be affected -- your evaluation may be affected by his ability to hear and alter his answer through the testimony of others.

JUDGE KELLEY: What about consultation with counsel?

MR. GUILD: I think it is a fair and a not uncommon remedy to instruct counsel not to discuss a witnesses testimony under the circumstances. I'm going to use as an example when a witness comes off of the stand during the recess, in the course of cross-examination. It is quite common, in my experience, that counsel either by express instructions from the bench or by general understanding of the ethics of practice would not engage with a discussion with their client, if you will, about the remainder of his testimony to come on cross-examination. That is intended to be illustrative of a relationship that I would argue should be the relief we request here.

Mr. Davison is entitled to have advice of counsel, but that advice of counsel should not extend to counsel advising him as to his testimony or as to the content of the answers of other witnesses.

JUDGE KELLEY: Okay. Mr. McGarry?

101b7

MR. MC GARRY: Yes, sir. As we said yesterday, a request of the nature that has now been made today, is an u nusual request. It is one that should be thoughtful. It is one that should be researched. It is one that should be presented to the Board well in advance. And we take great issue with the fact that it is sprung on us on the second day of this hearing, without one shred of legal research going into such a significant motion and casting aspersions on the personal nature and personal conduct and personal integrity of an individual that is in this courtroom at this point in time. How would you like to be that individual, hearing these innuendoes cast about willy-nilly? Having them heard, having him been styled as participating in malfeasance.

This isn't the first time. It's been going on and having the Charlotte Observer reporter sitting in the courtroom as this goes on. We take great umbrage at that.

Now let's state some facts. The facts are these. On the 8th of September, we submitted a list -- hand delivered that list to Palmetto Alliance -- wherein we identified our witnesses, our proposed witnesses. Mr. Davison was indicated as one of those proposed witnesses and it said that Mr. Davison and Mr. Morgan are expected to testify concerning the quality assurance program at Catawba, the pay reclassification and resulting recourse of welding inspectors, the concerns as expressed by welding inspectors, the task force investigation

of those concerns, and the implementation of recommendations of the task forces at Catawba, including procedure revisions and other changes in the QA program.

The substance and facts and opinions to which Mr. Davison and Mr. Morgan are expected to testify, as well as a description of their education and profession backgrounds, are set forth in the transcripts of their respective depositions taken by Palmetto Alliance. And yet, almost a month after this document, we are now faced with this oral haphazard presentation.

Now it seems to us that there are two points that are before this Board. One is whether or not you're going to order that Mr. Davison leave this courtroom. And the second is whether or not you are going to order that Mr. Davison cannot speak to this counsel. Let's take the second one first. We referenced the Geders case to you yesterday and we think that is clear. We have an absolute right to talk to our clients. Mr. Davison is our client and our right cannot be taken away from us. Regardless of your ruling on sequestration, we want to talk to Mr. Davison. We will discuss with Mr. Davison precisely the testimony of other individuals. We will work with Mr. Davsion, such as his testimony is meaningful and responsive to the issues before this Board. What we said yesterday we will repeat again.

What we will not do is tell Mr. Davison what he has to say, because that is a violation of the canon of ethics and

that has been postscribed by Geders. And we will not do that.

We, in a variation or extension of that thought, we have the right and recognize that the case law to have experts to assist us here in this hearing, whether or not they testify. Mr. Davison is a critical part. He is the head individual of quality assurance at Catawba. Who, other than Mr. Davison has the deep background and knowledge of what transpired at Catawba then Mr. Davison. We need him. He is critical to our case. If he is not permitted to assist us in this courtroom, we feel that our rights have been compromised and our burden has been made heavier. We feel we will have been prejudiced.

Now, taking the first point, the sequestration, whether or not Mr. Davison should be excluded from this courtroom. As we know, sequestration speaks to whether or not Mr. Davison can listen to a witness prior to Mr. Davison testifying, listen to that witnesses' testimony. What showing has been made today, with respect to the impropriety of Mr. Davison listening to any of the management witnesses. You heard nothing in the five to ten minutes that Mr. Guild spoke with respect to management. What did you hear about? You heard about welding inspectors and the welding inspectors concern and fear of reprisal because Mr. Davison was working closely with them.

You heard not one reference to any fear on management's part or any fabrication of testimony on management's part. He did not address that issue.

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JUDGE KELLEY: Oh, I don't think he claims that management is afraid of Mr. Davison. I thought the claim was that Mr. Davison would pick up his cues by listening to the cross. That's what I understood, basically.

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MR. MC GARRY: We sit back here, and we listen.

Quite frankly, we take that as an insult. But that's an observation.

It's very easy to come in and yell, "The sky is falling. The sky is falling."

And the Board would say, "Oh, McGarry, we hear Mr. Guild say 'The sky is falling.' We're a little bit concerned. You tell us why the sky isn't falling."

What Mr. Guild has done here is said Mr. Davison is going to prevaricate, he's going to listen to what these individuals say, and he's going to tailor his testimony and he's not going to speak truthfully to this Board. That's what he's saying. And we're supposed to come in here and combat that.

We're telling you he's going to tell the truth. He has sworn under oath. And absent some strong showing that that's not the case, then this motion ought to be denied out of hand.

Now, let me continue, if I might.

JUDGE KELLEY: Your time is running.

MR. MC GARRY: Yes, sir.

With respect to the welding inspectors -- we would ask the Board to keep this in mind -- every single welding inspector in issue has submitted testimony in this proceeding. They're not afraid of Mr. Davison, because -- I'll tell you

one thing -- if you look at their testimony, Your Honor --

JUDGE KELLEY: My understanding is that the very narrow motion we're hearing now is whether Mr. Davison should be excluded between now and next Tuesday. And we will get to the welding inspectors when we get to them.

MR. MC GARRY: I understand.

The only reason I'm addressing this, Your Honor, is because we happen, as a matter of fact, to have members of the public and members of the press here in this room, and I would like to clarify the record. And I'll take 30 seconds to do it and I'll move on.

But the simple fact of the matter is that not a single welding inspector was so concerned as to not file testimony. They all came forward.

You have looked at that testimony enough. I said yesterday -- as I said this morning, that testimony is not in all instances rosy. Some of our testimony takes issue with some of the activities of supervision, of management. We wish they didn't, but they did. Enough. They had to do it. And they weren't fearful of bringing that to this Board's attention.

So, we say there's absolutely no basis, aside from innuendo, to support any sequestration of Mr. Davison. I think the gentleman has been submitted to quite a bit in the last several days and over the last several months. I think

the Board ought to come to grips with it and rule one way or the other, and then let's move on.

JUDGE KELLEY: Okay.

Mr. Johnson.

MR. JOHNSON: I will be very brief.

The Staff objects to this procedure. This is the second time in two days that we have been required to respond without any notice to this type of oral motion.

Yesterday we weren't prepared really to deal with it, and we assumed it was under advisement and was going to be ruled on this morning.

Again, it's taken up again with no notice.

Therefore, we feel the procedure you are adopting here is manifestly unfair to the other party.

And I just wanted to note that it's simply lack of notice.

Secondly, I don't believe the Board should consider, in making its ruling, any of the allegations that assumed that Mr. Davison would do anything but testify truthfully. There has been no evidence presented. All we have is innuendo.

It seems to me it would be improper for the Board to consider such material.

I have considered moving to strike that material from the record.

But I think it is sufficient for the Board to know

the Staff's feeling about this.

On the other side of it, it seems to me is that it's manifestly unfair to Mr. Davison to have all this, innuendoes and unsupported statements, in the record as to his integrity.

What's involved here has to do with procedures at the plant, judgment calls and matters that go to the merits of this case.

And I do not believe that, in any way, the honesty and integrity of this man is at issue here.

And I think that the counsel for the Intervenors has been not a little bit, but very unfair to this man.

And I think that the Board here is just aggravating the problem by letting him bring this up again in this way.

And lastly, I believe that there really is no basis to what has been offered. The only thing that Mr. Guild has said is that somehow, by listening to the testimony of the others, that Mr. Davison would conform his testimony.

It seems to me the only possible ground for that is to question his integrity and the truthfulness of his testimony. And that, I believe, should be excluded.

No other rationale has been provided. And I think there is no basis for the relief requested.

JUDGE KELLEY: Thank you.

The Board took it up the way it's taken it up

because we thought it needed to. Because if we didn't do it, it wouldn't get looked at at all.

I would add this, that it puts Mr. Davison or somebody like Mr. Davison in a very difficult position, and we regret that.

A number of things have been said that reflect on his integrity, very unpleasant things. And he doesn't have a chance to say anything right now. He just has to sit there and listen to it, and that is unfortunate. And we do regret that.

It did seem to us that Mr. Guild had a right to make his presentation -- even though we do think it's coming in late. And his factual thesis is such that it does reflect on Mr. Davison, as he stated it. And we have heard it, and we will consider the motion, and we will decide it.

It is now 25 after 12:00.

Now, I believe we have worked ourselves up to the position of giving opening statements when we get back from lunch.

Are there other matters that the Board is unaware of that need to be addressed? Or can we move to an opening statement?

MR. MC GARRY: I think that's the next step.

I would just make one inquiry, so that we have a complete record. We have not received any testimony from

Palmetto Alliance on Contention 16. We would like to know if Palmetto Alliance filed any testimony on Contention 16.

MR. GUILD: We haven't filed any testimony. We were unable to meet that deadline. We don't have testimony at this time on Contention 16.

MR. MC GARRY: We would like to know if they intend to file. We want to prepare our testimony. The deadline has come and gone.

MR. GUILD: We have a consultant who is working on Contention 16. All I can say, we are unable to meet the deadline that exists.

We are informed -- we are informed that Dr. Resnikoff and Mr. Audin are involved in a matter that has to do with spent fuel shipment from the West Valley facility -- It came up as a surprise, as a result of a judicial ruling -- it's been in the press the last couple of days -- large shipments of spent fuel out of the West Valley facility back to a number of facilities and were unable to meet the deadline set by the Board.

And we are trying to review the question of whether or not to request an opportunity to file his testimony at a later time, but we have not filed testimony -- written testimony on Contention 16.

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JUDGE KELLEY: It does seem that the deadline comes. If you're interested in filing testimony and you

can't make it, the appropriate thing is to ask for an extension.

I don't know whether, in this case, it makes a large practical difference, but there would have to be a time for us to assume, I suppose, if we're not going to get cases filed, we'll drop the contention. I don't know what else to do.

MR. GUILD: Judge, I would hope that whether or not we have direct testimony to offer on a contention would not settle the question of whether the safety issue is outstanding about the adequacy of the storage facility of spent fuel in Catawba.

I just represent to the Board that we have to rely largely on volunteer efforts by these men and that they were engaged, on an emergency basis, otherwise. They have agreed to provide technical assistance to Palmetto --

JUDGE KELLEY: I understand that. My point is this, if you are simply prepared to say, right here and now, "We're not going to have a witness we want to cross-examine," then Mr. McGarry can go and write his testimony.

But if you're saying "We've got somebody doing some work, and he'll be in here someday," that's a little different.

And it's time to fish or cut bait, isn't it?

MR. GUILD: We've got a lot of fish, and we're

trying to do it on a whole number of fronts, Judge, at the same time.

JUDGE KELLEY: I understand that.

MR. GUILD: I'm sorry, Your Honor, but I'm just doing the best I possibly can, facing the resources that I have compared to the resources of the Nuclear Regulatory Commission and Duke Power Company.

Now, the best I can tell you is we have got a man who hasn't agreed to try to put something together, not knowing whether or not it would be entertained. He has agreed to help as a volunteer. He is otherwise engaged on this, the deadline for filing testimony.

I may seek -- if I can persuade him to do it -- to file late testimony. But as of now, I am in default. I concede on the filing deadline.

And that's the question. That's the answer.

JUDGE KELLEY: Okay. The only point I'm making, I guess, is you know what the parameters are and that there can come a time, I suppose, when -- well, I've already said it, and McGarry says he wants to prepare his case; I understand that.

The longer you stay in the posture of saying "I intend to file testimony" -- but I don't know when there could come a point where that goes on too long and Mr. McGarry is going to come in and say, "The whole thing

is too late. Let's drop it." And that may not be an unfair position to take.

As long as you understand that, I guess that's all right.

MR. GUILD: Judge, I think that's fair.

All I'm saying is Mr. McGarry certainly will, as he has every time we've raised a point, raise untimeliness. And before it gets to the merits, he'll raise untimeliness if we ask for extention on filing testimony on 16.

All I can tell you is I can't give you an answer because I rely on this man's volunteer efforts.

I will check and get the word back as soon as possible now that the matter has been raised.

I appreciate your observation about the timeliness issue as well.

JUDGE KELLEY: Let me ask the other parties whether the present posture is satisfactory with them.

MR. MC GARRY: Your Honor, we really have no other choice. But, yes, it is -- we understand they haven't filed testimony.

We have filed testimony. We understand they have a right to cross-examine on that testimony.

But as you suggested, we have two individuals who have been alluded to that will compromise our preparation if we don't get their testimony in a timely fashion. If it

comes in at the last moment, obviously we're going to strike the testimony as being late-filed testimony.

But in terms of the issue, I think the issue is, indeed, before the Board.

JUDGE KELLEY: All right.

Any comment?

Mr. Johnson --

MR. GUILD: My only point is that I hesitate to ask for extensions -- I'm sorry.

JUDGE KELLEY: I said "Johnson."

MR. GUILD: I'm sorry.

MR. JOHNSON: I agree with Mr. McGarry. It seems to me that if we're going to have an orderly proceeding here, the only way to do this is for Mr. Guild to come to the Board before a deadline is due, and it comes to him, and make a showing that it's required in the Rules of Good Cause.

It seems to me the only legitimate interpretation of that rule is that this showing be made before the deadline comes about. I think that is fairly well accepted practice. And I think if you just allow this -- I'm not speaking to the merits of the need for the delay or not. But if we're going to have an orderly proceeding, it seems to me he has to be required to make his request prior to the deadline.

And I think we also would move to strike the testimony.

JUDGE KELLEY: But you would agree -- then we can go to lunch -- you would agree, wouldn't you -- and I think everybody agrees -- that the issue is joined, that the Staff and the Applicants have filed their case.

And then, the only real question now is whether Mr. Guild can violate testimony. He can cross-examine, whether he gets testimony or not; right?

MR. JOHNSON: Yes, I agree --

JUDGE KELLEY: All right. So, we're clear to that extent.

Shall we come back here, then, at 1:30, with the expectation of making opening statements, presumably in the sequence of case presentation that we have already set.

Okay.

(Whereupon, at 12:30 p.m., the hearing was recessed, to reconvene at 1:30 p.m., this same day.)

end 11

AFTERNOON SESSION (1:40 p.m.)

JUDGE KELLEY: On the record.

We have considered the parties' presentations on the motion that was argued just before lunch and we can announce a ruling on that. And then directly thereafter, we expect to move to the initial statement stage, followed by presumably the first witness.

The pending motion is a motion to sequester Mr. Davison from the testimony of the corporate executives who are in the immediately upcoming panel. Sequester, in this motion, includes exclusion from the hearing room, a prohibition on reading transcripts of the cross-examinations of those panels, and also certain limits on discussions between Mr. Davison and counsel, about his upcoming appearance.

We would just note briefly again, that we heard that motion now because it would otherwise be moot. The people involved will be appearing beginning this afternoon. Other such requests for sequestration or for some form of exclusion from the hearing room will be put forward from Palmetto on Tuesday in the form of the earlier outline.

Now I should add, just to be real clear on this, Tuesday's request ought to include any motion by Palmetto to exclude Mr. Davison from the hearing room during the testimony of the welding inspectors. That is not, as we understand it, before us right now. That's a separate issue. We see it

separately. It presents, in our view, some different considerations. We have an open mind on that, and if you seek that relief you should do it, but we are not reaching that today.

As to the issue that is before us, the motion to sequester with regard to the testimony of the corporate executives, we are denying that motion on two grounds. In the first place, we view it as untimely. It's coming in very late and I think it's lateness has prejudiced our ability, the parties' ability, to consider it. As we see it, the material facts bearing on the need or lack of need for this relief were known before the pre-hearing conference of September 12th, and should have been put forward at that time.

Apart from the timeliness aspect, we do not find the good cause showing ultimately persuasive. We are strongly influenced by the fact that we have prefile testimony -- it does pretty much set in place a witness's basic position on the fundamental points. We don't really think there's that much room for witnesses to maneuver once they have filed prefile testimony. But if their proclivity may be to maneuver or not to maneuver.

In addition, the concern about a witness changing testimony to make it fit somebody else's or "coaching", if you want to call it that, coaching in quotes is something that Palmetto could inquire into on cross-examination. For example,

if Mr. Davison were on the stand, Palmetto could ask whether he had spoken with some specific person about his cross and delve into that, if that were the case. There would be some limits on that, in terms of practicality, but that's a fair enough question to raise.

So it isn't that he can't reach it. He can't reach it by that device.

Another point that carried some weight with us, it seems to us that this kind of sequestration ought to be the exception and not the rule. Therefore, we would look for some really special circumstances that sets one witness apart from the generality of other witnesses. We didn't see that here with regard to Mr. Davison and the corporate executives. It seems to us that much the same point could be made about a goodly number of other witnesses that we have on the list. So that, too, weighed against the motions and those were our reasons. And that's our ruling.

MR. GUILD: Judge Kelley, I would ask that the record reflect that Mr. Davison is present in the hearing room and I would also ask if the record could reflect, in light of your ruling, the attendance and presence of others in the hearing room who will be witnesses. I won't ask that it be made at every point, but I would like a continuing notation that those persons, who we had asked to have sequestered, are present in the hearing room and are going to

be here on a continuing basis. So that, for review, the record will reflect that they at least had the opportunity for the harm to occur that we thought should be prevented by the remedy of sequestration.

JUDGE KELLEY: I understand your point. I wish there were some sort of simple, practical way that we could do that. You have already noted Mr. Davison is here. We know that, but a number of people in the back of the room, the Board doesn't know who all of them are. It's pretty hard to keep sort of a running track on who comes in and out.

MR. GUILD: I appreciate that. I would just ask -- I don't know who all these people are, either. I would note for the Staff Mr. Bryant and Mr. Van Doorn are present and have been. I would note that Mr. Wells I recognize as a perspective Applicant's witness. Mr. Owen, of course, is to come soon. Also Ms. Addis. Ms. Addis is present. I don't recognize the others, but those at least are witnesses who are yet to come who are present and have been. And Mr. Davison, as well.

JUDGE KELLEY: Okay. Well, Mr. McGarry, whenever you are ready to give your opening presentation.

MR. MC GARRY: Yes, sir.

OPENING STATEMENT ON BEHALF OF APPLICANT

BY J. MICHAEL MC GARRY:

MR. MC GARRY: This case commenced in June of 1981. It has been

difficult going since that point of time. It's been acrimonious at times. We hope that is now behind us. We are at the hearing. It is time for each party to put on its respective case. Quite frankly, we welcome that prospect.

We trust that we can move through this process in an efficient and professional manner. This case, at this stage, involves four contentions. Contention 5, which involves the quality assurance issue. Contention 16, which involves the spent fuel storage issue. Contention 18/44, which involves the embrittlement issue. And DES Contention 1', which involves the adverse meteorology contention.

At this time, we would address simply Contention 6, because that is what is before the Board. And perhaps at an appropriate time we can address the other matters.

JUDGE KELLEY: I think if we can do that later on, that it's better to focus on 6. I sort of assumed that's what people had in mind.

MR. MC GARRY: Contention 6 involves an allegation of systematic deficiencies in construction and company pressure to approve faulty workmanship, resulting in no reasonable assurance of protection of the public health and safety. In support of this allegation, Intervenors initially advanced Mr. Hoopingarner and Mr. McAfee. Collectively, they had 29 allegations. This Board, in ruling on summary disposition, admitted into the hearing 14 of those contentions. Of those

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14, there is overlap such that what will be before the Board are 10 specific concerns. They range from concerns concerning the protection of cable to allegations that instructions were given not to write NCIs.

NCIs are Non-Conforming Items. They are a procedure that the welding inspectors use. You will hear quite a bit about the various procedures that the welding inspectors use. You will become very familiar with the term NCI.

After the admission of discovery -- after the admission of contentions, discovery ensued. It particularly began, in this instance, with Contention 6, in December of 1981. Intervenors had asked about any disputes or disagreements. We acknowledged that there had been. We directed them to the welding inspector concerns at Catawba. There are 130 of those concerns. They range from concerns over pay, wages, to questions on specific welds. These concerns arose during a pay reclassification recourse procedure.

To explain, the pay grade of these welding inspectors was downgraded from a Class 11 to a Class 10. Some of these inspectors took issue with that reclassification and filed a recourse. This is a company procedure. During the recourse, they raised what had been styled as safety or quality concerns and those are the 130 concerns we make reference to.

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It also might be helpful for the Board to bear in mind that this pay reclassification took place shortly after the welding inspectors were transferred from the construction department to the quality assurance department. You will become intimately familiar with that transfer as we go through.

We identified the specific concerns raised by approximately less than 30 welding inspectors. We provided to the Intervenors Duke Power's Company response to those concerns. That response took the form of various task force reports. We also provided -- what were also provided to the Intervenor during discovery -- was an NRC memorandum from Mr. Van Doorn who was a resident inspector at Catawba. In that memorandum, allegation concerns respecting harrassment and falsification were raised.

In Mr. Van Doorn's deposition, he indicated that he used those terms in his memorandum to attract the attention of his management that there was a potentially serious concern here, not that there was harrassment, not that there was falsification; he was simply raising the red flag. His deposition shows that after a thorough investigation by his office, they concluded that indeed there was not harrassment and indeed there was not falsification. This information that was gleaned during discovery then formed a basis for the expanded contention. The Intervenors moved from a Hoopingarner/McAfee contention to another contention

ki 13:02

and that is the welding inspector concerns at Catawba. Essentially, the concerns can be broken down into two categories, first harrassment, second falsification. As we see the harrassment allegation, it is as follows, and it itself has two points. First, that Duke Power Company has harrassed welding inspectors by (1) the reclassification of pay, by the failure to transfer, by the failure to promote. Also, that Duke Power Company has harrassed by forcing inspectors to approve faulty workmanship under the threat of disciplinary action.

The second form of harrassment as we see it being alleged is that Duke Power Company has condoned harrassment by failing to properly address specific disputes between the welding inspectors and the craft. That is the harrassment issue.

With respect to the falsification issue, as we it, it is that Duke Power Company supervision has forced welding inspectors to falsify documents by stating that questioned work was acceptable. Duke Power Company's position is that these allegations have absolutely no merit and we intend to demonstrate that in shouldering our burden before this Board. Prior to outlining our evidence, we'd like to share some perpsectives that we think would be helpful to this Board. First, this is a large project, the construction of a nuclear power plant. Millions of activities are involved in building

a nuclear power plant. Tens of thousands of welds are involved in building a nuclear power plant. Numerous inspections are involved with respect to each of these welds. This case involves approximately 130 welding inspector specific concerns and 10 concerns of Mr. Hoopingarner and Mr. McAfee.

I think it would be helpful for the Board to bear in mind the nature of the job of the welding inspectors. It is the welding inspector's job to find errors, to have specific concerns, because then we know we have a proper quality assurance program and we have more reasonable assurance that the plant is being constructed safely.

In finding the errors,the Board should appreciate the natural tension that occurs in such a job, the tension that I, being an inspector, will have when I am telling the craft, the person performing that task, that they are doing the job wrong. I think the Board should also keep in mind the nature of the job site, the people, the craft at the job site, and the inspectors are hard-working, tough individuals, and what might appear as strong language to this Board might be commonplace on the job site.

Now, with respect to our evidence, the public has heard much about alleged quality assurance problems at Catawba, innuendoes of harrassment, falsification, and of an improperly-built plant. What the public has not heard and what this Board will hear is that these concerns have been

ki 13:04

fully explored and found not to pose a problem to the public health and safety, that Duke Power Company has not condoned harrassment, has not falsified, and has indeed properly constructed the Catawba Nuclear Station.

The Board will also learn that every single welding inspector who testifies in this proceeding will say based on that individual's work at the plant, that the plant is safe, despite the concerns that that individual might have.

This Board should also bear in mind that Duke Power Company is not attempting to downplay the concerns of the welding inspectors. Rather, we have chosen to bring these concerns before the Board in the person of each individual making that concern. These individuals are our employees. We stand behind them, and we stand behind their right to bring the concerns to this Board without any fear of reprisals

With respect to the evidence -- first Mr. Hoopingarner and Mr. McAfee -- our evidence will show that there is absolutely no substance to any of their allegations. Our evidence will show four things: first, that the individuals are either unfamiliar with the subject matter of the allegation; for example, that either Mr. Hoopingarner or Mr. McAfee overheard a person saying that a weld was improper or that a requirement could be waived. However, neither one of those gentlemen will have any familiarity or any knowledge of the weld or the requirement that allegedly is being waived.

ki 13:05

Second, numerous concerns, or several concerns of Mr. Hoopingarner and Mr. McAfee will be shown to be outside their scope of work. For example, Mr. McAfee was an electrical inspector. He has concerns over concrete being poured in the rain, clearly a matter outside of his expertise.

Third, we will demonstrate that several of these concerns were resolved to the satisfaction of these gentlemen while they were at the site.

Fourth, we will show that each and every allegation of Mr. Hoopingarner and Mr. McAfee which are before this Board have been thoroughly reviewed and shown to be without any substance and posing absolutely no threat to the public health and safety.

With respect to the welding inspector concerns, first the harrassment issue, I think it's important that we share with the Board our definition of harrassment. I have just shared it with you. We don't have a definition of harrassment. We feel much like Potter Stewart, Justice Potter Stewart, who when he confronted obscenity, couldn't give you a definition of obscenity, but he knew obscenity when he saw it. We can't give you a definition of harrassment. It is dependent upon the factual situation.

What we think the area of inquiry for this Board should be is, has Duke harrassed, given the factual situation, or has Duke condoned harrassment? And to that, we loudly say

ki 13:06

no. The evidence will show that the pay reclassification was entirely proper and cannot be said to be retaliatory. It was the result of the application of a recognized rating classification system. It was carried out by a group of knowledgeable experts. There were substantive reasons to support the reduction.

The Catawba welding inspectors were not singled out. The pay reduction applied to all welding inspectors, be they at McGuire, be they at Oconee, be they at Catawba.

It will also demonstrate that welding inspectors were not the only group that was affected by the pay reclassification. Rather, other inspectors, inspectors in electrical -- electrical inspectors, mechanical inspectors, various other components within the quality assurance department, the evidence will show that some of those inspectors' grades were raised, some of those inspectors' grades were lowered.

We will also demonstrate that the reclassification in pay did not result in a pay cut. What it did result in is the individuals not getting as large an increase. In any event, the welding inspector concerns became known to management afterward, and not before the pay reclassification.

End 13

As to the failure to promote or to transfer, we maintain that that was not entirely retaliatory. The evidence will show that the inspectors were given an opportunity to transfer at the time of the reclassification. Only several sought to be transferred and they were granted. Since then, the work load plus the completion of McGuire, and the need to take care of those people, has diminished the prospect of both transfer and promotion.

The evidence will show that there was no pressure to approve faulty welds. I would like to take a minute with respect to this issue.

JUDGE KELLEY: I want to make a comment. I want you to go ahead. I think you've already stated what's useful to the Board and everybody else. I will note you are around 20 minutes. How much more time about do you think it will take?

MR. MC GARRY: Your Honor, I have maybe five more minutes.

JUDGE KELLEY: Mr. Guild, you can assume you have comparable time. All right. Go ahead.

MR. MC GARRY: Thank you. The evidence will show that there is no pressure and was no pressure to approve faulty welds. I think it's helpful, at this point, to explain the setup. Verbal voiding of NCIs and technical support decisions, those are the two items that are to be confronted. The verbal voiding of NCIs involves the following type of

situation. A welding inspector has a question, as to whether or not there has been a violation, whether or not a certain procedure has not been followed. He would bring this concern, this question, to his supervision or to his management. It is Duke's position, and the evidence will show, that the supervision and the management, based on their expertise and a broader appreciation of the procedural requirements, in some instances -- and this was not widespread -- but in some instances, would tell the inspector that there wasn't a violation of procedure or that this instance could be satisfied in another fashion, and go about and do it.

Let me give you an example. Procedures say that when a welder finishes his assignement, finishes the weld, he is to stencil the weld, puts a number by that weld, its traceability and logistical administrative detail. A welding inspector would go up to that weld and he wouldn't find a stencil number. That is a procedural violation. The welding inspector would bring that concern to his management. The management would say, in this instance, go get the welder. Get him to get his stencil. Bring him over to that weld and get him to stencil that number on the weld. Technically, it was a violation. Management said it can be resolved this way. Let's resolve it that way.

That is one instance that you will hear. I'm not suggesting that that's representative of the entire situation,

but it gives you a flavor of what a verbal voiding of an NCI is.

With respect to the technical support decisions, when an NCI is written and as it was processed, it would go to competent engineers for review. They are the technical support. They would make an engineering judgment that a particular action was acceptable, even though the welding inspector found that it wasn't acceptable. Based on this engineering judgment, the matter would be resolved.

The question that will come up in this hearing is whether or not these welding inspectors appreciate the engineering judgment or appreciated the perspective that the supervision and the management had in resolving what they thought was a problem. And quite frankly, as the evidence will show, it was a communication problem at some point in time. But it does not mean that the work was done unsafely.

Now with respect to the issue of whether or not there was pressure to approve faulty welds, we say no. The evidence will show that the inspectors were given an opportunity to bring their concerns to the first level of supervision. The evidence will show if they were dissatisfied they could take their concerns up the chain. The evidence will show that indeed, this occurred, such that the inspectors have satisfied that appropriate action has been taken. They may not be totally satisfied with the resolution, but they will be

satisfied in the manner of the resolution.

Now, with respect to the second harassment allegation. And that is whether or not Duke has condoned harassment by failing to properly address specific disputes between the inspectors and craft. Again, we say no. The evidence will reflect that in the specific incidents, which will be brought to this Board, rather than condoning the situation, Duke thoroughly investigated and saw the corrective action was taken. This is a big job. It's a big job site. There is naturally going to be disputes and disagreements between individuals when we have over 4,000 employees. The question is does Duke tolerate this and condone it, when it impacts safety. And the answer, as the evidence will show, is no they don't.

With respect to the falsification issue, that again involves the verbal voiding of NCIs and the technical support issue, which I discussed a minute ago. The question, that you have to ask yourselves, is did these inspectors falsify the documents or did we, the company, cause these inspectors to falsify the documents? And the evidence will show that not a single inspector is saying that the work he approved rendered the plant unsafe.

The evidence will also show that, with respect to the specific concerns, there was not a single technical inadequacy. Rather, the evidence will show that if anything, it was a communication problem and the inspectors did not

completely understand the reasons of management's resolution of the NCI.

I think, as a final point, that this Board should bear in mind, as it goes through this case, that when we are talking about inspectors and the concerns that they raise, that we trained these inspectors to follow the letter of the law. We have strict procedures and we want them to follow them. We don't want them making those judgments on the gray issue. That is for supervision and that is for management. That's the only way we can control this job. And the problem that will be brought to this Board is how supervision and management resolved these gray areas and how they communicated the resolution to the inspectors. That's the issue here.

We maintain that in every single incidence that will be before this Board, that the matter at issue was indeed properly resolved and the public health and safety has not been compromised.

Thank you.

JUDGE KELLEY: Thank you, Mr. McGarry. The Board decided to allow these statements to be a little more open ended in time. We think it is useful. I assume that Mr. Guild may want approximately equal time on his statement, and he may have it. I'm not sure about Mr. Johnson needing quite that much time, but okay.

In any event, Mr. McGarry -- Mr. Guild, if you want

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to go now, you may go. Up to a quarter of, if you wish. And then we'll go to Staff. We might get a cup of coffee when you're through. We'll see.

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OPENING STATEMENT ON BEHALF OF PALMETTO ALLIANCE

BY ROBERT GUILD, ESQ.

MR. GUILD: Members of the Board, Palmetto Alliance is an organization, membership organization with members throughout South Carolina, and some members out of state, including some concentrations in the Charlotte area.

It has had a long history of work in the area of matters nuclear. Palmetto was formed in 1978, initially because of concerns on nuclear waste concentration in South Carolina, particularly focusing on the proposed Barnwell Nuclear Fuel Plant which had been targeted as the major nuclear reprocessing facility for nuclear waste.

We lived long with things nuclear in South Carolina. The South Savannah River Plant, major defense facility, with large amounts of high level waste has been with us for over 25 years. And we have an unusually high concentration of nuclear facilities. We are concerned about the subject, and have attempted to participate constructively in the public debate that has surrounded the development of nuclear technology in our state.

Early -- late in the spring of 1981, two young men contacted Palmetto Alliance. They said they had troubling experiences working for Duke Power Company at Duke's Catawba Nuclear Station. These gentlemen you will have a chance, after all of the preliminaries have gone by the board, soon

15:02 ki

to speak directly to you.

S2 Bu Of course, Ron McAfee, former electrical QC inspector at Catawba, another one, Rick Hoopingarner, a former scaffold builder at the Catawba facility, and both of these gentlemen contacted us and said, "Palmetto, we want you to help us oppose the operating license for the Catawba Plant. We believe it is not safe, it is not being built correctly, and it will endanger us and our families who live in close proximity to the plant in York County."

We looked at the matter, we weighed carefully, frankly, the prospects of participating in a hostile proceeding, because we are not so naive as to not observe the fact that this Commission has never denied an operating license for a nuclear plant, and that largely over the years, the NRC and its predecessor agency, the AEC, has been seen in this dual role of, in part, promoting the technology that it is bound to also regulate.

But we entered the fray, and we are here today. We are here today with very few of our large number of serious questions about this facility remaining as issues we will be permitted to litigate. This Board has applied the Rules of the Commission in ways that we can't criticize in specific, largely in the context of normal customary practice for this agency, and what started out to be this large number of issues ranging from the safety of the hydrogen control

ki 15:03

system to be used in the event of an accident, to need for power to be generated from this facility and the economics of the facility -- we are now down to the issues that Mr. McGarry has referred to in his opening statement. And before us today begins the issue that brought us into this case in the first place, and that is the quality of the as-built condition of the plant.

We raised the question in 1981 when we filed our Intervention. We raised it in the terms of the breakdown in quality control/quality assurance program for the site. We knew little detail, because the evidence, uniquely, is in the possession of the Applicants, Duke Power. We knew only of the experiences of two men, and that was Messrs. Hoopingarner and McAfee. But on the basis of their experience, we believed at the time that there had been serious deficiencies and systematic problems in the program design to assure that the plant was safely built.

Those fears and the experiences of those two men have been confirmed again and again and again in the most serious respects as we progressed through the period of discovery and learned more about how the job is done at Catawba. We were informed earlier by an anonymous letter that went to the Government Accountability Project that there was a saying that was on the men's john at the site. And the saying used to say, "We are the unwilling, led by the

incompetent, doing the impossible."

We learned the other day that that saying has been whitewashed, if you will, painted over. It is no longer there. But it's been replaced by something else, and the saying that now appears there, we understand, is "At Catawba we can do it again, but we can't do it right."

And we think that there is very, very serious and sweeping evidence that points inescapably in the direction of a systematic breakdown of the QA program. We hear the Applicants tell us, "Point out a bad weld, and we will fix it or show you that if it's been pointed out before, it has been fixed already. Point out a technical concern, tell us all you have, and we will address each and every one of them."

Of course, they will. That is their initial burden and one that any person, any entity in the Applicant's position is bound to do. The problem that we think cannot be escaped, though, is it is not an issue of whether each tree is properly grown, built, what have you; it's a question of whether the forest itself can be trusted to be as designed, and in this instance, as must be built in order to safely operate.

The fundamental premise for construction of a facility of this complexity, which I can characterize as sort of a lawyer's view, that is an inherently hazardous instrumentality, a facility whose technology we all understand cannot

be left to chance with respect to the quality of its construction or operation; that, because the agency before whom we are appearing doesn't have hundreds or thousands of inspectors to look over the shoulder of each craftsperson on the job, you and the agency must trust to Duke Power Company to be self-policing and self-regulating, for the most part, and therefore, the quality assurance requirements of Appendix B have been adopted.

They are to provide systems of checks, systems of independent verification, systems of documentation and processes, of detail and regularity as to provide a sufficiently high competence level that the plant is built the way it is supposed to be built, because all you gentlemen have before you otherwise is the 20 volumes of the Final Safety Analysis Report, telling you on paper how it should be done. The question really in issue here is, was it built the way they told you it would be on paper?

Now, we find very troubling the whole welding inspector incident. We think, first, that it is astounding to read and appreciate the fact that some 30 individuals cast their professional careers, their futures, their livelihood, and yes, perhaps their personal safety, before their employer, before those on the job who may not appreciate what they have done, and brought the welding inspector concerns before the management of Duke Power Company and the

Nuclear Regulatory Commission.

JUDGE KELLEY: I do find the last statement about personal safety rather disturbing. I know of no evidence in the case that indicates that that's true.

MR. GUILD: Judge, we hope to offer you an instance where a welding inspector allegedly had a rifle pointed at him by a craftsperson who is disgruntled with QC inspectors. If that isn't personal safety, I don't know what is. Threats to punch inspectors in the nose, push them off scaffolds.

JUDGE KELLEY: I'm certainly surprised. You do evidence to that effect?

MR. GUILD: Yes, sir. Absolutely.

JUDGE KELLEY: Go ahead.

MR. GUILD: We think it is just too glib to say, "We encourage the welding inspectors to come forward with all their complaints and address them, and we correct them, and we found them to be a communications problem," because, members of the Board, the welding inspectors are reflective of the very best that we will ever see working and trying to do their job and see that this plant is built correctly. They are of a class of people who we believe are exemplary of those who have brought quality assurance to the issue to the fore at plant after plant around the country. They are people who believe what they were told when they were trained to follow the rules, and when they find that the rules are

ki 15:07

ignored or waived, or only matters of convenience when they conflict with costs and scheduling pressures, they are troubled and at times, at times when they are pushed so far, they risk it all and bring those concerns to those who they really don't expect a favorable hearing from, but nonethless they bring them forward and ask that they be dealt with.

We think that the welding inspector concerns is reflective of serious, widespread breakdown in the quality assurance program. We don't question when a specific concern is enumerated, that Duke does not marshal all of its resources to see that that concern is either explained away, or that the hardware problem is fixed.

How would one expect a Utility to efficiently address a problem like that? Otherwise, it's much less costly to go in and cut the weld and do it over again, or have an engineer write a report saying the weld was acceptable in the first instance. So the adequacy of a corrective action for the specific concerns is not seriously to be questioned. These concerns, if you recall, arose during the course of this litigation. For months, this Nuclear Regulatory Commission Staff and Duke Power Company were processing serious safety concerns raised by quality control inspectors, and there was no notice to this Board of the pendency of those concerns. There was no notice to the parties of this proceeding that there were welding inspector concerns that

ki 15:08

were being investigated.

When Duke Power went to Atlanta Office of Region II and made their final presentation about how adequate their task force effort has been, a Notice of Significant Licensing Meeting was issued, but not served on any of the parties in this case or to the Board, to our knowledge.

Of course, Duke approached this issue with a mind and an eye to litigation, because one of the first things they did was to hire MAC, Management Assistance Company, Lewis Zwissler, the consultant who was principally, we maintain, to offer testimony in this proceeding as to the adequacy of Duke's response to these concerns. We maintain that both Duke and the NRC Staff did all they could to keep the lid on the welding inspector concerns. That lid did not stay on, and won't stay on. We maintain the Board will see that the concerns just will not go away.

We think that when one tampers with the independence of the quality control inspectors who are the first and probably last line of defense between a plant that is designed safe, but not built safe, that one calls into question the adequacy of systems and processes and workmanship far beyond the specific 100-odd items of substandard workmanship that were documented and obtained in individual inspectors' records.

When one cuts the pay of welding inspectors as a

class, does one do that simply as a shortsighted economy move that, in the long run, wrecks such bad morale that it would be undone; or does one do it because with the rush of cost and scheduling pressures, one was troubled by the welding inspectors doing their job too well, and therefore interfering with the primary end of finishing this plant on time and under budget?

We think that when Duke crows that it is unique in the industry because it not only designs, but also builds and operates its own nuclear plants, it must accept the down side of that uniqueness as well. We don't dispute that Duke stands large in the industry and that it has undertaken these sweeping responsibilities. We question, though, that on the point at issue, the adequacy of the quality assurance program at Catawba, that that uniqueness bears ill for the central requirement that quality assurance be independent of cost and scheduling pressures.

You will see evidence from the very outset, there has been a conflict between cost and scheduling pressures on the one hand and quality assurance and quality control on the other. That conflict extended from Day 1 at the plant when Mr. Lee, the chairman of the board, wore two hats, in charge of construction engineering and QA, up until 1981 when the quality control inspectors were finally removed out from under the construction department and put in an independent

ki 15:10

QA department; and, further, when the welding inspectors and others had their pay reclassified, we see the implications of downgrading the inspection function with the effect that it had in producing the welding inspector concerns.

We know the practices that were followed in the case of the welding inspectors reflect practices that were followed in all other areas of the construction of Catawba. We have pending before this Board a motion to expand the scope of what has now been allowed to be litigated under Contention 6 to include a number of other craft areas where we believe the kinds of QA deficiencies that are reflected in the welding inspectors' experience bear on the quality of workmanship.

We think that the welding inspectors are unique, though, in this respect. First, we have inspectors who are probably the most experienced and qualified inspectors on the job site, remembering, as the Applicants have stated, welding inspectors, until up recent times, were required, first, to be senior welders before they were allowed to undertake the additional responsibility of inspection. These gentlemen then knew their job. They simply weren't applying, by rote, a set of standards of rules for inspection without a knowledge of the underlying details of the craft work they explored. And so, of any inspectors on the job site, these welding inspectors knew what they were looking at when they looked at

ki 15:11

a weld, and they knew the importance of following construction procedures that are applicable to their work.

Contrast the admitted state of knowledge and experience and training that Mr. McAfee will bring to you, who is an electrical quality control inspector, a graduate in biblical studies, who had had no prior construction experience, who had no inspection experience, no electrical experience, is turned virtually overnight into someone who is inspecting electrical work at the Catawba Nuclear Station.

Now, the welding inspectors knew their job, and they had the gumption to say when something was wrong that they saw, and to take it up. But they took it up to the same QA supervision that was supervising quality control inspectors in all other craft areas -- Mr. Davison -- Mr. Davison, who was QA manager of projects, QA manager at the site, and the technical support engineer before that, holding essentially the same responsibilities -- to review inspection work.

The statement in his deposition that practices followed by the welding inspectors with respect to verbally voiding nonconforming items, with respect to not documenting the decisions to not treat identified deficiencies as reportable items occurred in other crafts, as well as the welding area -- one can only wonder about the inspectors who have not come forward. The welding inspectors teach us an important lesson, one that should be applied to the plant in general.

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Let me mention the point about the role of the Staff, the role of the NRC in probing this.

Early on, the welding inspectors, after bringing their written complaints to Duke management, communicated directly to the NRC resident inspector, Mr. Van Doorn. His documentation reflects, some months later, that they had met with him the first of February. A number of inspectors had come to him. They came to him using those red flag words that counsel for Applicants point out. We understand them as they are used.

Inspectors complained to me of falsification, harassment, lack of management support, going back years, at Catawba and of the feared Duke whitewash of our concerns, a whitewash which will be in the form of couching our complaints as mere disgruntlement concerning the pay reclassification. That was brought to the attention of the NRC virtually on day one. And the decision was made to allow Duke to use its own task forces, its own consultants, to do its own soft-policing on this issue.

And all the NRC did was going after the fact and what we say "rubber-stamping" the decisions already made by Duke Power to, as the welding inspectors termed, "whitewash" their concerns, characterize them as mere communication problems and ones that bear no significance to the safety of the facility. We think that's wrong. And we think, as

we mentioned earlier today in our motion for what we characterize as protective order -- we think that you should look carefully at the welding inspector concerns and view them from their shoes, put yourself in the position of a man whose livelihood, whose family, whose perhaps personal physical safety is being risked because of his commitment to see that the job is done right.

Anybody knows that when you work for an employer you are not expected to make waves. You put criticisms of your employer in writing only at risk to yourself; that's common sense.

And look at those complaints and think about you being an hourly paid inspector who is assumed to be in a career track to stay with Duke Power Company for another 10 years over the 10 you already worked, and balance and weigh what kind of risks those gentlemen ran. When you do that, we submit, and consider the current statements of sworn testimony by a number of these inspectors, that, as of this date, they still fear reprisal, they still believe they've been discriminated against for having raised these concerns, and the testimony that we urge you to consider carefully yet to come from other workers outside of QA who can tell you about the level of chill and fear on the job site today -- and we submit that, having weighed that, you will give a proper -- attach the proper significance to the

fact that the welding inspector concerned came to the fore at all.

And then we would ask you to consider the logical inferences that you must draw.

Now, our concern is, in short, that since the quality assurance program at Catawba is fundamentally flawed in its implementation, as you will hear, that the independent check, if you will, on the as-built condition of the plant cannot be relied upon for the purpose for which it is intended. And that is a source of reasonable assurance that the plant can safely operate.

We have pending before the Board a number of motions that ask to expand the scope of Contention 6, ask for a number of pieces of remedial action that we can see are unusual or perhaps unprecedented.

We are asking this Board to order an audit of construction- and safety-related areas of the plant. We are asking the Board to take hold of the relationship between the Applicants and their employees to see that the concerns that are held come to your attention, with or without Palmetto Alliance's participation.

We are asking you to entertain and welcome the assistance from the Government Accountability Project to bring to your attention quality assurance and safety problems before it's too late, before the plant is licensed, before

the public health and safety is threatened.

So, we approach the hearing today understanding that what we have before us is a mere shadow of the issues that we know must be addressed before a final judgment is in on this plant. And we do so because we think that the welding inspector concerns, which is the focus of the Applicant's case, together with the McAfee and Hoopingarner concerns, are so illustrative of the larger problems that we maintain are crying to be addressed, that we think it is healthy, it is useful to proceed as we now are set to do.

One word about the question of decorum, if you will, of acrimony, of ill will. It troubles me to have to name a name and say things that obviously go to a man's integrity or reputation. But I am not making these things up. These things come from documentary evidence from Duke's own employees or from the words and mouth of the subject.

The Board observed early on that this contention inherently involves the issue of misfeasance by the Applicant. And I think the Chairman observed at an earlier point that it is inevitable that things will get heated in the course of this litigation.

I would say that it's important to me to be treated with respect. It's important for me, despite some perhaps inherent conflicts with this tribunal. Because, to be honest, I don't expect that you're going to deny a license for this

plant. I think it would be naive of me, and I would misadvise my clients if I said otherwise.

But I ask respect. And despite the heated nature of the issues, I ask you to recognize the difficulty of our position, trying to bring these before you, members of the Board.

We look forward to doing -- to a hard job, one that we think is important and is absolutely essential, to see that the public must live with this plant inevitably, is well served.

Thank you.

JUDGE KELLEY: Mr. Johnson, about how long do you need?

MR. JOHNSON: Between five and ten minutes.

JUDGE KELLEY: Why don't you go ahead.

Thank you, Mr. Guild.

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OPENING STATEMENT ON BEHALF OF THE NUCLEAR REGULATORY COMMISSION STAFF BY GEORGE E. JOHNSON, ESQ.

MR. JOHNSON: As has been stated, the issue on Contention 6 is, first, whether there has been systematic deficiency in the construction of the Catawba plant and, secondly, whether there has been any Company pressure to improve faulty workmanship which would prevent a finding that there was reasonable assurance that the health and safety of the public will not be endangered from the operation

of the Catawba facility.

The Standard of Reasonable Assurance is found in 10 CFR 50.57. This reasonable assurance standard is a predictive standard, and the contentions essentially assert that the Applicant's record of construction activity -- on the one hand, the way in which the plant physically has been built; second, the process by which the Applicants have sought to assure the physical plant has been built correctly, according to code standards and various requirements, has been deficient, so as to cast doubt on a determination of reasonable assurance.

The primary regulatory basis for determining the adequacy of the Applicant's program for assuring that the plant has been built correctly is Appendix B to Part 50 of The Code of Federal Regulations.

In accordance with Appendix B, the Applicants were required to include, in their preliminary safety analysis report, a quality assurance program applicable to design, fabrication, construction, and testing of structures, systems, and components related to safety-related functions.

The focus of this contention is on construction and upon the quality control aspects of quality assurance -- that is, the means by which the Applicants have assured that the physical characteristics of material structures and components and systems in the plant had been build to

predetermined requirements.

Thus, while th licensing action here involves an application to operate the Catawba facility, that determination is, in part, based upon the way in which th activities for which Applicants already have a license have been conducted.

This is where the NRC Staff plays a unique role. The Staff has an ongoing inspection program, including the placement of a resident inspector for construction at the plant site, to review the Applicant's implementation of the quality assurance program, which Applicant is required to have in place and is reviewed and approved by the Staff prior to construction.

The inspection program reviews this implementation of the quality assurance program based on requirements of Appendix B. Thus, even without a contention in a licensing proceeding challenging the adequacy of the implementation of Applicant's quality assurance program, the Staff is engaged in the process of assuring that the requirements of Appendix B are met.

Thus, while at this hearing, as this hearing process has progressed, the Staff has involved its inspectors in preparing affidavits and testimony

Nearly all the inspections, reports, and similar documentation on which the Staff position is based were not

related -- were not created with the hearing process in mind, but rather in the sourse of the execution of the Staff's ongoing inspection activities at Catawba.

The testimony which the Staff will present is that of two inspection personnel: Peter K. Van Doorn, Senior Resident Inspector for Construction at Catawba since February 1981; and Jack C. Bryant, former Section Chief of Region II of the NRC, who supervised inspection activities at Catawba during most of the period of Catawba's construction through the end of 1982.

Mr. Van Doorn's testimony addresses that part of the contention, which is based on concerns Catawba welding inspectors raised in late 1981. These concerns involved technical matters relating to the adequacy of particular welds performed at Catawba, but are primarily technical and nontechnical matters, relating to the adequacy of procedures and methods employed in Applicant's program for inspection of welding at Catawba, which generally fall into the area of quality assurance and quality control.

As Mr. Van Doorn's testimony states, from the time these concerns came to the attention of the NRC and well before they became the focus of this contention, the Staff has closely followed developments.

Mr. Van Doorn reviewed the concerns of the inspectors at each stage of Applicant's activities addressing

these concerns, including each of the task forces' created findings and recommendations of the task forces and the implementation of their recommendations.

Mr. Van Doorn interviewed all the inspectors who had complaints and others, and conducted a detailed documentation review of each of the concerns and the Applicant's responses thereto.

He also has witnessed various implementations of corrective actions undertaken -- such as new training provided to inspectors and supervisors.

The conclusions reached by Mr. Van Doorn have been made a matter -- have been a matter of public record in inspection reports, well before these items became subject to this contention, starting in September 1982.

Mr. Van Doorn concludes that Applicants recognized the problems that did exist, appropriately evaluated the concerns raised, and implemented appropriate corrective actions.

He finds that the fact that no significant technical discrepancies were identified as a result of the intensive investigation of the welding inspector concerned provides confidence that the quality assurance program at Catawba is, in fact, proper.

He also finds that the various changes in procedures training and management awareness growing out of

the welding inspector concerns should make the quality assurance program work well in the future so as to preclude any significant construction deficiencies.

Mr. Bryant's testimony addresses the specific allegations of Ronald McAfee and Nolan Hoopingarner, which they assert is the basis for contending that there are systematic deficiencies in construction and pressure to remove faulty workmanship at Catawba.

Mr. Bryant's testimony is based on numerous inspections at Catawba, not only dealing with the specific allegations made, but other inspections, dealing with the adequacy of Applicant's implementation of its quality assurancy program.

His testimony illustrates the the type of long-term attention the NRC has given to assuring the adequacy of that program.

Mr. Bryant concludes that instances of construction deficiencies and alleged poor quality assurance practices were either unsubstantiated by the facts or deficiencies which were identified and corrected, indicating that Applicant's quality assurance program was, in fact, working.

Based on this testimony, the Staff reaches the conclusion that there is no basis for a finding that systematic deficiencies in construction at Catawba have

jl 16:11

occurred or that Company attitudes and practices put pressures on inspectors, which would have a negative effect on the safe operation of the facility.

JUDGE KELLEY: Thank you, Mr. Johnson.

It has been useful to get an overview from each of the three parties on this contention.

The Board is inclined to take a ten-minute break. And then, I think the next order would be for you to call your first witness.

MR. MC GARRY: Yes, your Honor. We will call Mr. Owen, Mr. Grier, and the first instance, as we said yesterday, we will move the formal documents, the ER, the FSAR, the QA Topical and then they will be prepared to give their testimony.

JUDGE KELLEY: And they are prepared to present an overview summary of their written testimony; is that correct?

MR. MC GARRY: Yes, sir.

JUDGE KELLEY: Thank you.

Let's take ten minutes or so and then reconvene.

(Recess)

End 16

JUDGE KELLEY: Okay. We are back on the record.

Mr. McGarry, you indicated earlier -- I guess you first indicated yesterday an intention to move the introduction of the documents. Is that correct?

MR. MC GARRY: That is correct, Judge Kelley.

JUDGE KELLEY: Would you refresh my recollection. There was a question about the distribution, at least for the FSAR. Mr. Guild indicated he had a difference with your approach. I don't believe we actually argued any of that, simply adverted to it.

MR. MC GARRY: That's correct. I will state our position. We're talking about four documents. The first document is the Final Safety Analysis Report, which is called the FSAR. The second document is the Environmental Report, we refer to as the ER. And the third -- included in those two documents, of course, is our license application.

In the third document will be our Quality Assurance Topical Report. The fourth document would be our Quality Assurance Manual and just for the Board's edification, I might explain the QA Topical is how Duke satisfies the Quality Assurance information requirement of the regulation, the Chapter 17 information. They have chosen, since they have so many plants, to do one master Quality Assurance -- prepare one master Quality Assurance document that applies to all plants. And that's called QA Topical.

171b2

Those four documents we will move in evidence through these two witnesses, Mr. Owen and Mr. Grier. The question, I believe, that came up yesterday was the number of copies and how we can facilitate it. The regulations require that when we move a document into evidence, as an exhibit, we furnish three copies to the court reporter, which will then work their way up to Washington, D.C. And each party should be provided a copy. Now in this instance, the Board has a copy of the FSAR, the ER, and the QA Topical Report.

JUDGE KELLEY: I'm sure you're correct. I don't believe I have it with me. Was that served at some early point?

MR. MC GARRY: It was never served. The way the process works is that when we file our application -- and this was several years ago, 1981 I believe -- we furnished 40 copies of this document to the Nuclear Regulatory Commission. The Nuclear Regulatory Commission will distribute. One goes the Public Document Room in Washington. One goes to the local Public Document Room. My understanding is one works its way to the Board.

JUDGE KELLEY: All right.

MR. MC GARRY: The Staff has a copy of the filing, the FSAR, ER, and QA Topical. The Intervenors have a copy of the FSAR, the ER, and the Topical -- the Palmetto Alliance does. Now that being the case, since all the parties have

copies of those three documents, we maintain that our burden is simply to serve three copies upon the court reporter and, parenthetically, what we will do is simply, as a convenience to the court reporter, once they are marked we will see that those three copies find their way to Washington, D.C., to the Public Document Room, because that's where the court reporter would take them.

Again, it's a convenience because of the weight and size. How in the world the court reporter's going to get them on the airplane and bring them back to Washington? So we will facilitate that. But that is their job.

With respect to the Quality Assurance Manual, that's a Duke internal document and we will provide copies to the Board and parties today. We have five copies today of that document and we will get more copies. But we will give a copy of that to the Intervenors, to the Staff, and the three Board members. And we will provide the three copies to the court reporter at an appropriate time.

JUDGE KELLEY: When you move the admission of these particular documents. We mentioned yesterday the complication -- we realize Palmetto may have an objection on the issue, but at the moment I want to ask Mr. McGarry a question. Is it in your view, a requirement to take the FSAR and ER -- a legal requirement -- that these documents be in the record?

MR. MC GARRY: That's a curious question, Your Honor. We always thought that it was a requirement and to satisfy our burden, we traditionally move these into evidence. But as I read the San Onofre decision of March 4, 1983, 717, there seems to be an indication that that is not the case. And I understand why you're raising the question. I can just answer that we have always operated on the assumption that indeed it should be part of this hearing record.

JUDGE KELLEY: Then the next point, I guess, is I suppose the time will come, maybe it will be the Staff who will offer the so-called ACRS letter and there is a statutory provision in the Atomic Energy Act that says in so many words, that letter is to be in the record. So I think the practice is from the Staff to duly offer the letter, really for the fact that it exists, and not for the truth of the matter stated therein, as people learned in hearsay are familiar with that phrase.

Are you offering the FSAR for the truth in the matter, as asserted therein, or just to show that there is a thing called the FSAR, that you duly complied certain documents.

MR. MC GARRY: Yes. I think that's the case with respect to these four documents. They do exist. Here are these documents. They're part of the record. But as I said yesterday, with respect to relying upon these documents,

if we do we must provide a specific witness -- which may not be either one of these gentlemen -- so that Mr. Guild and the Board and the parties will have an opportunity to cross-examine.

Now what we have chosen to do, I think in every instance, is to provide testimony rather than relying upon the FSAR and ER. And those witnesses of ours will be subject to cross-examination. If they, indeed, rely upon the FSAR, they will reference that section of the FSAR so that the parties can cross-examine on that. I think that is the teaching of San Onofre.

JUDGE KELLEY: Fine. I'd like that clarified for the posture that the papers will be in. Mr. Guild, any comments or suggestions?

MR. GUILD: Yes. If I assume that this colloguy represents a motion to receive those in evidence -- I will assume it does. And I'm going to pose an objection. The objection is to the FSAR and ER, is that we properly view those as pleadings, as formal documents that are obviously hearsay in character, in the sense that I don't see -- I don't presume that Mr. Owen or Mr. Grier is being offered as a witness as the author of those documents, capable of being examined on the subject contained therein. And I have heard the exchanges between the Chair and counsel for Applicants. If I understand that they are not offered for the truthfulness

of the matters contained therein, therefore this Board can simply turn to Chapter 10 of the FSAR and say we find as stated there, that emergency core cooling system is safe. Then perhaps our objection is more of a technical one. We view them as pleadings. They can be noted and received as pleadings, but we would oppose receiving them for proof of the truth of the matters contained therein.

JUDGE KELLEY: Okay. Any comments?

Mr. Johnson?

MR. JOHNSON: Well, the Staff has prepared -- not at this point because we don't have enough copies -- but at the appropriate time the Staff will present the SER and the supplement to the SER. And in its supplement to the SER, number one supplement, the first supplement contains the ACRS letter and the Staff's response to it. And we would also offer the Final Environmental Statement.

With respect to your question before now, would you like me to comment on that?

JUDGE KELLEY: Yes. I think really, until that San Onofre business came up, I don't think you could ever really look at a book anywhere and get the answer to that question. We just did it a certain way and nobody ever objected. All of a sudden that was an objection so it goes up to the Appeal Board and you've got that looking at you. Do you understand -- does the Staff believe that the FSAR is required to be in the

record in this case, either for the truth of the matters asserted therein or simply as evidence that an FSAR was indeed compiled? Those are the only two ways that I'm capable of thinking of them. Or do you think it doesn't need to be in at all?

MR. JOHNSON: I would subscribe, at least, to the latter or the middle point that you made. That is, that it should be in, at least for the purpose to show that it was submitted for the record. And since the SER is in, has to be by regulation, in the record, and it is a review of the FSAR it is relevant to matters that are considered in the SER. And if there are portions of the FSAR that are going to be relied upon, then those can be sponsored. It seems to me that that is close to what Mr. McGarry was proposing.

JUDGE KELLEY: I'm not clear. Has anybody offered the SER yet?

MR. JOHNSON: No. But let me just say this, there is a kind of a technical problem with respect to offering the FSAR. And that is there are many amendments to it and it is continually being amended. And the logistics of supplying such a copy for the record, I would imagine, are great.

JUDGE KELLEY: My recollection was that the amendments were being served on the parties, as a matter of course in this case.

MR. MC GARRY: That is correct.

171b8

JUDGE KELLEY: So that's not a practical problem, I don't think.

MR. MC GARRY: That is correct. Your Honor, could I address one other point. Picking up on your question, I think those portions of these documents which are not in controversy can come in for their truth. In other words, a document that has no bearing on any of the issues -- an area that has no bearing on any of the issues in this case, can come in for their truth because they're not controverted.

But with respect to controverted portions, we must provide the sponsoring witness. And that is how I read San Onofre.

JUDGE KELLEY: Okay. It's one of those lawyer's points that we could probably spend another hour, if we wanted, on it. One of the reasons you say put them in for the truth if they're not in controversy. If they're not in controversy we, by definition, aren't interested in them as a Board.

MR. MC GARRY: That's correct

JUDGE KELLEY: Okay.

MR. MC GARRY: That is correct. And, Your Honor, interestingly enough I told the two witnesses sitting here that we may very well take about an hour before we get to them.

JUDGE KELLEY: Well, we hope you aren't going to be proved to be a prophet.

MR. MC GARRY: I do also.

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(Board conferring.)

JUDGE KELLEY: We will announce a ruling on this. A motion pends.

MR. GUILD: Do I understand that all of those four documents have been just offered?

JUDGE KELLEY: My understanding is that four documents, the FSAR, the FES, and the two QA documents, the QA Topical Report and the QA Manual, have all four been offered into evidence, but not for the truth matter as asserted therein. At least that's one option that has been put to the Board. And -- well, basically, that's the posture, as I understand it.

MR. GUILD: I'd like to -- we only addressed the FSAR. And if I might --

JUDGE KELLEY: Yes. Surely.

MR. GUILD: My objection --

MR. MC GARRY: Mr. Guild, if you'll indulge me for a moment. I think just for formality purposes, we ought to swear the two witnesses in and ought to ask them about 30 seconds worth of questions, in terms of their ability to identify the documents and answer the requisite questions that the Commission has given us guidance on. And then I would offer these documents in evidence.

Perhaps I have confused the Board. It would be nice if we could enter into a stipulation. Then we wouldn't have to go into this. Since we don't have a stipulation, I

think the record would be in a better posture if we did swear the witnesses in and they did adopt these documents. And I think Mr. Guild could object properly or could then be in a position to object to their admission.

JUDGE KELLEY: Does that sound sensible with you, Mr. Guild?

MR. GUILD: Yes, sir.

JUDGE KELLEY: Okay.

(Off the record.)

JUDGE KELLEY: Back on the record.

Now we have Mr. Owen and Mr. Grier. Is that correct?

We like just a short, simple, formal oath and I will state it and I will ask you to repy in the affirmative, if you wish, if you will.

Whereupon,

WARREN H. OWEN

G.W. GRIER

took the stand, and having been duly sworn, were examined and testifed as follows:

DIRECT EXAMINATION

BY MR. MC GARRY:

Q Thank you. Mr. Owen, have you prepared a statement of your professional qualifications for use in this proceeding?

A (Witness Owen) Yes, I have.

Q Do you have that before you at this time?

A I do.

Q What document does it contain, Mr. Owen? Is it the testimony of W.H. Owen?

A It's the testimony of W.H. Owen, Dockets 50-413 and 50-414.

Q Is that contained on pages one and two of that document?

A That is correct.

Q For the Board, the parties, and the public, could you just explain who you are, what your responsibilities are?

A My name is Warren H. Owen. I'm Executive Vice President, Engineering and Construction, for Duke Power Company.

Q Thank you, Mr. Owen.

MR. GUILD: Mr. Chairman, I wonder if I could ask that the witness speak up. This kind of an expanse here --

JUDGE KELLEY: This is sort of our first go, as you know. I'm sort of wondering if we shouldn't try to get a mike for the witnesses. I'm having a little difficulty. I guess for this afternoon we will just ask you to speak up the best you can. If counsel has trouble hearing, then let us know. This is just a quick reaction, but have you thoughts of at least trying to put mikes in for the witnesses?

MR. MC GARRY: I think that might be helpful, Your Honor.

JUDGE KELLEY: Mr. Guild?

MR. GUILD: I did hear a spectator earlier saying that they had difficulty hearing exchanges amongst counsel in the back of the hearing room.

JUDGE KELLEY: Yes. I don't know how easy or hard it is to, in effect, wire all of us for sound, but at least in the case of the witness that's important.

MR. MC GARRY: Your Honor, I'm noticing some speakers here in the courtroom, so perhaps at a break we can discuss this with the bailiff. We might be able to work something out.

JUDGE KELLEY: All right. Let's raise it.

MR. JOHNSON: I also notice a mike over there. There seems to be a microphone right there.

MR. WILSON: I would also notice there is a jack over there.

MR. MC GARRY: Why don't we press on, Your Honor, if that's all right with you.

JUDGE KELLEY: Let's go ahead for right now, and check with the bailiff.

BY MR. MC GARRY:

Q Mr. Owen, as Executive Vice President of Duke Power Company, could you just shed a little bit of information what that job entails?

A (Witness Owen) I am responsible for the departments that design, construct, and provide the Quality Assurance for our generating facilities. I'm also a member of the Board of

Directors and the Executive Committee of the Company.

MR. MC GARRY: Your Honor, I would ask that the testimony of W.H. Owen, a copy of which has been provided to the Board and the parties, in Applicant's testimony on Contention 6 Volume 1, and it would be found under tab 1, be marked for identification as Applicant's Exhibit 1 for use in this proceeding. Copies, as I said, have been furnished the Board and parties and we will furnish three copies to the court reporter.

JUDGE KELLEY: So ordered.

(The document referred to was marked for identification as Applicant's Exhibit No. 1)

MR. MC GARRY: Thank you, Your Honor.

MR. GUILD: If I might, Mr. Chairman, just so that we may settle these problems at the outset, I understand the only portion of Mr. Owen's testimony is going to be presented now and I don't, by not objecting, mean to waive my opportunity to address all of his testimony through cross-examination as a mechanical manner. If it's all being received as an exhibit now. I understand he's only being tendered for cross on part of his testimony.

MR. MC GARRY: That is correct, Your Honor. In fact, in this particular exchange, we're just talking about professional qualifications. But by no means should we preclude Mr.

Guild's right to cross-examine the entire document.

JUDGE KELLEY: Right. By so ordered I really only meant so ordered to mark the number on it. But I think your interruption was well placed. Especially right here at the beginning, it is better to clear these things up right now instead of halfway through the testimony.

BY MR. MC GARRY:

Q Mr. Grier, have you prepared a statement of qualifications for use in this proceeding?

A (Witness Grier) Yes, I have.

Q And is that set forth on pages one and two of the testimony of G.W. Grier?

A Pages one, two, and three.

Q Thank you. Mr. Grier, likewise, would you share with the Board, the parties, and the public, what are your professional qualifications and what is your position at Duke Power Company?

A I am currently the Corporate Quality Assurance Manager of Duke Power Company. I'm responsible for the implementation of the Quality Assurance Program.

MR. MC GARRY: Your Honor, I would request that the testimony of G.W. Grier be marked for identification as Applicant's Exhibit 2. Copies have been previously furnished the Board and the parties and we will make three copies available to the court reporter.

JUDGE KELLEY: So ordered.

(The document referred to was marked for identification as Applicant's Exhibit No. 2.)

BY MR. MC GARRY:

Q Mr. Owen, are you responsible for managing and supervising the preparation of the license application which includes the Final Safety Analysis Report referred to as the FSAR, the Environmental Report referred to as the ER, and the QA Topical Report?

A (Witness Owen) They were prepared under my overall direction.

Q Have you satisfied yourself and has your staff satisfied itself that those submitted documents, as amended, are true and correct?

A Yes, we have.

Q And were they prepared, to your knowledge, pursuant to Commission regulations?

A Yes, they were.

Q And were they submitted to the Nuclear Regulatory Commission as part of the application?

A That's correct.

Q Mr. Owen, as part of the FSAR and ER, as part of your request to the Commission, did that submittal include a document called the license application?

A Yes, it did.

Q Was that document prepared under your supervision?

A Yes, it was.

Q And was it submitted pursuant to Commission regulations?

A Yes.

Q Mr. Grier, are you responsible for the management, supervision, and preparation of the Topical -- QA Manual?

A (Witness Grier) Yes, I am.

Q Have you satisfied yourself that the QA Manual is true and correct?

A Yes, I have.

MR. MC GARRY: Your Honor, at this time we request that the FSAR be marked as Applicant's Exhibit Number 3 for identification.

JUDGE KELLEY: So ordered.

(The document referred to was marked for identification as Applicant's Exhibit No. 3.)

MR. MC GARRY: That the Environmental Report be marked as Applicant's Exhibit 4 for identification.

JUDGE KELLEY: Yes.

(The document referred to was marked for identification as Applicant's Exhibit No. 4.)

MR. MC GARRY: That the QA Topical be marked as Applicant's Exhibit 5 for identification.

JUDGE KELLEY: Yes.

(The document referred to was marked for identification as Applicant's Exhibit No. 5.)

MR. MC GARRY: And that the QA Manual be marked as Applicant's Exhibit 6 for identification.

JUDGE KELLEY: Yes.

(The document referred to was marked for identification as Applicant's Exhibit No. 6.)

MR. MC GARRY: And I believe, just for clerical purposes, that the license application, referred to by Mr. Owen, be marked as Applicant's Exhibit 7 for identification.

As I noted, prior to the dialogue between Mr. Owen, Mr. Grier and myself, that copies of the FSAR, the ER, the license application, and the Topical Report have indeed been furnished the NRC, that the Intervenors have copies of these documents, that with respect to the Quality Assurance Manual we will now furnish copies of that document to the Board and parties and we will furnish three copies of all those documents to the court reporter.

(The document referred to was marked for identification as Applicant's Exhibit No. 7.)

MR. MC GARRY: Now, Your Honor, at this point in time we would move the admission of Applicant's Exhibits 3, 4, 5, 6, and 7 into evidence.

JUDGE KELLEY: Now, again, is this material being moved in to demonstrate that it has been compiled or is it being moved in for the truth of matters asserted therein -- particularly with respect to issues and contentions on QA matters?

MR. MC GARRY: Your Honor, it's being submitted with respect to the former, for the truth of its existence. With respect to the truth of the matters contained therein, it is our obligation to inform the Board and the parties of those portions of those documents which we rely upon, so that the parties will be in a position to conduct whatever examination they wish to on those particular portions of those particular documents.

JUDGE KELLEY: And it would not be expected that the Board would rely on these documents otherwise?

MR. MC GARRY: That is correct.

JUDGE KELLEY: On that basis, Mr. Guild, any comment or objection?

MR. GUILD: I guess I have an objection. I'm sort of having difficulty getting a feel for why these things are in for the limited purpose for which they have been offered. I would just say, listening to Mr. McGarry's description I'm

a little -- I'm tempted to say I have no objection. But the problem is I am fearful that there is going to be some basis for reaching in there for reliance on the substance of these documents. And if not, I'm prepared to stipulate they filed such documents. If that's all they mean to show -- that they filed them -- that's not in contest. I think the contents of those documents are very much in contest and I'm loathe to waive my opportunity to challenge the content.

So on that basis, we certainly object to Mr. Owen sponsoring the entire FSAR, for any purpose other than a mere formality which we concede. And likewise, the other documents, unless they are prepared to address the substance.

JUDGE KELLEY: Well, I understand your concern, but has it not been stated pretty clearly -- you could use the term formality. They have been moved in. This Board is not convinced, quite frankly, that it's crucial that they be in. We are aware of the ACRS thing. You know, the thing I'm referring to, about the ACRS. There is a provision, right in the statute, that says this ACRS report is supposed to be in the record in the case. So we, of course, put in in the record of the case. Whether, by analogy, these other documents have to be in is, I think, debatable. It seems -- and I can understand the Applicant's desire to have them in -- in some sense, some technical sense, it seems like if it's let on such a narrow basis -- that is to say, just to show that it

exists and not for the truth of anything that's said in there, certain QA matters -- that's the concern here -- that that is sort of harmless.

MR. GUILD: Again, Your Honor, our position is we would stipulate to the formality that they have been compiled and filed but nothing more. And if they're being offered for anything more then it seems objectionable upon no other grounds than it's irrelevant, why offer it? So I'm still puzzled about why they're being offered. And since it's not clear to me, and not wanting to run some risk by not opposing their admission, we do oppose them.

JUDGE KELLEY: It doesn't seem like an issue that is of sufficient import to ponder any greater length. The Board is going to grant the motion that these documents be admitted for the limited purpose to show that there are such documents, but they will not be admitted for the purpose of demonstrating anything on any effect or issue in this case. As and when they might become pertinent to issues in the case, there will be supporting witnesses and they will be subject to examinations. As to anything in the documents being relied on, I will go further and say the Board will not rely on any of these documents except under those circumstances. And receive 3 through 7 in evidence.

MR. MC GARRY: Thank you, Your Honor. I believe the witnesses will now be prepared to address that testimony. We

have moved to that stage.

(The documents previously marked for identification as Applicant's Exhibits No. 3 through 7 were received into evidence.)

ki 19:01

MR. MC GARRY: As we understand it, the Board has admitted those Applicant's exhibits 3 through 7, pursuant to the conditions that the Board has outlined.

JUDGE KELLEY: Yes.

MR. MC GARRY: Thank you.

BY MR. CARR:

Q Mr. Owen, do you have before you a document 20 pages in length, with one attachment, now marked for identification as Applicant's exhibit 1, and entitled "Testimony of W. H. Owen"?

A (Witness Owen) Yes, I do.

Q Was this document, sir, prepared by you, or under your supervision?

A Yes, it was.

Q do you have any additions or corrections at this time to make to pages 1 through 12 of this document?

A Yes, I do.

Q Would you tell us, sir, what those corrections are?

A On page 10, lines 26 and 27, there's an inadvertent error at the end of line 26 and the beginning of line 27, words, "American Society of Mechanical Engineers," and then "(ASME)" in paren should be stricken and replaced by "Hartford Steam Boiler Insurance and Inspection Company."

JUDGE KELLEY: Could you please repeat that phrase

ki 19:02

once more?

WITNESS OWEN: Hartford Steam Boiler -- excuse me -- Hartford Steam Boiler Insurance and Inspection Company.

JUDGE KELLEY: Thank you.

BY MR. CARR:

Q Does that complete your additions or corrections to pages 1 through 12 of this document, Mr. Owen?

A (Witness Owen) Yes, it does.

Q Is this document, then, as corrected, your true and correct testimony?

A Yes.

Q If I asked you today, sir, the questions set forth in this document, would your answers be the same as set forth therein?

A Yes.

Q Do you adopt this document and the testimony questions and answers therein as your testimony in this proceeding?

A I do.

MR. CARR: Your Honor, I now move Applicant's Exhibit 1, Testimony of W. H. Owen, be accepted into evidence in this proceeding.

JUDGE KELLEY: Any objection, Mr. Guild?

MR. GUILD: Your Honor, so long as we have an opportunity through cross examination upon a proper foundation

to strike certain portions of the testimony, it seems a more efficient way of going forward to simply note that opportunity and allow it in, without trying to do line-by-line efforts at this point.

So I would suggest that without some other problem, we let it in first, and then proceed to cross, if I may, and would like to reserve my right to move to strike portions of this witness's and other witness' testimony.

MR. CARR: I understand that, Your Honor. Mr. Guild is asking that he be allowed to make a motion to strike the cross examination if the testimony is in evidence, subject to that motion to strike, and we have no objection to that procedure.

MR. JOHNSON: Likewise with Staff.

JUDGE KELLEY: Okay, fine. Let's do it that way.

(The document previously marked Applicant's Exhibit I for identification was received in evidence.)

MR. CARR: Excuse me. Is Exhibit 1, then, in evidence?

JUDGE KELLEY: Yes. The testimony has been moved in and the understanding is that it will be allowed in, subject to a later -- possibility of later motion to strike particular parts in light of the cross examination. And the record can

show, too, that that's the general approach we will take.

MR. CARR: We understand, sir.

BY MR. CARR:

Q Now, to assist the Board, also members of the public --

JUDGE KELLEY: Excuse me just a minute. I have a question.

(Board conferring.)

Is your motion ages 1 through 12, or the entire testimony?

MR. CARR: It's the entire testimony, Your Honor. But at this time, consistent with the panel approach, we're focusing on pages 1 through 12 of Mr. Owen's testimony, and I was just about to ask him if he would summarize for the Board, parties, and members of the public, his testimony, pages 1 through 12.

JUDGE KELLEY: It seems sensible to let in the whole thing now, if it's all subject to a motion to strike, rather than have to make two motions. Isn't that right, Mr. Guild?

MR. GUILD: Yes, sir, as long as it's understood that we have a full opportunity for cross examination, to cross examine all parts of his testimony.

JUDGE KELLEY: Right. So the motion is for the entire testimony.

ki 19:05

MR. CARR: Yes, sir.

And now, as I said, I will ask Mr. Owen to summarize the first 12 pages of his testimony.

WITNESS OWEN: Those pages describe my personal experience and qualifications, including my prior positions held with Duke Power Company. It includes a description of the corporate organization of the Company as it relates to the construction and operation of a power generating facility. It briefly describes the Company's experience in designing and constructing electric generating plants and how we fulfill our obligation and our responsibilities to the public, our investors, and our employees in connection with the design and construction quality assurance of power plants.

BY MR. CARR:

Q Thank you, sir.

BY MR. GIBSON:

Q Mr. Grier, do you have in front of you a document that has been marked as Applicant's Exhibit 2, which is titled Testimony of G. W. Grier, which is 58 pages in length and has four attachments?

A (Witness Grier) Yes, I do.

Q Is this the testimony you prepared for presentation during these hearings?

A Yes, it is.

Q Do you have any corrections to make to that testimony

on pages 1 through 34?

A No.

Q Is this a true and accurate reflection of your testimony?

A Yes, it is.

Q If you were asked these questions today, would you answer in the same fashion as indicated in Exhibit 2?

A I would.

MR. GIBSON: Your Honor, subject to the procedure as outlined in the previous discourse, we move that Applicant's Exhibit 2 be admitted into evidence.

MR. GUILD: Mr. Chairman, I have no objection to that, given our previous assumption.

JUDGE KELLEY: Motion granted, subject to the same understanding as described. And, henceforth, gentlemen, if it's a pro forma motion like that, and we all understand that, I'm just going to say "Granted." If you're going to interpose an objection on a particular one, fine. But that would be the understanding I would propose that we have.

(The document previously marked Applicant's Exhibit 2 for identifidation was received in evidence.)

MR. GUILD: Judge, if I may make an inquiry at this point, before we go forward, I've heard three separate counsel

dealing with the same panel, and I, frankly, have difficulty with the panel format, which you have heard already, but I have further difficulty with three separate counsel handling the one panel for two witnesses. Generally speaking, I'm concerned as it is with having to handle multiple adverse counsel in any event, but I'm particularly concerned, anticipating objection and argument from multiple counsel when I have to take both witnesses at the same time.

Perhaps if we could have some clarity about what Applicant's approach is likely to be.

MR. MC GARRY: Yes, Your Honor. I think it would be helpful. Given the magnitude of the number of witnesses, counsel have divided the witnesses among themselves so as to be more fruitful and beneficial and develop the record. In this instance, Mr. Carr has been working with Mr. Owen and Mr. Gibson has been working with Mr. Grier.

Now, the way we would envision working is, with respect to any objections and questions of Mr. Owen, Mr. Carr would impose those objections. I would not, and Mr. Gibson would not, so Palmetto Alliance will be dealing with one counsel, Mr. Albert V. Carr, with respect to Warren Owen. And in terms of any redirect, Mr. Carr will conduct the redirect of Mr. Owen, and the same situation would apply with respect to Mr. Gibson's discussions and representations with Mr. Grier.

MR. GUILD: Mr. Chairman, I would only make this

ki 19:08

point. As it should be obvious, there's only one of me, and there's four or more of them. And it's difficult enough handling this panel device as it is, without multiple counsel, so it puts me at some difficulty.

But I would like to at least note that I may be joined by other counsel at a later point in this proceeding. If I am joined by other counsel, I would hope that we can at least reach the understanding, beginning today, that multiple counsel can handle the panel for the Applicant, that we can stipulate that multiple counsel can interrogate a panel for the Intervenors. That said, on that assumption, I would have no further problem with going forward as described.

MR. MC GARRY: Our point would be, Your Honor, we would have no difficulty with that proposal, provided that the Intervenors followed the same course that we are following; that is, that they have two counsel; let's say there are two witnesses on a panel; they are Applicant witnesses. One counsel can be responsible for interrogating one person, one counsel can be responsible for interrogating the other witness.

I think the problem we're envisioning is two counsel interrogating one on the part of the Intervenor, or the Intervenor's concern about two or three counsel representing Mr. Owen. And I don't think that's the case as we have explained it.

ki 19:09

JUDGE KELLEY: As I understood Mr. Guild's point, if co-counsel is going to come in and help you out, that is fine. What is your response to Mr. McGarry's response? Have we agreed? Do you two gentlemen agree?

MR. GUILD: It sounds right, Judge. The only question I would have, to make sure I don't have any misunderstanding on the point, is although -- since we're not really clear about how this panel mechanism is going to work, and it's being done over my objection -- if I have witnesses jumping in with answers, I don't want to be restricted on who can respond to those multiple answers to the same question because of the panel.

I stand by the position that if I can get some assistance and have co-counsel here, we want the same prerogatives that Applicants have.

JUDGE KELLEY: That seems reasonable. Okay. We have to live a little by feeling how this system is going to work. We understand your point. We think there's agreement in general between yourself and Mr. McGarry.

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MR. GIBSON: May I proceed now --

MR. JOHNSON: If I may, before you proceed --

JUDGE KELLEY: I'm sorry --

MR. JOHNSON: I don't expect anybody to come down from Washington to help me, but in case they do, I would like the opportunity to have the same prerogatives that were

ki 19:10

requested by the other counsel. I wouldn't expect that we could exercise that. And I would like it.

JUDGE KELLEY: It sounds reasonable.

Now everybody has spoken to that point. We were up to the point that Mr. Owen's testimony was put in, subject to the possibility of the motions. Do we have an overview statement -- not Mr. Owen's. He's already done it. Mr. Grier.

BY MR. GIBSON:

Q Mr. Grier, would you summarize pages 1 through 34 of your testimony?

A (Witness Grier) Yes. I describe my personal experience and qualifications, a description of the quality assurance department organization, including interface with construction department and design engineering. I describe how the Duke QA program satisfies each of the 18 point criteria in 10 CFR 50, Appendix B. I describe the topical report and the quality assurance manuals that implement the QA program, and also I describe how internal and external groups have audited or evaluated the Duke QA program.

MR. GIBSON: Judge Kelley, members of the Board, Mr. Owen and Mr. Grier are available for questioning by the Board or cross examination by the other parties.

JUDGE KELLEY: Thank you. The Board, I am sure, will have questions, but as is customary, we expect other counsel to begin. We might interrupt at one point or another,

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to ask a question. Generally speaking, though, we will have questions after counsel. I don't recall if we have covered this. I would assume Mr. Guild would have cross examination. I don't know if you envision cross of these particular witnesses, Mr. Johnson. Would you know at this point?

MR. JOHNSON: Well, I would envisage the possibility of cross examination of all the witnesses, and I would like to reserve the opportunity to do that. But I will not know whether I will, in fact, do it until I've heard the cross examination that precedes.

JUDGE KELLEY: Correct. Okay, so Mr. Guild going first.

MR. CARR: One point, Your Honor. Is this the point at which the cross examination plans were to be tendered, or have they been tendered?

JUDGE KELLY: Yes, they have been.

End 19

MR. CARR: Thank you.

MR. GUILD: Your Honor, now that we have touched on the order of cross, if Mr. Johnson's intention is to go last, it raises this question of scope of examination.

I frankly would suggest, in light of the discussion we had on the order of presentation of witnesses and the relative positions of the parties on the issues, that the most efficient way of handling it, since Applicants and Staff are of one position on the substance of this contention, is that the Staff go first in cross-examination and Intervenors third.

If that's not the case, then I would strongly suggest, as a more efficent way -- what I would anticipate handling -- and I would like to note my intention to do -- is to go back after Mr. Johnson, if Mr. Johnson has examination, by way of recross with respect to either a new matter or matter that is of significance that wasn't raised in my cross initially.

I frankly think the more efficient technique would be, since we think the Staff and the Applicants do share substantive position on the merits -- would be if Mr. Johnson needs to offer anything further in support of his position beyond the direct, he do so second, and then I follow, third.

I think at that point we would have a complete circle, with the very, very limited likelihood that any of

parties would need to have recross.

MR. JOHNSON: I would object to that procedure. I think that's not the procedure that is normally followed and not the procedure that the Board intended in its preconference order.

Also, I would object on the grounds that it is not the most efficient way of doing things, as I anticipate the possibility that a lot of the cross-examination that I would conduct could be taken care of by the cross-examination that precedes.

So, it may be, after I hear Mr. Guild's cross-examination, I would not have any.

Therefore, I would request that the Staff have the opportunity to cross-examine last.

JUDGE KELLEY: Could we just --

MR. JOHNSON: Let me add, also, I don't object to his request for recross on new matters that I raise either.

JUDGE KELLEY: All right.

Well, I don't think -- our prehearing order gave an order of presentation. Looking at it again, it didn't spell things out in great detail on pages 2 and 3. We gave an order of the Applicants, and then the Intervenors, and then the Staff.

We didn't, in so many words, refer to cross and recross and redirect, and all the rest. Rather, this was

presenting cases that we were basically talking about.

But we should have it clear what the sequence is, what the recross opportunities are, what the redirect opportunities are going to be.

Some of this we can thrash out on a case-by-case basis as we go along.

But obviously, we have to resolve now who goes next.

Do Applicants have any comment on the sequence of questions that we are speaking to at the moment?

MR. CARR: Yes, sir. Just a couple.

First, as Mr. Johnson points out, it is general custom for the Staff to go last in cross-examination.

I would state the obvious, which is that the Applicants and the Staff are not the same party. And although our positions may be the same on some issues, it is, after all, the Staff that is charged by statute with the responsibility for protection of the public interest, the public health and safety.

That being the case, in many instances it is common for the Staff to fulfill or to fill what you might refer to as the centerfield role, to make sure that, in its mind, the record is fully developed. And the most expeditious and efficient way for that to be done is for them to take the last position in cross.

JUDGE KELLEY: Let me ask Mr. Johnson question.

It's been argued, I think, more than once that the Staff and the Applicant's position are essentially indistinguishable.

Now, it may be that the Staff says that in their opinion matters are satisfactory at the Catawba facility and the license ought to be issued. It doesn't necessarily follow that you agree with every position that the Applicants were taking. I gather you do not.

Do you have a response to that?

If you simply agree with the Applicants right down line, there's no point in your being here.

MR. JOHNSON: I think our perspective is very different. As I was trying to outline in our opening statement, Staff does, in fact, represent the public interest in these proceedings. We are primarily interested in the fulfillment of the regulatory and statutory objectives and to assure that the record is complete. And we are not the proponents of a contention. By the same token, we are not here to defend the Company.

Therefore, I feel that the Staff is in a unique position, which is, in a sense, neutral as to the other two parties. And I do not believe that you can consider that we are the same party or stand in the same position, simply because as a result of the processes that the Staff goes

through, satisfies itself through, that we approve, in certain instances, what the Applicants do.

And as the case develops, it may become a little bit clearer that we don't necessarily agree with everything that the Applicants present.

JUDGE KELLEY: Thank you.

I think the Board needs to rule on this point now. And it will.

It is 4:00. We would like to confer for a few minutes.

Why don't we take a short 5-minute -- and I really mean short break. And then we will come back and issue a ruling on the point immediately under discussion, and then plan to go on to about 5:00 or thereabouts.

A 5-minute break.

end 20 (Recess.)

JUDGE KELLEY: Back on the record.

We want to bear in mind Mr. Wilson is here representing the State of South Carolina, appearing as an interested state. And they, from time to time, may have some questions they want to put, also. And we will be bearing that in mind.

We expect to hear from you from time to time.

In terms of sequence, the immediate issue that was before us was the sequence in which cross-examination ought to take place.

Our earlier prehearing trial order did not directly address that particular point. In discussing order of presentation, we were talking about the Applicants going first, followed by the Intervenors, followed by the Staff.

We didn't speak, in so many words, to the question of order of cross.

It does seem to us, in light of hearing the parties' discussion of the point and thinking about it some, that there is an analogy between order of cross and order of presentation that we think should pertain in this case.

We believe that the order ought to be the Applicants, followed by the Intervenors, followed by the Staff. And our reason basically is that the Staff does have a role, a public interest role, to see to it that the record is spelled out. They can best perform that function if they

are coming on last. And that is their request, and we think it is well-founded.

We would add, in addition, as Mr. Johnson pointed out, if there are new matters that come up in the course of their cross, then Mr. Guild can get some further cross with regard to those matters. That would be on a case-by-case basis, but that would be possible.

So, we have decided to follow that sequence.

There would also be an opportunity for brief redirect when we have gotten through the Applicants -- when we have gotten through the cross-examination by the Intervenors and by the Staff. And Mr. Wilson from the State, if he has questions, will come after the Staff.

So, with that understanding, shall we proceed with the Intervenors' cross-examination of Mr. Owen and Mr. Grier.

MR. GUILD: Yes, Mr. Chairman.

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CROSS-EXAMINATION

BY MR. GUILD:

Q Good afternoon, gentlemen.

I intend to examine, first, you, Mr. Owen, since you have been designated as the first witness for Applicants.

And then, in turn, as I complete -- my intention would be to complete questions to you, sir, and then to move, in turn, to Mr. Grier.

I would therefore ask the questions I am directing now be answered only by Mr. Owen.

Recognizing the Board's ruling concerning the panel format, I would first request that there be no consultation between you, sir, Mr. Owen, and Mr. Greer before you, Mr. Owen, answer.

My desire would be that the answer be full and complete and be your own, Mr. Owen, and not be Mr. Grier's.

If, over my objection, it is the Board's pleasure to allow Mr. Grier to provide supplementation after Mr. Owen has answered initially, I would simply ask that it be clear for the record that the supplementation does not come from Mr. Owen, but it comes from Mr. Grier.

And that said, Mr. Owen --

JUDGE KELLEY: Let me make a comment here now.

I think it's clear that whoever says whatever gets said will clearly appear in the transcript. There ought not to be any confusion on that score.

What we said earlier was that you could direct questions and you would choose who was going to answer the question in the first instance and then you could ask some follow-up questions.

My concern is though that in order to make this panel function -- this panel system work, if you're on a particular topic and you ask Mr. Owen some questions, some

follow-up questions, and then we have got Mr. Grier sitting here and he knows something about the topic, there is going to come a point there where he should speak up and say "I've got something to add" and do so.

We do not have in mind that necessarily your entire questioning of Mr. Owen's direct testimony -- on his direct testimony -- would go through to a conclusion before Mr. Grier could say anything. Otherwise, we might as well not have a panel.

Now, I think we just have to see how that works as a general approach. But I did want to interject that we did not envision your completing your cross on one guy before the other guy, person, or witness said anything at all. That would defeat the purpose.

MR. GUILD: It's my intention to direct these questions to Mr. Owen. And I appreciate the Chair's ruling. But the questioning is directed to Mr. Owen; that's my purpose.

JUDGE KELLEY: I understand that. Mr. Grier may, at some point, have something to add on the point, and he presumably will speak up when that happens.

MR. GUILD: I understand.

MR. GIBSON: Judge Kelley, we have instructed the witness in accordance with what you have just described.

JUDGE KELLEY: All right.

BY MR. GUILD:

Q Mr. Owen, I understand that the corporate quality assurance program, as it relates to the construction of your nuclear generating facilities, falls under your area of responsibility, is that correct, sir?

A (Witness Owen) Our corporate quality assurance program, all aspects, falls under my jurisdiction.

Q Construction QA falls under your jurisdiction?

A That's part of the program.

Q It does fall under your jurisdiction?

A Yes, it does.

Q All right, sir.

And how long has construction quality assurance been under you? How long have you been responsible for construction QA?

A Since 1978.

Q And what happened in 1978, sir?

A I was promoted from Vice President of Design Engineering to Senior Vice President, Engineering and Construction, and was designated as the corporate officer responsible for the quality assurance function.

Q All right, sir.

And prior to your assuming those responsibilities, what individual, by title and name, held that responsibility, quality assurance construction, nuclear facility?

A Prior to 1978, my predecessor in the job ws W. S. Lee, Bill Lee, who was Senior -- I believe was Executive Vice President, Engineering and Construction.

Q Mr. Lee is the chairman of the Duke Power Company at this time?

A Yes, he is.

Q At the time, did Mr. Lee have responsibility for engineering construction and quality assurance in construction?

A What was your question?

Q Can you not hear me?

A I couldn't hear the first part.

Q At the time that Mr. Lee preceded you, did he have responsibility for construction engineering and quality assurance in construction?

A That's correct.

Q When was the corporate Quality Assurance Department organized at Duke Power?

A The Quality Assurance Department was formally organized in May of 1974. I believe it was May 1974.

Q And Mr. Lee was responsible for it at that time?

A Quality Assurance Department, when formed, was designated as reporting to Mr. Lee.

Q Was Mr. Lee initially the Corporate Quality Assurance Manager, by title?

A There was a period prior to May 1974, prior to the

formal organization of that department, when he was the Acting Quality Assurance Manager for the Company.

Q Did he bear the title of Acting Manager, the emphasis on "Acting," to your knowedge?

A That's my recollection.

Q Why did Duke Power Company organize the Quality Assurance Function, Mr. Owen, with respect to construction now under the manager responsible for line construction activities?

A The manager responsible for construction activities is the Vice President of Construction, and quality assurance is not under that manager.

Q I see.

At the time though, when the department was organized, did I not understand that Mr. Lee was both responsible for construction and engineering and quality assurance?

A No.

The Office of Vice President of Construction was responsible for construction.

The officer the Company designated Vice President of Design Engineering was responsible for engineering.

And they both reported to Mr. Lee.

Q Is it your position that Mr. Lee did not wear those two hats, construction and quality assurance, if you will?

A He wasn't Vice President of Construction.

Q Did you understand the question?

A No.

Q Let me repeat it.

Is it your testimony that Mr. Lee did not wear the two hats of responsibility for construction, as well as responsibility for corporate quality assurance?

A He was a senior officer with the Construction and Engineering Departments reporting to him.

And I guess, in that sense, he still is.

Q And he was the corporate Quality Assurance Manager?

A For that period of time, in 1973, he was Acting Corporate Quality Assurance Manager.

Q All right, sir. Are you aware of the safety evaluation that was performed with respect to the contruction construction permit for the Catawba Nuclear Station with regard to quality assurance?

A What was the document?

Q The subject is the safety evaluation that was performed with respect to quality assurance at the construction permit state for the Catawba Nuclear Station.

A Performed by whom?

Q The Atomic Energy Commission.

A I don't recall any specific document. If you show

me the document, I'll tell you if I have seen it.

Q Yes, I will.

MR. CARR: Your Honor, I'm going to interrupt at this time and interpose an objection.

If I understand what Mr. Guild is showing Mr. Owen -- and I would ask that he show a copy to us as well -- is the construction permit safety evaluation report.

All of Mr. Guild's questions thus far which I have let go -- and this particular document precedes substantially the commencement of construction at Catawba. I don't believe it's relevant to this phase, which is a review of construction which didn't begin until after this time in the operating license stage.

JUDGE KELLEY: Comment, Mr. Guild?

MR. GUILD: Mr. Chairman, I am trying to lay a foundation for what we believe was the pervasive lack of independence in the Quality Assurance Department, beginning with construction and extending up to the present time.

The corporate philosophy of quality assurance and the commitment to independence is the subject of considerable testimony by this witness and others.

And it seems to me very germane to lay a foundation as to the formation of the department.

And what I Have that I want to show the witness is the AEC Staff's criticisms of what I will purport to be

the lack of independence of the QA fundtion at the time that Duke organized the Quality Assurance Department.

There's testimony that will come late about the adoption of Appendix B and the efforts to comply with the criterion of Appendix B to the organization of the QA Department. And I'm trying to lay a foundation for that area of inquiry.

JUDGE KELLEY: But the document in question precedes the construction permit?

MR. GUILD: No, sir. It's entitled "Safety Evaluation Report, Catawba Nuclear Station, Units 1 and 2, Quality Assurance." It's dated August 13, 1973, the Staff correspondence from a Mr. R. C. DeYoung, Assistant Director for PWRs.

JUDGE KELLEY: But that's a pre-CP grant, isn't it?

MR. GUILD: Yes, sir. It's the premise behind which the quality assurance organization was formed. That is the structure under which I understand the Catawba Nuclear Station was construction. It's this plant. It's the Applicant's program. And it's the AEC's criticism of the organizational structure of that program.

MR. CARR: Let me just make a point here, Mr. Chairman.

What I see there is an August '73 document, which

looks as though it may be a part of the SER at the constuction permit stage.

If the NRC, or Atomic Energy Commission as it was at that time, had an objection to Duke's quality assurance program, by definition, it was ironed out before the construction permit was issued. It is not our function here to relitigate the Catawba construction permit.

MR. GUILD: That's not my intention either, Mr. Chairman. And it's not either a detailed or a lengthy area of examination.

I think the point is very important, that Duke, in my judgment -- and I'll characterize -- attempted to shortcut in their organization of the quality assurance function. And that shortcutting may or may not have been remedied.

You've already heard my position that the Staff supports the Applicant on this contention. So, it's no surprise that we find the Staff saying everything is okay. But that should be open to impeachment through cross-examination.

The essential point is that the witness has maintained that quality assurance is adequate and has been adequate during the period at issue when the plant was constructed.

And my point is that there has been a fundamental effort to impune the independence of the quality assurance

function.

I want to lay that foundation through Staff criticism that existed and is reflected in this document.

JUDGE KELLEY: Well, I suppose this is an issue that's going to arise more than once, the issue of remoteness and relevance.

How far back in history are we going to go in order to litigate this case?

We will make a ruling now. You can pursue this briefly. But we want to state, also, at the same time, the idea of getting way back to 1973 is not, in our view, very germane.

As a general proposition, we don't want to spend a great deal of time on what is almost ancient history.

So, you can pursue this a bit at this point, but you are on notice that we are really interested in the time in which this plant was being built.

And indeed, I think most of the evidence is really in the last four or five years. That's an off-the-top-of-the-head estimate, but I think it may not be too far off.

And so, getting into events of 1973 in any depth we would probably regard as beyond the purview.

Go ahead for the moment with this particular point.

MR. GUILD: All right, sir.

(Counsel Guild and Counsel Carr conferring.)

BY MR. GUILD:

Q Mr. Owen, I show you a copy of a documente dated August 13, 1973, as previously described.

(Document handed to witness.)

Does that appear to be an excerpt, by its title, from the Safety Evaluation Report for this facility?

A (Witness Owen) It's described as being evaluation. I haven't read it.

Q Take a moment and examine it, if you would. It's several pages in length. I want to direct your attention specifically to the cover page, which sets forth four numbered items. And those items are described in the previously text as items which, through satisfactory resolution, is a condition to the Staff approval of Duke's proposed Quality Assurance program for construction of Catawba.

JUDGE KELLEY: I think we may need another ground rule and that is, when you have a document which you are using essentially to refresh the recollection of the witness and cross-examine him on it, it isn't necessarily -- not at that point, it's not an exhibit. It's not an exhibit. It's not in evidence. It's being used. We don't have a copy up here. The witness is being asked a question about line 13 and we can't read it. So I think that all parties, generally speaking, if they would have a document that they're going to use to

question from, you ought to have copies for the other counsel and the Board.

MR. GUILD: I'm going to try, Judge. I guess we should try to take up this administrative matter first. It's very difficult getting copies. I ran upstairs and tried to make some copies of this particular document. I would ask and seek your indulgence. I'll try to have copies available to distribute to the parties and the Board. But it may not always be possible for me to do that in advance.

I would like leave, perhaps, to get those additional copies made. I intend to offer this as an exhibit. What I'm asking is I may have to ask leave to supply the additional record copies after the item has been identified and perhaps ruled on.

JUDGE KELLEY: I do think something like this -- I assume you have been ready to use this document for some time. The extra three copies that go to the reporter, if it takes a few more days to get them made, I don't suppose we really care. But as far as the Board and parties go, the general proposition is we would require that you supply us with copies at the time you start asking the witness questions about them.

MR. GUILD: I will try my best, sir.

BY MR. GUILD:

Q Mr. Owen, do you have that document in front of you,

sir?

A (Witness Owen) Yes.

Q You have to articulate an answer.

A Yes.

Q With respect to the first item, clarification of the independence, responsibilities, authorities, and specific routine duties of electrical, mechanical, welding/NDE, and civil engineering -- civil inspectors, do you know why the Staff, at that time, questioned the adequacy of your proposed Quality Assurance program, with respect to that independence issue?

A I think I know what was in their mind. I understand the transition that we were going through at that time.

Q Would you explain that, please?

A They found, as it says here, that our program was acceptable, with these four changes. Prior to 1973, sometime in '73, the Quality Control, if you will, responsibilities in our company, as in many organizations at that time, rested with the line organization. And the responsibility for the Quality Control, as well as the quality of the designs fell with the head of the Design Engineering Department. Responsibility for the quality of construction as well as the Quality Control of construction fell with construction. The same thing was true with operations.

During that period of time, Quality Assurance was

becoming very much a well-used term and the interest in having those function independent was being discussed. The virtue of having them independent as opposed to having them part of the line organization, during 1973. Really in 1973, as I recall, we committed to having an independent Quality Assurance Department. And it takes a while to make those kinds of transitions.

As I recall, Bill Lee was named Corporate Quality Assurance Manager and my Quality Control people, in the engineering department -- I was in engineering at that time -- functionally, reported to him. It was early in 1974 when we announced the formal creation of the Quality Assurance Department and the fact that those people were going to be moved from under my direction, in engineering, to the QA department, similar people to be moved from construction department and from the operations department. And I -- my recollection is that, number one, clarification of the independence, responsibilities, authorities, and specific -- the rest of that sentence, written in August, was that we were going to do that prior to getting a construction permit, that our program would be acceptable if we did that.

Q Prior to that time, were those functions independent?

MR. CARR: Your Honor, I don't want to belabor the point but I'm going to object again. This report, which is dated August 13 1973, preceeds issuance of the construction

permit by two years. It is a part of the Safety Evaluation Report, which formed the foundation for issuance of the construction permit. And it states "we have concluded that the description of the QA program for the Catawba Nuclear Station, Units 1 and 2, complies with the requirements of Appendix B to 10 CFR Part 50 and is acceptable for the design and construction phase, subject to satisfactory resolution of the following items." And there are items one through four listed.

Item 1 was just covered. This, in my view, is a relitigation or an attempt to relitigate the construction permit. The CP, presumably, wouldn't have been issued unless we had taken action in response to these four items, to satisfy the Staff.

MR. GUILD: Judge, we maintain that through the present time the independence of Quality Control inspectors from line control is in issue and is in question. That is the sum and substance of the harassment, QC inspector versus craft, dispute which Applicants have addressed in detail in their direct case.

Now, I am trying to lay a foundation which I will purport to go to establishing that the independence questions that were raised by the Staff prior to the approval of the paper plan, that Duke got its construction permit on, still remain as issues that impune the adequacy of Quality

Assurance. This document reflects the questions that were raised by the NRC Staff. I'm not attempting to relitigate the construction permit. I'm simply attempting to lay a foundation for a substantive point, that the problems exist today despite the paper plans.

JUDGE KELLEY: Well, it's not attempting to relitigate the CP. I agree with you on that. But, it's an awful long way back there in time. Hopefully, you will be able to present some evidence that will relate to, say, the last five years instead of 1973. To the extent that that document may be material, you may offer it. I would suggest that you conclude whatever questioning you've got on it in the next five minutes and we will move on to some other point.

MR. GUILD: Judge, with all due respect, sir, five minutes is woefully inadequate time to examine him about the history. This witness sponsors this testimony at length, pages about the history of Quality Assurance at Catawba.

JUDGE KELLEY: Mr. Guild, you can cross examine on his testimony at length. My point is we're not going to spend a lot of time on 1973 Staff documents. If you want to introduce it in evidence, go ahead and offer it. But we are going to touch upon this matter briefly and then we're going to get on with it and into some more pertinent areas.

MR. GUILD: We maintain this is directly pertinent, Your Honor. With all due respect.

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JUDGE KELLEY: The Board takes the position that it's very remote. We have granted you considerable indulgence in getting into it at all.

BY MR. GUILD:

Q Would you turn to page three of that document? It is number three at the top, Mr. Owen. It's the first complete paragraph. It begins with the following sentence "Staff was also concerned over the lack of clear definition of the independence, responsibilities, authorities, and specific duties of the electrical, mechanical, welding, and civil inspectors." Do you know the basis for that concern, Mr. Owen?

A (Witness Owen) I just -- that's the same statement that we just covered in the first part?

Q Yes, sir.

A I guess my answer would be the same.

Q All right, sir. Page two, sir. The first full paragraph "At the present time the positions of Corporate QA Manager and Senior Vice President for Engineering and Construction are filled by the same individual." The Staff questioned the acceptability of this organizational arrangement wherein the same individual has multiple duties to effectively implement the QA program. Are you aware of the basis for that criticism and questions?

A I don't know what was the basis of that, in the minds of whoever wrote it. I guess it was just what it says

there. They wonder about the same individual fulfilling both positions. Now I note that it goes on to say that we had committed to appointing full time QA manager by no time later than July 1974 and, as I stated earlier, that commitment was carried out in early '74 and the QA department was organized and franchised, if you will, within the company in May of 1974.

Q All right, sir.

MR. GUILD: Mr. Chairman, I would ask that this document, that has been identified as the August 13, '73 excerpt from a Safety Evaluation Report with respect to Quality Assurance, be marked and received in evidence as -- if you want to call it Palmetto Exhibit Number 1.

JUDGE KELLEY: Any objection?

MR. CARR: No.

JUDGE KELLEY: So marked and so received.

(The document referred to was marked for identification as Palmetto Exhibit No. 1 and received into evidence.)

MR. GUILD: Mr. Chairman, I would --

BY MR. GUILD:

Q Are you aware, Mr. Owen, that the Appeal Board of the Nuclear Regulatory Commission directed Duke Power Company to fill the Corporate Quality Assurance Manager position with

an independent official, other than the official who wore the hat of construction as well?

A (Witness Owen) They directed us to? I thought we agreed to. It must have been prior to writing this document, in August, that we would agree to do that.

MR. GUILD: Mr. Chairman, I would ask the Board take notice of a ruling. I want to give a citation for the record and direct your attention to a specific portion. This is ALAB 143. It's the supplemental decision of the Appeal Board, dated September 8, 1973 and it's in the matter of Duke Power Company, William B. McGuire Nuclear Station. I direct the Board's attention specifically to the portion of the purported opinion that appears on page 625. It's a footnote 11. And if I may, for clarity, just publish it for the record.

There a citation to a transcript reference in the text, and the footnote reads "Mr. Vassallo --" V-A-S-S-A-L-L-O -- "also testified -- reference omitted -- that the Staff's approval of the Applicant's current Quality Assurance organization was with the understanding that there was going to be a separate Corporate Quality Assurance Manager. The record reveals that that position initially is being filled by the Applicant's Vice President for Engineering and Construction who was acting in a dual capacity. The regulatory staff has the duty and responsibility to assure that the Applicant

221b10

appoints a separate Corporate Quality Assurance Manager in a timely manner. Otherwise the 'understanding' -- reference omitted -- which the Staff had in that regard will not be very meaningful.

For this reason, we believe that the Corporate Manager for QA position should be filled as quickly as possible with the period of one year (which commenced in January, 1973) being the outside limit for such action."

BY MR. GUILD:

Q It's your testimony that such a position was created and filled on or about January 1974, Mr. Owen?

A (Witness Owen) No. As I recall, the individual who was to head the Quality Assurance Department was selected about that time. I believe, announced about February. And the official transfer of people, which took some time to work out, occurred during that period between then and May 1974. And I believe May 1st, 1974 is the official birth of the Quality Assurance Department.

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MR. GUILD: Mr. Chairman, I offer that Appeal Board opinion in that portion for notice. I don't know whether it is customary to get a ruling on that request or not.

JUDGE KELLEY: I don't think you have to put that in evidence. It is a citation, it is there.

BY MR. GUILD:

Q Is it true, Mr. Owen, that the quality control function within the quality assurance program, that of inspection, was organized under the construction department at the inception of the organization of quality assurance at this time, during this time period?

A (Witness Owen) Oh, there were quality control inspection functions already residing in the construction department at that time.

Q And they remained?

A They remained there with the changes, the responsibilities indicated in the QA program.

Q I'm sorry. What reference is that? What do you mean by that?

A The quality assurance program, as it existed in 1974, identified the duties of the quality control inspectors in the construction department and the duties of the quality assurance people with respect to those quality control inspectors.

Q I see. To be clear, the QC inspectors worked under

construction at that time?

A Administratively, they worked under construction.

Q In what respect did they not work under construction?

A Their training was designated by the quality assurance department. Their certifications resulting from that training were reviewed by the quality assurance department. Their criteria to which they worked were established by the quality assurance department. Maybe other things. It's in the record.

Q But they worked for construction?

A Administratively, they worked for construction.

Q If I were a QC inspector at the time, I would be hired and fired by a person who was a construction supervisor. Is that fair?

A The requirements to which they worked, as far as carrying out their work, were set by the quality assurance department. Administratively, all that includes, they worked for the construction department. They were hired and, if necessary, terminated by the construction department.

Q I see. They were supervised in their daily activities by line construction supervisors?

A No.

Q Who determined their scheduling? Who would say quality assurance -- quality control inspector A, work on this job today?

ki 23:03

A Quality control supervision.

Q And who did they report to for that purpose?

A They reported to the lead quality control supervisor on the job.

Q Did he, in turn, report to the construction line in construction?

A No.

Q Who did he report to?

A He reported to -- I don't recall the exact organization chart, but he reported up the line to the project management, not to the craft function, not to the line organization that you're referring to.

Q Was the project manager a quality assurance department official?

A No. I think we just covered that. They were in the construction department, but not in the line organization which I assume you mean the craft organization, the people responsible for building the plant.

Q No, sir; you shouldn't make that assumption. What I want to understand, is it not a fact that the quality control inspectors worked for the construction department?

A Yes.

Q And that they continued to work for the construction department during most of the period of construction at Catawba?

A They did up until they were transferred to the quality assurance department.

Q When was that, approximately, sir?

A I believe it was 1981.

Q In your judgment, sir, why did the quality control inspectors work under construction?

A Well, that's the conventional way. Certainly it was the way that most organizations existed at that time, and it's the way most construction and quality assurance organizations are today.

Q By "most," you are referring to what -- by comparison to whom, sir?

A Most construction organizations.

Q How about nuclear construction?

A Most nuclear construction organizations.

Q Now, sir, the same Staff question -- the same Staff document that you have in front of you there -- do you still have a copy of that?

A I don't have it.

Q Counsel will hand it to you.

(Document handed to witness.)

First page item 3, documentation of Duke Power Company's definition of the terms "Administrative Reporting and Functional Reporting." How are those terms defined, sir?

A I can't give you the definition that we used at

ki 23:05

that time. I'm sure it would be part of the record I described a moment ago, the differences in administrative reporting and functional reporting, administrative being those personnel-related matters, and functional reporting to be those work-related matters.

Q And do I understand you correctly to say that your testimony is that QC inspectors during this period of time, until 1981, were functionally reporting to quality assurance and administratively reporting to construction?

A That's correct.

Q QC inspectors in '81 were changed in their reporting, to report to the quality assurance department for both functional and administrative purposes?

A I didn't understand -- hear the first part of your question.

Q In 1981, when the QC function was assigned to QA, QC inspectors reported to QA for both functional and administrative purposes?

A That's correct.

Q Do you consider that a significant change in the organization to quality assurance?

A No, I don't consider that a significant change for an organization like ours.

Q Would you agree, Mr. Owen, that the independence of the quality control inspection function was enhanced by the

ki 23:06

reorganization of QC under the quality assurance department, as compared to its prior reporting for administrative purposes to construction?

A No. The move was not made in order to enhance that. I don't think that there was any material change.

Q Let me focus, first, on your first observation. The purpose of the move was not to enhance independence. Is that correct?

A No.

Q What was the purpose of the move?

A When we first created the quality assurance department, we had a large number of inspectors, and they were already functioning well in the quality control area of the construction department, and we had a new department and did not want to put large numbers of people, as I recall it, into that area.

That, in fact, was more like most organizations worked, where the contractor ended up on the job with the contract, had the quality control responsibility as part of his contract.

Our concern, as I recall at that time, was that we wanted to be sure that we had adequate quality control inspectors. They could be scheduled to be available when they were needed for the construction work. That was our prospective concern at that time. It never turned out to be a problem.

ki 23:07

We moved those QC inspectors to the quality assurance department. The fundamental reason, in my mind, was that this created a larger quality assurance department, gave those people more career opportunities. They were all Duke Power employees, and they did not move from one company to another, but just from one department to another.

Q Did the organization of QC under construction enhance schedule efficiency of the inspection?

A We did not anticipate that when we moved those inspectors to the quality assurance department, that we would encounter any sort of scheduling problem, and we did not.

Q No, sir. The question, I guess, was focused on the preexisting organization. You maintained quality control inpsectors under construction, in part, to enhance efficiency of seheduling of the inspections.

A No. You characterized it different than the way I explained it to you. I indicated that was our concern in 1974. I indicated that that did not turn out to be any problem.

Q Let me understand you. How did you know it didn't turn out to be a problem if you kept them under construction? It wasn't a problem as compared to what?

A Scheduling of quality control inspectors who were functioning underneath the quality assurance department, as far as the requirements for the work and so forth. It just

didn't turn out to be the kinds of scheduling concern that we thought it would be.

This was a period of developing criteria, many more inspection requirements than we had -- than had existed previous to the '70s in the nuclear business, and that didn't turn out to be a problem.

Q Why did you keep them under construction for some seven years?

A Why? Well, you could ask why we didn't move them. We just didn't. I don't recall any discussion about moving them or not moving them until we decided that we would like to give them more career opportunities within a given department, without having them have to move from one department to another. So we enlarged the QA department, the numbers of people, more management opportunities, supervisory opportunities for the growth of people.

Q All right, sir. So, is it your opinion, then, that the reorganization of QC inspectors under the QA department had no effect on the performance of the inspection function?

A I didn't observe any significant or material change. In the management of an organization, you always worry about any change. Some people, naturally, react adversely to anything that changes, so I couldn't say that there was no -- there was no noticeable difference in performance.

Q In your opinion, was there any change in the

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relationship between quality control inspectors and craft as a result of the reorganization?

A No.

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Q In your opinion, was there any affect on the morale of the Quality Control inspectors, as a result of the reorganization?

A There was none brought to my attention.

Q At the time?

A At the time of the move. I thought that's what your question was.

Q Since then?

A The pay classifications -- reclassifications was obviously --

Q I'm sorry, I missed your answer. You trailed off.

A There was no -- I was not aware of any morale -- change in morale as a result of the move. You ask if there was at some later time and I said the pay reclassification, obviously, has an impact on morale.

Q Had an impact on morale? What's the relationship, if any, between the pay reclassification and the QC reorganization?

A None.

JUDGE KELLEY: Can we just note that the clock on the wall is five after five. Why don't we go to a quarter after and break for the day at that point?

MR. GUILD: Fine.

JUDGE KELLEY: Another ten minutes.

BY MR. GUILD:

241b2

Q Mr. Owen, in your statement of qualifications, you note that you presently serve on an industry committee. I believe it's the Atomic Industrial Forum Policy Committee on Nuclear Regulation. Are you the Chairman of that body?

A (Witness Owen) That's correct.

Q Would you just briefly tell us, what do they do?

A That is a committee of senior utility and nuclear manufacturing executives, who meet about three times a year to discuss policy level items relating to the nuclear industry.

Q With respect to nuclear regulation?

A A good portion of our discussion has to do with the regulatory requirements. It's not restricted to that.

Q What I'm interested in, Mr. Owen, is on the basis of that activity are you knowledgable on the relationship between the Nuclear Regulatory Commission, in performance of its inspection functions, and construction activities in building a nuclear power plant?

MR. CARR: Excuse me, counsel. Could I ask you to repeat that question? I didn't follow it. I beg your pardon.

BY MR. GUILD:

Q Are you informed as to the NRC's policy, with respect to enforcement and investigation as it relates to construction in nuclear power plants?

A (Witness Owen) I suspect, from time to time, we

241b3

have discussed inspections and enforcement requirements. We have, as a subcommittee or a committee under that policy committee, a committee on design construction and operation. And that committee, under our policy direction, works more closely with the regulatory requirements for those areas.

Q Are you generally familiar with the policy of the company, with respect to access of workers at Catawba, particularly to the Nuclear Regulatory Commission with regard to concerns that they may have about safety in construction activity?

A They have access. The appropriate notices are posted. They have been informed for many years by posting and through supervision that they have access to -- obviously, to their supervision, to the employee relations people, and to the regulatory agencies which govern construction activity, Department of Labor and others, NRC.

Q What is your understanding of Duke Power Company's policy in that regard?

A Our policy is that they -- that we abide by the law. The law says post a notice, we post the notice. Our policy is that they have the right and we encourage them to express their concerns.

Q To the Nuclear Regulatory Commission?

A To management, to the Nuclear Regulatory Commission, to the Department of Labor and anyone else that they feel they

241b4

might need recourse.

Q Do you believe that a worker should have unhindered access to the Nuclear Regulatory Commission, with respect to concerns regarding safety in construction?

A Yes, I do. And to that extent, our resident inspectors are located in places where that can occur.

Q Do you believe any conditions should be attached to the access of construction workers to the NRC, with respect to concerns about safety?

A Any conditions?

Q Yes.

A I would not characterize it as a condition. I would encourage our workers to express their concerns through their supervision, in the interest of correcting problems that exist as they occur. It would seem to me the logical way to run an organization in an effective manner. That's not a condition, though, obviously.

Q Would a worker be free to go directly to the NRC and not go through or first to Duke management?

A Yes, they are. The notices are posted, as I recall, have telephone numbers that they don't even have to visit.

Q I see.

MR. CARR: Excuse me, counsel. Let me just interrupt for a second. I don't mean to be obstructive and perhaps it would be better if we discussed this off the record. I would

MR. JOHNSON: Judge Kelley, could you explain, just briefly, what the procedure is going to be for the distribution of documents put into evidence, since there has been no provision to the parties of these?

MR. GUILD: Mr. Chairman, I would just offer this to short circuit it. I understand the Chair's direction. I will hereafter try to make copies available to everybody. I will have to supply copies of these documents. I will give them to Mr. Johnson and the other parties as soon as I can, probably tomorrow.

JUDGE KELLEY: As to the one you have here, right now, I would think if you produce copies tomorrow morning so we would all have them.

MR. GUILD: Yes, sir. I will do that.

JUDGE KELLEY: That should be your practice.

MR. GUILD: We have some difficulty accessing a copier here in Rock Hill and that presents some problems. But we will get copies of this and others.

(Counsel Carr and Guild conferring.)

JUDGE KELLEY: Perhaps this is a good point to just quit anyway. It's 5:15. We said we would quit. This way before we start on this document, you can give us copies in the morning if you have copies.

MR. GUILD: With all respect, Judge. I've got the witness there. I've got him identifying the document, looking

point out that this particular line of inquiry might be better served of the second panel. It's just an observation. If you want to continue I don't have any strong objections.

BY MR. GUILD:

Q Did you have occasion to speak on this subject to a number of welding inspectors, who had concerns about the compliance with the QA construction procedures and the adequacy of Quality Assurance at Catawba?

A (Witness Owen) I had an occasion to speak to the welding inspectors who express concerns during the pay reclassification and was asked a question, as I recall, concerning talking to the NRC about their concerns.

Q Did you explain your understanding of the company's policy, at that time, to those welding inspectors with regard to contacts and access to the NRC?

A As I recall, I answered that question by saying you not only have a right to call the NRC or talk to them, but you have an obligation, if you have concerns, to talk with them, which is the way I felt about it.

Q Let me show you a document here and ask if you can identify it.

(Document handed to counsel and witness.)

Was a transcription made of the talk that you gave to the welding inspector and, if so, can you identify this document as that transcription?

at it. I'd certainly like to complete this point. It won't take long, but before he has overnight to construct a response -- a line of response, I would like a spontaneous answer to a limited series of questions about this document, sir.

JUDGE KELLEY: You don't have a copy for the Board?

MR. GUILD: I can hand one out as soon as I get one.

JUDGE KELLEY: I understand your point. Why don't you go ahead. This is going to be fairly brief, isn't it?

MR. GUILD: Yes, sir.

MR. CARR: Let me make one point. I don't like the implication that was inherent in the objection. I just let it pass.

JUDGE KELLEY: Okay.

MR. GUILD: I don't mean to impune Mr. Owen.

JUDGE KELLEY: I think it's clear on both sides.

MR. GUILD: My only point, it's an opportunity. As a practice --

JUDGE KELLEY: Why don't you go ahead?

BY MR. GUILD:

Q Can you identify this as that transcript, Mr. Owen?

A (Witness Owen) I can identify it as whatever it is. It looks like a transcript of part of one of the sessions that I had with the welding inspectors following the conclusion of the pay recourse. I went to the job. I met with -- I don't recall whether it was three -- about three groups of inspectors.

Since we had to keep the work going I met concurrently with all three of them and had a prepared statement that indicated how the company felt and how I felt with respect to the closure of the pay recourse and the fact that our policies indicated that that was closed and our hope that we would move on and leave that behind us.

Q I don't mean to interrupt you --

A Can I finish?

Q Let me ask you, just one second --

MR. GUILD: I would like to first identify the document.

JUDGE KELLEY: Let's do that.

MR. GUILD: I will let you complete your explanation but I want to identify the document.

WITNESS OWEN: I said it appears to be a transcript. I could not verify that it is, without -- I gave you -- we gave to you the written document that I used for the --

BY MR. GUILD:

Q I'll represent to you this was produced by the company, so identified as a transcript. It appears, to you, to be that, sir, does it not?

A (Witness Owen) It appears to me.

MR. GUILD: Mr. Chairman, we'd like it marked for identification as Palmetto Exhibit 2, please?

JUDGE KELLEY: Very well.

(The document referred to was marked for identification as Palmetto Exhibit No. 2.)

WITNESS OWEN: Since we essentially don't all have a copy, let me read the part that seems to be of interest to Mr. Guild. I finish by saying "once again, let me emphasize my commitment to quality work and your obligation to bring forth all of your concerns now." That was a period of time when we were trying to get all of the concerns for review by the technical task force.

I said, "I have described how we are going to review those concerns and I would like to spend a few minutes that we have left for comments or questions on that process of resolving your concerns." There was a question -- and I want to emphasize that this was in one of the three groups. And this was in a group where one of the inspectors had brought a tape recorder, which I was not aware of but I did not object to -- as I told him afterwards. I said I think it would be appropriate if you would let us take that tape and transcripe it and give you a copy and the tape back so that we can have a copy of the same thing that you have. That was Mr. Godfrey, as I recall.

The question was "Mr. Owen, I would like to -- I believe you said that there would be no type of repercussions, no type of holding anything that we have done against us, that there would be no type of retaliation or anything as long as

we have followed all of Duke Power's policies and procedures. There is some concern among the group that maybe we should voice our opinion directly to someone else involved, i.e. the NRC. How does Duke Power stand, how do you stand on that point? If someone in our group was to feel strong enough that we needed to, instead of allowing Duke to present our concerns to them, if we chose to present them directly to them. How does Duke stand on that? Will we be retaliated against for that?"

And I answered, "Each man has to make his own decisions. Those concerns are going to be presented to the NRC. My point was we're going to tell the NRC about this whole review and I suspect that the NRC is going to take a look at all of those concerns. The telephone number for the NRC is posted down here and certainly that is your decision to make."

The queston was "Ah, that was somewhat of an evasive answer. Would Duke Power or would you condone anybody retaliating against an individual who thought they had to do that?" My answer would be -- was "That would just have to depend on circumstances in the case. If it was done capriciously, then they would not serve the best interests of a company. If it was a genuine concern that you have presented to the company and you feel that the company has not responded appropriately to that concern, then I think that would not only be your right to do that, but maybe your obligation to do

241bll

that."

Q And Mr. Owen --

JUDGE KELLEY: Could we have a date for this?

BY MR. GUILD:

Q Would that have been on or about January 27, 1982, Mr. Owen, to the best of your recollection?

A (Witness Owen) That's about right. As I recall, they were all three on one day and this was the questions and answers of one of the three sessions, the only session in which that question was asked.

Q On page number seven is the next page, do you ask "what is your name?" and is there an answer that says "John Rockhclt."

A What page?

Q It was number seven, sir. The numbers may have not been copied well. It's the following page from where you were quoting.

end t24

ei 25:01

A Yes. I think I recall saying -- I don't think I said what is your name. I think I said, "Aren't you Rocky Rocco?"

Q All right, sir -- Mr. Owen --

A As I recall, the tape was very difficult to transcibe because it was relatively poor quality. Let me tell you the other aspect of it.

I had a talk with Mr. Godfrey aftewards, and I said when he indicated --

Q Mr. Godfrey, was that it?

A Godfrey, I believe his name was Godfrey. And when it was indicated to me that he had it tape recorded, I suggested to him that I felt it was inappropriate to record a session without making that known, that I would not do that. And I thought, in the interest of developing a trust between any levels of supervision, that needs to be done in an open and above-board manner.

We had a good understanding before I left the job and before this was transcribed.

S2 BU

Q Does that complete your answer, Mr. Owen?

A (Nodding affirmatively.)

MR. GUILD: Mr. Chairman, we ask that the exhibit for identification be received in evidence. That is the transcript.

MR. CARR: No objection.

ki 25:02

JUDGE KELLEY: So ordered.

(The document previously marked as Palmetto's Exhibit 2 for identification was received in evidence.)

MR. GUILD: If that's an appropriate stopping point --

JUDGE KELLEY: Does that bring us to a stopping point?

MR. JOHNSON: I just want to ask one question. How can anyone possibly accede or not accede the admission of a document they have not seen? How can we object or not object, if we haven't seen the document?

MR. GUILD: Mr. Johnson, I'm sorry. I apologize. I've shown it to counsel. Counsel for the Applicants had the document.

JUDGE KELLEY: I think we made it clear earlier, and I'll state it briefly again, that we expect in the normal course, copies will be brought in. I am sure that somewhere near here, there's a nickel-a-page copying operation going and you'll just have to make appropriate arrangements.

MR. JOHNSON: Could I ask a question about this transcript? Is this a complete transcript of this session?

MR. GUILD: Yes, to my knowledge. It was in the form presented to me by the Applicants,and you were present

ki 25:03

when I examined this witness about this subject, to my best recollection, Mr. Johnson.

MR. JOHNSON: I don't believe I was. In any event, you answered my question.

MR. GUILD: I'm not keeping anything out --

JUDGE KELLEY: I don't think we will have this problem again.

All right. Let's quit for today and resume with the same witnesses tomorrow morning at nine o'clock.

JUDGE KELLEY: Back on the record.

MR. CARR: I beg your pardon, Judge. First I'm told that there is a library within a block of here that has a copying machine for a nickel a page. I can't -- I cannot represent, given what I have here, that this is a complete transcript. I can't -- Mr. Owen has described the circumstances under which the tape was transcribed. There's punctuation in here that, under certain circumstances, would indicate ellipses, like maybe something was left out or was illegible.

At this point, I frankly don't know whether the claim is complete or not. It does appear to be what we turned over to Mr. Guild.

JUDGE KELLEY: This is certainly awkward. I mean the initial awkwardness comes from not having copies. You have indicated you will try to avoid that in the future.

I did say a few minutes ago, Mr. Guild moved the

admission of the document. I looked up. I heard no objections. Mr. McGarry indicated he had no objection. I thought that was a signoff as far as the Applicants were concerned, so I said okay.

It's tough for you, I think, to come on later and raise a question on admissibility when I have got the signal which was pretty clear that there isn't any objection.

MR. GUILD: Judge, may I offer this? I would be perfectly happy, if Mr. Owen has some additions or corrections tomorrow to alter this document, that he feels free to do that. I want a complete record.

JUDGE KELLEY: Isn't the solution here along those lines? You've got copies now. Please look over it over the evening. This, I gather, purports to be a transcript of a meeting on a particular day, on a particular subject. We all understand when it was and who was there. Read it over, and if we've got problems with corrections or difficulties, then we can have an understanding. We can hear about it in the morning. But hopefully, counsel and the witness can work that out.

MR. CARR: I understand. The point I was making, it was very difficult to tell that it was complete, that's all.

JUDGE KELLEY: We're going to let the ruling stand, and what you just said, what we said, what Mr. Guild said,

ki 25:05

what the witness said, it's all on the record. If you read it overnight and you find problems, bring it up first thing in the morning. We'll try to straighten out.

We are adjourned.

(Whereupon, at 5:25 p.m., the hearing was adjourned, to resume at 9:00 a.m. the following day, Thursday, October 6, 1983.)

CERTIFICATE OF PROCEEDINGS

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

In the matter of: DUKE POWER COMPANY, et al

Date of Proceeding: October 5, 1983

Place of Proceeding: Rock Hill, South Carolina

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

Mimie Meltzer
Official Reporter - Typed

Mimie Meltzer
Official Reporter - Signature