

# ORIGINAL

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: 2380 - 2592

Date: Tuesday, October 11, 1983

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the matter of: :  
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DUKE POWER COMPANY, et al. : Docket Nos. 50-413 OL  
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50-414 OL  
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(Catawba Nuclear Station, : ASLBP No. 81-463-01-OL  
:  
Units 1 and 2) :  
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U.S. District Court  
Old Post Office Building  
Second Floor  
Caldwell & Main Streets  
Rock Hill, South Carolina

Tuesday, October 11, 1983

The hearing in the above-entitled matter resumed,  
pursuant to recess, at 9:30 a.m.

BEFORE:

JAMES L. KELLEY, ESQ., Chairman,  
Atomic Safety & Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

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



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5       and

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13       and

14           BRADLEY JONES, ESQ.  
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17       On Behalf of the Intervenors:

18           ROBERT GUILD, ESQ.  
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21       On Behalf of the State of South Carolina:

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1        Also Present:

2                BILLIE GARDE  
3                Government Accountability Project  
4  
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I N D E XWitness:DirectCross

Warren A. Owen  
and  
G. W. Grier  
and  
B. Gail Addis  
and  
James R. Wells

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2498  
(Cont'd by Mr.  
Guild)

E X H I B I T SFor IdentificationReceived

Palmetto Exhibit No. 4

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Palmetto Exhibit No. 5

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Staff Exhibit No. 1

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1 JUDGE KELLEY: We're back on the record.

2 Good morning, ladies and gentlemen.

3 We have just a few preliminary items to touch on  
4 before we resume the cross-examination of the second panel.

5 First of all, I received -- I found in my end  
6 box over the weekend a memorandum dated September 29, 1983  
7 from Mr. James K. Joosten, (spelling) J-o-o-e-s-t-e-n,  
8 to the files, subject being Catawba trip report, and this  
9 is a memorandum about a trip taken by Mr. Galinski and some  
10 members of his staff on September 20th to the Catawba site,  
11 along with representatives of the parties, I believe.  
12 What was adventurous to us -- I'll read it. It's brief --  
13 goes to the question of scheduling in projected fuel load  
14 dates and commercial operation dates, and on page two at the  
15 bottom, the last paragraph, says this, quote, "Mr. Dick  
16 reviewed Duke's current construction schedule. The  
17 company hopes to be able to do hot functional testing in  
18 May, 1984, to be ready to load fuel in November, 1984, and  
19 to be ready for commercial operation in June, 1985," close .  
20 quote.

21 We have been operating on the assumption, as  
22 represented to us numerous times by the applicants, the  
23 two loadings projected for May, 1984 and that has had a  
24 heavy bearing on scheduling in the case. This memorandum  
25 says November. That's a seven-month difference. So we'd

Tlm2

1 like the applicants to -- I don't know if you've seen this  
2 particular memo yet. It's supposed to be served on every-  
3 body so if you don't have it yet, I suppose you'll get it;  
4 but that's what Mr. Jooesten wrote in his memo, and we'd  
5 like to have comment on that.

6 WITNESS OWEN: Could I comment on that?

7 JUDGE KELLEY: Please do.

8 WITNESS OWEN: We did receive that and are in  
9 the process of notifying him of the mixed-up dates that  
10 Mr. Dick used in his oral presentation. The current  
11 schedule calls for hot functional testing to start November  
12 the 4th of this year, and fuel --

13 JUDGE KELLEY: Could you clarify for my sake  
14 what hot functional testing is?

15 WITNESS OWEN: Yes. Hot functional testing is the  
16 operation of all the critical parts of the plant, all the  
17 nuclear portion of the plant without fuel in the core. So  
18 all the systems have been checked out. The reactor vessel  
19 is closed up with all the internals in except for the core.  
20 The pumps are run. All the other systems necessary to  
21 support operation are run to see if they run in an inte-  
22 grated function.

23 Following hot functional test, then you open  
24 up the vessel, clean up the vessel, put the fuel in, do  
25 some additional testing; but then you put the fuel in some

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1 three or four months following hot function.

2 (Continued on next page.)

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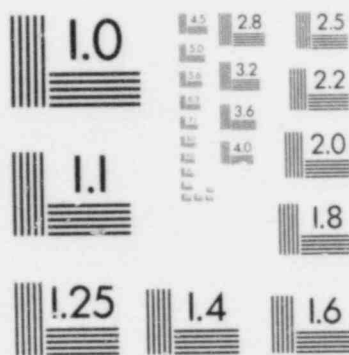
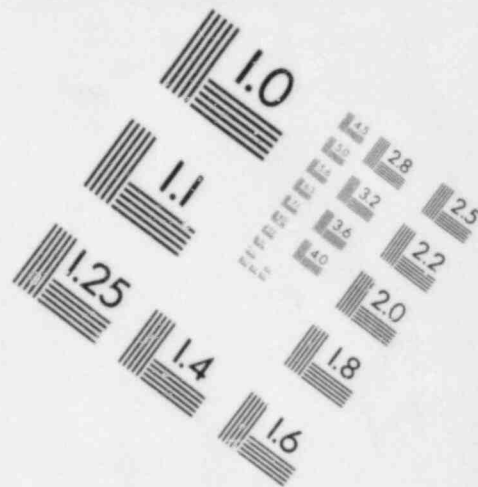
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1 JUDGE KELLEY: You're essentially running hot water  
2 through the pipes?

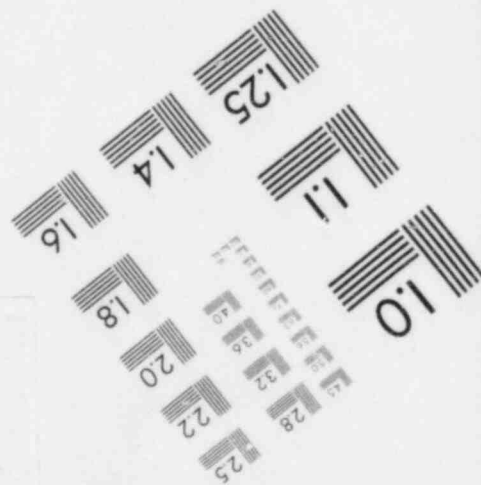
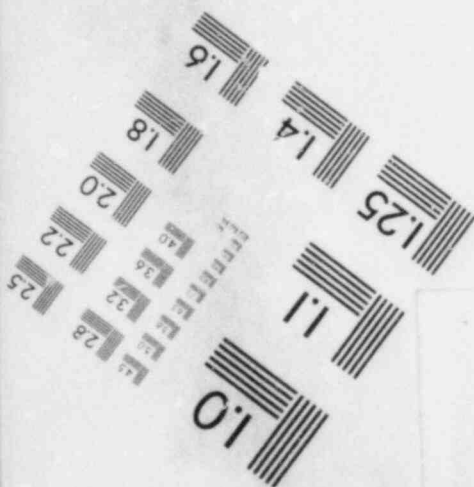
3 WITNESS OWEN: Yes, sir, you run hot functional.  
4 You run water through the pipes. The water heats up due to  
5 the energy put in by the large reactor coolant pumps and, in  
6 fact, we generally operate the turbine on steam generating  
7 from just the heat of the pumps during hot functional. We had  
8 originally scheduled hot functional for mid-October, and at  
9 that time the steam generator modifications were to be done  
10 after hot functional. We decided to move those up prior to  
11 hot functional, which delayed it from mid-October until early  
12 November -- right now it is November the 4th -- and fuel is  
13 to begin arriving on the site shortly after the first of the  
14 year to be completed in mid-April, and then we'll be on our  
15 current schedule -- with some margin, we'll be ready to load  
16 fuel in May.

17 JUDGE KELLEY: With an expectation -- just to  
18 finish out the various milestones that have been referred to --  
19 with an expectation of all going well, of commercial level  
20 operation about when?

21 WITNESS OWEN: Well, we would -- we want to run the  
22 unit through its testing phase at each of the power levels up  
23 to a hundred percent power, and that takes three to six  
24 months, just depending on the nature of the -- and the result  
25 of the tests. We do want to shut the unit down prior to



6"



1 commercial operation to do some eddy current testing of the  
2 steam generator tubes just to confirm for sure that we don't  
3 have any problem resulting from the modification, and then we  
4 would expect commercial operation somewhere near the end of  
5 1984. We would run a hundred percent power prior to the shut-  
6 down to look at the steam generator tubes.

7 JUDGE KELLEY: The term "commercial operation" as  
8 you've just been using it, is that equatable with more than  
9 five percent, or not?

10 WITNESS OWEN: No, sir, that's -- really it's a  
11 utility's commission term that says the unit is used and  
12 useful, and that's somewhat of a nebulous thing, but it's a  
13 period of time when we quit accumulating costs for construc-  
14 tion and start accumulating costs for operation.

15 JUDGE KELLEY: I think I asked the wrong question.

16 From our licensing standpoint -- we've been talking  
17 about this before, as the record will reflect -- it you pre-  
18 vail on safety and environmental issues and have nothing  
19 standing in your way to offset emergency planning, you can  
20 get a so-called low powered license, but under the rules,  
21 that's usually up to five percent. Rather than asking you  
22 the commercial operation question, when do you envision, if  
23 all goes well, reasonably well, that you would need something  
24 more than a low power license; that you would need a full  
25 power license?

1           WITNESS OWEN: It's sort of testing my memory, but  
2 I believe it's in the order of six weeks, or so, following  
3 loading of the fuel. I believe there's about six weeks of  
4 zero power physics testing, and the other testing before we go  
5 to five percent, do a little bit of testing then, and then I  
6 believe 15 percent power is the next plateau. I can confirm  
7 that. I'll have to check with some of our operations people,  
8 but I believe it's about six weeks. Certainly it's in that  
9 order.

10           JUDGE KELLEY: My main concern here was whether  
11 Mr. Jooesten was just wrong, and the answer is that he is  
12 wrong.

13           WITNESS OWEN: Yes, he is, and there's several  
14 other errors or misinterpretations of things in that, and  
15 we're in the process of notifying him and correcting that,  
16 and we'll serve that on all the same people that he did.

17           JUDGE KELLEY: I might just add, it becomes signi-  
18 ficant now, perhaps not exclusively, but principally what  
19 comes to mind is the emergency planning schedule. We've had  
20 disagreements about when to close discovery, and that's all  
21 been keyed to fuel level. If Mr. Jooesten had been right,  
22 then we would have an unnecessarily tight schedule; but if he  
23 is wrong, maybe we don't. That's why we've raised it,  
24 essentially.

25           WITNESS OWEN: And as I've said before, if that

1 situation changes -- and it always can during the tail end of  
2 a schedule -- if that changes, we'll notify the Board  
3 immediately.

4 JUDGE KELLEY: Right. I think when we've had  
5 these discussions in the past, we've developed an understanding  
6 that any material change in these projections would be brought  
7 to the Board's attention. Fine.

8 MR. GUILD: Mr. Chairman, if I might, I was on that  
9 tour and remember the description generally the way Mr. Owen  
10 has just stated it as presented by Mr. Duke with the one  
11 significant difference that today is the first time I've heard  
12 anyone state other than a June 1985 commercial date.

13 Now, I didn't understand what the November new  
14 interpretation of that term meant in light of Mr. Owen's  
15 remark about how nebulous the concept of commercial operation  
16 was. Perhaps for clarity's sake he could state what the  
17 significance of the June '85 date now is, if any, and what he  
18 meant by the November commercial date.

19 JUDGE KELLEY: It seems a fair question.

20 WITNESS OWEN: I guess you've caught me in a lapse  
21 of memory. I was thinking about McGuire 2 when I was  
22 thinking about the end of this year, and that's where we're  
23 shutting down to do the modifications -- no, I'm not. That's  
24 June for Unit 2.

25 MR. GUILD: The published dates that I've seen are

1 June '85 and June '87 for Units 1 and 2 Catawba Station.

2 WITNESS OWEN: June '85 --

3 MR. GUILD: '85 and 87, sir.

4 WITNESS OWEN: You're right.

5 JUDGE KELLEY: Mr. Carr has a suggestion.

6 MR. CARR: I think the record clearly reflects the  
7 dates in Mr. Joosten's trip report are incorrect. Now, if we  
8 want to get into the question of commercial operation, and  
9 that kind of thing, Mr. Owen can check with the appropriate  
10 people at the company so we will be prepared to respond.

11 JUDGE KELLEY: I don't want to get into it in  
12 depth for the simple reason that commercial operation, as I  
13 understand it, doesn't have any bearing on what we do. We're  
14 worried about going to five percent and going beyond that.  
15 Whether you're commercially viable for pumping of your PUC is  
16 not our concern, as I understand it.

17 MR. GUILD: Mr. Chairman, I guess my understanding  
18 of the entire impetus beyond what's been described as the  
19 Commission's policy was what I would describe as a rush to get  
20 licensing done so that the unit is available for commercial  
21 operation. To the extent that there is no meaningful defini-  
22 tion of the term "commercial operation," then we're all playing  
23 backwards from something that doesn't mean anything.

24 (Continued on next page.)

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T3ml

1 JUDGE KELLEY: This board isn't moving backwards  
2 from commercial operation. Quite frankly, this board doesn't  
3 care about commercial operation. The Commission might.  
4 The Commission might appoint a proper arrangement and think  
5 their policy is wrong and they can change it; but they  
6 have said to this board, "Try to finish this proceeding,  
7 except for offside emergency planning, by the time they load  
8 fuel. That's a very simple concept, and that's really,  
9 as far as these proceedings go, all we need to worry about.

10 MR. GUILD: Well, sir -- I mean, if I might  
11 just state this very succinctly, if loading fuel is an  
12 arbitrary point in time that has no meaning to the Commis-  
13 sion's stated policy of assuring the facilities are ready  
14 to operate, but yet unlicensed, then I suggest that this  
15 board's misinterpreting the application of that proposal  
16 statement to the detriment of this part because we're being  
17 rushed to complete this case in order to meet a date that  
18 Duke says it needs to meet.

19 I might suggest it's important and that I'm  
20 perfectly willing to see what the clarifications of the  
21 dates comes out to say, but I heard Mr. Owen tell us that  
22 he's advanced commercial operation by some seven months in  
23 responding to the Chair's question. That concerns me and  
24 has a bearing on the scheduling we're talking about.

25 MR. CARR: And my suggested simply was

1 if we're going to get into this, we have already pointed  
2 out that the dates in Mr. Joosten's trip report are wrong.

3 JUDGE KELLEY: Right.

4 MR. CARR: Mr. Owen said when we started down  
5 this aisle of inquiry that he wasn't sure of his dates, and  
6 to be accurate, he wanted to check with the appropriate  
7 people. Now, Mr. Guild has tried on two occasions before  
8 to litigate this schedule and the board has overruled him on  
9 each occasion. So if we're going to get into it, allow us  
10 to check with the right people to get the facts straight.

11 JUDGE KELLEY: We have no intention of getting  
12 into this for litigation purposes, and I think we all  
13 understand when we say that. What we're concerned with, we  
14 get a memorandum from the Office of the Commission that's  
15 flat wrong. That we all know. So we raise the question,  
16 "What is that?" We have now got an answer. I think that's  
17 really as far as we need to go.

18 The fuel load date, which is what we keyed this  
19 proceeding on, hasn't changed. The commercial operation  
20 date, as we see it, isn't the same thing on which nuclear  
21 power license may be needed, and that's the other point  
22 that we're keying on. I guess if we're wrong, we're wrong.  
23 I don't think we are, but we're willing to go with that,  
24 that our interpretation -- the Commission's stated policy  
25 with regard to scheduling of these kind of cases. We think

T3m3

1 it's clear enough, that there's some mark between commer-  
2 cial operation dates -- we'd be happy to have an explanation  
3 for the record, but I don't think we need it this morning.

4 MR. CARR: Thank you.

5 MR. GUILD: Mr. Chairman, at your pleasure, I  
6 handed the Chair and Judge Foster some documents and I have  
7 some record corrections I'd like to make when it's con-  
8 venient.

9 JUDGE KELLEY: Let's do it now.

10 Mr. Guild served you and the Board two documents;  
11 one captioned, "Application for Subpoenas," dated October  
12 10; the other captioned, "Request for the Exclusion of  
13 Witnesses and Motion to Reconsider," dated October 10.

14 And, Mr. Guild, if you have some corrections,  
15 why don't you go ahead.

16 MR. GUILD: Yes. The substantive corrections I  
17 made with Applicant and Staff, and if I can read it for the  
18 record. It also includes typos. If I can turn to Application  
19 for Supoenas -- I apologize to make these corrections, but  
20 these were typed overnight and brought up this morning with-  
21 out an opportunity to correct the first draft.

22 The first line, after "2.720," strike "in" and  
23 add "and," (spelling) a-n-d.

24 Five lines down where it says, "Quality Assur-  
25 ance," put a slash between "Quality Assurance/Quality

T3m4

1 Control."

2 The last line of the paragraph numbered one which  
3 reads, "Testimony of Warren H. Owen at," insert "P. 18,"  
4 to read page 18, lines 25 et seq. And to the paragraph  
5 numbered two, after the concluding phrase, "Rating wasn't  
6 justified," change the period to a comma and add the phrase,  
7 "referred to in the direct testimony of W. H. Owen at P. 18,  
8 lines 11 et seq." page 19, lines 11, et seq.

9 Am I reading too fast; is that --

10 JUDGE KELLEY: I don't think so.

11 MR. GUILD: Paragraph number four, Mr. Zwissler --  
12 it's (spelling) L-e-w-i-s, as I understand. And that's the  
13 only corrections on that document.

14 The second document we handed up and served --  
15 let me give the Court Reporter copies of these. How about  
16 that? Sorry.

17 The second document is captioned, "Request for  
18 the Exclusion of Witnesses and Motion to Reconsider." The  
19 second-to-the-last line on the first page, the citation,  
20 Consumers Power Company, should be underlined. ALSB should  
21 read ALAB, and the ALAB citation should be ALAB 379, to  
22 drop the comma.

23 Second page, there are four numbered paragraphs.  
24 Add a fifth numbered paragraph, and I gave -- this is the  
25 only substantive change.

13m5

1 For the record, paragraph number five should  
2 read, "Enjoin each such witness from reading the transcripts  
3 of testimony of others and from discussing his testimony  
4 with any other person."

5 And that's all.

6 JUDGE KELLEY: Would you give us that last one  
7 once more?

8 MR. GUILD: Yes, sir. It should be handwritten  
9 on the copy I gave to the Chair.

10 JUDGE KELLEY: Okay.

11 MR. GUILD: "Enjoin each such witness from reading  
12 the transcripts of testimony of others and from discussing  
13 his testimony with any other person."

14 JUDGE KELLEY: Is that it?

15 MR. GUILD: Yes, sir.

16 JUDGE KELLEY: Now, just so we all understand,  
17 including the Board, where we are on the two documents just  
18 referred to, the application for subpoenas, just on the  
19 basis of looking at it quickly, is a specification of -- more  
20 specification of documents that you're asking witnesses to  
21 bring with them, is that correct, in response to the discus-  
22 sion of last week?

23 MR. GUILD: Yes, sir.

24 JUDGE KELLEY: And the other document, am I  
25 clear -- again on the basis of reading this rather quickly --

T3m6

1 that this motion -- this request for exclusion, which is  
2 functionally a motion, I take it, speaks only to Mr. Larry  
3 Davison?

4 MR. GUILD: No, sir. It speaks more broadly  
5 than that. If I could just characterize, as I recall, the  
6 Chair left us with an opportunity this morning to bring  
7 before the Board a request to exclude Mr. Davison and perhaps  
8 others with respect to nonmanagement personnel to be testi-  
9 fying, basically welding inspectors. We have made that  
10 request in this request for exclusion. We've also brought  
11 before the Board a motion to reconsider a more general  
12 request to sequester or exclude witnesses on the basis of  
13 authority that we've had an opportunity to review over the  
14 weekend in consultation. We can represent to the Board that  
15 we understand that it is common practice to provide the  
16 relief that we requested, and that the authority -- both  
17 the Appeal Board decision in the Midland case and the exis-  
18 ting federal authority, fully supports the relief that we  
19 sought last week. So we ask to reconsider.

20 In any event, Judge Kelley, you suggested that  
21 we would have an opportunity to present argument and  
22 authority this morning on the narrow additional request that  
23 you anticipated.

24 JUDGE KELLEY: Yes. As I recall it, we said  
25 provide the names of those that you want excluded and provide



T3m7

1 also a proposed order so we would know exactly what the  
2 relief was.

3 MR. GUILD: Specification of relief, yes.

4 JUDGE KELLEY: Right. We said that you could  
5 orally spell out your reasons, make a legal argument if  
6 you wish, that kind of thing. That's roughly, I think, the  
7 demarcation that we made on those points.

8 MR. GUILD: Yes, sir.

9 JUDGE KELLEY: Now, these particular papers that  
10 have now been distributed, I don't know whether Counsel --  
11 as a matter of logical sequence, whether we should proceed  
12 further with this now, or whether we should defer it a  
13 bit.

14 One option would be for Mr. Guild to make what-  
15 ever oral presentation of a supplementary nature he wants  
16 to make now so you would know what his complete position  
17 is, and then -- I don't know whether you feel prepared to  
18 speak back to it at that point or not. Let me poll the  
19 lawyers on that point.

20 Mr. McGarry, do you think we should go ahead on  
21 this now, or have you had a chance to absorb it?

22 MR. MCGARRY: We would like to dispose of these  
23 two matters as quickly as possible. We would like to hear  
24 what Mr. Guild has to say, and perhaps we can respond.  
25 I think we're clearly in a position today to at least

T3m8

1 partially respond.

2 Again, it would be desirous to completely respond,  
3 but that's dependent upon what matters Mr. Guild raises.

4 JUDGE KELLEY: All right. Mr. Johnson, do you  
5 want to go ahead with this now? My understanding is we would  
6 hear further from Mr. Guild. To the extent you care to  
7 respond, you can go ahead. If you want to reserve to some  
8 later point, you can do that. But we would at least -- as  
9 long as we're talking about these issues, we'll go ahead  
10 with it now.

11 MR. JOHNSON: I have no problem with Mr. Guild  
12 making his oral presentation and Mr. McGarry making his  
13 response, and I may have a response at this point, but I  
14 would like to reserve, until at least tomorrow morning, an  
15 opportunity to review the matters that he's relying on.

16 JUDGE KELLEY: That seems reasonable. Do either  
17 of these requests take effect today, as you talk about a  
18 document request, for example, that needs to be acted on  
19 today, or can it wait? I don't know, looking at it.

20 MR. JOHNSON: I was really referring to the  
21 request for the exclusion of witnesses. The other document  
22 doesn't really adjust the staff.

23 JUDGE KELLEY: All right. Well, we've already  
24 gotten into this to some extent. Perhaps the best course  
25 is to just go ahead and hear Mr. Guild's further presentation.

3m9

1 Mr. McGarry will have some response. Mr.  
2 Johnson may. One or both of them may wish to reserve a  
3 bit of time, either later today or tomorrow morning.

4 I do think that, having spent a fair amount of  
5 time on this problem last week, that the general principles  
6 have been pretty well put out. The relief is reasonably  
7 well understood. So that, gentlemen, I think you could all  
8 be fairly brief in these presentations.

9 Now, Mr. Guild, so I understand correctly, we  
10 have your names of people -- and I'm speaking now to your  
11 request for exclusion, the names of people, and we have the  
12 relief spelled out that you want. You would, as I under-  
13 stand it, speak now as to why these particular people, as  
14 distinguished from anybody else, ought to be excluded in  
15 this fashion and why that relief is warranted by applicable  
16 NRC precedence, right?

17 (Continued on next page.)  
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1 MR. GUILD: Yes, sir, that's correct.

2 Mr. Chairman, let me hand up at this time what's  
3 indicated in the document, the motion, as an attachment, and  
4 that is described on the third page of the motion as an April  
5 27, 1983, memo to file from Mr. G. W. Grier, corporate QA  
6 manager, reflecting a manager meeting with welding inspector  
7 supervisor G. E. Roth.

8 JUDGE KELLEY: Okay.

9 MR. GUILD: Let me say at the outset that having  
10 reviewed the authority, both the Federal Rule of Evidence  
11 provision with advisory committee notes and federal and NRC  
12 case law that's been available to us, we are of the strong  
13 conviction that the relief of sequestration of witnesses is  
14 relief to which Palmetto is entitled as a matter of right  
15 without having to make the showing that essentially Palmetto  
16 was put to last week.

17 Now, we are prepared to make a showing as to  
18 specific witnesses and the need to exclude them essentially on  
19 the basis of what we think the factual record that supports  
20 the likelihood of harm, the harm that the rule of exclusion  
21 is intended to prevent.

22 The advisory committee notes to Rule 615 of the  
23 Federal Rules of Evidence that provide for the exclusion of  
24 witnesses, as a matter of right, upon the request of the party  
25 support the proposition that the exclusion of sequestration is

1 a means of discouraging and exposing fabrication, inaccuracy  
2 and collusion; that it's the potential for such harm that is  
3 to be prevented by granting the relief of sequestration or  
4 exclusion upon request. It puts the party seeking the relief  
5 in an untenable and unfair position to require the party to  
6 make the showing of the actual likelihood or probability of  
7 the harm, and it forces Palmetto, in this instance, to delay  
8 its case, essentially, in this instance focusing specifically  
9 on Mr. Larry Davison, the quality assurance manager of the  
10 project.

11 Obviously we went into this in some detail last  
12 week. Having read the authority, it seems clear to counsel  
13 for Palmetto that the exercise that was required of us last  
14 week was one that properly should not have been put to us, and  
15 the policy behind the rule making sequestration a matter of  
16 right upon request is intended to obviate the necessity for  
17 making such a showing in the face of a witness who might be  
18 influenced and whose likelihood for, if you will, prevarica-  
19 tion is the harm to be prevented and not the harm to be proven.

20 Having said that, we reviewed the authority that  
21 Applicants cited principally, and that was the Midland case,  
22 Consumers Power Company, which details the -- a review of  
23 Licensing Board decision to what -- to do what they character-  
24 ize as sequestering Staff witnesses for the NRC.

25 Let me point out two things; first, that's a 1977

1 Appeal Board decision. It's quite dated. It explicitly  
2 authorizes and permits sequestration under the circumstances  
3 that Palmetto seeks a relief here, and that is, as quoted from  
4 the text of Midland's pages 569 and 570 where witnesses such  
5 as the welding inspectors and welding inspector supervisors  
6 here who have complained about misdeeds by their supervision,  
7 who have complained about concerns of quality assurance --  
8 quote -- could be deterred from testifying fully by the  
9 presence in the courtroom of those able and likely to take  
10 physical or economic reprisal against them.

11 Now, that's the explicit, express exception to the  
12 Midland decision denying sequestration of the Staff witnesses  
13 that was the subject of that appeal. Here, the relief we seek  
14 at paragraph 4, motionarily, with respect to the welding  
15 inspections and welding inspector supervisors, who are the  
16 bearers of bad tidings in this case, is the exclusion of those  
17 indirect supervisory chain above them, those who, in the words  
18 of the Midland decision, are able or likely to take physical  
19 or economic reprisal against them.

20 In this case, the reprisal is one of discrimination  
21 in one's job and one's career; it's economic reprisal, at  
22 least with respect to the people named as supervision.

23 The people we seek are Messrs. Allum, Baldwin,  
24 Davison, Grier and Owen. Beginning with the end two gentlemen  
25 who sit as sworn witnesses in the middle of their examination,



1 Messrs. Owen and Grier, most senior corporate quality  
2 assurance official, Mr. Grier, and his supervisor, who super-  
3 vises the QA department and construction of the facility; Mr.  
4 Davison, who is the site project quality assurance manager;  
5 Mr. Baldwin, who has been in direct supervision of visual  
6 welding inspectors, now performs responsibilities in quality  
7 control supervision at Catawba is named as a, if you will,  
8 wrong-doer by a number of welding inspectors; Mr. Allum, Mr.  
9 Art Allum, who was, as part of the remedial action taken,  
10 transferred in to supervisor -- welder supervisor Beau Ross.  
11 Mr. Allum is the subject of a pending -- is the subject of a  
12 recent 1983 -- spring-summer 1983 recourse claiming reprisal  
13 filed by G. E. Beau Ross. Mr. Ross is to be a witness in this  
14 case. Mr. Allum is to be a witness in this case.

15 The Federal Rules of Evidence suggest exceptions  
16 to the principle of sequestration or exclusion as a matter of  
17 right, and those exceptions now, I understand, were to be the  
18 points alluded to by Applicants last week when they responded  
19 to this request, and those are the exception for a person  
20 where -- quote -- a party who is a natural person or, two, an  
21 officer or employee of the party which is not a natural person  
22 designated as its representative by its attorney" -- that is,  
23 to paraphrase, Duke's official representative as a corporate  
24 party to this proceeding -- "and/or, three, a person whose  
25 presence is shown by a party to be essential to the

1 presentation of his cause," and that generally refers to the  
2 principle that counsel is entitled to the assistance and  
3 expertise of persons in the preparation and presentation of  
4 his or her case.

5 Now, we believe that the principle of the federal  
6 rule is not disturbed in this instance by the Midland decision,  
7 and that it's the burden upon the party opposing and resisting  
8 sequestration to make the showing under those specific  
9 exceptions to the rule that they are entitled to keep present  
10 the designated persons.

11 With respect to the Midland decision, I am informed  
12 that only very recently the Commission itself has granted a  
13 request by the government accountability project to modify the  
14 construction permit for the Midland facility. The signifi-  
15 cance of this decision is that following on the heels of the  
16 similar case, where construction was halted at the request of  
17 the government accountability project by the Commission  
18 itself, at Midland the harm, just the harm that was the focus  
19 of inquiry by the Licensing Board and the Appeal Board in this  
20 1977 decision is now not simply a concern but a demonstrated  
21 reality, and I would urge that the vitality of the principle  
22 of ALAB's 379 1979 decision excluding Staff witnesses or  
23 preventing the exclusion of Staff witnesses where the  
24 Licensing Board, back in 1977, was attempting to probe what  
25 they called then the Dow/Consumers relationship, that the

1 vitality of that decision is now quite suspect, given the  
2 fact that the Commission itself has focused -- or the director  
3 in issuing the construction permit amendment has focused  
4 attention directly on exactly the issue that was missed  
5 because of the failure, at the earliest time, to take the  
6 proper action to manage the proceeding so that the evidence of  
7 potential -- to quote the language of the rule -- "fabrication,  
8 inaccuracy and collusion" was reached at the time when proper  
9 action could be taken and not, instead, five or six years  
10 later.

11 We suggest, Mr. Chairman, that it is only appro-  
12 priate that when we're beginning litigation of this quality  
13 assurance issue with respect to the Catawba facility, that  
14 the action -- that the remedy of exclusion be taken now so  
15 that the record is not built on a faulty foundation of wit-  
16 nesses who might, who may engage in the kind of conduct that  
17 the rule is designed to prevent.

18 JUDGE KELLEY: Let me be sure I understand this  
19 point. I'm not entirely clear about your argument as to why  
20 the '77 decision by the Appeal Board in Midland has now somehow  
21 been eroded or uncut. Can you point to an Appeal Board  
22 decision which says that, which says we were wrong; and if we  
23 had to do it over again, we'd do it differently?

24 MR. GUILD: Mr. Chairman, the Midland plant is  
25 largely being constructed for the benefit of a single consumer,

1 and that's Dow Chemical Corporation. We are informed that as  
2 a result of subsequent litigation by Dow against the con-  
3 structors of Midland facility, Consumers Power, evidence has  
4 been adduced which could have been adduced had the relief of  
5 exclusion been properly granted back in 1977. That relation-  
6 ship and the evidence that now has come about is in part the  
7 basis for the recent reopening of the record in the licensing  
8 proceeding to probe the Dow/Consumers relationship, the very  
9 subject -- evidentiary subject that was missed in 1977; and,  
10 secondly, the Director's decision modifying the construction  
11 permit is, in part, premised on the workmanship and quality  
12 assurance failures that flowed from that factual relationship.

13 Now, we suggest that, first --

14 JUDGE KELLEY: Quality assurance failures at  
15 Midland flowed from the construction --

16 MR. GUILD: Dow had a contract to have the plant  
17 completed by X date. It was not completed. There was  
18 commercial construction pressure on the Applicants to see that  
19 the plant got down to meet a preexisting constructual  
20 schedule. Significant quality assurance problems flowed from  
21 the efforts to try to meet -- to follow construction and  
22 scheduling cost pressures.

23 JUDGE KELLEY: Okay. I think your argument is  
24 pretty speculative. Does that cover the law? I'm asking --  
25 we're 15 minutes into your time now and don't want to spend too

1 much time on this point this morning.

2 MR. GUILD: Let me cite, if I may -- one moment,  
3 please.

4 (Pause.)

5 MR. GUILD: Let me direct the Board's attention to  
6 an Eighth Circuit decision in the case of Wood vs. Southwestern  
7 Bell Telephone Company. The citation is 637 Fed.2d, 1188,  
8 1981 decision.

9 JUDGE KELLEY: Is that a criminal case?

10 MR. GUILD: No, sir, it's sex discrimination, and  
11 it reflects a -- the Court of Appeals' consideration of the  
12 issue of potential harassment as a standard for reflecting the  
13 need for the relief of exclusion.

14 JUDGE KELLEY: Okay.

15 MR. GUILD: Let me turn to the attachment that's  
16 referenced in this document.

17 Having stated our position that we don't believe  
18 it's the burden of a party seeking the relief of sequestration  
19 or exclusion to demonstrate the degree of likelihood of  
20 collusion or falsification or harm, if you will, we'll under-  
21 take that burden, and we have. We think the record is  
22 abundantly clear as to specific named people. There is a  
23 likelihood of the harm occurring, which the rule of exclusion  
24 is designed to prevent, and let me add only to what was said  
25 last week about Mr. Davison -- and the record which amply

1 reflects Mr. Davison being not only the target of complaints  
2 by welding inspectors, but the initiator of significant adverse  
3 action -- that we add now an attachment which reflects what  
4 we would characterize as the reality of coaching, Mr. Chairman,  
5 the harm that exclusion and an order enjoining the witnesses  
6 from conferring with respect to their proposed testimony is  
7 designed to prevent, and here -- this is the April 27, 1983  
8 meeting with Mr. Beau Ross conducted by his superior several  
9 positions up the line of authority, Mr. G. W. Grier, corporate  
10 quality assurance manager, and the quotation at issue of  
11 significance is on page 2: "I discussed was in regards to the  
12 hearings. I explained to Beau one of our big tasks would be  
13 to put the concerns expressed by welding inspectors into  
14 perspective," and et cetera.

15 JUDGE KELLEY: Where is that exactly on page 2?  
16 I'm sorry.

17 MR. GUILD: It's the first paragraph. "The last  
18 area I discussed was in regards to the hearings."

19 JUDGE KELLEY: I'm sorry -- The first sentence,  
20 all right. But what you just read before that, where is that?

21 MR. GUILD: I jumped in the middle of that sentence  
22 The sentence reads: "The last area I discussed was in regards  
23 to the hearings. I explained to Beau that one of our big  
24 tasks would be to put the concerns expressed by welding  
25 inspectors into perspective. The Intervenor will be



1 characterizing those concerns in the worst possible light,"  
2 and et cetera.

3 JUDGE KELLEY: Okay.

4 MR. GUILD: The point here is, Mr. Chairman, that  
5 aside from what can be inferred as the likely face-to-face  
6 oral nonrecorded exchanges between persons in supervisory  
7 authority over welding inspectors and welding inspectors with  
8 respect to their testimony, from the mouth of one of those  
9 supervisors, and a memo to his file, in what can be inferred  
10 as the most favorable description of the exchange to the  
11 Applicants, to Duke, is expressed language that we think  
12 cannot be understood in any other terms except as coaching a  
13 witness who works for that man, who is subject to exactly the  
14 kind of economic reprisal that Rule 615 and the principle of  
15 exclusion of witnesses is designed to prevent.

16 (Continued on next page.)  
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1 MR. GUILD: (Continuing) The relief that we  
2 seek by way of exclusion is several and stated in the alter-  
3 native, because we think that some relief is better than  
4 none. We think that despite the fact that the relief can't  
5 be perfect, that it's the obligation of this panel, this  
6 Board and of the parties to attempt to have a record that is  
7 as full and complete and as accurate as we possibly can.

8 We ask first for the exclusion of Mr. Davison.

9 JUDGE KELLEY: I think that's pretty clear.  
10 We can read one and two, and three, too. With respect to  
11 paragraph four, you list five people, Allum, Baldwin, Davi-  
12 son, Grier and Owen, and you seek their exclusion. You've  
13 heard the Applicants argue that they need the assistance of  
14 some or all of these people in order to present their de-  
15 fense --

16 MR. GUILD: Yes.

17 JUDGE KELLEY: -- and to be here to be able to  
18 consult with them in the course of the testimony. If you  
19 had your druthers, you'd exclude all five. I understand  
20 that. Short of that, I understand you want to exclude Mr. --  
21 I infer Mr. Davison would be the person you would exclude  
22 first.

23 MR. GUILD: Yes.

24 JUDGE KELLEY: Could you give us a notion among  
25 the remaining four who you think -- whose presence would be

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1 most damaging to you?

2 MR. GUILD: Yes. Let me approach the point the  
3 other way. I heard Counsel for Applicant state three names  
4 on the record of this hearing as essential to its case.  
5 That was Mr. Davison, Mr. Grier and Mr. Henry. Mr. Henry,  
6 of those three, is the only individual who isn't named in  
7 this list. He isn't on the direct supervisory chain over  
8 the welding inspectors. He is the quality assurance  
9 manager for mechanical services, which fully took a limb  
10 of the QA tree, and not on direct line.

11 JUDGE KELLEY: Okay.

12 MR. GUILD: Now, answering your questions  
13 directly, Mr. Davison, Mr. Grier and Mr. Owen are manage-  
14 ment directly over the welding inspectors. Mr. Allum and  
15 Mr. Baldwin -- Mr. Baldwin was formerly over the welding  
16 inspectors who are the source of complaints in the likely  
17 testimony.

18 I am informed -- and I wish to be corrected if  
19 I'm not up-to-date -- that Mr. Baldwin no longer exercises  
20 supervisory authority over welding inspectors, that he's  
21 in charge of NDE, nondestructive examination, QC. If he  
22 now presently supervises welding inspectors, he may testify  
23 then that his role is one that would warrant exclusion.

24 Mr. Allum, I understand, has been the past --  
25 been the supervisor of Mr. Beau Ross, but I understand

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1 that he may have been transferred also to a position where  
2 he no longer supervises individual inspectors of welds who  
3 will be witnesses.

4 If either of those gentlemen no longer is in a  
5 supervisory position over witnesses, then the relief, I guess,  
6 in terms of order of importance, is less compelling for them.

7 JUDGE KELLEY: Okay.

8 MR. GUILD: If it's clear what the meaning of  
9 paragraph four is, I won't need to argue it. The point is  
10 to exclude those gentlemen during the testimony of the weld-  
11 ing inspectors, and then welding inspectors and supervisors  
12 from the testimony of each other.

13 JUDGE KELLEY: Okay.

14 MR. GUILD: What we envision is one witness at  
15 a time in the room without opportunity for others to hear  
16 that testimony or know what he's said.

17 Paragraph five that was added was an oversight.  
18 I dictated this over the phone last night, and its provision  
19 is to speak to the specification of relief, other than  
20 exclusion from the hearing room, to make the remedy complete.

21 JUDGE KELLEY: Would you read that one again?

22 MR. GUILD: Yes. "Enjoin each such witness from  
23 reading the transcripts of testimony of others and from  
24 discussing his testimony with any other person."

25 Now, I might state that we envisioned the

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1 implicit exception to that rule as relating to Counsel.  
2 We acknowledge Counsel's continuing -- or the parties'  
3 continuing right to consult with Counsel. And given Mr.  
4 McGarry's representations on the record as to the proper  
5 scope and limits of that counsel, we don't seek as relief  
6 any injunction against consultation with the lawyers by the  
7 witnesses, so long as we're not talking about the substance  
8 of their testimony.

9 JUDGE KELLEY: I think it becomes important  
10 that we have the precise wording in that regard. It could  
11 be a fertile source of disagreement if we don't.

12 MR. GUILD: Judge, I guess having read U. S.  
13 versus Getters, the authority that Counsel cited, which is  
14 a criminal case in the U. S. Supreme Court, touches on just  
15 that issue. In a criminal context, wherein the Sixth  
16 Amendment issue is much more compelling than civil context,  
17 I would state their formulation is appropriate. And that  
18 is, given the ethic, the constraints of the disciplinary  
19 rules, the injunction to Counsel should be clear and  
20 doesn't need to be specified, and that, in any event, the  
21 nature of the relationship between Counsel and the witness,  
22 in terms of what input Counsel did have, is the proper subject  
23 for inquiry on cross-examination.

24 The question should be put -- rather than en-  
25 join the Counsel or witness, the question should be put to

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1 the witness, "Have you discussed your testimony with  
2 Counsel?" "Yes." "What did you say?" End of inquiry.

3 JUDGE KELLEY: Okay. So you would just say the  
4 order in that regard should say, "Enjoin these witnesses  
5 from reading the transcript or talking to each other about  
6 testimony, except for discussions with Counsel," period.  
7 Something to that effect?

8 MR. GUILD: Yes. Talking to each other or other  
9 persons not being witnesses and may be --

10 JUDGE KELLEY: Just putting in simple exception  
11 for Counsel, without trying to spell out exactly what he  
12 could do?

13 MR. GUILD: Yes, that would be acceptable to us  
14 and would be --

15 JUDGE KELLEY: One other point. On paragraph  
16 five, it's open-ended as to time. How long does this bar  
17 pertain; until the end of the case, next year, forever?

18 MR. GUILD: I think that the clear limitation  
19 at this point is at the conclusion of the testimony of the  
20 witnesses themselves and the welding inspectors.

21 We're trying -- the remedy is designed to  
22 prevent influence on the testimony of the witness who was  
23 excluded himself, so once he's testified, that relief is  
24 moot. But, secondly, to prevent his influence of other  
25 witnesses' testimony. And to the extent that we're still



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1 taking testimony of welding inspectors and welding inspec-  
2 tors' supervisors, the relief is necessary.

3 So I would say this narrow relief should extend  
4 through the completion of the evidentiary hearings where  
5 testimony of welding inspectors and welding inspectors'  
6 supervisors is heard.

7 I might add, that we envision and expect that  
8 there will be testimony of other workers from the Catawba  
9 facility. To the extent that relief of a similar sort is  
10 appropriate with them, we would make the request at the  
11 appropriate time; but for here, the point is welding inspec-  
12 tors.

13 JUDGE KELLEY: I just wondered about the logic of  
14 that time limit, if the theory is, Mr. Guild, that you  
15 don't want some of the corporate supervisors to influence  
16 the testimony of a witness, say a welding inspector, out of  
17 his fear that if he's perfectly candid and lays out problems  
18 on the record, he'll eventually be shunned to the side or  
19 fired. If the bar on reading the testimony only extends  
20 through the hearing, why wouldn't his fear continue to --  
21 why wouldn't he still be afraid?

22 MR. GUILD: Well, Judge, that's a separate ques-  
23 tion. I think the question of retaliation, in fact, is one  
24 that isn't effectively governed but simply dictates to  
25 witnesses to not read transcripts. I think the existence

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1 of retaliation in fact is a matter we intend to probe  
2 historically, and we intend to do the best we can to see  
3 it doesn't occur prospectively. But the point we're really  
4 focusing on here is protecting the integrity of the record  
5 in this proceeding. The first and foremost need right now  
6 is to see that the witnesses' testimony -- and that's the  
7 focus of the rule -- witness' testimony of record be un-  
8 influenced.

9 JUDGE KELLEY: That's precisely the point I'm  
10 trying to make. Welding inspector says to you, "I'll go  
11 in there, and I'll testify with all candor; but what assur-  
12 ance do I have that my supervisor won't know what I said  
13 when the case is all over?" And you'd have to say, "None,"  
14 right?

15 MR. GUILD: That's exactly the point of the  
16 pending request we have for relief that asks this Board to  
17 take control over this management, a directive, order to  
18 prevent reprisal from occurring in the future.

19 Now, I don't know what else we can do. It seems  
20 to me unrealistic to -- I mean, if that's a remedy that  
21 will, in part, accomplish what we want to accomplish -- and  
22 that's the prevention of reprisal -- so be it. But I'm  
23 trying to come up with -- fashion a piece of relief that we  
24 think is manageable and pragmatic, and in that regard it  
25 seems to me inevitable the information will pass and it's

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1 sort of a hollow protection to say to all witnesses, "The  
2 information will not get to supervision."

3 JUDGE KELLEY: I agree with you that that can be  
4 hollow. What concerns me is we not do something that will  
5 also be hollow. I think we've gone over that enough, though.

6 Okay. Is that basically --

7 MR. GUILD: Let me add one other reference for  
8 the Board, and this is a case which extends this principle  
9 to administrative proceedings, and that's to the National  
10 Labor Relations Board adjudications, Eighth Circuit case.  
11 It's ALR against Hale, (spelling) H-a-l-e, Manufacturing  
12 Company, Incorporated, 570, Fed. 2d 705, Eighth Circuit,  
13 1978.

14 JUDGE KELLEY: Okay.

15 MR. GUILD: And that concludes our presentation.

16 JUDGE KELLEY: Thank you.

17 Mr. McGarry, are you prepared to respond?

18 MR. MCGARRY: Yes, sir. I might ask if Mr. Guild  
19 could provide us with the copy of the decision provided to  
20 the Board and the parties of the Midland decision.

21 MR. GUILD: Yes. I'll hand that back up again.  
22 I have a copy. Mr. McGarry, do you have your own?

23 MR. MCGARRY: No. That's our copy.

24 MR. GUILD: This one (indicating)?

25 MR. MCGARRY: Yes, sir.

1 MR. MC GARRY: Your Honor, let me address the ques-  
2 tion as follows, an overview impression. We are now in the  
3 second week of this hearing. I think the transcript will  
4 reflect that we have had about a day and a half of testimony.  
5 This Board is here to gather the facts to gather the testimony  
6 from these people. This motion could have been made months  
7 ago, clearly should have been made prior or at the time of  
8 prefiled testimony. We engaged in lengthy discussions last  
9 week on this topic, and here again we're facing continued  
10 discussion. I hope that this will be the last time that we're  
11 going to discuss sequestration, but since it's now on the  
12 floor, let us proceed.

13 I think the fundamental flaw in the Intervenor's  
14 request is they treat sequestration as a routine matter, as  
15 a matter that is routinely granted by tribunals. That is  
16 simply not the case in NRC proceedings. Indeed, it has been  
17 styled by the Appeal Board as an unusual remedy, and there's  
18 a reason for it. As this Board pointed out last week, it's  
19 the nature of these proceedings. It's the nature of the panel  
20 approach. It's the nature of this tribunal to seek the truth  
21 and accumulate a record upon which it can reflect and make a  
22 decision. It's the nature of the prefiled testimony which all  
23 witnesses, all persons, all members of the public are free to  
24 avail themselves of, and perhaps already have.

25 In addition, in this case there's another factor.

1 As this Board well knows, numerous depositions were taken.  
2 They were taken in June and July of this year. They also are  
3 matters of public record which potential witnesses may or may  
4 not have read, but clearly have had the opportunity to avail  
5 themselves of. It is the unique character of the pre-trial  
6 testimony and unique character of this proceeding which  
7 renders sequestration an extremely unusual remedy, and I  
8 believe a reading of the Midland decision, the Appeal Board's  
9 decision in that case, clearly supports that proposition.

10 What this Board should expect is some unusual  
11 showing, and not by the Applicant, no. The shoe is on the  
12 foot of the Intervenor. What unusual showing has the Inter-  
13 venor made today? They have not made any. Essentially they  
14 have furthered their cause not one inch since last week.

15 Reference is made to federal law. As the Appeal  
16 Board's decision points out, in the area of sequestration the  
17 NRC does not embrace rapidly, warmly or uncritically the  
18 sequestration rules; and, again, the logic underlying that is  
19 a logic I've already discussed, the nature of the NRC pro-  
20 ceedings, and I believe that's contained on page 568 of the  
21 Midland decision, ALAB 379. They say judicial proceedings  
22 shall not be imported into the administrative arena uncriti-  
23 cally, and the sequestration rule is one that has to be applied  
24 with a sensitivity concern for the special nature of our  
25 proceedings.

1           What is the legal or factual support that's been  
2 provided for this Board? Reference to the federal rules; that  
3 doesn't apply. These particular cases, quite frankly, we've  
4 not had an opportunity to read. We would submit, though, that  
5 if they're relying upon the federal law, we stand behind  
6 Midland. What factual support? That's the critical issue  
7 the Board has to ask. Aside from the legal, what's the  
8 factual support?

9           JUDGE KELLEY: I think it's the fact that the  
10 welding inspectors are employees of Duke Power Company, and  
11 you've got people superior to them sitting in the room.

12          MR. MC GARRY: That is a fact. Now, what is the  
13 factual support that says that those welding inspectors are  
14 going to be intimidated, or what's the fact that says those  
15 welding inspectors are going to falsify their testimony? I  
16 dare say that in every proceeding before the NRC, there's  
17 going to be some line of supervision sitting in a room where  
18 some individual is testifying, and that does not render  
19 sequestration the proper remedy.

20          JUDGE KELLEY: It's not the usual case, is it, to  
21 have line capacity people -- in a QA case, it is, but your  
22 usual technical cases where you've got a bunch of experts who,  
23 in all likelihood, are consultants anyway in the courtroom  
24 arguing about some technical issue.

25          MR. MC GARRY: Your Honor, more likely than not,



1 that is the case. Two observations. What, indeed, is the  
2 oath? What significance does the oath have if not to tell the  
3 truth? That should be the paramount consideration in the  
4 Board's mind. In other words, the Board should be coming from  
5 a point of view that these witnesses are going to be telling  
6 the truth. There's not going to be collusion. Then you have  
7 to say, "What showing has the Intervenor made, and if that  
8 showing has been made, perhaps sequestration is appropriate."  
9 That showing has not been made.

10 JUDGE KELLEY: I think the thing we would be  
11 principally interested in hearing from you, Mr. McGarry, would  
12 be the practical impact that a sequestration order, along the  
13 lines of the one that's been sought, would have in the pre-  
14 sentation of your case. Now, just as an example, I wouldn't  
15 see any reason why you would need to have a group of welding  
16 inspectors sitting out in the audience while one after the  
17 other got called up. I wouldn't think you would care if they  
18 were out in the hall or hadn't come yet. But what does it do  
19 to you if Mr. Davison or Mr. Grier are not available to con-  
20 sult with you as witnesses?

21 MR. MC GARRY: Unequivocally, it compromises our  
22 case. It inhibits our case. Mr. Davison has been sitting in  
23 this room since the commencement of this case. We consult  
24 with Mr. Davison frequently during the cross-examination. We  
25 want to assure ourselves that the record the Board will have

1 before it is, indeed, correct and accurate, and Mr. Davison  
2 is the critical link, and our ability to assure the Board that,  
3 indeed, the record is correct and accurate.

4 Mr. Davison is the number one quality assurance  
5 official on the site. This matter that's before this Board  
6 involves quality assurance at the site. Who, then, is in a  
7 better position to assist counsel than Mr. Davison? He's  
8 critical to our case. It's as simple as that.

9 Now, with respect to your observation as to the  
10 welding inspector, quite frankly, we don't disagree with the  
11 Board with respect to how we see the welding inspectors'  
12 testimony taking place. Hopefully we see these inspectors,  
13 the majority of them, coming in and perhaps going on the stand  
14 for half an hour to an hour; and if another welding inspector  
15 is out in the hall having a cigarette, that's not going to  
16 bother us. These men are here to tell the truth, and they  
17 have their particular case to present to this Board; however,  
18 there is an overtone associated with the granting of seques-  
19 tration; that is that there is some impropriety, and, quite  
20 frankly, we cannot sit idly by and permit that overtone to be  
21 created, because we just think it's improper, and we think  
22 that the evidence that's before this Board -- and we'd say  
23 look to the welding inspector testimony that's been prefiled,  
24 and essentially that does not support the claim of undue burden  
25 and falsification.

1           What you have before you, if you stack it up side  
2 by side, the Applicant's documentation that's at least been  
3 submitted to the Board, it may not be in evidence yet, com-  
4 pared to the allegations that are made, I think you can only  
5 come to one conclusion, that there hasn't been a showing.

6           JUDGE KELLEY: Well, doesn't the showing so far  
7 really have to rest on the apparent nature of the relationship?  
8 I mean, after all, that's one of the difficulties in this case.  
9 We get claims that there has been various kinds of misconduct,  
10 harassment. We can't stop everything and hear witnesses on  
11 that. We're just barely getting off the ground; but, on the  
12 other hand, the person making the claim can't really put his  
13 case on, so it's a difficult position to be in.

14           Now, it just seems to me that if I look at it from  
15 your perspective, and one of your perspectives -- and I would  
16 assume your most significant one -- is "how is this going to  
17 hurt me in putting my case on?" That's why we get a written  
18 order, and we've now got five specific paragraphs, and they  
19 say a number of different things, and I would think from your  
20 standpoint some aspect of this would be more objectionable  
21 than others. I pick out the one at the end of paragraph 4,  
22 and the inspection of each welding inspector -- the exclusion  
23 of each welding inspector and welding inspector's supervisor  
24 during the testimony of others. I'm not sure about inspectors,  
25 but at least others, I can't see how that hurts you at all,

1 so I would ask you to focus on this -- maybe you want to tell  
2 us after lunch, but when you look at this whole order with a  
3 lot of different relief requested, what in there would you  
4 stipulate to? Maybe nothing. But we'd like to know.

5 MR. MC GARRY: We would not stipulate to a single  
6 item. We would agree with the Board. But with respect to the  
7 welding inspectors and, perhaps, to your observations on  
8 No. 4, as a practical matter whether or not we're going to  
9 talk to these individuals, but that's not the question before  
10 you. The question before you is whether or not you're going  
11 to grant the unusual remedy of sequestration and, quite  
12 frankly, I'll repeat the point I made. It has overtones  
13 associated with it, and I'll tell you further, with respect to  
14 dealing with our inspectors, these inspectors read the papers.  
15 They know what's going on through the papers at this pro-  
16 ceeding, and there's inquiry made. "What the heck is going on  
17 at this proceeding? Are people saying we're lying?"

18 Now, all of sudden they'll read in the paper  
19 tomorrow, if this Board grants the sequestration in part, that  
20 the Board has granted sequestration that these welding  
21 inspectors can't talk to one another. That's going to, first,  
22 disrupt the job; and, second, it's going to, I think, impact  
23 on this proceeding.

24 JUDGE KELLEY: Okay. Can you wrap up?

25 MR. MC GARRY: If I may have just one minute to go

1 through my notes and confer with counsel, I think we can.

2 MR. GUILD: Just if I might, I'd like the record to  
3 reflect that Mr. Davison is present in the room, and during  
4 the argument Mr. Allum and Baldwin were present and in the  
5 room.

6 (Continued on next page.)  
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1 JUDGE KELLEY: Very well.

2 MR. MCGARRY: I think the only other point, Your  
3 Honor, we'd like to make is with respect to the application  
4 of federal rules. I've made reference to the Midland case,  
5 and its tempering of the application of the federal rules  
6 in this instance. If indeed this Board feels that the  
7 federal rules are applicable --

8 JUDGE KELLEY: We don't. A lot of cases say so.  
9 They're often followed by analogy. They're pertinent for  
10 Counsel to argue, but they don't bind the Board, is our view.

11 MR. MCGARRY: Your Honor, I've learned on Board  
12 rule to keep quiet. So I'll pass to another point.

13 The only factual support that has been provided,  
14 aside from this contextual setting, is this memorandum of  
15 Mr. Grier's. We'd like to make several objections.

16 First of all, this memorandum has been available  
17 to the Intervenor, and indeed he's had this document for  
18 months. We go back on our opening comment, why are we now  
19 arguing this motion in the second week of hearing?

20 In addition, during the deposition of Mr. Grier  
21 in late June, early July, this memorandum was the subject of  
22 some extensive discussion.

23 Thirdly, we don't think that this memorandum  
24 supports the proposition of coaching. We think it's simply  
25 an exchange between supervision and -- between supervision.



17m2

1 Mr. Ross is a supervisor, and Mr. Grier is his boss.

2 More importantly -- saving the best for last --  
3 this Board in its order of April 27th, 1983, ruled on page  
4 three under the caption, the employer's right to communicate  
5 with its employees, "We expressed at the outset that the  
6 Applicants are free to communicate with their employees  
7 about this pending licensing proceeding." And we submit that  
8 Mr. Grier's discussions with Mr. Ross are clearly embraced  
9 within this Licensing Board's directive.

10 Last point I'd like to address are the five  
11 specific instances. We've been focusing on the welding  
12 inspectors, but the specific relief sought isn't limited  
13 just to the welding inspectors. It's also directed to Mr.  
14 Allum, Mr. Baldwin and Mr. Davison, today.

15 Summing up, we oppose all five requested grounds  
16 for relief.

17 That concludes our presentation.

18 JUDGE KELLEY: Mr. Johnson, how much time do you  
19 need?

20 MR. JOHNSON: Oh, five, ten minutes, at the most.

21 JUDGE KELLEY: Should we go ahead, or should we  
22 quit for coffee break?

23 MR. McGARRY: I'd say let's go ahead and get it  
24 over with so we can start getting the testimony of these  
25 witnesses.

7m3

1 JUDGE KELLEY: Go ahead.

2 MR. JOHNSON: Fine. First, I think that we ought  
3 to distinguish between the two rationales that have been  
4 offered, one of the fear of retaliation -- possibly with  
5 retaliation, and, second, the question of whether the testi-  
6 mony given on cross-examination will be truthful.

7 I'd like to dispose of the first subject, retalia-  
8 tion. It doesn't seem to me that this Board really can  
9 prevent retaliation if retaliation there is going to be.  
10 There hasn't been any showing that there's going to be  
11 retaliation. There's no evidence in the past of retalia-  
12 tion or of the fear of retaliation, from the testimony  
13 in this case; but to the extent that there is a policy to try  
14 to prevent it, there is a law. There's a statute -- a federal  
15 statute which is designed to prevent or cure the possibility  
16 of retaliation in Section 210 of the Energy Reorganization Act,  
17 and --

18 JUDGE KELLEY: It's true, though, when Mr. Guild  
19 says that he does have evidence of retaliation, which he  
20 will offer in due course -- but this is the problem the  
21 Board has. Mr. Guild says he has such evidence, and we  
22 can't shove all that up front. I assume that will all  
23 come out at the hearing. You can't say now there isn't any.  
24 We don't know.

25 MR. JOHNSON: The point I'd like to make only is

T7m4

1 that there is a statute and a regulation, a series of reme-  
2 dies and deterrents to this kind of activity, and since the  
3 Board really cannot provide any relief -- meaningful relief  
4 beyond what the statutes and regulations provide, it seems  
5 to me that it's necessary for this Board to act on this  
6 matter. But there is a regulatory scheme that adopts -- that  
7 implements Section 210 of the Energy Reorganization Act,  
8 and it seems to me that's the protection. If it's a meaning-  
9 ful protection, it's a statutory protection, and I don't  
10 think this Board can provide anything more.

11 JUDGE KELLEY: What about in camera hearing?

12 MR. JOHNSON: Well, in camera hearing of the  
13 particular welding inspectors?

14 JUDGE KELLEY: Okay.

15 MR. JOHNSON: Unless you don't -- well, to me,  
16 that's -- I don't understand that because we know what the  
17 testimony of these individuals is. It's all pre-filed.  
18 We know their names. So I don't see the meaningfulness of  
19 in camera testimony. If there is the possibility of  
20 retaliation, it's there already.

21 JUDGE KELLEY: Well, that may be right, but --  
22 I suppose you could in camera cross. What disturbs me is  
23 your apparent argument this Board can do absolutely nothing  
24 about retaliation or atmospheres of fear of losing one's job  
25 and all that kind of thing. Are we just supposed to ignore

7m5

1 all of that?

2 MR. JOHNSON: I think to the extent that that is  
3 an issue in the case, that it's being explored in testimony  
4 in cross-examination, that it's not being ignored.

5 I think the question is, what kind of relief, in  
6 the context of providing testimony and exclusion and seques-  
7 tration of witnesses, is meaningful? And I don't think those  
8 types of requests for relief have really any ultimate bearing  
9 on whether there's retaliation or not and whether it can be  
10 prevented or not, whether it can be cured or not, whether  
11 there is a remedy, if there is, or not. That's what my point  
12 is.

13 It seems to me the hardest question is the ques-  
14 tion of getting truthful responses out of witnesses, and  
15 that's the question, it seems to me, that Mr. Guild has not  
16 presented a persuasive case; that there is evidence that the  
17 testimony on cross-examination will not be truthful, given  
18 the presence of other employees.

19 First of all, I think an important question is  
20 the fact that these individuals' testimony is already in  
21 the record. The amount of control that they had slips  
22 drastically once you get into cross-examination. Mr. Guild  
23 has full control, so to speak, in asking and securing  
24 answers to his questions. And it seems to me that that  
25 technique and that process is designed to assure that

T7m6

1 candid and direct answers are given, and it serves to assure  
2 the truthfulness of answers, apart from the presumption  
3 that when a person takes an oath, he is going to testify  
4 truthfully, which I assume -- I also would recognize that the  
5 process is also designed to try to assure that as well; that  
6 you have a function to try to deal with that reality, as it  
7 applies not particularly to any individual, but in general.

8 I think it really turns out, as a practical matter,  
9 to be academic at this point, because we all know that when  
10 each of these individuals -- I'm talking now to the welding  
11 inspectors, and I think that's the major focus of this.  
12 Mr. Guild can ask each and every one of those welding  
13 inspectors whether he feels the fear of intimidation,  
14 retaliation, whether he feels that because of the presence  
15 of any idnvididual -- maybe an NRC person -- that he was  
16 not able to candidly be cross-examined and answer truth-  
17 fully. And if he says that there is an individual in the  
18 room who is going to deter his truthful testimony, it seems  
19 to me, no matter what we argue today, that the Board is  
20 going to seriously consider whether that person should be  
21 in the room. And it seems to me, for that reason, as a  
22 practical matter, this is ali academic, because it would all  
23 be brought up, I'm sure -- because this, obviously, would be  
24 a subject of cross-examination for each of those witnesses.

25 In a situation where each of the -- let me just

T7m7

1 make a hypothetical. Just assuming that each of the  
2 welding inspectors were to be asked exactly the same ques-  
3 tions, it seems to me that you have a situation where it  
4 might promote more candid answers to those exact same ques-  
5 tions if, you know, you didn't have all of the 25 welding  
6 inspectors sitting in the gallery listening to the answers  
7 that the first one gave. It seems to me that that type of  
8 situation could be remedied by some kind of serial bringing  
9 in of the witnesses without elaborate requests for the type of  
10 relief that Mr. Guild has put forward here. I think if  
11 the Board feels that's appropriate, it can do so without  
12 injuring anybody's rights in this proceeding, Applicant's  
13 rights in this proceeding.

14 I have a couple more points, if I could just  
15 refer to those.

16 MR. McGARRY: We just have one observation, with  
17 the Board's indulgence -- excuse me. I thought that --

18 MR. JOHNSON: I'm not finished.

19 MR. McGARRY: I'm sorry.

20 MR. JOHNSON: If you could just bear with me.

21 I think I'd like to conclude by saying that it  
22 does, in a sense, come down to a balancing of the rights  
23 of the parties, particularly Applicant's rights, versus the  
24 harm. And I don't think a very strong showing has been  
25 made of harm now. If it becomes apparent during the course of



T7m8

1 the examination a witness thinks that there's a possibility of  
2 harm, then we can look at that at that time. But it seems  
3 to me that with respect to the nonwelding inspectors, it's  
4 clear that Applicants ought to have the assistance of any  
5 individual that they have referred to or Mr. Guild has  
6 referred to, to consult with in the preparation and guidance  
7 of their case. And given the strength of that right and the  
8 weakness of the harm, I would say that the relief -- all the  
9 other areas of relief that were requested should be denied.

10 JUDGE KELLEY: Thank you.

11 Do we really need further discussion? I assume  
12 that Mr. McGarry has an objection.

13 Mr. Guild?

14 MR. GUILD: Mr. Chairman, if I could, by just a  
15 brief reply.

16 JUDGE KELLEY: How brief?

17 MR. GUILD: Two minutes.

18 JUDGE KELLEY: Well, you had about 35 minutes.  
19 Mr. McGarry had about 25. Mr. Johnson had about 10.  
20 Timewise it's about even. If you reply beyond that, they'll  
21 warrant reply. I think we've really heard enough on this.

22 MR. GUILD: I really want to make a record  
23 reference, if it's okay.

24 JUDGE KELLEY: Make a record reference. Go ahead.

25 MR. GUILD: Retaliation is not simply on the

T7m9

1 surmise of Palmetto. It's supported by the direct testi-  
2 mony of Applicant's own witnesses. And I would direct the  
3 Board's attention to the testimony of witnesses that have  
4 already referred to, and that's Messrs. Bryant, who is a  
5 welding inspector; Mr. Ross, who is a welding inspector  
6 supervisor. Both testified to fear of retaliation and  
7 reprisal in fact, and I add the testimony of John L. Rockholt,  
8 a welding inspector, at page three. "Question: Did you feel  
9 free to express all your concerns?" "Answer: I expressed  
10 all my concerns, but I did not feel free because of fear of  
11 retaliation from Larry Davison, Charles Baldwin, Mr. Wells,  
12 Mr. Owen and Art Allum. Retaliation comes in many and  
13 variable ways, ranging from suppression of job opportunities  
14 to threatening of one's job," period, in their own case,  
15 Judge.

16 JUDGE KELLEY: Okay. I think that you referred  
17 to those last week. Some of it, at least, I know I heard  
18 before.

19 Why don't we take a ten-minute break.

20 (Recess.)

21 (Continued on next page.)  
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1 JUDGE KELLEY: Okay. We're back on the record.  
2 Just a couple of more things before we get back to the wit-  
3 nesses.

4 One, Mr. Guild's application for subpoenas of  
5 October 10, does that require any discussion at this point,  
6 Mr. McGarry, or are you prepared to say?

7 MR. MC GARRY: It does require some discussion. I  
8 can address some of the matters right now.

9 JUDGE KELLEY: Do you think any of it could be  
10 negotiated off the record?

11 MR. MC GARRY: With respect to items 3 and 4, we  
12 don't have any problems. Actually, we've already provided  
13 that information to the Intervenors. They have -- The  
14 Intervenor has the handwritten notes of Lewis E. Zwissler, and  
15 the Intervenor has the handwritten memorandum from Mr.  
16 Davison to J. R. Wells dated on or about January 1981.

17 MR. GUILD: I'd like to clarify, just so we can  
18 simplify, the areas that are in dispute. That's true. We  
19 have copies. We would like production of the originals by way  
20 of subpoena, and we would like the Applicants to make an  
21 additional copy which we will pay them for, as the Board  
22 suggested last week, those two items.

23 JUDGE KELLEY: That seems to be consistent with the  
24 discussions we've had last week.

25 MR. MC GARRY: We'll check into that matter, Your

1 Honor.

2 Item No. 5, the personnel performance evaluations,  
3 this Board has already precluded such inquiry with respect to  
4 Mr. Davison, and that was in the Board's ruling of September  
5 1st, 1983.

6 JUDGE KELLEY: Let me read paragraph 5 again.

7 (Pause.)

8 JUDGE KELLEY: Does request extend as well to Mr.  
9 Baldwin and Mr. Wells?

10 MR. MC GARRY: Yes, sir, and we would simply state  
11 in our view the principle that the Board has set forth in its  
12 September 1st order should apply equally to Mr. Baldwin and  
13 Mr. Wells, and the discussion at this point with respect to  
14 Mr. Davison can be found in TR 1251-52, a conference call of  
15 August 31, 1983, and in the Board's September 1, '83 order --  
16 which is two pages -- on page 2 at the very end of the order.  
17 "Palmetto's request for performance evaluations of Mr.  
18 Davison is denied. The Applicant's objection is sustained."

19 With respect to items No. 1 and No. 2, we're just  
20 not in a position to address those today.

21 JUDGE KELLEY: Okay. Can you come back tomorrow  
22 and speak to those two?

23 MR. MC GARRY: Or maybe this afternoon.

24 JUDGE KELLEY: Either one.

25 MR. MC GARRY: Yes.

1 JUDGE KELLEY: Mr. Guild, as you heard, there's a  
2 dispute over paragraph 5.

3 MR. GUILD: Yes, sir.

4 JUDGE KELLEY: I'm sure we all recall -- at least  
5 generally recall the earlier discussion about Mr. Davison.

6 MR. GUILD: Yes, sir.

7 JUDGE KELLEY: I believe we said -- and I can look  
8 it up -- but my recollection is that we turned down that  
9 request leaving the door ajar in the event that the -- ajar  
10 for the renewal of the request in the event that that kind of  
11 information, in the light of the record as it was developed,  
12 showed its relevance, but that at that stage of the game, we  
13 said no. If one applies that logic now, I would think we're  
14 in the same position.

15 MR. GUILD: Slightly different with respect to  
16 Mr. Davison, Your Honor. In response to Judge Purdom's  
17 request of Mr. Grier as to how he, if I could use the word,  
18 interfaces with the site quality assurance effort, Mr. Grier's  
19 testimony paraphrased was that he relied in substantial part  
20 on the periodic evaluations of Mr. Davison, who was the site  
21 quality assurance manager, to see that whatever identified  
22 deficiencies -- well, I'm extending his remarks, but, in  
23 essence, he used the personnel evaluation, performance manage-  
24 ment plan evaluation of Mr. Davison as a principal management  
25 tool to see that quality assurance activities on site were

1 carried out appropriately.

2 Now, our position, generally, is that the adequacy  
3 of the performance of quality assurance responsibilities by  
4 Messrs. Davison, Wells and Baldwin is a matter in issue. With  
5 respect to Mr. Davison, it's put directly into issue by the  
6 witnesses -- Mr. Grier's own testimony that he relies on that  
7 in part to perform his quality assurance supervisory function.

8 (Continued on next page.)  
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1 MR. GUILD: (Continuing) I just note that Mr.  
2 Wells is the former QA manager for Duke Power Company, as  
3 a whole corporate manager. He left at the height of the  
4 welding inspector investigation, if you will. And we believe  
5 that his replacement by Mr. Grier carries with it the  
6 inference that, in part, his replacement was a corrective  
7 action in response to identified quality assurance deficiencies.  
8 And we would seek to either demonstrate that those  
9 deficiencies are documented in his evaluations, or, on the  
10 other side of the coin, that Applicants, despite those  
11 deficiencies, have failed to document those in the regular  
12 personnel evaluations which Mr. Grier says is the vehicle for  
13 assuring quality assurance functions are carried out properly.

14 Mr. Baldwin is former first line supervisor who was  
15 transferred as one of the recommendations for corrective action  
16 taken by the quality assurance department in light of the  
17 welding inspector concerns. Therefore, either the documentation  
18 or nondocumentation of his identified acts or omissions  
19 is material to the adequacy of Applicant's corrective  
20 action.

21 JUDGE KELLEY: Okay. Any comment, Mr. Johnson?

22 MR. JOHNSON: I don't believe we have any comment.

23 JUDGE KELLEY: Okay. We'll take that under  
24 advisement, that particular dispute over paragraph five.  
25 That's all we need to do right now on that.

T9m2

1 Let us just note briefly the status of several  
2 pending matters.

3 MR. GUILD: Mr. Chairman, before you pass on, if  
4 I can -- excuse me, sir, but paragraphs one and two don't  
5 need to be argued at this point; but I should note the  
6 witnesses, who are the subject of those requests, are on the  
7 stand, and that as stated in our motion -- our application  
8 for subpoenas, we asked that the materials be produced be-  
9 fore they leave the stand and are unavailable for further  
10 examination.

11 I just wanted you to understand that those  
12 needed some decision in a timely fashion.

13 JUDGE KELLEY: Okay. I think Mr. McGarry was  
14 going to -- if you would speak to it later today, that would  
15 be good; if not, first thing tomorrow morning --

16 MR. MCGARRY: Yes, sir.

17 JUDGE KELLEY: -- I think we could accommodate  
18 Mr. Guild's point.

19 Just to tick off the points we have before us,  
20 there are three things that we're about ready to rule on and  
21 expect to rule on tomorrow morning. One is the protective  
22 order request that was argued last Wednesday, I guess it  
23 was; secondly, the questions of subpoenaing certain  
24 individuals, I believe Mr. Rogers, Mr. Beam, two or three  
25 others; thirdly, the issue over whether Palmetto should be

T9m3

1 required to provide further specification of areas of  
2 interest with regard to the welding inspectors. Those we  
3 have in hand; just want to confer a bit more on that, and  
4 I think we can give you a ruling tomorrow morning.

5 Contention 17 ruling is moving on; hopefully later  
6 this week. The motion to reopen, don't see any way -- we  
7 won't get to that before next week -- hope to get to it  
8 next week. So that's where those matters are.

9 Now, we have pending, obviously, the motion for  
10 the document captioned, "Request for the Exclusion of  
11 Witnesses," that we just spent some time hearing argument  
12 on, and we'd expect to rule on that possibly tomorrow; if  
13 not, then the next day. We're aware of the fact that there  
14 are witnesses coming in and there's relief requested as to  
15 some of these people -- I assume that will be the case --  
16 and they will not be under any bar pending our ruling,  
17 whatever that may be.

18 Just to point out once more, I realize that can  
19 be viewed as a denial of relief, which in a sense it is, but  
20 the motion is late in the first place. Beyond that, we also  
21 think that the issue becomes more sensitive down toward the  
22 end of the welding inspectors than it does toward the people  
23 that we're hearing from at this point.

24 So, I think, with that, if there are not other  
25 points -- I'll ask Counsel. Are there other things we need

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1 to raise now or ought to raise now, or can we get back to  
2 the cross of this panel? Anything else, Mr. McGarry?

3 MR. McGARRY: There are some other matters. I'm  
4 hesitant to raise them because we'd like to get on with this  
5 panel. Let me just identify them, and then maybe we can  
6 bring them up this afternoon.

7 JUDGE KELLEY: Okay.

8 MR. McGARRY: First is the April, 1977 letter of  
9 Mr. Dick which communicated to the work force the right of  
10 the work force to go to the NRC, and there was some inquiry  
11 from the Board of who originated the language that was con-  
12 tained in Mr. Dick's letter; was it Mr. Dick or the NRC? I  
13 believe we can discuss that one this afternoon.

14 JUDGE KELLEY: Okay.

15 MR. McGARRY: We do want to clarify the record  
16 with respect to Mr. Wells -- you remember the last two  
17 questions in Mr. Wells' testimony that Mr. Guild asked, "Was  
18 there some confusion as to the dates?" There was a December,  
19 1981 date and then a January, 1982 date. I think we can  
20 clarify that with Mr. Wells on redirect.

21 The third item is the tape recording of Mr. Owens'  
22 discussions with the inspectors. We have that tape, and we  
23 think it would be fruitful for the Board and the parties to  
24 hear that, and we're prepared to put that on now.

25 I want the record to clarify one further item

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1 with respect to the quality assurance manuals. We identify  
2 them as seven in number. They're actually eight in number.  
3 The eighth document is the quality assurance manual. It's  
4 blue. And so the seven documents that were referenced on  
5 TR 21-52 should now reflect eight.

6 The last item I hesitate to bring up at this time  
7 because I think it's going to engage us in some further  
8 dialogue, but I feel I am duty bound to bring it up to the  
9 Court's attention. It's in the nature of a reconsideration  
10 of the Board's ruling concerning the date on which Palmetto  
11 Alliance is to disclose names of individuals who have not  
12 already been disclosed to this Board, and the Board has set  
13 October the 17th as the date for that disclosure.

14 In the Charlotte Observer of, I believe, Saturday,  
15 the 8th of October, there was a recap of Friday's case.  
16 And let me just read the last four paragraphs: "In a  
17 related matter Friday, a Washington-based group said  
18 it has asked NRC Chairman Nunzio Palladino to provide  
19 protection for fourteen current and former Catawba workers  
20 who it says want safety problems investigated but don't  
21 trust regional NRC inspectors.

22 "Billie Garde of the Government Accountability  
23 Project, which is helping Palmetto Alliance in its case against  
24 Catawba, said the workers fear retaliation from Duke and  
25 their colleagues if they make their concerns public.

T9m6

1 "Garde also said the group, which encourages  
2 government and corporate whistle-blowers, also sent a similar  
3 letter to Representative Morris Udall, Democrat, Arizona. Udall's  
4 Interior and Insular Affairs Committee oversees NRC functions.

5 Those are three paragraphs that are found --

6 JUDGE KELLEY: What is the first paragraph, I think  
7 it was, where it states the description of the relief sought?  
8 It asked NRC Chairman Nunzio Palladino to provide -- what is  
9 it it asked for?

10 MR. McGARRY: It has asked Nunzio Palladino to  
11 provide protection for 14 current and former Catawba workers.

12 JUDGE KELLEY: Okay.

13 MR. McGARRY: We find this reference disturbing.  
14 It's disturbing because the Commission's favored a certain  
15 amount of information concerning this topic. The Charlotte  
16 Observer is favored with a certain amount of information  
17 concerning this topic; but this Board, who is charged with  
18 the responsibility of gathering the facts on this topic,  
19 is kept in the dark.

20 If there are indeed 14 current and former Catawba  
21 workers that Palmetto is aware of may shed some light in this  
22 proceeding, why can't we have those names today? Why can't  
23 the Board know who those individuals are?

24 We think it's patently unfair that the names  
25 have not been provided. It inhibits the preparation of our



T9m7

1 case. First of all, it inhibits the time it would be able  
2 to spend on the matter. Second of all, as I pointed out  
3 last week, some of the panel members who are presently  
4 sitting, or who will sit in the next week or so, could very  
5 well address some of the concerns of the 14, if indeed there  
6 are such concerns.

7 I mentioned the theme last week, and I feel that  
8 I'm compelled to mention it again. I think that the Inter-  
9 venors have done everything possible to hold back the names of  
10 any individuals they may have to support their case. They  
11 had a duty in discovery to answer our interrogatories in  
12 that regard, and they provided no information. They had a  
13 duty at the filing of the prefiled testimony to indicate who  
14 those individuals are, and they haven't done it.

15 And, Yo r Honor, we submit they have a duty today  
16 -- and they shouldn't be permitted to wait until next Monday  
17 -- to give us those names. The continual case seems to be  
18 tried to the press. The case seems to be one of innuendo,  
19 and we just don't think that should be permitted.

20 If there are some individuals we think it's proper  
21 they be identified, proper they testify, we think it's  
22 proper this Board be given the facts. We think it's proper  
23 we be given the opportunity to address because the buck  
24 stops sometimes and the buck stops in this proceeding and  
25 we'd like the buck at least to be moving forward to a point

r9m8

1 where it can stop. And it just simply hasn't been permitted  
2 to occur, and at some point in time, I think this Board has  
3 to say, "Look, Intervenor, enough is enough. In the paper  
4 here it says 14 current and former employees. Who are  
5 they?" Now, if the Intervenor wants to argue, it should  
6 be in camera, that's another matter the Board should  
7 consider; but the point is this Board should know who the  
8 names are rather than the Charlotte Observer or Nunzio  
9 Palladino.

10 JUDGE KELLEY: We are, it seems to me, dis-  
11 advantaged, and I mean no criticism of the Charlotte Observer  
12 when I say that. I guess that's all we've got here this  
13 morning, is the paper's story. We don't have the Petition.

14 MR. GUILD: Judge, if I can help you.

15 (Continued on next page.)  
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1 JUDGE KELLEY: Yes.

2 MR. GUILD: I meant to and didn't, because  
3 we were engaged in other matters, but sitting at the  
4 table with me was Billie Garde of the Government Accountability  
5 Project. I meant to introduce her to the Board. She is here  
6 in Rock Hill in the process of conducting her investigation  
7 of QA concerns by present and former Catawba workers. We  
8 agree -- and she left the hearing because she had to go to an  
9 engagement in respect to that investigation. We agree with  
10 Applicants that we think a first order of business is to pro-  
11 vide for an orderly and secure process for taking this impor-  
12 tant evidence, but I'll be doggoned if I think that involves  
13 handing Mr. McGarry the names of 14 people. Now, let's be  
14 clear --

15 JUDGE KELLEY: Didn't he say that he'd be perfectly  
16 happy if the in-camera procedure that we put forward were  
17 invoked?

18 MR. GUILD: But he said, "We want to know." I mean  
19 the people on the stand can address those concerns. They want  
20 to know. Of course they want to know. The same problem that  
21 we think necessitated the relief by way of the protective  
22 order of reprisal and retaliation certainly indicates that you  
23 know who to take that against. But let's talk about the real  
24 world here. We're talking about the people in this room who  
25 are in this room --

1 JUDGE KELLEY: Let's narrow the focus just for the  
2 moment. Let's talk about the Board's provision for in-camera,  
3 and only that. Let's not get into all these other side  
4 issues. The Board heard you. You indicated you had people  
5 who were concerned. So we put out a remedy designed to open  
6 the door.

7 MR. GUILD: Yes, you did, and we intend to take  
8 advantage of that. Ms. Garde is here. She is available to  
9 testify, as we offered last week. If we really want to get  
10 to the bottom of this and we want to do it now before further  
11 damage is done -- we think damage is being done right now for  
12 lack of a protective order -- then I say let's address it  
13 right now. Let's not talk about what happened seven years ago.  
14 We're prepared to go forward with that, and we have a request  
15 pending before the Board. Ms. Garde is here. She will be  
16 back this afternoon after her engagement. She's prepared to  
17 testify under oath with respect to her investigation, and I  
18 understand she has the Palmetto Alliance letter with her,  
19 which she would be happy to share with this Board.

20 I am informed that it does not contain the names  
21 of witnesses, and I would be very surprised if she gave the  
22 names to the Charlotte Observer, because I understand her  
23 overriding concern is to protect the confidences of these  
24 workers from reprisal by Duke Power Company and that making  
25 them public in any way would compromise that, but I'll let her

1 speak for herself in that regard, if the Chair wants to hear  
2 further on it.

3 JUDGE KELLEY: I think Judge Foster and I would  
4 like to confer about this more during the lunch break. I  
5 think it's a significant matter we can talk out a little bit  
6 further than we have at this point. I should think our pri-  
7 mary interest right now would be to hear from Ms. Garde as to  
8 whether the people she speaks of -- I wouldn't use the  
9 technical term "represent," but the people she's in touch with  
10 who have, I gather, sought this letter to the Chairman,  
11 whether these people are prepared to invoke the procedure that  
12 the Board provided. I think that's the first thing that we'd  
13 want to know.

14 MR. GUILD: Yes, and I think she's prepared to  
15 address that. Let me just make this point clear. I think I  
16 stated earlier, neither I nor Palmetto Alliance is capable of  
17 adequately pursuing the concerns that are raised by Catawba  
18 present and former employees with respect to safety of the  
19 as-built concerns of the government. That's why we've asked  
20 GAP, the Government Accountability Project, to assist us in  
21 this case, because they have considerable experience doing  
22 that.

23 Now, for the most part, the relationship is not  
24 between Palmetto Alliance and the worker. It's between the  
25 Government Accountability Project and the worker, and that

1 individuals set the terms and conditions of their relationship  
2 with Palmetto or with this Board or with this power company,  
3 and those vary, as I understand it. Some persons are  
4 unwilling to come forward and let anybody else know their  
5 names and concerns, including me and including this Board.  
6 There are others who take a different position, and I think  
7 Ms. Garde is prepared to address specifically the terms and  
8 circumstances under which some of those individuals are pre-  
9 pared to offer in-camera testimony under the terms and condi-  
10 tions that the Board shared and described last week.

11 JUDGE KELLEY: And then it would depend on whether  
12 their terms were acceptable to the Board as to how we would  
13 proceed.

14 MR. GUILD: That's true, certainly.

15 JUDGE KELLEY: All right.

16 Well, Mr. Johnson, any thoughts?

17 MR. JOHNSON: Well, I would think that if there are  
18 any individuals who -- I mean we saw Ms. Garde sitting with  
19 counsel, Mr. Guild, this morning, and obviously the relation-  
20 ship is a close one. If he is in a position to present the  
21 names of individuals at Catawba who would like to testify but  
22 want protection and would be willing to use the in-camera  
23 procedure that was suggested, in general, then it seems to me  
24 Mr. Guild should come forward with that information; that the  
25 testimony of Ms. Garde is not necessary, and that's what we



1 really are looking for here.

2 JUDGE KELLEY: Yes. We deliberately are not  
3 reaching, right now, at least, the quite separate question of  
4 whether we want to hold a hearing now on the state of abide,  
5 if you will, at the Catawba site. We're interested in the  
6 very narrow question. We're interested in knowing if there  
7 are some people who want to come forward and invoke our pro-  
8 cedure, and that's what I want to ask Ms. Garde when she's  
9 available this afternoon, perhaps.

10 Mr. Guild, will that be possible?

11 MR. GUILD: I'll make arrangements for that, Mr.  
12 Chairman.

13 JUDGE KELLEY: We'd be happy to hear from her on  
14 this particular point. I would ask you to make clear to her  
15 at this juncture, anyway, that's really our posture, and we  
16 are not in the position of holding an evidentiary hearing on  
17 harassment and concerns of the like.

18 MR. MC GARRY: Your Honor, we just have one final  
19 observation in this regard. We hope that, indeed, Ms. Garde's  
20 comments will be limited as the Board has so described. We  
21 think that will be of some assistance. What troubles us and  
22 what troubled us at the beginning of this hearing and what  
23 has troubled us for several months is that we feel this hearing  
24 is a hearing of surprise. Why should we have to bring this  
25 motion to the Board's attention? This should be a matter that

1 palmetto, in preparing its case, should have brought to this  
2 Board's attention. I submit that these 14 names didn't come  
3 to GAP's attention Friday if, indeed, there are 14 names.  
4 We'll find that out. But it seems to be a trial by surprise,  
5 and this Board shouldn't permit it.

6 Now, we bring up the motion because we sense that  
7 if we don't, at some point in time 14 people will be thrust  
8 upon the Board, and it will disrupt the proceeding, and we  
9 think that the Board should be instructed in properly pre-  
10 senting this case. I think they have an obligation as an  
11 officer of this Board to present these matters to your atten-  
12 tion, and that wasn't done in this instance, and it troubles  
13 us that we're now in the second week of the proceeding waiting  
14 to hear the testimony of these individuals and we're discussing  
15 matters that we should have discussed months ago. End of  
16 observation.

17 JUDGE KELLEY: Well, I think you'll be free to urge  
18 those arguments as to particular pieces as and when we may get  
19 into them.

20 MR. MC GARRY: Thank you.

21 JUDGE KELLEY: Okay. Well, I think it's useful to  
22 raise that matter now, and it has been raised, and we've had  
23 some preliminary discussion, and we'll look forward to hearing  
24 from Ms. Garde this afternoon.

25 MR. GUILD: We would be interested in hearing the

1 tape recording of Mr. Owen's remarks to the welding inspectors.

2 MR. MC GARRY: We could do that now, Your Honor, if  
3 you'd like to.

4 JUDGE KELLEY: I'd say this would be an appropriate  
5 time. Why don't we just go ahead and do that.

6 MR. MC GARRY: I would like the record to reflect  
7 that what we are going to hear this morning is, indeed, the  
8 original tape. The transcription that the Board and parties  
9 have before them is the transcription from a copy of that  
10 original tape, and I will represent to the Board we listened  
11 to that tape yesterday afternoon, and I think the Board and  
12 parties will find it beneficial, and there are some differences  
13 between the transcription and the tape because of the nature  
14 of the tape, the quality of the tape.

15 JUDGE KELLEY: Let me just comment at this point,  
16 might it not be useful, now that you've got a better quality  
17 tape, could we make a separate exhibit which made the changes  
18 or whatever it takes to show what this better tape would indi-  
19 cate?

20 MR. MC GARRY: I would think so. Quite frankly, we  
21 were trying to determine yesterday how this tape would come  
22 into evidence if someone moved it. We only have one copy. I  
23 think it would be better to transcribe the tape.

24 MR. GUILD: Judge, I haven't heard it. We'd like  
25 the opportunity to --

1 JUDGE KELLEY: Why don't we just listen to it first,  
2 and then we can perhaps have a clearer idea if we want copies  
3 made, or transcripts, or whatever.

4 Let's go off the record for a minute.

5 (Bench conference.)

6 JUDGE KELLEY: It's pretty tough. It sounds fast.  
7 Couldn't we play it later if that's necessary?

8 MR. MC GARRY: That's fine.

9 JUDGE KELLEY: It's sort of fast and kind of fuzzy.  
10 Let's not try for it right now.

11 MR. GUILD: Counsel, could I ask, we're beginning  
12 at the beginning of the transcription?

13 MR. MC GARRY: Yes.

14 (Playing of the tape commenced at this point.)

15 (Continued on next page.)  
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1 JUDGE KELLEY: The Board appreciates the Appli-  
2 cant's bringing in the tape. It's very useful to hear it  
3 as opposed to simply reading the cold print.

4 Looks like a good enough time to eat lunch for  
5 an hour. Shall we come back at 1:30 and resume?

6 (Luncheon recess.)

7 (Continued on next page.)  
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1 JUDGE KELLEY: We're back on the record.

SP?

2 Two minor points: I don't think I noted earlier  
3 Judge Purdom's absence today. I don't think I noted it on  
4 the record. He is absent today. As he indicated last week,  
5 he's off at Beaver Valley on a hearing and will be back  
6 tomorrow; expect him back on Thursday to read the transcripts.  
7 But that notation is appropriate.

8 We've just had a discussion off the record, Mr.  
9 Gibson and Mr. Guild, about the preferred approach to the  
10 tape we heard before lunch. And the three of us, I believe,  
11 had a consensus that there really don't seem to be a lot of  
12 changes appropriate between the transcript that we now have  
13 and the tape that we heard earlier, so the Applicants would  
14 undertake to show those changes by interlineation or some  
15 appropriate means and then just supply the parties and the  
16 Board with a copy of that changed version. That is to say,  
17 it's not necessary to retype that whole transcript. The  
18 Board would like to have a copy of the tape. Mr. Gibson  
19 is going to look into that. We assume it's possible, and  
20 not too expensive, to make us a copy, and that's what we  
21 would like. The feeling is that one copy of the tape might  
22 be enough, but if the parties want to seek their own copy,  
23 why don't you take that up initially with Mr. Gibson?

24 So with those two things, and we were on the point  
25 of going back to our witnesses, but we did have a discussion



T11m3

1 just before lunch hour about a GAP request to the Commission  
2 and Congressman Udall concerning some workers at Duke.  
3 Are we in the process of getting Xerox copies of that letter?

4 MR. GUILD: Yes, sir. They're being copied right  
5 now so I expect them in a moment.

6 JUDGE KELLEY: Ms. Garde is with us, is that not  
7 correct?

8 MR. GUILD: Yes, sir.

9 JUDGE KELLEY: Could you introduce Ms. Garde for  
10 the record?

11 MR. GUILD: Yes, I would at this time like the  
12 record to reflect the presence in the hearing room of Ms.  
13 Billie Garde of the Government Accountability Project. ' Ms.  
14 Garde -- I informed her the last ten minutes, I guess, of  
15 the discussion before the luncheon recess, and I'm a little  
16 -- I regret she wasn't present to hear the exchange, and  
17 particularly Applicant's impressions, but she does understand  
18 that we, Palmetto, have offered to present her as a witness  
19 first, in support of our motion for protective order, and  
20 that the Chair expressed the view that the Board would  
21 entertain Ms. Garde's testimony with respect to the interest  
22 of present and former workers in presenting evidence to this  
23 Board in the in camera fashion that the Chair had outlined  
24 earlier. So I think she's prepared to be sworn and to  
25 testify to that point.

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1 JUDGE KELLEY: That seems to be a fair summary of  
2 the discussion before lunch. The Board's primary interest  
3 here is in the -- well, we are interested obviously in the  
4 reasonably brief flow of information between workers at  
5 Catawba and this Board and this case. Our primary interest  
6 at the moment is in whether there are people, workers at the  
7 site who are interested in pursuing the in camera procedure  
8 which we spelled out at pages four and five of our order of  
9 September 30th. For context -- it's short. I'll just read  
10 it again.

11 "If there are specific prospective witnesses for  
12 Palmetto who genuinely fear public disclosure of their names  
13 because of jeopardy to their jobs or for other substantial  
14 reasons, Palmetto may seek to invoke an in camera procedure.  
15 That can be done initially by an in camera written disclosure  
16 to the Board alone of the names of these witnesses, the  
17 areas of their testimony and the basis of their concerns by  
18 public disclosure of their identities. Confidentiality of  
19 the in camera hearing would depend largely upon protective  
20 orders of the Applicants' attorneys, and possibly another  
21 representative of the Applicants would attend, as well as the  
22 staff. Therefore, the prospective witnesses should realize  
23 that confidentiality of their identities from the Applicants  
24 would not be complete. If Palmetto wishes to invoke this  
25 procedure, it may do so as outlined above, and procedural

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1 details can be discussed further."

2 I should add we only expressed it as a right  
3 Palmetto can invoke. Any worker could invoke this through  
4 Palmetto. Indeed Ms. Garde is here this afternoon. We  
5 understand you've been in contact with these workers, and  
6 our main interest this afternoon, right now, is to determine  
7 whether, to your knowledge, there are workers at the plant  
8 who are, one, informed of the terms of this order that I  
9 just read and, two, whether they're interested in invoking  
10 it. I don't think we need to swear you as a witness.  
11 We are not, at this juncture, interested in an evidentiary  
12 showing about witnesses at the site, workers' attitudes.  
13 We're interested in a very narrow question: Are there  
14 people that want to invoke this procedure? And we would  
15 appreciate it very much if you would speak to that.

16 (Continued on next page.)  
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1 MS. GARDE: In response to the first question, I  
2 believe that there are workers and former workers who would  
3 testify in this proceeding under some type of protective order.

4 JUDGE KELLEY: Well, is there any reason, to your  
5 knowledge, why those workers and former workers, any reason  
6 why they can't proceed and invoke this procedure?

7 MS. GARDE: I have read the part that you read to  
8 a number of the workers and discussed with them various types  
9 of protective orders and what that meant. I did not suggest  
10 to those workers that they do so. What I did suggest was that  
11 the opportunity would be available.

12 The opinion of the workers as I read the order was  
13 they didn't understand the difference between Duke Power  
14 attorneys and Duke Power knowing their identity, and I  
15 couldn't explain to them what -- where the line would be  
16 drawn.

17 JUDGE KELLEY: Well, we tried to spell this out.  
18 We didn't go into it in great detail. The pertinent sentence  
19 -- sentences are these: "Confidentiality of the in-camera  
20 hearing would depend largely on protective orders. The  
21 Applicant's attorney and possibly another representative of  
22 the Applicant would attend, as well as the Staff; therefore,  
23 the prospective witnesses should realize the confidentiality  
24 of their identities from the Applicants would not be complete."  
25 What we meant by that was simply this: If an attorney for the

1 Applicant comes into this hearing and the workers come in and  
2 they give their evidence, the attorney would be under an order  
3 of some kind, commonly called a protective order, not to dis-  
4 close that person's identity to other people in the company.

5 Now, in addition, it may be in order for the  
6 attorney to function effectively, he would need at least  
7 somebody along with him, so let's say if someone like one of  
8 these witnesses that may come along. That witness, too, would  
9 be under a similar order, and our experience is that protec-  
10 tive orders are a pretty effective way to keep information  
11 private. We don't hold out that it's absolutely fool proof.  
12 We do not say to the workers out there, "Come on in, and  
13 there's absolutely no chance anybody ever will find out who  
14 you are." I can't say that, and they ought to know that and  
15 be aware of it up front, and come forward with their eyes open  
16 in that regard.

17 Now, that's an attempt at explaining what we meant.  
18 Does that help?

19 MS. GARDE: Now, that's pretty much as I explained  
20 it to the workers. Candidly, I think there are a number of  
21 workers who would come and speak to the Judges directly, if  
22 that option was available. In explaining the terms of the  
23 protective order and the risk that they have to assume, their  
24 natural response was somewhat toned down in terms of anxious-  
25 ness to come and discuss their concerns on the site, and



1 specifically about harassment. I think that the --

2 JUDGE KELLEY: Let's take them one at a time.  
3 There are different threads involved here.

4 If I understand you correctly, you just indicated  
5 that some of the workers would be prepared to come and talk  
6 to the Board alone about their concerns at the site, but not  
7 with a representative of the Applicant present; right?

8 MS. GARDE: Yes.

9 JUDGE KELLEY: Okay. I think you should tell them  
10 that they better stay home; don't come. We can't operate that  
11 way.

12 MS. GARDE: I explained that to them.

13 JUDGE KELLEY: Okay. Fine.

14 Now, you say some people may feel that way. To  
15 your knowledge, are there others who are willing to proceed  
16 under the procedure we've outlined?

17 MS. GARDE: Well, as you can imagine, explaining  
18 to a worker the details of this proceeding and how this works,  
19 and protective orders, and parties, is an intimidating thing  
20 in itself. I think that some of the workers who initially  
21 said that they would talk to the Judge but not in front of  
22 anybody else in fact would be the same ones who would consider  
23 the protective order, and I have provided copies of the pro-  
24 tective order to them.

25 I think that the next step in attempting to get



1 these workers in here would be for the protective order to be  
2 detailed and articulated, and that provided to the workers,  
3 and then they have to make that choice. I can't make that  
4 choice for them; none of us can.

5 JUDGE KELLEY: Well, we deliberately left that for  
6 a later day. That was not an accident. It was a choice. We  
7 put in there the -- what we thought was the absolute minimum  
8 information that we needed to do anything. If, then, we're  
9 supposed to develop some elaborate procedure involving all  
10 three parties here and lawyers negotiating that in order for  
11 people to take step one, quite frankly that's a problem for  
12 us.

13 MR. MC GARRY: Your Honor, I have to chime in here.  
14 I think that what's taking place now should be on the record.  
15 I think that it should be under oath. I understand we are on  
16 the record. I made that observation. And I think that we  
17 should be given an opportunity to ask questions of Ms. Garde.  
18 But statements are being made here that may influence you.

19 JUDGE KELLEY: I'm not ruling that out as an option.  
20 We're opening up and asking Ms. Garde a few questions of our  
21 own, and we can open up the discussion a bit, I assume, and  
22 get a better handle on it. I can't quite follow your sugges-  
23 tion of testimony, Mr. McGarry. You know, having sat in here  
24 for the past week, now difficult it has been to keep this thing  
25 moving without getting bogged down in what I'll call premature

1 evidentiary hearing. Now, if you really want to hold a hearing  
2 this afternoon on the state of affairs at the Catawba site,  
3 you know, maybe you believe that's in your best interest. It  
4 strikes me as a dubious move from everybody's standpoint.

5 MR. MC GARRY: Our interest is moving this case  
6 along and is having questions directed to this panel; however,  
7 our interest also is to ascertain whether or not 14 other  
8 individuals may take the stand at some point in time so that  
9 we can prepare ourselves for that.

10 JUDGE KELLEY: I understand that.

11 MR. MC GARRY: And if Ms. Garde has that informa-  
12 tion, we think that should be forthcoming to this Board and  
13 to the parties, and my understanding is that we are now -- we  
14 are now getting into that area, and I think we should have  
15 Ms. Garde under oath and we should direct questions to her.  
16 I think it's important.

17 JUDGE KELLEY: Ms. Garde, are you an attorney or  
18 not?

19 MS. GARDE: No, sir; law student.

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1 JUDGE KELLEY: It seems to me we're --

2 MR. McGARRY: Your Honor, I know we bring this at  
3 your doorstep but I just want to say this, it isn't our  
4 doing. This should have been brought to you a month ago.

5 JUDGE KELLEY: I know that. I'm focusing on now  
6 whether we should swear witnesses on the matter and spend the  
7 rest of the afternoon on this. Do you really want to do  
8 that?

9 MR. McGARRY: Your Honor, I want to find out who  
10 the 14 witnesses are. I want to --

11 JUDGE KELLEY: Well, there isn't any way in the  
12 world you're going to do that this afternoon, is there?  
13 You're not going to find out who those 14 people are this  
14 afternoon, and maybe not this week.

15 MR. McGARRY: Why shouldn't we? That's the  
16 question I ask.

17 JUDGE KELLEY: All right. Mr. McGarry, you've had  
18 a few minutes. Let me get back with Ms. Garde, we'll see  
19 where we are.

20 You indicated, Ms. Garde, the Board in your  
21 opinion should provide a more detailed protective order so the  
22 employees could get a clearer idea of what kind of protection  
23 they would get, and that this might affect their willingness  
24 to come forward, right?

25 MS. GARDE: I am, obviously, in a position of an

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1 intermediary.

2 JUDGE KELLEY: That's right.

3 MS. GARDE: In that position all I can do is  
4 explain what the order is and let them make a decision.  
5 I've explained to the workers who have indicated they would  
6 talk to the Board what the order that you've issued says.  
7 I've also explained that you haven't yet ruled on a motion  
8 for a protective order.

9 JUDGE KELLEY: That's right.

10 MS. GARDE: I've explained how it works in other  
11 proceedings, and they're aware of the risks independently.

12 I believe that our workers would testify under a  
13 protective order, but I can't represent to this Board that  
14 there will be seven of the fourteen, fourteen of the fourteen  
15 or two of the fourteen, and witnesses are calling every  
16 day. So I have to go through this with every witness that  
17 comes forward.

18 Once the procedure is established, this is the  
19 protective order we're going to operate under -- each witness  
20 will have to make up his own mind. There are some people --  
21 I certainly won't say anxious, but willing to talk to the  
22 judges. I've been in a position of having to explain the  
23 conditions under which that will have to take place.

24 JUDGE KELLEY: Are you aware of any worker or  
25 former worker willing to invoke this procedure now, without

T13-3

1 waiting for a further protective order?

2 MS. GARDE: You mean that would come talk to you  
3 now?

4 JUDGE KELLEY: No, not even talk to me; that would  
5 file a piece of paper saying, "Joe Smith. I'm worried about  
6 welding, and I'm afraid I'll get fired." That's what you  
7 have to do. Is anybody prepared to do that?

8 MS. GARDE: Well, my investigation with the  
9 workers involves the construction of affidavits -- their  
10 statements into affidavits, which will be submitted to the  
11 NRC.

12 JUDGE KELLEY: As an aspect of your pending .206  
13 petition?

14 MS. GARDE: I don't think that that will be a  
15 supplement to the 2.206. They will be submitted to the staff  
16 for investigation.

17 JUDGE KELLEY: All right.

18 MS. GARDE: In the event that those workers are  
19 confidential sources of the staff and there's pending  
20 investigation, I think then it gets into the whole area of  
21 pending investigation. Making independent statements to the  
22 Board, I think, is something that these people would con-  
23 sider, which would in effect be submitting their affidavit  
24 to the Board.

25 JUDGE KELLEY: Anonymously?

F13m4

1 MS. GARDE: Well, I don't ever recommend anony-  
2 mously unless it's -- you know, they're absolutely too  
3 paranoid to speak up, because certainly I can't do a credible  
4 investigation.

5 JUDGE KELLEY: Not anonymous in the sense -- I  
6 meant that -- maybe I misspoke. Under our procedure, it's  
7 anonymous when you submit your name in the sense it's con-  
8 fidential, but you do submit your name, and that's what we  
9 require as a part of our trigger mechanism for getting into  
10 the whole in camera procedure.

11 MS. GARDE: I think that is possible, yes. And  
12 I also think it's important, but right now it's somewhat am-  
13 biguous of what exactly I'm talking to the worker about  
14 doing.

15 JUDGE KELLEY: Well, we tried to do that in one  
16 instance. This can be done initially by an in camera written  
17 disclosure to the Board alone of the names of these witnesses,  
18 the areas of their testimony and the basis of their con-  
19 cerns about the disclosure of their identity. That doesn't  
20 strike me as ambiguous. It strikes me as pretty clear.  
21 What's the ambiguity in that procedure?

22 MS. GARDE: Well, submitting that type of state-  
23 ment opens up the door to discovery and a lot of inter-  
24 action, which I'm not sure these workers are ready for.  
25 Testifying in a hearing is an extremely complicated process.



T13m5

1 Putting their neck on the line for a former worker is cer-  
2 tainly not the same as someone who's employed on the site  
3 presently.

4 JUDGE KELLEY: Well, it's certainly true that  
5 putting yourself forward and involving yourself in a hearing  
6 can take a certain amount of time and certain amount of  
7 inconvenience, but I just take that as given. I mean, if  
8 some of these people are serious, they've got concerns, they  
9 want to get into this case, they're just going to have to do  
10 that.

11 MS. GARDE: But getting into the case is the point  
12 that they're not sure about. Giving their information to the  
13 NRC they view as a duty. They want their concerns investi-  
14 gated, and are prepared to do so in the form of an affidavit  
15 which will be submitted for investigation. It's a different  
16 thing to explain what's going on in the hearing and the  
17 litigation.

18 JUDGE KELLEY: I'm not sure I follow that. If  
19 a man wants to come in here, or a woman wants to come in  
20 here, they're going to be a witness, get on the stand,  
21 testify and be asked questions, and they're going to turn  
22 around and leave. What's so complicated about that?

23 MS. GARDE: What happens after that?

24 JUDGE KELLEY: Well, that's a separate point.  
25 What you said, the whole thing is complicated, and I thought

F13m6

1 you meant the proceeding, and I gather you don't mean  
2 that. What happens after that? We've already talked about  
3 protective orders, and they say what they say, and they'll  
4 do whatever they're going to do. My guess is -- more than  
5 a guess -- my judgment is that the person in question would  
6 be protected from disclosure of any harmful sort. That's my  
7 judgment. That's a judgment. The other person may disagree,  
8 and that's his judgment, and he can decide to stay away.

9 MS. GARDE: Well, I certainly can get back with  
10 each of the people who have talked to us and very clearly ask  
11 them if they will submit or allow to be submitted on their  
12 behalf a statement including their name, a brief statement  
13 of what they're going to talk about, under the provision  
14 that you've explained in that order; and in response to that,  
15 submit that to the Board.

16 JUDGE KELLEY: That seems reasonable. Now, the  
17 other lawyers want to ask questions, make comments, and let's  
18 give them that opportunity. Mr. Guild may have something to  
19 say also.

20 I would say, in addition, that, one, if there are  
21 people out there, as there are, who are interested in follow-  
22 ing this procedure, they ought to follow it pretty soon.  
23 The witnesses' names were due in this case some time ago.  
24 We're in the middle of this, and there's a limit beyond which  
25 we would have to say to somebody coming forward, "You're too

T13m7

1 late. In that case it was last month." I don't think that  
2 point has been reached in my view, but there is that con-  
3 sideration.

4 We don't want to set a deadline of the day after  
5 tomorrow or any particular day, but at least this afternoon  
6 we want to send a message saying this -- call it an invita-  
7 tion to come into in camera hearing has been out now for a  
8 couple of weeks. The case is moving along and if you really  
9 want to get in here and be heard, do it now.

10 Secondly, it doesn't necessarily follow -- we don't  
11 know what the areas of concern are and don't expect to tell  
12 us this afternoon. Obviously, we have a contention here,  
13 number six, and it speaks to QA. If somebody is concerned  
14 about pay, if he's concerned about diesel generators, this  
15 probably isn't the place for them, and there are those  
16 limitations.

17 Well, I think that expresses the Board's  
18 interests and concerns. We appreciate you coming.

19 MS. GARDE: Thank you.

20 JUDGE KELLEY: And the work that you're doing,  
21 I'm sure, is well motivated, and we think you're doing some  
22 good. I'm not speaking about this company necessarily, but  
23 the nuclear industry generally is benefitted from some  
24 outside investigation in our view. So we do appreciate it,  
25 and we would appreciate your carrying back the message that

r13m8

1 we've tried to spell out as clearly as we can this  
2 afternoon.

3 Now, on that Mr. McGarry wants to speak, Mr.  
4 Johnson. They may want to ask the Board to do something  
5 different and we can consider that, but we've said what's on  
6 at least the forefront of our minds.

7 Mr. McGarry.

8 MR. GUILD: Judge, before Mr. McGarry goes, I  
9 would like to, if I can, distribute these two letters that I  
10 referred to earlier so that can be before the Applicants and  
11 the Board as well.

12 JUDGE KELLEY: Okay. I might just add, Ms.  
13 Garde, if you think a transcript of our colloquy this  
14 afternoon would do you any good, we'll get a copy tomorrow.  
15 I don't know that it would, but think about it.

16 MS. GARDE: It might be helpful.

17 JUDGE KELLEY: Okay. The record can show that Mr.  
18 Guild has distributed to the Board and parties copies of the  
19 letter from the Government Accountability Project, one to  
20 Chairman Nunzio Palladino of the NRC, and the other to Morris  
21 Udall, Chairperson of the Committee on Interior and Insular  
22 Affairs, both dated October 6th.

23 MR. MCGARRY: Your Honor, we would like the record  
24 to also reflect these documents were handed out first thing  
25 this morning to the press.

T13m9

1 JUDGE KELLEY: Go ahead, Mr. McGarry.

2 MR. McGARRY: Your Honor, we find this an unusual  
3 set of events that have just transpired. We now are supposed  
4 to accept at face value what Ms. Garde has said to this  
5 Board. It may be correct. It may not be correct. We've  
6 asked you to accept at face value that there is no retaliation,  
7 that there will be no harassment by Duke Power Company,  
8 and yet that is not accepted at face value, and these  
9 individuals are testifying under oath. We find that as a  
10 strange circumstance.

11 Aside from that, this Board -- let me just back  
12 up. Aside from that, the Intervenors have a responsibility.  
13 The staff has a responsibility, and the Applicants have a  
14 responsibility. If we thought we had some potential  
15 witnesses that might testify in this case as a responsible  
16 party, we had an obligation to inform the other parties, as  
17 well as this Board, of those individuals we might call.  
18 And we had to identify those individuals in September, and  
19 we would have shirked our responsibility if we had not  
20 identified potential witnesses.

21 Now, let's put the shoe on the Intervenor's foot.  
22 They know now today -- and I assume that Ms. Garde has known  
23 about these fourteen individuals before yesterday. That's  
24 a question I'd like to ask her. They've known for some time.  
25 We got wind of this in a conference call several months ago,



T13ml0

1 and that's why we filed motions to provide for further  
2 specification. If they thought they had people who would  
3 testify in support of their case, they had a responsibility  
4 to identify those individuals to the Board and the parties.

5 If at that time they thought there was a problem  
6 with respect to the confidentiality, they should have made  
7 that known to the Board and the parties, and we could have  
8 treated it at that time. They didn't do it, and now we are  
9 here, Your Honor, and it seems like we're now cast in the  
10 light of the villain. We're simply trying to see that our  
11 rights, and in fact the duty of the parties, are properly  
12 carries forward. We just don't think they are.

13 We're now engaging in a colloquy with Ms. Garde,  
14 which I think is unusual. I understand the Board's interest  
15 in talking to Ms. Garde. We've met with Ms. Garde before.  
16 We understand she represents the Government Accountability  
17 Project. We understand she's been involved in Zimmer,  
18 she's been involved in Midland; but, quite frankly, Your  
19 Honor, that is of no moment in respect to this case.

20 What is of moment in this case is whether or not  
21 there are other individuals who are going to testify on  
22 behalf of Palmetto Alliance. And if there are, who are they?  
23 It's as simple as that. And we have now -- all we've got  
24 even today from Ms. Garde is that she's talked to some people,  
25 and there's mixed feeling of whether or not they want to



T13m11

1 participate in the case, and she'll go back out and talk to  
2 them. If they want to come back -- and after she's talked  
3 to them, if they feel they want to come to the case, then  
4 they come to the case.

5 I don't think that's the way we conduct this  
6 proceeding. We think we have to stick by the rules. If  
7 there are people, by golly, they ought to come forward. I  
8 don't think it's onerous to require that.

9 Now, I find -- I asked earlier this morning that  
10 the Board reconsider its order that says to Palmetto Alliance  
11 they have to come forward next Monday and identify these  
12 people. We would have hoped today that Ms. Garde could  
13 give us those names; but at the worst, Palmetto Alliance has  
14 to come forward with those names next Monday, and I don't  
15 think we should leave it to Ms. Garde to come back to this  
16 Board two months from now, or three weeks from now, and  
17 say, "Talked to some folks, and of the fourteen, seven say  
18 they want to come forward." We just don't think that's the  
19 way to do it, and I don't think if Ms. Garde thinks about  
20 it, she would say that's the way to do it.

21 If there are people with genuine concerns, let's  
22 find out about those concerns and let this Board develop a  
23 record in that regard.

24 With respect to the confidentiality of those  
25 individuals, that's something we can work out with the

T13ml2

1 Board. But to continue to -- I've used the words "perceive"  
2 and "innuendo." We just cannot do it. We've got to get on  
3 with the hearing. We've got to get these witnesses' testi-  
4 mony. We've got seven or eight panels. We've got to know  
5 where Palmetto Alliance is coming from. We've got to know  
6 who those fourteen individuals are if indeed they testify.  
7 We have a right to find out who those individuals are, and  
8 we have a right then to investigate ourselves and find out  
9 the facts.

10 If an individual thinks there's a faulty well,  
11 if the individual thinks there's a faulty framastand, we  
12 have a right and a duty to follow up on that well or that  
13 framastand and tell that Board what the facts are as we  
14 see it.

(Continued on next page.)

1 JUDGE KELLEY: I understand that what you're asking  
2 for, at least in part, is a deadline by which people who want  
3 to invoke the in-camera procedure do so.

4 MR. MC GARRY: Yes, sir.

5 JUDGE KELLEY: And you propose when?

6 MR. MC GARRY: I propose yesterday. I asked for it  
7 today, and at the worst, Your Honor, it would be next Monday,  
8 the 17th, which is the date this Board has already established.

9 JUDGE KELLEY: Okay.

10 MR. MC GARRY: Now, I do have some questions I'd  
11 like to ask Ms. Garde.

12 MR. GUILD: Mr. Chairman, you know, if that was a  
13 question, it sounded more like argument on a point that we  
14 haven't had a chance to address; and if there's a matter of  
15 a deadline with respect to witnesses, and this is Mr. McGarry  
16 arguing his motion to reconsider the deadline, I certainly  
17 would like to be heard before the Board considers the record  
18 ready for a decision on that motion.

19 JUDGE KELLEY: My understanding of the deadline of  
20 the 17th is that it covers people whose names you have been  
21 told to disclose, and, conceivably you will disclose some. I  
22 envision in a separate box people who want to invoke the  
23 in-camera procedure. It may turn out to be much the same  
24 people, but the order at least is cast in those terms. We do  
25 not now have in the order as drafted a deadline for in-camera

1 people filing their names. Maybe we should, but we don't, as  
2 I understand it, and Mr. McGarry is saying it ought to be the  
3 same; it ought to be the 17th, if I understand you correctly.

4 MR. MC GARRY: That's correct, Your Honor.

5 JUDGE KELLEY: Okay. I think that's all we're  
6 talking about, and we'll get to you -- why don't we let Mr.  
7 McGarry finish his comments or questions, and then we will get  
8 back to you, Mr. Guild.

9 MR. MC GARRY: And the reason we suggest that, Your  
10 Honor, is if we look at the letter from the Government  
11 Accountability Project which, quite frankly, I've not had a  
12 chance to look at, but if the newspaper article properly  
13 portrays it, the Government Accountability Project is saying  
14 to Nunzio Palladino that "We have some individuals." It's  
15 not whether or not these people are going to testify. They  
16 have 14 individuals, so they say.

17 Now, they work closely with Palmetto lines. If they  
18 have 14 individuals, those names ought to be on the list next  
19 Monday, and I think if they're not on the list, if those 14  
20 individuals make a cameo appearance two months from now, they  
21 shouldn't be permitted. We understand the sensitivity of  
22 quality assurance and, again, I repeat, we're not naive. We  
23 read Zimmer. We read Midland. We take our responsibility  
24 seriously. If, indeed, they're concerns, we want them on the  
25 record, but we think you have to draw the line somewhere. We

1 think the Court of Appeals would affirm you if, two months  
2 from now, someone says, "We want to testify," if you didn't  
3 let them, because we're sending the word out that these people  
4 ought to come forward, and my recollection -- and I'm a bit  
5 hazy on this -- I'll withdraw it. I think the Appeal Board  
6 may have given us some guidance in this regard about the  
7 Catawba matter, about some matter being raised at the last  
8 moment, but I'll stand on my argument and rest on that point,  
9 Your Honor. But we are disturbed. We're disturbed by what  
10 are characterized as a pattern of behavior.

11 In a traditional case, we put on our technical  
12 experts. We go by panels. They're cross-examined. A record  
13 is developed. We don't see this case as any different from  
14 any other case. We understand the issue. We understand it's  
15 a sensitive issue. We appreciate that fact. But that doesn't  
16 say that we change our rules. We have our rules, and we have  
17 to follow those rules; and if these individuals -- there is  
18 no reason that these individuals cannot fit within these rules,  
19 and I think we ought to strive for that; and if we deviate  
20 from that, we run the risk of this process breaking down. I  
21 think if we hold people's foot to the fire, we make sure that  
22 they've had proper notice, then we can proceed on and dispose  
23 of this case.

24 Now, I do have some questions for Ms. Garde.

25 JUDGE KELLEY: Now let me ask you a question.

1           In connection with this Board's imposing a deadline  
2   for people who want to invoke this in-camera procedure, it  
3   seems as a practical matter that the terms of the in-camera  
4   procedure have gotten around. Ms. Garde indicates that she  
5   has told people about them; that they know about it. But I  
6   have a little concern about a deadline if I'm not entirely  
7   sure that the mechanics have been made known.

8           Would you have any objection to posting the  
9   pertinent part of the Board's order at Cacawba?

10          MR. MC GARRY: We have no objection to that.

11          JUDGE KELLEY: How soon could you do that?

12          MR. MC GARRY: We could do it this afternoon. But  
13   let me just make an observation in that regard.

14                I think this Board is under the impression that  
15   Ms. Garde just came into the knowledge of these names. I  
16   don't think that's the case. I think that these names have  
17   been known to Ms. Garde for several months, and that's why we  
18   would like her under oath to ask her these questions; and if,  
19   indeed, she's had contact for several months with these  
20   individuals, they're familiar with what's going on; they've  
21   been contacted by Ms. Garde. Why do we now have to give them  
22   two more months to decide whether or not they want to come  
23   forward?

24          JUDGE KELLEY: Well, at the best they've only known  
25   since sometime early in October that there would be an



1 in-camera procedure in this case; isn't that correct?

2 MR. MC GARRY: That's correct with respect to the  
3 Board. But let's just back up.

4 Palmetto Alliance and the Government Accountability  
5 Project have been engaged in an effort with respect to former  
6 and current employees to see if, indeed, there are present or  
7 former employees that wish to participate in their behalf in  
8 this proceeding, and I believe that's been ongoing since last  
9 March. I think that's what the records reflect. Maybe it was  
10 April. But the point is, it wasn't October.

11 If, indeed, Palmetto Alliance/GAP came up with  
12 individuals they thought were potential witnesses, why should  
13 we now stand back and say, "But they don't have to tell any-  
14 body about these. Let's see what the Board does about it.  
15 And since the Board didn't tell anybody about in-camera pro-  
16 ceedings until October, that means our clock doesn't start to  
17 run until that point in time." If we did that, as an  
18 Applicant, do you think that we would come and say that to  
19 Your Honor? We certainly wouldn't. We would tell our wit-  
20 nesses that there was an in-camera problem; that we would  
21 bring it to the Board, and I think that Palmetto Alliance  
22 should have been expected to do that. It's only fair. If  
23 they know those names, if they have their longstanding, I think  
24 they should have been brought to the Board's attention and,  
25 again, I say, with respect to confidentiality -- and that's

1 something we can work out -- but with respect to bringing the  
2 matter to your attention, I don't think you should start the  
3 clock on October the 6th. I don't think you should start the  
4 clock when you issued your ruling on in-camera. I think that  
5 the rules are the rules, and Ms. Garde has said she's  
6 explained the rules to the individuals. I think, you know,  
7 the Board is now saying, "You've got essentially one more week.  
8 Fourteen people, presumably they're located somewhere right  
9 around here. Here's a regulation. Here's what it says. Do  
10 we want to come forward or not?" And one item that I left  
11 out, I keep saying, "names." I don't mean to limit this  
12 discussion to names. Names, quite frankly, are relevant, and  
13 we do want to know them. We want to know what the concerns  
14 are.

15 MR. GUILD: He's asked a question and Ms. Garde is  
16 prepared to respond in a large part to what Mr. McGarry has  
17 been driving at.

18 MS. GARDE: Judge, may I request to make a limited  
19 appearance statement in response to that?

20 JUDGE KELLEY: I don't think we want to handle it  
21 that way. I'll stipulate that we can spend at least the rest  
22 of this afternoon going back and forth and bac<sup>1</sup> and forth on  
23 when you got to know the names of certain unnamed people, and  
24 I just don't see how that's going to advance the football. I  
25 don't understand that at all. I'm prepared to stipulate that

1 at least some people have come to you recently. That being  
2 so, what's the point?

3 MS. GARDE: Sir, I'm not interested in getting  
4 into an argument, but I do have a number of points that I  
5 think I can make in about five minutes.

6 JUDGE KELLEY: Well, I will guarantee you -- I'm  
7 not saying that you can't speak. I don't think a limited  
8 appearance is the way to do it. Let's do it on the record or  
9 not do it at all.

10 What concerns me, Mr. McGarry -- The Board is  
11 going to confer a moment.

12 (Board conferring.)

13 JUDGE KELLEY: The Board thinks they can resolve  
14 this issue without going into the precise point in time at  
15 which various people came to the attention of Palmetto and GAP.

16 Now, I'd like to give Mr. Johnson a shot. Did you  
17 get over your points, Mr. McGarry?

18 MR. MC GARRY: I have, Your Honor. Just for my  
19 final position, what we're asking this Board for is the  
20 identity of these individuals and the nature of their concerns,  
21 their specific concerns, and we're asking the Board to set a  
22 time.

23 JUDGE KELLEY: You want a time limit. I understand.  
24 Okay. Mr. Johnson.

25 MR. JOHNSON: Well, it seems to me that there are

1 three avenues here that have been made available, that are  
2 available. The first is for Palmetto Alliance, the Intervenor  
3 in this case, to propose witnesses. It did not meet its  
4 deadline for certain of its witnesses, not pre-filed testimony.  
5 It was given another two weeks to do so.

6 If Palmetto Alliance has witnesses that it wishes  
7 to present, it has until October 17th to do that, by the  
8 Board's order, and the Board has said that this doesn't  
9 necessarily apply to those individuals who might come in on an  
10 in-camera basis. Fine. Those people can come to the Judge.  
11 Under the procedure that you, yourself, read and outlined,  
12 that's an alternative. It seems to me that that should be at  
13 the earliest possible moment, but it seems to me, as a  
14 practical matter, this could happen at any time during a  
15 proceeding. We have no real control over that, and it would  
16 be up to the Judge, the Board to determine whether this is a  
17 proper way to go, as a practical matter. So that's the second  
18 one.

19 JUDGE KELLEY: Doesn't there come a time, though,  
20 I mean, as we get further and further along in this case,  
21 don't we -- aren't we entitled to apply some sort of balancing  
22 test whereby we can say marginal matters are too late? If  
23 we're going to open up some brand new line of inquiry late in  
24 the case, it ought to be a smoking gun to do so.

25 MR. JOHNSON: I would agree with that.

1 JUDGE KELLEY: Thank you.

2 MR. JOHNSON: I think just fairness requires that.  
3 We are proceeding now. We have witnesses. Their opportunity  
4 to rebut testimony would be limited if it comes too late, so I  
5 agree with that.

6 The third avenue is presenting information to the  
7 Staff. The Staff has an obligation to investigate any  
8 allegations of problems at any construction site or operating  
9 reactor; and if I understand the assertions made by GAP,  
10 they are preparing affidavits for all of the individuals,  
11 perhaps as many as 14 -- I haven't had a chance to fully read  
12 this material -- those, if submitted to the Staff, would get  
13 full consideration by the Staff. I have every confidence that  
14 the Staff would properly investigate such matters. I think  
15 to the extent that some sui generis requests to the  
16 Chairman and the Commission is being requested based on some  
17 desire to somehow avoid the normal manner of the Commission's  
18 operations, I think that's not a proper request. I think that  
19 the Staff of Palmetto is not going to investigate these claims.  
20 There are certain ways that the Staff and Commission operate,  
21 and if they want an investigation, then they have to use those  
22 channels that are available. But if they do choose the  
23 channels that are available, then a request is made. It is  
24 directed to the Staff. The Staff investigates it. Whether  
25 it has to do with quality assurance at Catawba, diesel

1 generators or any other matter that they may present an  
2 affidavit upon, that matter, if it is significant, would be  
3 presented to this Board by way of Board notification procedures,  
4 and this is a procedural requirement on the part of the Staff.  
5 That doesn't involve the divulgence of confidential sources,  
6 just the significant safety information, if there is such,  
7 would be disclosed.

8 (Continued on next page.)  
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1 MR. JOHNSON: (Continuing) So what I see  
2 happening here is there's a confusion taking place. You  
3 have a party -- Palmetto Alliance has an obligation. You  
4 have individuals who you've notified directly or indirectly  
5 that they may come forward, and you have Gap which is some-  
6 where out there pursuing extra adjudicative avenues, and  
7 it's free to do that as a public citizen, individual, group,  
8 whatever, and let them do that.

9 It seems to me we ought not to get bogged down  
10 overly in this debate today and now. I'm not sure that  
11 it really is productive. If there are individuals who are  
12 ready to come forward to be Intervenor's witnesses, they can  
13 be coming forward by next Monday. If not, some kind of  
14 reasonable approach to in camera presentation to the Chair-  
15 man should be done.

16 If not, send your affidavits to the staff, and  
17 those will be treated appropriately, and let's get on with  
18 the case.

19 JUDGE KELLEY: Thank you.

20 Mr. Guild, any comments?

21 MR. GUILD: Yes, Mr. Chairman, couple of points.

22 First, I think what needs to be clear here is  
23 the showing that we tried to make the second day of this  
24 hearing that Palmetto Alliance does not control this flow  
25 of information that is, well, very, very important for

1 reaching the ultimate conclusions, the safety of this  
2 plant's likely operation.

3 We're not capable of doing that. We're not  
4 qualified to do that. We have an axe to grind. We have a  
5 very clear adversary position with respect to this. Many  
6 of these workers do not. We have put before the Board the  
7 request that they acknowledge the fact that Mr. Johnson  
8 urged the workers have their own independent interests, some  
9 of which they may choose to bring to the Government Accounta-  
10 bility Project, some of which they may choose to bring to  
11 Palmetto Alliance and some directly to this Board.

12 If the Board is open to hearing this information,  
13 which I understand it to be, then it has to facilitate those  
14 channels.

15 Secondly, there's not a free flow of information.  
16 It's not simply the inherent limitations that are placed  
17 because of the interest of the utility company in finishing  
18 a plant and not having people criticize them.

19 We claim and are prepared to demonstrate that  
20 there is a special chill and restraint on the flow of infor-  
21 mation that requires the intercession of this Board, and  
22 that's our pending motion for protective order.

23 So it's not just neutral; if they're here and  
24 want to particulate, let them come forward. It is not going  
25 to work that way. It won't work that way.

P15m3

1 I would like Ms. Garde to respond in her own  
2 right because her position is not identical to Palmetto.

3 We would urge the Chairman to consider communi-  
4 cating as effectively as this Board can with the Catawba  
5 work force with respect to the provisions of the in camera  
6 process that you've set forth. It's just not going to work  
7 to rely on secondhand information, Mr. Chairman, in the  
8 sense that the people Ms. Garde may have direct contact  
9 with or those that may happen to read the dense language  
10 that's posed along with a thousand other pieces of paper on  
11 a bulletin board at the plant.

12 We intend to offer to the Board in the next day  
13 or so a draft notice that the Chair invited last week as  
14 a part of the relief we sought in our protective order.  
15 This is the kind of thing you could send out over the  
16 Board's endorsement, if you would, to the Catawba work  
17 force. We think it would make perfect sense for the Board  
18 to send such a notice that impended the in camera procedure  
19 you outlined in your order.

20 JUDGE KELLEY: We intended to rule on that  
21 tomorrow. Maybe it was a misunderstanding. What I meant to  
22 say to you last week was, when you suggested we write a  
23 letter to the employees, I said to you, "Are you willing  
24 to write the letter?" And you said, "Yes." But I didn't  
25 say, "Go ahead and do it."

1 MR. GUILD: No, sir

2 JUDGE KELLEY: And it's my understanding that we  
3 avoided it.

4 MR. GUILD: I thought the Board said, "If there's  
5 a proposed form of Board notice to workers that Palmetto  
6 would propose, please draft one as a proposal and submit  
7 it to the parties and Board," and we are prepared to do so,  
8 and --

9 JUDGE KELLEY: I simply don't remember making  
10 that request. Maybe I did.

11 MR. GUILD: That was my understanding, Mr.  
12 Chairman. In any event, I would advocate that as direct  
13 communication between the Board and the work force. Pal-  
14 metto is not holding back any witnesses, Mr. Chairman, and  
15 I think if Ms. Garde would be allowed to, that she could  
16 speak very succinctly to the nature of her role in the --  
17 GAP's role in this, and the distinction of that and Palmetto  
18 Alliance. These are not Palmetto Alliance witnesses, Judge.  
19 It's a mistake to see them as witnesses sponsored by us.

20 We simply recognize, understand and perceive that  
21 there are people who want to come forward, not necessarily  
22 through this party, and offer evidence to this Board.

23 JUDGE KELLEY: Well, don't you envision, though,  
24 that there may be witnesses who want to go the in camera  
25 route who you will, in effect, call and represent? I

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1 thought that you would.

2 MR. GUILD: No, sir, not necessarily at all.  
3 I can't represent to the Board that there's a single indi-  
4 vidual that I would present as a Palmetto Alliance witness.  
5 That isn't to say there aren't present and former workers  
6 who have safety concerns that they wish independent to  
7 introduce to this Board or through the Government Accounta-  
8 bility Project. When we were ordered to identify witnesses,  
9 Judge, we identified witnesses.

10 JUDGE KELLEY: You did not identify, as I under-  
11 stood your submission, certain witnesses for whom you wanted  
12 to maintain confidentiality.

13 MR. GUILD: And the --

14 JUDGE KELLEY: That suggests you have some  
15 witnesses you haven't named yet.

16 MR. GUILD: The ones we had there were then the  
17 class of welding inspectors and welding inspectors' super-  
18 visors, Judge. They are not in the class the membership is  
19 now known.

20 JUDGE KELLEY: We're talking about something  
21 pretty narrow here, and we seem to be growing out like some  
22 kind of potted plant. I would like to get this wrapped up  
23 somehow so we could get going on the witnesses.

24 MR. GUILD: Let me conclude this, then.

25 JUDGE KELLEY: Fine.

T15m6

1 MR. GUILD: I think our position ironically is  
2 just the same as the Applicants on this point because, Judge,  
3 we think this proceeding is going to be indelibly marked  
4 and influenced by the existence of concerns unexpressed by  
5 Catawba workers, and they are there, sir. It's not simply  
6 a matter of hypothesis.

7 Now, we can either ignore them, pretend they're  
8 not there and say, "Well, Palmetto Alliance case is con-  
9 strained to Mr. McAfee and Mr. Hoopingartner in cross-  
10 examination."

11 We can adopt those artificial constraints.  
12 Fine. We think that would be a mistake. Having identified  
13 the existence of sources of critical evidence, the question  
14 is, are we going to invest the time now to try to under-  
15 stand the parameters of that source of information. And  
16 I suggest to you, Mr. Chairman, as much as it does require  
17 deviation from pursuing the examination of the four witnesses  
18 sitting here ready to be examined, we're prepared to do that;  
19 but we think the appropriate thing to do right now as I  
20 understood Counsel for Applicants to say, let's find out if  
21 there's harassment, retaliation, chill effect on the Catawba  
22 site. Let's find out if there's witnesses prepared to offer  
23 testimony to this Board, and let's set forward a motion,  
24 an orderly one, for identifying those people and helping  
25 them bring their concerns forward.



T15m7

1 JUDGE KELLEY: The Board thinks that would be  
2 counterproductive and does not wish to pursue it. That  
3 evidence will come out in the course of this case, in the  
4 course of presentation of witnesses.

5 We are not going to sit here the rest of this week  
6 trying to find out what the harassment would be at Catawba  
7 work plant.

8 MR. GUILD: I just want it understood we are  
9 prepared to go forward and offer evidence at this time.

10 JUDGE KELLEY: Fine. Appreciate the offer.  
11 Declined.

12 Ms. Garde, you've been the center of some  
13 lengthy discussion. We'd like to move on pretty quickly.  
14 Would you like to make a comment or something?

15 MS. GARDE: Yes, sir. First of all, Mr. McGarry,  
16 you made a point on you not receiving a letter that was  
17 served on the Commission last Thursday and Congressman  
18 Udall. I would note that we're not under an obligation to  
19 serve all the parties in this case on the service list, but  
20 we will be glad to do so, if that's requested by either  
21 yourself, the staff or the Board with any letters or docu-  
22 ments that we would be serving on the NRC staff.

23 If you would like to receive a letter when we  
24 send one, I will send you one immediately, and I will send  
25 to the service list if that is requested also.

T15m8

1 Second, I would like to point out that GAP has  
2 developed a methodology which was not designed to be  
3 conducive to the hearing process itself. We are attempting  
4 in this proceeding to work within that because there is the  
5 subject of contention six which is the same subject of our  
6 investigation.

7 It may be, at a minimum, cumbersome and difficult  
8 for both the parties and the Board, and I apologize for that.  
9 I believe that the work that we're doing is constructive,  
10 and it needs to be done, and that the information that  
11 we're turning up is of interest to the staff, to Duke Power  
12 Company and to this Board.

13 It's a very slow process. GAP, as an organization,  
14 is not very large. It is also slow because we want to be  
15 accurate. And Midland and Zimmer stand, if for nothing  
16 else, for the fact that we do our work very well, and that  
17 means we find three sources to support every comment that  
18 we make in an affidavit or it doesn't go in the affidavit.

19 That takes a lot of time, and it means talking  
20 to a lot of workers. I'm not going to submit something to  
21 the NRC against your plant that I don't feel comfortable  
22 with and that that worker doesn't really believe and that that  
23 worker can't document.

24 I think Mr. Johnson is absolutely accurate in the  
25 fact that those affidavits may be the subject of a Board

T15m9

1 notification. And when turned over to the NRC, they,  
2 I'm sure, will be investigated. And I think that the duty  
3 that we have is to do that to the best of our ability as  
4 quickly as possible.

5 It was not until last Friday that I had any  
6 workers who voluntarily brought up the question of this  
7 hearing as a result of reading Mr. Horan's article. Now,  
8 you may or may not believe that, but the workers that  
9 specifically talked about the hearing responded to news-  
10 paper articles, and I will say that under oath, if you  
11 would like me to.

12 JUDGE KELLEY: Okay. I think we've heard enough  
13 on this point. The Board would like to thank Ms. Garde  
14 for being with us this afternoon.

15 We leave with you once more that to the extent  
16 you talk to people who may have relevant evidence to  
17 offer, we'd appreciate your explaining to them what the  
18 Board situation is, what our intimate procedure is. We've  
19 been asked by Mr. McGarry beyond that to impose a deadline,  
20 a deadline by which if people are going to come forward,  
21 they ought to do that, and we'll consider that, and we may  
22 do that.

23 And if we do, we'll be sure you know about it;  
24 but would just like to alert you to the fact it's not an  
25 open-ended invitation from now until the end of the case.

T15m10

1 Can't be. So be aware that the clock ticks.

2 Why don't we take ten minutes and then go directly  
3 to our panel?

4 Thank you.

5 (Short recess.)

6 (Continued on next page.)  
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1 JUDGE KELLEY: Okay. We're back on the record.

2 The witnesses may have felt that they were wasting  
3 their time here today. You are undoubtedly aware of the fact  
4 that this Board is able to grant honorary degrees in federal  
5 administration procedure, and you'll get suitably embossed at  
6 a later date.

7 (Laughter.)

8 JUDGE KELLEY: When we quit on Friday, as I recall,  
9 Mr. Guild was cross-examining the panel. We propose to take  
10 back up where we left off.

11 Okay. Mr. Guild.

12 MR. GUILD: Yes, Mr. Chairman. I'm prepared to go  
13 forward.

14 WARREN H. OWEN,

15 G. W. GRIER,

16 B. GAIL ADDIS and

17 JAMES R. WELLS,

18 resumed their testimony and testified as follows:

19 CROSS-EXAMINATION (Cont'd.)

20 BY MR. GUILD:

21 Q Mr. Owen, let me direct your attention, sir, to  
22 page 18 of your pre-filed testimony, your testimony beginning  
23 with the question at line 19 and following. With respect to  
24 the 1981 SALP report, the Systematic Assessment of Licensee  
25 Performance, the below average rating of Catawba, the question

1 is: Does this SALP report indicate that there are significant  
2 or systematic deficiencies in design or construction, or the  
3 QA program, at Catawba," and you expressed the opinion that  
4 it does not, isn't that true, sir?

5 A (Witness Owen) That's what I said, no.

6 Q Yes, sir.

7 MR. GUILD: Mr. Chairman, I'd like to distribute  
8 copies of that SALP report. We asked the Board to take notice  
9 of it before the break, and I think the Chair ruled that it  
10 was an appropriate subject for notice.

11 JUDGE KELLEY: That's correct. I've got one here.  
12 We could use one more.

13 MR. GUILD: I've got an extra one or two for the  
14 Board.

15 JUDGE KELLEY: All right. Thank you.

16 BY MR. GUILD:

17 Q Now, sir, I'm going to hand you a copy of that  
18 document that's been distributed to counsel. Let me ask you  
19 to turn to Appendix B, and it's the first page, and that  
20 appendix is entitled, "Performance Element Summaries for Power  
21 Reactor Facilities under Construction Rated Below Average,"  
22 and do you see there a rating -- a listing of Catawba 1 and 2?

23 A (Witness Owen) I see it.

24 Q All right, sir. And, if you would, for the record,  
25 read the other power reactor facilities under construction



1 that are listed in Appendix B as also below average. What is  
2 the classing which the Catawba facility falls, s r? Who do  
3 you share that distinction with?

4 MR. CARR: I object to that, Your Honor. The docu-  
5 ment speaks for itself.

6 MR. GUILD: If it suits counsel more, I'll simply  
7 publish that the document reflects --

8 MR. CARR: It's not relevant to this matter. We're  
9 talking about Catawba.

10 JUDGE KELLEY: That's a little different point.  
11 Your first point was it speaks for itself, and I would agree  
12 with you.

13 MR. CARR: There are two points.

14 JUDGE KELLEY: What is the second one?

15 MR. CARR: The second is it's not relevant.

16 JUDGE KELLEY: Mr. Guild.

17 MR. GUILD: Mr. Chairman, we want to demonstrate --  
18 I don't think it's a matter of contest, but we want to lay a  
19 foundation that the Catawba unit ranks along with some of the  
20 very worst facilities in the country which have since had  
21 significant corrective action or remedial action taken for  
22 quality assurance deficiencies that we will assert are very  
23 similar to the deficiencies that exist at Catawba.

24 MR. CARR: If Mr. Guild is saying that he is pre-  
25 pared to make the requisite showing with respect to each of

1 these other facilities, I suggest to ask him how he proposes  
2 to do it. Other than that lack of such a showing, it's not  
3 relevant to the matter before this Board.

4 JUDGE KELLEY: It's a matter of -- It's one thing  
5 to read this report where they summarize various defects and  
6 they put various plants in various categories. It's another  
7 thing, I suppose, to draw a conclusion and to conclude that  
8 some plant is the worst in the nuclear industry, or there-  
9 abouts.

10 MR. GUILD: Well, Judge, basically our position is  
11 that among the facilities that are listed as below average,  
12 there are only a few -- let me count -- one, two, three, four,  
13 five -- six, I count. There are six facilities that are  
14 listed below average. I think the only effort that we know of  
15 by the Nuclear Regulatory Commission to rank licensees in  
16 comparative categories of performance, they abandoned that  
17 whole rating system subsequently. In the only effort to rank  
18 facilities, Catawba is grouped along with Zimmer, Midland and  
19 the rest.

20 Now, we think that the Board can appropriately take  
21 notice of the fact, and we'll offer it at a later point in  
22 this case, that there are published explicit decisions of the  
23 Nuclear Regulatory Commission, its Licensing Boards and Appeal  
24 Boards, with respect to the other facilities that I just named  
25 who joined Catawba with the dubious distinction of below

1 average existing weaknesses in quality assurance where there  
2 are such things as stop orders, sweeping programmatic require-  
3 ments for remedial action. Now, we want to lay as a founda-  
4 tion that on the basis of the record in this proceeding, such  
5 remedial relief is appropriate for the Catawba facility. It's  
6 not accident that Catawba fell within this class of six  
7 facilities at the end and, in fact, Applicants undertake  
8 through their direct case to try to demonstrate that they  
9 didn't deserve the below-average rating. That's not my  
10 evidence. That's the evidence of Mr. Owen.

11 He goes on at pages --

12 JUDGE KELLEY: Mr. Carr, just cool it a minute. I  
13 think we ought to focus on this, the question being to what  
14 extent are we going to look at QA performance records at other  
15 facilities is something that has come up here many times, but  
16 I don't dare say for the last. To what extent is that  
17 manageable? Certainly you've got an NRC report that does not  
18 reflect favorably upon Catawba, and it gives them an  
19 unflattering label, and all those things we can stipulate to.  
20 But the next step that I gather you're moving toward is to  
21 say, in effect, Catawba is as bad as Zimmer. It ought to be  
22 shut down. That's the direction in which this goes.

23 MR. GUILD: Well, Judge, I'm not attempting to  
24 elicit from these witnesses evidence about other facilities  
25 except to simply, for purposes of impeachment in cross-

1 examination, demonstrate that there is a significant -- that  
2 the word "significant," which they dispute as a characteriza-  
3 tion of this rating, is an appropriate one to attack. That's  
4 cross-examination.

5 Now, what I'll say to you is that at a later point  
6 in this proceeding, we're going to simply ask if it's neces-  
7 sary that this Board take official notice of other decisions  
8 by bodies within and including the Commission itself, in the  
9 NRC, with respect to the other facilities that are on this  
10 below-average rating for QA rating problems, and I don't  
11 intend to offer witnesses about what happened at Midland or  
12 what happened at Zimmer, if you follow me. I'm not asking to  
13 pursue the comparative evidence in substance, simply the  
14 decisions and conclusions of the NRC itself, and those are a  
15 matter of -- they're beyond dispute. They're simply a matter  
16 of record.

17 JUDGE KELLEY: Well, I guess I'm not clear, then,  
18 why the witness is being asked about what kind of company  
19 their plant was keeping in this report if they're not going  
20 to be asked to testify about these other matters.

21 Rephrase the question, and we'll move on.

22 BY MR. GUILD:

23 Q All right. Mr. Owen, having heard the colloquy,  
24 you'll acknowledge, sir, it's apparent that at Appendix B,  
25 Catawba is ranked in the company of other facilities which we

1 all understand have had significant enforcement action with  
2 respect to quality assurance deficiencies since the time of  
3 this report.

4 MR. CARR: I'm going to renew my objection to that  
5 question, Your Honor. There's been no showing that Mr. Owen  
6 has any basis for such understanding and I say again, it's  
7 irrelevant. Catawba was to be judged on its own merits.

8 JUDGE KELLEY: I'll sustain the objection. I  
9 think you just said you weren't going to elicit from these  
10 witnesses evidence about problems with other facilities, which  
11 you then proceeded to do. The question is objected to and the  
12 objection is sustained. I'm not saying necessarily now and  
13 forevermore we'll never look at another facility, but we're  
14 sustaining an objection to that question with the caution that  
15 we don't intend to become bogged down in speculation about  
16 what may or may not have happened to some other nuclear power  
17 plant.

18 MR. GUILD: I'm not asking you to speculate, Mr.  
19 Chairman. I'm going to ask you to take notice of administra-  
20 tive fact.

21 (Continued on next page.)  
22  
23  
24  
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T17-ml

1 BY MR. GUILD:

2 Q Mr. Owen, you've indicated in your testimony  
3 that you served on industrywide committees with respect to  
4 quality assurance in construction of nuclear facilities;  
5 isn't that true, sir?

6 A (Witness Owen) That's correct.

7 Q And for example INPO Committees?

8 A I served on the Atomic Industrial Forum Policy  
9 Committee on Nuclear Regulation.

10 Q And in that capacity, sir, you -- and in the  
11 capacity as senior official of Duke, you come to learn about  
12 the significant, if you will, developments with respect to  
13 enforcement action in the industry; do you not?

14 A We certainly are responsive to whatever input we  
15 get from other utilities, whether it comes through the NRC  
16 or whether it comes through our own contacts.

17 Q All right, sir. And, I believe, you participated  
18 in the development of the INPO program designed to address  
19 the widespread problems of quality assurance in nuclear  
20 construction; didn't you?

21 A I responded to a challenge by the Chairman of  
22 the Nuclear Regulatory Commission to consider forming some  
23 sort of industry effort similar to the INPO evaluation of  
24 operating plants.

25 Q And that effort was based on Chairman Palladino's



1 observation that there were widespread problems in quality  
2 assurance construction of nuclear facilities?

3 A I think if I can paraphrase his specific  
4 statement at San Francisco was that there were many,  
5 many utilities in the country doing a perfectly adequate  
6 job. And he thought it was time that those professionals  
7 step forward to see if they could not bring about an over-  
8 all improvement in the industry.

9 Q I guess I missed it. Did you acknowledge that  
10 the Chairman identify widespread deficiencies in quality  
11 assurance, or was it that there were widespread quality  
12 performance deficiencies?

13 A I don't recall him using the word "widespread."  
14 He said there were cases in the news then that he thought  
15 the responsible companies in the industry ought to take  
16 that as an industry obligation and do something about it.

17 Q Well, did he acknowledge there were problems  
18 such as the acknowledged problems at the Zimmer facility,  
19 for example?

20 MR. CARR: Mr. Chairman, I'm going to renew my  
21 objection. The purpose of this hearing is to consider  
22 Catawba on its own merits. It's irrelevant whether it's  
23 one or one thousand violations at Zimmer.

24 MR. GUILD: Mr. Chairman, here is the problem  
25 I've got. I respect the limitation of scope that you've

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1 set on this matter, but this witness states an opinion.  
2 He says there's no significant finding there. In fact we  
3 went on to determine that the NRC either didn't mean what  
4 they said or that they acknowledged our defense to this  
5 obvious criticism.

6 Now, his opinion is expressed here in his  
7 testimony as the SALP report not indicating systematic  
8 or significant deficiencies in the QA program. If they can  
9 offer that as direct testimony, I've got to impeach him.

10 Part of the ability to impeach is to probe the  
11 basis of him expressing that opinion. One part of that is  
12 that Mr. Owen acknowledged expertise as INPO participant  
13 in this industrywide program.

14 MR. CARR: Mr. Owen's testimony does not intimate  
15 any problem whatsoever with the findings at Zimmer. It  
16 focuses solely on that report's findings on Catawba.  
17 Mr. Guild has questioned --

18 JUDGE KELLEY: The objection is sustained.  
19 The particular inquiry into Zimmer is too far afield for  
20 us here. There are other ways more directed to this case  
21 that you can test the witness' expertise and knowledge  
22 about the significance of QA violations.

23 MR. GUILD: With all due respect, Mr. Chairman,  
24 I take strenuous exception in not being able to probe that  
25 issue.

T17-m4

1 JUDGE KELLEY: I think this is at least the  
2 fourth time I said such exceptions do not need to be made.  
3 The NRC rules say when one party objects and there's a  
4 ruling made on it, whatever party loses has an automatic  
5 exception, and we don't want to hear any more editorial  
6 comment, which is all I really can call it, following the  
7 ruling.

8 MR. GUILD: Then I'll make an offer of proof,  
9 Judge. I don't know how else to respond to a ruling when  
10 you cut off a major attempt to demonstrate this is in the  
11 class with some of the most reknowned turkeys in the  
12 nuclear industry, Judge.

13 JUDGE KELLEY: Why don't you make an offer of  
14 proof?

15 MR. GUILD: All right, sir. I will demonstrate --

16 JUDGE KELLEY: It will be in writing, Mr. Guild.  
17 We're not going to sit here this afternoon and listen to  
18 speeches about Zimmer or any other such nuclear plant.

19 MR. GUILD: Somehow, Judge, it's okay for the  
20 goose when Mr. McGarry makes a speech for 35 minutes, but  
21 I can't respond.

22 JUDGE KELLEY: Mr. Guild, be very careful.

23 MR. GUILD: I don't hear admonishments to  
24 Counsel for the Applicant, Judge.

25 JUDGE KELLEY: Admonishments will be handed out

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1 as appropriate in the view of the Board.

2 Proceed.

3 MR. GUILD: All right, sir.

4 BY MR. GUILD:

5 Q State, if you can, Mr. Owen, fully and com-  
6 pletely, sir, the basis for the expression of your opinion  
7 that the SALP-1 rating of Catawba in respect to quality  
8 assurance does not reflect significant or systematic  
9 deficiencies, sir.

10 A (Witness Owen) When the 1981 SALP report came  
11 out and was -- the information from the region went to  
12 Washington and --

13 Q Sir, are you reading from a document?

14 A No, I'm not.

15 Q What do you have before you, sir?

16 A I have my testimony before me (indicating).

17 Q I see. All right.

18 A When I read that there was a -- that Catawba  
19 was rated below average, that, quite understandably, hurt  
20 my pride if nothing else. I asked for an analysis on each  
21 and every violation and nonconformance that went into that  
22 evaluation which covered a period from September of 1979  
23 through August of 1980. After meeting with the people that  
24 prepared that and assuring myself that each and every one  
25 of those had long since been corrected, and the NRC had

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1 concurred in those corrections to the program, I certainly  
2 felt that, at least in my opinion, we were unjustly  
3 placed in that category.

4 I would point out that it appeared that the  
5 1981 SALP report based its ratings on just sort of a gross  
6 count of the violations, with little attempt to account  
7 for other factors such as the construction activity that  
8 was going on.

9 In any event, when I reviewed that report  
10 carefully, the report said that a below average rating does  
11 not indicate -- a rating of below average does not mean  
12 that a facility was unsafe, that its operation or construc-  
13 tion should be stopped.

14 I think it's also significant to note in the  
15 later SALP reports, our quality assurance program was  
16 given the highest possible rating under the NRC's rating  
17 system at that time, and, in fact, no part of the SALP --  
18 two future SALP reports gave Catawba a below average rating  
19 in any area that was reviewed.

20 Q What are the rating scales now used in subse-  
21 quent SALP reports? Are they not 1, 2 and 3?

22 A 1, 2 and 3.

23 Q And hasn't Duke received 1's, 2's and 3's and an  
24 average of 2's in a subsequent SALP rating?

25 A Catawba, that's not correct.

1 Q What has Catawba received?

2 A 1's and 2's.

3 Q An average of 2's?

4 A It can't be an average of 2's if it's 1's and 2's.

5 Q Does the NRC express it as an average?

6 A I don't know how --

7 Q Don't they express it as an average of 2, Mr.  
8 Owen?

9 A They make a presentation to us in the management  
10 review that takes each category by itself.

11 Q Do you know whether they expressed it as an  
12 average of those categories?

13 A Not to my knowledge.

14 Q So you don't know then whether they expressed  
15 it as an average of 2?

16 A I'm interested in making sure we do the very  
17 best possible, Judge. If we've got 1's and 2's -- I'd like  
18 to have 1's on everything, and that's certainly what we'll  
19 be striving to do.

20 Q You didn't get 1's on everything, did you?

21 A We didn't get 1's on everything. We got 1's  
22 and 2's and no 3's.

23 Q Turn to page two of the SALP report present here.

24 A The 1981?

25 Q Yes, the one you talk about in your testimony,



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1 the one where you got the below average rating.

2 Do you agree that below average is intended  
3 by the NRC SALP review group to mean having negative or  
4 undesirable quality?

5 A Certainly had an undesirable -- had a negative  
6 impact on me.

7 Q Displaying less than desirable performance; do  
8 you agree with that, sir? It says that, doesn't it?

9 A That was their opinion.

10 Q It says that a facility which is characterized  
11 as being below average, if there is evidence of significant  
12 -- do you see that word, "significant" -- administrative,  
13 managerial or material problems in several activity areas.  
14 Do you see the word "significant" there, Mr. Owen, on page  
15 two?

16 A I see that.

17 Q Significant items of noncompliance which compared  
18 with others; do you see that?

19 A Uh-huh.

20 Q Evidence of repeated items of noncompliance;  
21 got that?

22 A (Witness nodded head affirmatively.)

23 Q Yes?

24 A You read it very well.

25 Q Sir, I want to understand, being able to read

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1 the English language minimally well, sir, how you can  
2 interpret the rating of below average when they use the  
3 term "significant" several times there as reflecting as  
4 you do in your testimony, sir, that this ranking does not  
5 reflect a significant deficiency.

6 A Are you asking me --

7 Q Yes, that's a question.

8 MR. CARR: Let me object to something. There's  
9 absolutely no call for Mr. Guild's demeanor with this wit-  
10 ness. The tone of voice and words he's using are totally  
11 uncalled for and are not standard behavior that should be  
12 followed in one of these proceedings.

13 Now, I would ask the Chair to caution Mr. Guild,  
14 both as to the use of language and the tone of voice. I  
15 would also ask him to take his seat.

16 MR. GUILD: Mr. Chairman, please --

17 JUDGE KELLEY: I believe --

18 MR. GUILD: May I be heard, sir?

19 JUDGE KELLEY: -- yes, just a moment. Would you  
20 go back to Mr. Guild's last sentence?

21 (Requested portion of the  
22 record was read.)

23 JUDGE KELLEY: Mr. Guild, I think that is  
24 uncalled for. Would you like to comment?

25 MR. GUILD: Yes, sir. Would you read back Mr.

1 Owen's last response, sir, to which that remark was  
2 addressed?

3 JUDGE KELLEY: Very well. Can you go back?

4 (Requested portion of the  
5 record was read.)

6 JUDGE KELLEY: Okay. I heard both. Do you want  
7 to comment, Mr. Guild?

8 MR. GUILD: Yes, sir. I'm trying with great  
9 difficulty, Mr. Chairman, to conduct the cross-examination  
10 of a hostile witness, a witness who has expressed an opinion,  
11 which I expect to see in the Board's order at some point,  
12 that these ratings were not significant.

13 Now, sir, if I'm not allowed some latitude  
14 as Counsel for adverse party to confront him with incon-  
15 sistent statements in the cross-examination where they say  
16 it means significant, Mr. Chairman, and he yet does not  
17 understand and disputes the attachment of the term "signifi-  
18 cant" -- that's his testimony -- then, sir, we might as  
19 well adjourn this proceeding because I am being constrained  
20 beyond all reason in the scope of my cross-examination.

21 JUDGE KELLEY: All right. Yes. We're not  
22 going to argue this at great length. The Board's reaction  
23 was that Mr. Owen's comment about "You read it very well,"  
24 had a slightly -- what's the term -- slightly sarcastic  
25 tone. Mr. Guild came back somewhat more sarcastically,

T17ml1

1 in our view, and I think this time around we're just going  
2 to say, gentlemen, try to keep this as civil as you can on  
3 both sides, and we will police it. I hope we don't have to  
4 police it, step in here and talk to people over this kind  
5 of stuff.

6 If we do have to, we certainly will; but we think  
7 that there was a little bit on each side and suggest --  
8 not just suggest, but say that we move on without further  
9 comment.

10 MR. GUILD: Very well, Mr. Chairman. May I  
11 proceed?

12 BY MR. GUILD:

13 Q Mr. Owen, if you look at the statement on the  
14 front page of SALP report NUREG-0834, you see the statement  
15 that the Nuclear Regulatory Commission, it's endorsed the  
16 staff's factual findings in this report concerning individual  
17 licensing operation?

18 A (Witness Owen) Yes.

19 Q Do you understand that to mean something other  
20 than it appears to mean, which is that they support the  
21 staff's conclusion as to the findings with respect to  
22 Catawba facility's weakness in quality assurance, et  
23 cetera?

24 A Well, I read the entire statement which says,  
25 "The Commission endorses the staff's factual findings in

17ml2

1 this report concerning individual licensing operation.  
2 The Commission also encourages licensees to make improve-  
3 ments in the area of weakness identified by the staff.  
4 However, in view of the long time span during which indi-  
5 vidual plant evaluations were made, the Commission does  
6 not believe that the relative rankings necessarily repre-  
7 sent current conditions.

8 The Commission has prepared guidance for the  
9 staff to govern the conduct of future assessments."

10 I believe if you go on and read the below average,  
11 beyond the part which you were reading, which says any  
12 one or a combination of any of those may result in a below  
13 average rating -- says "A finding of below average does  
14 not imply that a facility must be shut down or that con-  
15 struction of a facility must be interrupted. These ratings  
16 are only relative. Simply stated, a below average facility  
17 displays negative characteristics or undesirable qualities  
18 that are not typical of a majority of facilities.

19 "The SALP program is an evolving program and  
20 this is the first report providing facility performance  
21 ratings. The Review Group found that, as with any new  
22 program, changes are necessary to correct programmatic  
23 weaknesses. Regional SALP Board evaluations were not all  
24 conducted in an identical fashion. Regional SALP Board  
25 reports varied in scope and depth. Also, the evaluation

1 process itself involved elements of subjectivity. Steps  
2 have been taken to clarify definitions and revise instruc-  
3 tions governing the SALP process to provide a more consis-  
4 tent approach in the future."

5 We certainly took steps during the period when  
6 these violations were identified to correct them, and I  
7 would submit that future evaluations have confirmed that  
8 that happened.

9 (Continued on next page.)



1 BY MR. GUILD:

2 Q All right, sir. My question, which I didn't hear a  
3 responsive answer to, was do you dispute that the Commission,  
4 by that statement, endorses the findings of weakness made by  
5 the Staff with respect to the Catawba facility?

6 A (Witness Owen) I think that the relative ranking  
7 was a subjective sort of thing. I certainly don't take issue  
8 with the violations on which -- that the SALP report covers.  
9 Those were a matter of record and were a review of that period  
10 of construction, not any current evaluation, when this was  
11 released in August of 1981.

12 Q What I'm trying to understand, and I'm trying not  
13 to make this difficult, but what I'm trying to focus on, sir,  
14 is not the subjective -- not the relative ranking, but the  
15 point that I asked you about and that is the factual basis,  
16 that's the first phrase in the Commission's statement that I  
17 was asking you about.

18 Now, turning to page B-1, I want to understand, sir,  
19 do you dispute the factual conclusion reached by the Staff,  
20 not the relative ranking, that, first, the Catawba facility  
21 displayed evidence of weaknesses in the area of quality  
22 assurance, including management and training? Do you dispute  
23 that factual conclusion, Mr. Owen?

24 A I don't know that that appears to me to be a sub-  
25 jective conclusion. The factual findings in the report talk

1 about the violations, and the problems identifying most of  
2 them, by our own activities. They're in the August --  
3 They're in the September 1st, 1979, to August 31, 1980.

4 Q Yes. Do you dispute that conclusion, sir?

5 A Well, that's someone's summary of that period.

6 Q I want to understand. I mean if I'm not asking you  
7 questions clearly, tell me. Do you dispute that conclusion?

8 A My conclusion, after looking at all of the viola-  
9 tions which they base this on during that period, is that we  
10 corrected each and every one of them as soon as they occurred.

11 Now, how someone arrived at that conclusion, it's  
12 certainly evident, it's certainly a fact that they put us in  
13 the below-average ranking. I submit we did not stay there.

14 MR. GUILD: Mr. Chairman, I guess I need some help,  
15 sir. I'd like to get this clear for the record, but I'm  
16 trying to be narrow in focus and unargumentative in the way I  
17 pose my questions. If this is what I see as a factual conclu-  
18 sion, does Mr. Owen dispute it, and it seems to lend itself to  
19 a "yes" or "no" answer with an explanation. I would ask he --

20 JUDGE KELLEY: The Board agrees, yes or no, and  
21 then you can explain your answers.

22 WITNESS OWEN: No, I don't agree with that. My  
23 judgment, after my review at the time, my experience in the  
24 industry and our interest in correcting each and every thing  
25 that occurred at Catawba, led me to believe that we should not

1 have been in that below-average rating, and I so informed the  
2 NPC. There was nothing I could do about it after the fact  
3 except, as I did, to once again review those things on which  
4 the ratings were based to make sure they were corrected at the  
5 time they were found and remained corrected at the time this  
6 report was issued, and, to the best of my ability, to be sure  
7 they have remained corrected since that time.

8 MR. GUILD: Mr. Chairman, I understand the witness  
9 one more time to say he disputes the relative ranking. I  
10 appreciate he does. What I want to understand is in light of  
11 the Commission confirming the Staff's factual findings, to  
12 focus on the factual findings. There is a factual finding  
13 which I stated several times. I want to understand whether he  
14 disputes that factual finding or not.

15 JUDGE KELLEY: He said no. He says he doesn't  
16 agree with it. He says he does dispute it.

17 MR. GUILD: I thought he said --

18 JUDGE KELLEY: The sentence, "The Catawba facility  
19 displayed evidence of weaknesses," I thought you said you  
20 don't agree with that.

21 WITNESS OWEN: I do not agree with that. I  
22 acknowledge that we were placed in that below-average rating.  
23 I did not agree with it then, and I do not agree with it now.

24 MR. GUILD: Okay. I'll move on beyond that point.

25 BY MR. GUILD:

1 Q What I want to understand, sir, is I hear you talk  
2 about the below-average rating, and I understood your response  
3 to say that you disputed that relative ranking. I want to  
4 focus, sir, on the factual findings of the Staff.

5 Now, let's move on to the second paragraph of the  
6 narrative at page Appendix B-1, "Quality assurance weaknesses  
7 were characterized by instances of inadequate design reviews,  
8 procedures not issued, specifications and commitments not  
9 translated into procedures, and audit programs not established."  
10 Do you dispute that factual conclusion, Mr. Owen?

11 A (Witness Owen) You know, I can't say somebody  
12 else's words, characterizations of individual instances of  
13 inadequate design reviews --

14 Q So you can't answer my question?

15 A I don't consider these factual statements. They're  
16 conclusions on somebody's part, and I just can't speak for  
17 them. I look at all the same information --

18 Q Yes, I heard you say that. Just to try to expedite  
19 this, Mr. Owen, I understand the Commission's statement in  
20 part on the front page of this report to say that they, in  
21 short, don't agree with the ranking, or if they don't review  
22 the ranking, but that they endorse Staff's factual findings  
23 concerning individual licensees' operations.

24 Now, I know of no other factual findings with  
25 respect to Catawba than those that I'm directing your attention

1 to at page B-1. There's nothing else in here about Catawba,  
2 sir, and that's what I want to focus on. Since the Commis-  
3 sion endorses those factual conclusions, do you concede them,  
4 or do you dispute them?

5 A I would come to a different conclusion based on  
6 the factual information they used, as I understood them,  
7 which were the violations that took place and the results of  
8 their audits during that period of time.

9 Q So you disagree with the statement contained in the  
10 first sentence of that second paragraph; is that your answer?

11 A That's the Commission's statement. I read it in  
12 its entirety. You'll have to ask somebody what they mean by  
13 "factual findings."

14 Q The first sentence of the second paragraph, the  
15 one I just read to you about quality assurance weaknesses,  
16 you do dispute that finding?

17 A Obviously we had, during that period of time,  
18 violations. I don't dispute those violations unless there was  
19 some that we took issue with during that time, and in my  
20 review of the information that was available during that  
21 12-month period, we looked at each and every violation. I  
22 satisfied myself that those were corrected at the time and,  
23 therefore, I felt that we did not deserve this rating, but I  
24 had no way of judging that. We got the rating. That's a fact.

25 Q Lay aside the comparison. I'm asking you to focus

1 on what they said about Catawba.

2 Now, turn to the second sentence of paragraph 2,  
3 and there's what I read to be a fact-finding with respect to  
4 Catawba. "There were numerous items of noncompliance  
5 involving failure to follow procedures for activities  
6 involving welding, concrete placement, design, quality con-  
7 trol inspections, records control, and electrical equipment  
8 installation." Do you dispute that factual conclusion, sir?

9 A I don't dispute that there were items of non-  
10 compliance.

11 JUDGE KELLEY: Excuse me. It does seem to this  
12 Board that this can be answered yes or no. You either dispute  
13 it or you don't dispute it, or you can say "I don't know."  
14 But isn't one of those the choice?

15 WITNESS OWEN: Maybe I can make my position clear.  
16 I don't dispute whatever the factual evidence is. As I tried  
17 to state previously, I took a hard look at what we were doing,  
18 I took issue with the fact that we were put in the below-  
19 average category. There is a finite list of nonconforming  
20 violations that were made a part of this evaluation, and I  
21 accept those.

22 BY MR. GUILD:

23 Q All right, sir. I'll move along, but I just want  
24 to quickly touch on the last paragraph.

25 Do you dispute the conclusion in the first sentence



1 there, "Catawba received a relatively large number of items of  
2 noncompliance when compared with other power reactor facili-  
3 ties under construction?"

4 A I think that's probably a true statement. Somebody  
5 made a comparison and said we had a relatively large number  
6 of items. We made it a point that how many items of non-  
7 compliance you have generally bears some relationship to the  
8 volume of work that was going on, but if you make just a  
9 relative evaluation, then apparently we had more.

10 Q All right, sir. I didn't mean to cut you off.

11 A More than some of the others.

12 Q Now, let's be clear about terms. You just used the  
13 word nonconformance. Do you mean nonconformance in the sense  
14 of nonconformance items identified?

15 A Excuse me. I read nonconformance. It says non-  
16 compliance.

17 Q You meant noncompliance?

18 A That's the word they used.

19 Q They're not interchangeable. You don't mean them  
20 to be interchangeable; do you?

21 A No. Noncompliance was the word.

22 Q There were a relatively large number of noncon-  
23 forming items, were there not, during that period of time?

24 A I can't speak to that. I don't know.

25 Q What do you -- How do you understand the term

1 "noncompliance"?

2 A Violations.

3 Q Violations under what?

4 A Violations under the NRC characterization of --  
5 used at that time. I think they've changed the characteriza-  
6 tion slightly since then.

7 Q Okay. These would be analagous to formal notices  
8 of violation that the NRC Staff informed Duke Power --

9 A No, they're not characterized with respect to  
10 seriousness.

11 Q Yes, sir. But these are formal findings of lack  
12 of compliance with NRC rules, regulations or program require-  
13 ments?

14 A That's correct.

15 Q And they're the kind of things that are subject to  
16 hearing challenge. They're a formal finding of violation, if  
17 you will; is that right? Is that how you understand it?

18 A Well, quite frequently the violations are based on  
19 items that you, yourself, find and correct; but can be an  
20 instance of a breakdown in a part of your QA program, and you  
21 can be cited for that. They may be items that are results of  
22 outings, surveillances by NRC inspectors.

23 Q Okay. So some of those noncompliances are identified  
24 by your own people; is that what you're saying?

25 A I suspect --

1 Q For example, identified by quality control  
2 inspectors in the course of their work; true?

3 A That would not be an item that was identified by  
4 the quality control inspector. It would be a situation where  
5 we would not quote a procedure for some reason.

6 Q Find that you failed to follow a procedure in some  
7 instance and write up a nonconforming item report that  
8 ultimately leads to a violation or a noncompliance finding by  
9 the NRC Staff? That happens; doesn't it?

10 A I think that could. It doesn't always.

11 Q And that, in part, is what you were referring to  
12 when you said you identified some of these yourself?

13 A I think so.

14 Q But finally, the last sentence in this paragraph,  
15 "Most of these items of noncompliance were attributed to  
16 weakness in the licensee's quality assurance and management  
17 overview process." Now, do you dispute that conclusion, sir?

18 A That was their conclusion. I don't dispute that  
19 that was their conclusion.

20 Q All right. Now, you stated to me earlier that you  
21 -- this is your testimony, page 18, line 25, "Based on an  
22 analysis of the basis for the 1981 SALP report, I concluded,"  
23 et cetera. Who did you ask to do that analysis, Mr. Owen?

24 A It was done by -- as I recall, by Mr. Wayne Henry,  
25 manager of technical services in the quality assurance depart-  
ment.

T19ml

1 BY MR. GUILD:

2 Q Did he make a written report to you, sir?

3 A (Witness Owen) He made a tabulation when we  
4 discussed that report.

5 Q Was that in writing, sir?

6 A Yes, it was in writing -- the tabulation was.

7 Q All right. Describe that, if you would, just  
8 generally. What did it consist of?

9 A It took the violations item by item as I recall.  
10 It may have categorized some of them.

11 Q Did he offer an analysis of the significance  
12 of the item or its current status as of that time?

13 A Well, the NRC categorizes them, as I recall,  
14 with respect to seriousness --

15 Q Yes.

16 A -- in their system. As I said earlier, my  
17 interest was in being sure that we had corrected all of  
18 those deficiencies, that those deficiencies remained  
19 corrected.

20 Q What I'm trying to drive at, Mr. Owen, is, did  
21 Mr. Henry perform the analysis that led you to that conclu-  
22 sion?

23 A Yes. They had been corrected.

24 Q And as part of the tabulation that he did for  
25 you?

T19m2

1           A     It's a long time ago, so I don't recall the form  
2     that his review took. I do recall specifically the dis-  
3     cussion, and, as I said, my concern about us being rated  
4     below average in anything.

5           Q     I guess my point is this: You stated in your  
6     testimony that on the basis of that analysis, you concluded  
7     that all of the items leading to that '81 rating were  
8     satisfactorily corrected prior to issuance of the report.

9                 Now, you reached a conclusion that they were  
10    satisfactorily corrected, and I want to understand Mr.  
11    Henry's input.

12          A     What I'm trying to say there is that the SALP  
13    report covered a period of twelve months in late '79,  
14    early '80, and that while there are always instances of  
15    problems, the important thing is how you identify and  
16    correct those deficiencies.

17                 My interest was in seeing that the deficiencies  
18    were corrected so they did not become significant and did  
19    not indicate systematic deficiencies that would go on.  
20    That's my reason for saying there are no significant and  
21    systematic deficiencies that continued to exist at  
22    Catawba.

23          Q     Maybe I'm not communicating effectively, Mr.  
24    Owen. What I'm trying to understand is what your factual  
25    basis was for the statement you make in your testimony.

r19m3

1 I understand you to tell me Wayne Henry did an analysis or  
2 tabulation. Is there anything else that was the basis for  
3 your conclusion, and if so, tell us.

4 A Well, my own observations of the -- familiarity  
5 with the program, our own internal audit processes, all of  
6 those things in the total overview of something contributes  
7 to your belief that your program is working or not.

8 MR. GUILD: All right, sir.

9 Mr. Chairman, I would just like the record to  
10 reflect that the analysis we just referred to was the  
11 subject of the specification that we filed today with  
12 respect to subpoenaed documents and that I had an out-  
13 standing request to Applicants to produce it. I'll move  
14 on, but I do have a request to produce what's now been  
15 identified as Mr. Henry's analysis of the '81 SALP viola-  
16 tions.

17 JUDGE KELLEY: Which numbered paragraph does  
18 this correspond to?

19 MR. CARR: I believe that's number one, Your  
20 Honor. I think that's right.

21 MR. GUILD: I don't have the document in front  
22 of me.

23 MR. CARR: Let me see if we can find our copy.

24 JUDGE KELLEY: Yes, maybe you could find that.

25 MR. GUILD: Yes. That's No. 1, Your Honor.



T19m4

1 That's the one we indicated we simply couldn't address at  
2 this point.

3 We're going to address the matter tonight and  
4 be prepared to speak to it tomorrow morning.

5 I'm prepared to move forward. I just wanted to  
6 note that that's a subject of inquiry.

7 JUDGE KELLEY: We'll need copies of that when  
8 you get it.

9 MR. GUILD: Yes, sir.

10 BY MR. GUILD:

11 Q Now, Mr. Owen, you state on page 19 that in part  
12 you disputed the relative ranking of Catawba below average  
13 by comparison to other facilities under construction as  
14 unjustified because of the failure to take into account  
15 what you characterize as the extremely heavy construction  
16 activity during the review period of Catawba; is that  
17 correct?

18 A (Witness Owen) That's correct.

19 Q All right, sir. Now, what is the basis for your  
20 conclusion that that was an extremely heavy -- period of  
21 extremely heavy construction activity?

22 A There was a lot of work going on there at that  
23 time.

24 Q Do you have any objective measure of the compara-  
25 tive level of construction activity during that review

r19m5

1 period that would give us an objective basis for seeing  
2 the relationship between items of noncompliance and levels  
3 of construction activity in order to verify your observa-  
4 tion?

5 MR. CARR: Excuse me, Counsel. Could I have a  
6 clarification; compared to what?

7 MR. GUILD: Compared to the other facilities  
8 which is the basis for what I see your conclusion, Mr. Owen,  
9 or compare it to other periods of time for Catawba.

10 MR. CARR: Well, if it's the former, I would  
11 object. If it's the latter, I would go ahead and respond.

12 JUDGE KELLEY: Well, let me ask you this: Now,  
13 when I read the testimony, I thought the thrust of it was  
14 that the SALP report could be discounted to some extent  
15 bec use it didn't take into account higher levels of activity  
16 at Catawba as compared to other facilities. That's the way  
17 I understood it -- what I understood it to mean. And if  
18 you're going to say that, then it seems to me it would be  
19 fair to ask, well, what did you know about levels at other  
20 facilities. Well, if what you meant was some other time  
21 at Catawba, that would get you out of looking at other  
22 facilities, but somewhat blunt the point you were making,  
23 I would think.

24 WITNESS OWEN: What I tried to say there is that  
25 that was a period of heavy construction activity at Catawba.

T19m6

1 A lot of work was going on, a lot of concrete being poured,  
2 a lot of pipe being erected and things like that, where you  
3 generally generate nonconformances and provide the oppor-  
4 tunity for instances of that resulting violation.

5 In our discussion it was -- with NRC, I under-  
6 stood that the 1981 approach based its ratings on the number  
7 of violations -- said to me just sort of gross approach with  
8 little attempt to account for other factors such as they  
9 now do in their current SALP evaluation approach, where they  
10 will say not enough work is going on in this area for us to  
11 even evaluate, so they don't evaluate that kind of area.  
12 And I used such as construction activity as an example of  
13 their little attempt to account for other factors. That's  
14 argument on my part, if you would.

15 JUDGE KELLEY: I understand. Mr. Carr's point  
16 -- you have an objection to the question. The question  
17 went to his basis for saying that, correct? Do you want  
18 to restate your question?

19 BY MR. GUILD:

20 Q What is the basis for the comparison that  
21 you're using, first?

22 A (Witness Owen) Judgment.

23 Q But you're comparing Catawba today versus  
24 Catawba yesterday, or are you comparing Catawba versus  
25 Zimmer?

T19m7

1           A     No; Catawba versus any workload at a project  
2 with respect to the opportunities to have a violation would  
3 form some sort of curve like that (indicating).

4           Q     So I understand what you're saying, since the  
5 ranking was relative to other licensees with plants under  
6 construction, are you saying Catawba fared relatively  
7 poorly on an unfair basis because relative levels of  
8 construction activity were higher at Catawba, therefore, a  
9 higher opportunity for violations than at other facilities?  
10 Isn't that what you're saying?

11          A     No. Our discussion with the NRC at that time  
12 frame where the NRC as well as the industry was searching  
13 for a way to do a -- to have their assessments of us meaning-  
14 ful to us so that we could do something about them, my  
15 suggestion to them was, "You've got to find a way to relate  
16 the number of violations -- if you're just going to use  
17 numbers of violations, if that's going to be the heavy  
18 emphasis in your judgment as to how well we're doing,  
19 you have to look at that related to the amount of work that  
20 was going on." And I think they have -- and you'll have to  
21 ask them, but I think they now lean heavily on some judg-  
22 ment as to how much work is going on and what they see.

23          Q     I don't want to overcomplicate what seems to me  
24 to be a pretty simple proposition. The SALP comparison  
25 that you're complaining about is contained in the objection

T19m8

1 that the SALP Board makes, which is that Catawba received  
2 a relative large number of items of noncompliance when  
3 compared with other power reactor facilities under con-  
4 struction.

5 Now, the validity of that comparison is what you  
6 take issue with; isn't that true, Mr. Owen?

7 A I do not take issue with the fact that they --  
8 in their judgment they rated us below average. I have  
9 stated before that, in my judgment, it was not appropriate.  
10 In my judgment, it did not reflect the relative volume of  
11 work that was going on at whatever project that they were  
12 looking at.

13 MR. GUILD: Mr. Chairman, I hate to resort  
14 to John Rockholt's objection, but that seems to be a rather  
15 evasive answer. It seems simple to me; either he's com-  
16 paring with apples or oranges, but he's got to be comparing  
17 something. We have to establish that before I go to the  
18 next step, or I might strike the testimony. That might be  
19 the simplest way.

20 JUDGE KELLEY: I would like to ask the witness  
21 a question.

22 Correct me if I'm wrong, but I understand you  
23 saying at that time at Catawba you were going full bore,  
24 as it were, pouring a lot of concrete, cable, whatever, but  
25 you were really moving along. I assume you're not saying

T19m9

1 you're comparing the exact level of activity at that time  
2 at Diablo Canyon or anyplace else?

3 WITNESS OWEN: Yes, sir.

4 JUDGE KELLEY: You have been involved, have you  
5 not, in the construction of a number of power plants, and  
6 I assume you know the difference between going full bore  
7 and going fifty percent and just sort of loafing along  
8 and I suppose you've done all three, and that's -- in a  
9 sense, then, you're comparing levels of activity. And in  
10 order to make any sense, as a criticism of the SALP report  
11 it's got to be a comparison to other plants; but as the  
12 statement says, I assume they were going full bore at 50  
13 plants, 50 percent at 10 plants, and 20 percent at three  
14 other plants.

15 And, therefore, the thing is distorted; is that  
16 what you're saying?

17 WITNESS OWEN: Our argument with the NRC at  
18 that time was exactly that point, that any rating system,  
19 if they were just going to use numbers of violations, should  
20 somehow relate to the level of activity, because plant  
21 activity with respect to those things that are covered by  
22 NRC regulations start out slow, peak high and then slow  
23 down again near the end. And my point -- and our point --  
24 and I was involved in some industry discussion which was  
25 if it's going to be just numbers and not some objective --



T19ml0

1 subjective view of us, if you're just going to count num-  
2 bers, then you need to take how many and divide it by some  
3 measure of how much work was going on, and my only observa-  
4 tion here was that we were in the -- happened to coincide  
5 with the period of extremely heavy construction activity  
6 at Catawba and that's what was happening.

7 Whether or not there was heavy activity at other  
8 sites, I didn't really concern myself with that. I was  
9 only interested in making sure that we corrected those  
10 problems.

11 JUDGE KELLEY: But you must have assumed that  
12 there were varying levels of activity.

13 WITNESS OWEN: Yes.

14 JUDGE KELLEY: At other sites because that's what  
15 gives you basis for saying the SALP report is flawed be-  
16 cause it doesn't take that factor into account.

17 Conversely, if you were assuming everybody was  
18 going full bore, then the system they had at the time would  
19 be okay, right?

20 WITNESS OWEN: I was trying to point out weak-  
21 ness in the system. I think I went on to make the point  
22 I viewed the rating was not justified. Among other things,  
23 the SALP report does not take into account corrective  
24 action taken by Duke. I think it makes a difference whether  
25 you correct things when you find them or not.

1 JUDGE KELLEY: Well, sure. But I'm just trying to  
2 find out whether I understand you correctly. I think I do.

3 WITNESS OWEN: I did not make any comparison with  
4 others. You're correct. It was just an assumption on my part  
5 that there must have been at different stages of construction.

6 JUDGE FOSTER: I have one question for Mr. Owen.

7 What is the basis of your understanding that it was  
8 the number of NCI's that led to the lower rating?

9 WITNESS OWEN: That was my understanding of the  
10 way they went about it at that time in our discussions.

11 JUDGE FOSTER: Does the NRC perhaps in the SALP  
12 report, or elsewhere, tell us that?

13 WITNESS OWEN: It's been a long time since I read  
14 this, but I recollect with the -- from my reading at that time  
15 and even now that says Catawba received a relatively large  
16 number of items of noncompliance when compared with other  
17 power reactor facilities under construction. That's my  
18 recollection now. I have not reviewed it.

19 JUDGE KELLEY: Can we assume that when we get to  
20 Mr. Johnson in his case, that Staff witnesses will be able to  
21 speak to SALP and the way in which it was put together?

22 MR. JOHNSON: Yes, sir.

23 JUDGE KELLEY: Thank you. We came in on your cross,  
24 Mr. Guild. There may be some Board testimony in there, but if  
25 you'd want to pick back up --

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

2 BY MR. GUILD:

3 Q Now, just for clarity's sake, it is clear, is it  
4 not, Mr. Owen, that you did not have at hand an objective  
5 measure of the level of construction activities at the other  
6 facilities under construction that were also rated in the  
7 SALP 1 report?

8 A (Witness Owen) That's correct, as I recall now.

9 Q You had a subjective understanding of the level of  
10 construction activity which you characterized as extremely  
11 heavy at Catawba but not an objective one that compares to  
12 other facilities.

13 A That's what I tried to say there.

14 Q All right, sir. Now, page 19 further, on the same  
15 subject, beginning with the first full paragraph on that page  
16 at line 11, "In our view the rating was not justified, and we  
17 have told the NRC this." How did you tell the NRC that, Mr.  
18 Owen?

19 A Well, in my discussions the industry was fairly  
20 well concerned, as I recall, with a rating system that was  
21 not -- that we thought was flawed, and through the industry  
22 activities we made known to the NRC that we thought that  
23 system was flawed. I don't recall specifically how that was  
24 done.

25 In my discussions with the regional people at that

1 time, I made it clear that I thought that was unjustified, and  
2 I believe the -- as I recall what came back to me was that  
3 this rating system was done in Washington and not in the  
4 region, and by that time I had -- it was history. It did not  
5 -- I did not pursue that beyond that, and the important thing,  
6 in my mind, as I said, was to see that that rating -- if I  
7 felt it was not justified, if I felt it was also my obligation  
8 to prove in the future, that we should not be put in any  
9 below-average category.

10 Q Again, for clarity, who did you communicate that to  
11 at the NRC?

12 A I don't recall.

13 Q Someone at the Region 2 office?

14 A Yeah, somebody at the regional office, but I don't  
15 recall who it was there then.

16 Q Mr. O'Reilly?

17 A I don't recall when Mr. O'Reilly came. I believe  
18 he was there in 1981. He may have been.

19 Q You don't recall whether you communicated it to Mr.  
20 O'Reilly or not?

21 A No, I do not.

22 Q All right. Did the NRC alter its rating or its  
23 factual findings with respect to Catawba on the basis of your  
24 criticism?

25 A No, I didn't ask them to. I just took issue with

1 it, and I assured them that when the next SALP report came  
2 around, that we would not be in that category.

3 Q Well, they did away with that category, didn't  
4 they? They done have below average anymore; do they?

5 A Well, they had their new rating, which is cate-  
6 gories 1, 2 and 3.

7 Q And 18 functional areas. They don't rate utilities  
8 by rank; do they?

9 A Well --

10 Q They don't do they? It's pretty clear they don't.

11 A They shared with us at a management meeting without  
12 names on other plants how our rating in each category --  
13 category 1, 2 or 3 -- compares with other unnamed organizations  
14 in the region.

15 Q Yes. But after --

16 A Not national. There is no national, as far as I  
17 know. I don't believe there's a national compilation of --  
18 it's a regional effort.

19 Q There is no ranking as was done in SALP 1 format  
20 of average and below average any longer; is there?

21 A That's correct.

22 MR. GUILD: Mr. Chairman, for reference sake, I  
23 would ask that the 0834 be marked as a hearing exhibit. I  
24 think that will make it convenient as a source of reference,  
25 and I'm afraid I've lost track of what the next number is.

1 JUDGE KELLEY: If we have last week's reporters, we  
2 could find out. Palmetto Alliance No. 4.

3 (The document referred to was  
4 marked Palmetto Exhibit No. 4  
5 for identification.)

6 JUDGE KELLEY: Are you at a logical coffee break,  
7 Mr. Guild?

8 MR. GUILD: Yes.

9 JUDGE KELLEY: Why don't we quit for ten minutes  
10 and come back at ten after four. We indicated we would run  
11 5:15 to 5:30, maybe somewhere in there. Thank you.

12 (Brief recess.)

13 (Continued on next page.)  
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21m3

1 project managers. It wasn't just some clerk up there in  
2 Washington who counted up the number of noncompliances,  
3 was it, Mr. Owen?

4 A Obviously not.

5 Q Whether you agree with their conclusion or not,  
6 it at least appears to be the process of some deliberation  
7 involving a number of steps, a number of pieces of input  
8 and some judgment on their part.

9 A I would agree that that appears to be the case.

10 Q I show you a document, sir -- and I'll give a  
11 copy to your lawyer.

12 MR. GUILD: Mr. Chairman, this is a document  
13 obtained under the Freedom of Information Act from the  
14 Nuclear Regulatory Commission.

15 JUDGE KELLEY: Is that set for the Reporter?  
16 We need it up here is my point.

17 MR. GUILD: I'm sorry. No. I've got some up  
18 here.

19 BY MR. GUILD:

20 Q These documents obtained under the FOIA are in  
21 response to a request for meeting minutes of the SALP  
22 Board, SALP Group, in response to FOIA-81-392 from Mr.  
23 Richard A. Udell, the Critical Mass Energy Project, and  
24 they're attached to a cover letter from Mr. Felton, the  
25 responsible official of the agency.

T21ml

1 JUDGE KELLEY: Okay. I guess we can go back on  
2 the record.

3 Mr. Guild, can you resume cross-examination of  
4 the panel?

5 MR. GUILD: Thank you, Mr. Chairman.

6 BY MR. GUILD:

7 Q In response to Judge Foster's question about the  
8 basis for your statement, Mr. Owen, that the SALP report  
9 was based only on a comparison -- principally on a compari-  
10 son of items of noncompliance, turn, if you would, sir, to  
11 page three of the SALP report. It's the section that is  
12 entitled, "The SALP Evaluation Process."

13 Have you read this before, sir?

14 A (Witness Owen) I'm sure I read it at the time,  
15 but I haven't read it since then.

16 Q Well, it makes pretty clear, doesn't it, it's  
17 to be believed they consider simply more than the items of  
18 noncompliance in reaching their conclusion, doesn't it?

19 JUDGE KELLEY: Do we need to take a minute to  
20 read this over? Perhaps we should.

21 WITNESS OWEN: I've read that.

22 BY MR. GUILD:

23 Q Do you agree with my observation, Mr. Owen?

24 A They certainly do seem to have taken a number of  
25 things into account.

T21m2

1 Q Beyond simply the gross number of items of  
2 noncompliance?

3 I'm sorry, if Mr. Grier is consulting with you,  
4 I wish the record would reflect there's consultation  
5 among the witnesses.

6 WITNESS OWEN: He didn't consult with me.

7 MR. GRIER: I was looking at the document.

8 WITNESS OWEN: He was looking at the document.  
9 We only have one.

10 This certainly indicates that they held meetings  
11 with us, and they discussed performance evaluation, enforce-  
12 ment history, reportable events, communications with the  
13 NRC, inspection findings, overall performance conclusion.  
14 That, I presume, has to do with their discussion with us  
15 when they had their SALP report evaluation. When they had  
16 their SALP Board evaluation, then they had a meeting with  
17 us --

18 BY MR. GUILD:

19 Q Yes.

20 A (Witness Owen) -- as I recall, and described to  
21 us what they had done.

22 Q Well, on page three, the second-to-the-last  
23 paragraph describes the participation by individuals who  
24 were involved in the inspection and licensing activities  
25 of the licensee such as inspectors, regional managers and NRR

T21m4

1 Now, sir, turn several pages along and you'll  
2 see the copy of a document that's entitled, "Minutes,  
3 SALP Meeting, '81" -- I think it's sort of obscured, but  
4 it would be 03, and the date appearing at the top of the  
5 page is March 3, 1981.

6 A March 3?

7 Q Yes, sir. It's several pages into this package,  
8 and you'll see that paragraph number one with the subparts  
9 includes a, b, c and d -- a, b, c, d, e and f, each of the  
10 Duke facilities, and "a" being Catawba 1 and 2. Do you  
11 see that, sir?

12 A Yes.

13 Q The heading is the SALP Board convened at  
14 9:15 a.m. Attendees are listed in enclosure 2 and the  
15 facility packages reviewed and conclusions reached are as  
16 follows: "The decision on Catawba 1, 2 was deferred because  
17 the Board felt they will require additional information."  
18 And et cetera. Performance is, quote, "adequate but below  
19 average."

20 All right, sir. Now, turn, if you would, to the  
21 next page, and you'll see there the minutes of the March  
22 31st, 1981 SALP meeting, 81-04. Paragraph No. 2. "Facility  
23 packages reviewed by the SALP Board and conclusions reached  
24 are as follows: "a. Catawba 1 and 2. With the considera-  
25 tion of the additional information requested in the March

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1 31 SALP meeting, the Board approved Region II's action  
2 plan and concurred that Catawba 1, 2 is tentatively con-  
3 sidered 'average' and is a candidate for poor ranking."

4 Did you know that the SALP Board had considered  
5 rating Catawba poor, Mr. Owen?

6 A I think they had only three ratings, as I recall.

7 Q Look at the next page. It may clarify it for  
8 you, sir.

9 A I'm looking at page two, "Attendees recommended  
10 the following items to improve SALP reviews."

11 Q I'm sorry. Two of what?

12 A Page two.

13 Q Of the 0834?

14 A It's the second page of the packet.

15 Q Yes, sir.

16 A It says the ranking should be the same as that  
17 used by the Performance Appraisal Branch. So I guess it  
18 would equate to below average.

19 Q They didn't ultimately use good, average and  
20 poor. They used average and below average ultimately,  
21 right?

22 A I believe that's right.

23 Q All of them were either average or below average,  
24 as mathematically difficult as that concept is?

25 A I haven't studied the document. I guess that's

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1 what --

2 Q Yes, sir. But at the time -- you're correct,  
3 and it's appropriate to observe that page two they were  
4 going to use the Performance Appraisal Branch ranking  
5 designation of good, average and poor.

6 Now, turn to the schedule that's attached to  
7 the March 31, 1981 minutes, Mr. Owen, and there you find,  
8 do you not, a list of the construction reactors under each  
9 of the columns of good, average-candidate for good, average,  
10 average-candidate for poor and poor.

11 We don't see any poor listed in there, do we?

12 A No.

13 Q Which facilities are listed as average-candidate  
14 for poor?

15 A Summer, Catawba, Watts Bar and Zimmer.

16 Q All right, sir. Then, if you would, let's turn  
17 to the -- now, the date's obscured but it's the next page,  
18 sir. It's June 9th, I believe, 1981 meeting of the SALP  
19 Review Group.

20 A I see it.

21 Q All right, sir. And do you see there, at  
22 paragraph No. 2, it says, "The Review Group re-examined  
23 those facilities previously considered as average-candidate  
24 for poor. Those facilities were rated as follows:" And  
25 now, do we see that those get parceled into average and



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1 below average, and would you agree that Catawba now is  
2 listed as below average?

3 A It's in there, with a number of others, yes.

4 (Continued on next page.)  
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1 MR. CARR: Your Honor, excuse me. I am going to  
2 interrupt at this time and interpose an objection. What I  
3 understand we've got here is some sort of a document produced  
4 by the NRC Staff, turned over to Mr. Udell in November of  
5 1981. It talks about the 1981 SALP ratings, and Mr. Guild  
6 having gone through this thing page by page with Mr. Owen, is  
7 now prepared to cross-examine Mr. Owen with respect to a  
8 document produced by the NRC Staff. What is the point of  
9 this? An internal document produced by the NRC Staff.  
10 Apparently there is some importance being attached to the  
11 fact that the NRC Staff, in its internal deliberations,  
12 decided to use the word below average instead of poor, and  
13 he's going to ask Mr. Owen about that. What relevance does  
14 this have to the matter that's before us now? And, further,  
15 even assuming it does have some remote relevance, how can Mr.  
16 Owen testify to it? This is an NRC Staff document, an inter-  
17 nal document.

18 JUDGE KELLEY: Mr. Guild, would you speak to Mr.  
19 Carr's objection?

20 MR. GUILD: Yes, sir. I think it seems evident to  
21 me that the Applicants, including Mr. Owen, dispute the,  
22 first, validity of the SALP point rating. They then dispute  
23 the significance of the below average rating. They said,  
24 "Below average doesn't mean there are significant problems,"  
25 and they go on to try to explain the below average term away.

1 They try to suggest that the SALP 1 rating was based simply  
2 on a mechanistic counting of noncompliances. It seems to me  
3 simply that I should be able to cross-examine to impeach that  
4 conclusion and to demonstrate instead that the SALP point  
5 rating was based on some deliberate process and, that, in  
6 fact, Catawba almost got rated poor, poor with a company that  
7 was considerably smaller than its final class of below average  
8 facilities, and that there is significance behind that.

9 Now, this document is the product, as I represent  
10 it, of a Freedom of Information Act request. I obtained it  
11 from the NRC public document room. It has Mr. Felton's name  
12 on it. I suppose we can subpoena Mr. Felton to authenticate  
13 if there's a dispute as to its authenticity.

14 JUDGE KELLEY: I don't think there is.

15 MR. GUILD: All right, sir. These are the minutes  
16 of the SALP Board, and go to impeachment and seek to classify  
17 Catawba into an even smaller class of facilities that were,  
18 in fact, reflected poor.

19 JUDGE KELLEY: Does the document that you're  
20 referring to really reflect a change in terminology from  
21 below average to poor? Can you point to anything in this  
22 document that brings to light new evidence about the quality  
23 of quality assurance, if you'll forgive the redundancy, at  
24 Catawba?

25 MR. GUILD: I think the significance, if you will,

1 Mr. Chairman, is this: If you look at the schedule that  
2 appears behind the March 31, 1981 minutes, and I directed the  
3 witnesses' attention to that, and that was at the point before  
4 they did away with the poor category, you'll see that there  
5 are only four facilities listed in the average-candidate-for-  
6 poor category. Those are Summer, Catawba, Watts Bar and  
7 Zimmer.

8 Now, the Staff went through some further delibera-  
9 tions and put Summer in the average category, but when they  
10 did away with the poor, like Catawba was left in the group  
11 that now is represented in the final report Appendix B.

12 I simply want to establish, Mr. Chairman, that  
13 there was regularity behind the Staff analysis, at least on  
14 the face of this document, that it was somewhat deliberative  
15 and not simply a mechanistic appraisal contrary to the witnesses'  
16 testimony, and beyond that the document speaks for itself.

17 Now, I do want to have the question that's pending  
18 answered, and that is whether he was aware of that tentative  
19 rating, because I understand Mr. Owen to have engaged in some  
20 efforts with the Staff to try to try to change the ratings,  
21 and I want to know what, if any, influence Duke had with  
22 respect to the way the SALP process was conducted.

23 JUDGE KELLEY: Are you suggesting that Mr. Owen  
24 was attempting to change the rating before the SALP report was  
25 issued?

1 MR. GUILD: I don't know. But I understand the  
2 SALP group met with the Licensees, and that there was some  
3 interchange with respect to the licensing process. I don't  
4 know what the answer to the question would be.

5 JUDGE KELLEY: Mr. Johnson, do you have any comment  
6 on the use of the Staff documents in this process?

7 MR. JOHNSON: This is the first I've seen these  
8 documents. It does appear on their face that there was a  
9 change in designation, but I have no -- as I say, I haven't  
10 seen these before, but on page 2 -- the first page under the  
11 cover letter it says under 2a, "Ranking of Licensees, the  
12 ranking designations of Licensees/Applicants should be the  
13 same as used by the Performance Appraisal Branch, namely:  
14 'good,' 'average,' and 'poor.'" Apparently this was later  
15 changed, but --

16 JUDGE KELLEY: Do you think that cross-examination  
17 on that document would advance the inquiry?

18 MR. JOHNSON: As to the truth and substance, no,  
19 because it's an internal document in which, presumably, Mr.  
20 Owen had no part, and I'm not sure whether it was established  
21 whether he had any knowledge about these meetings. I don't  
22 think that was adduced.

23 JUDGE KELLEY: The Board will confer.

24 (Board conferring.)

25 JUDGE KELLEY: This is a pending objection to

1 cross-examination on the exhibit. Have we numbered this as  
2 an exhibit yet?

3 MR. GUILD: No, sir. I will. I intend to offer  
4 it as an exhibit. It will be Exhibit No. 5.

5 JUDGE KELLEY: Exhibit No. 5, Palmetto Freedom of  
6 Information Act response.

7 (The document referred to was  
8 marked Palmetto Exhibit No. 5  
9 for identification.)

10 JUDGE KELLEY: The Board has heard objection to its  
11 use on cross. We're going to sustain that objection. We'll  
12 allow the exhibit in to illustrate the SALP deliberation  
13 process insofar as it does that. Beyond that, it's not a  
14 document that we have any reason to think the witness knows  
15 anything about. More importantly, that there's really nothing  
16 there in terms of new information. If it just had evidence  
17 reflecting poorly on Catawba, that would be one thing. This  
18 is just a bureaucratic document referring to some meetings  
19 where some people changed some terminology, and we don't see  
20 that it would advance our purposes to hear cross on it, so  
21 we're going to disallow cross.

22 MR. CARR: Judge Kelley, I didn't catch that. I  
23 heard Mr. Guild ask that it be marked for identification.

24 JUDGE KELLEY: Yes, No. 5.

25 MR. CARR: And then I would just simply note that --



1 I didn't hear it moved -- I'm sorry -- I may have missed that,  
2 but it would be our view that should it be tendered at this  
3 point, that the appropriate thing to do would be to wait  
4 until a Staff witness takes the stand, because there's no way  
5 that this document can be authenticated or identified until  
6 such occurs. It certainly can't be done by our people, to the  
7 best of our knowledge.

8 JUDGE KELLEY: Well, but the Staff produced this  
9 in response to an FOI request. This is the age of Xeroxing.  
10 Do you really think that this thing is not what it says it is?  
11 We don't. We're going to allow it in for the limited purpose  
12 for which we described, but you're not going to be allowed  
13 cross-examination on it.

14 Proceed, Mr. Guild.

15 WITNESS OWEN: Judge, can I --

16 MR. GUILD: If I can't ask a question, the witness  
17 certainly -- surely can't volunteer an answer.

18 JUDGE KELLEY: I'm not sure what the witness wants  
19 to say.

20 Mr. Owen.

21 WITNESS OWEN: It was in respect to what I had to  
22 say concerning my contact with NRC following our below-average  
23 rating. It did not have anything to do with that document.

24 MR. GUILD: The pending question was about meeting  
25 with them while the -- it was the subject of Mr. Carr's

1 question, which you sustained.

2 JUDGE KELLEY: You can get back to that on further  
3 redirect.

4 Go ahead, Mr. Guild.

5 MR. GUILD: Yes, sir. Let me hand up the document  
6 and make sure that it is received.

7 (The document previously marked  
8 for identification as Palmetto  
9 Exhibit No. 5 was received in  
10 evidence.)

11 MR. GUILD: Mr. Owen, I'll take back your copy that  
12 I asked you about and give it to the court reporter.

13 Mr. Chairman, I'm going to try to ask a question.  
14 I'm not sure if it's within --

15 JUDGE KELLEY: Are we on a different document?

16 MR. GUILD: No, sir.

17 JUDGE KELLEY: Go ahead.

18 MR. GUILD: With all respect, I want to make sure  
19 I'm not running afoul of your last ruling, so let me just ask  
20 the question.

21 BY MR. GUILD:

22 Q The question, Mr. Owen, is did you or anyone with  
23 Duke Power Company meet with the NRC Staff on the subject of  
24 the SALP 1 rating prior to the publication of the SALP 1  
25 report?

1           A       (Witness Owen) I believe so. There was a meeting  
2 between the regional people where they told us -- called a  
3 management meeting where we discussed their evaluation of our  
4 operating plans, Oconee, at that time, and our McGuire and  
5 Catawba plants that were under construction. Once the  
6 rating was issued, my only contact then was to say, as I said  
7 earlier, that it's my full intention that we not get a rating  
8 like that again. I've made no effort, as far as -- and no one  
9 has made an effort to argue that the rating system or that the  
10 rating itself was not justified. I didn't think that was  
11 important. I thought, as I said before, that what was  
12 important was to make sure that we not be in the below average  
13 category in anything that we do.

14                   (Continued on next page.)  
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1 BY MR. GUILD:

2 Q Let me focus, please, page four of the SALP  
3 report, the final report, and that's the part we looked at  
4 earlier about the evaluation process. I'm looking at the  
5 paragraph just before the numbered paragraphs. "Following  
6 the Regional SALP Board evaluation, NRC management met with  
7 the corporate management of each facility that had been  
8 evaluated. This meeting provided a forum for discussion of  
9 issues relating to the facility's performance." And it  
10 goes on.

11 What I want to understand, you had one of those  
12 meetings, as far as you know, didn't you?

13 A (Witness Owen) Where is that you're reading?

14 Q Do you see the paragraph numbered one? Now  
15 it's just above that. It says, "Following the Regional  
16 SALP..."

17 A Yes. That's the meeting -- that's the management  
18 meeting that I was referring to. I think that was follow-  
19 ing the regional SALP Board evaluation, which did not  
20 encompass any sort of rating system. We talked about their  
21 evaluation of each of our facilities.

22 Q That's what I want to understand.

23 A Yes.

24 Q At that point did they announce to you a tent-  
25 tive or regional evaluation of Catawba performance?

123m2

1           A     I recall that we had some discussion about  
2     Catawba, and I don't recall any rating by the region,  
3     but I may be incorrect. I just don't recall.

4           Q     You don't recall whether they used the compara-  
5     tive classification?

6           A     No. As I recall, they did not have the same  
7     comparative kind of approach between our unit and other  
8     units in the region at that time. But, again, that was  
9     three of those meetings ago, and I could be confused.

10          Q     Well, at that point, to the best of your recol-  
11     lection, this was the meeting that was leading up to the  
12     ultimate 1981 below average rating. Did they express to  
13     you any of the factual conclusions that ultimately found  
14     their way into the final report, and did they, you know,  
15     give you an opportunity to say, "Wait a minute, that's just  
16     not right, and you ought to reconsider"? I'm trying to  
17     paraphrase that, but did they tell you those things?

18          A     I guess my recollection of the meeting is that  
19     they had some things to say about Catawba, and as I recall,  
20     I pointed out at that time that we had resolved each of  
21     those things at the time of the identification.

22                 Again, I don't recall and don't believe there  
23     was any sort of rating system from the regional SALP Board.

24          Q     All right, sir.

25          A     That was a relatively new program at that time.

T23m3

1 Q Do you recall -- and I'll give you an opportunity  
2 to tell me if there is anything that's responsive. Do you  
3 recall any criticisms that were communicated to you in that  
4 forum that you were able to respond to and obtain some kind  
5 of reconsideration; errors, mistakes, misjudgments?

6 A No. As I said, I don't recall any effort on  
7 our part to change that evaluation. We review each viola-  
8 tion as we receive it to see if we take issue with it,  
9 and I would think we would have argued about that at the  
10 time of the violation, not at the time of the evaluation.

11 Q Now, then, let me understand, on page 19 of  
12 your testimony, again, as we stated earlier, you told the  
13 NRC that in your view the rating was not justified. Was  
14 there any written communication that you know of, Mr.  
15 Owen, where you communicated your criticism to the NRC?

16 A No. I don't recall. As I said, what I recall  
17 trying to convey to them was while I didn't think the rating  
18 was justified I told them I didn't think it was justified,  
19 that it didn't take into account the corrective action that  
20 we were taking, and that we wanted -- I wanted to make sure  
21 that we didn't rate below average at anything.

22 Q Well, no one rated below average thereafter  
23 because they did away with the average and below average  
24 classifications, right?

25 A That's correct. They have a different categorization



23m4

1 now. And I would be delighted if we rated one in everything,  
2 but certainly don't want us to rate three in anything.

3 Q All right, sir. Now, since we're on this  
4 subject, I'm going to conclude on it. There are two other  
5 gentlemen who are on the panel with you who have some  
6 information and knowledge on this subject.

7 Mr. Grier, you touch on the subject, but basically  
8 couch your testimony in terms of your understanding. You  
9 weren't corporate quality assurance manager at the time of  
10 either the review period for the SALP-1 report or at the  
11 time of publication of SALP-1, were you?

12 A (Witness Grier) That's correct.

13 Q Now, at page 34 of your testimony, Mr. Grier,  
14 you state your understanding with respect to the unweighted  
15 enumeration of deficiencies as being the basis for the  
16 SALP-1 rating. In substance, do you agree with what Mr.  
17 Owen has said about that subject, sir?

18 A Basically. My understanding is based on conver-  
19 sations with Mr. Henry in regards to his knowledge during  
20 the presentation of the SALP report.

21 Q Did you also have access to Mr. Henry's analysis  
22 of the noncompliances that were the basis for that rating,  
23 the ones referred to by Mr. Owen?

24 A No, I've not seen the analysis on paper. I've  
25 discussed the subject with Mr. Henry and understand what he

P23m5

1 did in terms of looking at the violations and determining  
2 that corrective action had been taken at the time that the  
3 violations were tendered to the company.

4 Q Mr. Grier, with respect to the last question to  
5 Mr. Owen, and that is the existence of any written communi-  
6 cation between Duke and the NRC transmitting Duke's criti-  
7 cism, if you will, of SALP-1 finding, are you aware of any  
8 such communication?

9 A No, I'm not.

10 Q Now, the other gentleman on the panel is Mr.  
11 Wells. And Mr. Wells, you were corporate quality assur-  
12 ance manager during both the review period relevant to  
13 SALP-1 and at the time of its publication in -- I believe  
14 it's August of 1981, correct?

15 A (Witness Wells) Yes, I was.

16 Q Now, are you aware of any communication -- written  
17 communication with the NRC containing Duke's criticism  
18 of the basis for the SALP-1 finding?

19 A No, I'm not.

20 Q Did you meet with the NRC during the delibera-  
21 tions on the SALP-1 findings to discuss the subject of  
22 their proposed finding?

23 A When you say "The NRC," I assume you mean any  
24 employee of the NRC. I certainly met with the Catawba  
25 resident many times during all of that period. Certainly

T23m6

1 there was no meeting to discuss with them the possibility  
2 of upgrading it or anything of that nature. We met to  
3 discuss the violations, and all of them were cleared up by  
4 that time; but we met also weekly. So to say, did I meet  
5 with NRC, yes.

6 Q But not with respect to the substance of the  
7 proposed SALP rating; is that fair?

8 A It's fair to say that I did not meet with them  
9 to try to persuade them to change their rating. As far  
10 as substance of it, if there was anything that we needed  
11 to do to correct a violation, we possibly discussed that.

12 Q So now you touch on the subject of SALP-1,  
13 Mr. Wells, at pages 11 and following in your prefiled  
14 testimony, and you touch again, as did Mr. Owen, on the  
15 subject of the use of raw noncompliance numbers. Do you  
16 have anything factual to add to Mr. Owen's testimony on  
17 that point?

18 A Well, I'll say this, that there were, obviously,  
19 many factors that they used. We felt at the time -- and I  
20 still do -- that the raw numbers were one of the major  
21 contributing factors. It may not have been the only one.

22 There's another item that they also considered,  
23 and that is the number of reportable items; that is, that's  
24 reported to the NRC under the provisions of 10 CFR 5055(e)  
25 and 10 CFR, Part 21. And that is one of the things that is

123m7

1 considered.

2 Now, it's my judgment that this is in no way  
3 indicative of a poor program. It only indicates that  
4 we're going overboard to keep the NRC informed of what's  
5 going on. I know from my experience that we report many  
6 things that possibly other utilities don't report. So the  
7 raw numbers are not only the violations, but the raw  
8 numbers include the items that we voluntarily tell the NRC,  
9 "Here's a problem we've discovered, and here's what we're  
10 doing about it."

11 Beyond that, you asked if I had anything to add.  
12 I would say this: It's the level of work that Mr. Owen  
13 testified for. My feeling is that the level of work was  
14 just not considered. We aren't saying that we made a  
15 conscious decision and that our level was higher than  
16 somebody else, therefore, we should have a better rating.  
17 We're saying that we knew ours was very high, possibly  
18 amongst the highest in the country with the level of  
19 productivity there. What we're saying is that had that  
20 been considered, we certainly wouldn't have ranked any  
21 lower, and possibly higher. We aren't saying that we  
22 made a study, because we did not.

23 Q All right, sir. Now, you heard Mr. Owen's  
24 testimony about the relationship between the items of non-  
25 compliance that the NRC SALP Board noted, and items of

T23m8

1 nonconformance, specifically identification of nonconform-  
2 ing items, construction deficiencies.

3 Do you agree that the volume of NCI's as related  
4 to the volume of noncompliance, since many of the NRC  
5 noncompliances are based on NCI's that your own people  
6 identify?

7 A My understanding is that -- not to disagree.  
8 I don't think that I disagree with that statement. The  
9 NRC doesn't come in and write a noncompliance based on our  
10 nonconformances. If they feel that we're handling our  
11 nonconformances in a satisfactory way and clearing them up  
12 in a satisfactory way, that would lead them not to write  
13 a noncompliance.

14 Therefore, I don't believe that I could say --  
15 and I don't believe I heard Mr. Owen say either, but I  
16 don't believe I could say that there's a direct bearing on  
17 the number of nonconformances and, say, if you have a  
18 number of nonconformances that means you're going to have so  
19 many noncompliances. I don't think there's a direct  
20 relationship.

21 Q All right, sir. Well, let me put it this way  
22 now: The relation exists -- you agree there is a relation-  
23 ship?

24 A I'm not sure I agree there's a relationship.

25 Q Let's stand --

23m9

1           A     I think a good program in which you identify  
2 your own nonconformances and get them resolved in a timely  
3 way would lead to less noncompliances. That's been my  
4 experience. That's what the QA program is supposed to do.

5           Q     Well, I just heard you say, Mr. Wells, that, in  
6 part, the noncompliances are based on the numbers of  
7 reportable occurrences, 5055(e)'s and Part 21's; is that  
8 right?

9           A     No. I think you heard me wrong. What I said,  
10 the SALP, there were two -- amongst other things, there  
11 were two things, a number of noncompliances that the NRC  
12 issued. That's one number. There's a totally different  
13 number of the number of reportable items that we report to  
14 the NRC.

15          Q     All right.

16          A     If we report an item to the NRC, under the  
17 regulations that is not a noncompliance. It may lead to  
18 one, but in itself is not a noncompliance.

19          Q     Let's start there and it may or may not lead to  
20 noncompliance.

21                 I believe I did hear you say you believe the  
22 SALP-1 review is based on a number of reportable items,  
23 correct?

24          A     That's what I understand, yes.

25          Q     Let's start with that. We agree on that much



T23ml0

1 now. If your rating is going to be directly related --  
2 if your SALP-1 rating was directly related to the number  
3 of reportable occurrences, 5055(e)'s, you would agree with  
4 me, wouldn't you, Mr. Wells, that in order to get reported  
5 as a 5055(e), to the extent we're talking about a construc-  
6 tion deficiency, it has to be identified as a deficiency,  
7 and the way you identify it during the period of time  
8 material to the review period was through a nonconforming  
9 item; isn't that right?

10 A No, that's not correct.

11 Q Isn't it true on the Q-1A form there's an evalua-  
12 tion of the reportability of the NCI?

13 A That's one of the ways.

14 Q Is that a principal way?

15 A No, it is not. I don't have the figures at  
16 hand, but during my experience there I do not believe that  
17 the nonconformance route generated a majority of reportable  
18 items.

19 Q How did they come in?

20 A They came in -- for example, a manufacturer would  
21 notify us that he had shipped a piece of hardware that  
22 somehow didn't meet the specifications.

23 Q All right, sir.

24 A Or it would come about by a -- within the design  
25

23ml1

1 engineering department, somebody would identify. I can't  
2 say for sure here without counting, but it's my recollec-  
3 tion that the majority of reportable items did not find their  
4 way up through the NCI rank.

5 Q Well, I want to understand how they came, to  
6 the best of your recollection, if they didn't come fr-m  
7 a vendor -- and I can understand that somebody used Duke  
8 Power Company reporting a significant deficiency, correct,  
9 5055(e), right, a piece of bad pipe or something?

10 A Yes.

11 Q And they came instead from construction people.  
12 Lay aside engineers, lay aside vendors. Now, let's say it's  
13 within construction. It's a deficiency that arose in  
14 construction. Would you agree that would come principally  
15 through the nonconforming item process?

16 A It's a little unsure to me exactly all the way  
17 back through how we brought it up in construction. I would  
18 say if they did come through the nonconforming, it would not  
19 normally be an inspector that found it. It may be -- it  
20 could be a receiving inspector, maybe, when something  
21 came in, it was not correct, but the normal inspection  
22 process, that is the rate a graph is bad and has to be  
23 prepared, that kind of nonconformances do not generally  
24 result in a reportable item.

25 Q All right, sir.

23ml2

1           A     So I don't believe -- and you say lay aside  
2 vendors and lay aside engineers. Well, you can't lay aside  
3 those, because that's --

4           Q     Well, if we looked at the numbers we might see  
5 what the clear story is in terms of the source, but you  
6 will agree that the Q-1 procedure at the time material to  
7 the SALP-1 report provided aimings for identifying reportable  
8 items?

9           A     That's a fair statement.

10          Q     Now, did you agree with Mr. Owen -- what I  
11 heard Mr. Owen say, and that is, that the nonconstruction  
12 nonconformances themselves might provide a documentary  
13 basis for the NRC finding on compliance?

14          A     I don't say that, but that, in my judgment, in  
15 my experience is not the primary method by which the NRC  
16 detects and eventually sites us for noncompliance.

17                               (Continued on next page.)  
18  
19  
20  
21  
22  
23  
24  
25

1 BY MR. GUILD:

2 Q All right. Well, I'm not going to focus on the  
3 primary measure. But why don't you tell me what the primary  
4 method is.

5 A (Witness Wells) The primary method, as I under-  
6 stand it, is that the NRC inspector goes out and finds some-  
7 thing on his own. It doesn't come from us.

8 Q Do you understand that at present the resident  
9 NRC inspector reviews all nonconforming items that are  
10 originated?

11 A It's my understanding that he has access to them.  
12 Now, whether or not he has time to review them all, I can't  
13 answer that, but he has access to them.

14 Q Did the NRC resident have access to them at the  
15 time of your tenure?

16 A Yes. During my tenure as QA manager, the NRC had  
17 access to any records bearing on the quality and safety of  
18 the plant.

19 Q Well, then, let's go one step further. Did he  
20 access the NCI's?

21 A I really can't answer that. I know he had access  
22 to all our records. There were days that he would come in and  
23 look over records. We didn't bother to look at what he was  
24 looking at. We didn't spy over his shoulder. It's my opinion  
25 he did access them. Whether he looked at all of them, ten

1 percent of them, I guess he would have to answer that.

2 Q I just want to understand, we can agree that NCI's  
3 are something you can't say, as a matter of certainty, he  
4 never looked at.

5 A Well, I know he looked at some of them.

6 Q Fine. Now, can we also agree, Mr. Wells, that if  
7 we look at the period of time when you were corporate QA  
8 manager and we look at a comparable period of time Mr. Grier  
9 has taken over that job, that you saw the QA procedure -- the  
10 nonconforming procedure, shall we say, fallen to some dis-  
11 favor, and there were a lot more NCI's written during the  
12 period of time you were there than that?

13 A I can't answer that.

14 Q You just don't know?

15 A I don't know how many are written today. I just  
16 can't answer that question. I don't know.

17 Q I see. Are you aware during your period of tenure,  
18 Mr. Wells, of criticism that Catawba was experiencing too many  
19 NCI's?

20 A No, I was not aware of any criticism. You're  
21 getting into an area, though, where we're obliged and obligated  
22 to follow our own procedures, and I made sure we did that.

23 Now, many procedures require that you identify  
24 things in another way. For example, the ANSI code, which we  
25 are bound by agreement under, under our license agreement,

1 requires that you have a reader sheet when a nonconforming  
2 item relating to flaws in welds is found by radiography, and  
3 we're required to use this reader sheet.

4 Now, I guess there would be nothing wrong with  
5 using also a nonconformance, but it seems it's a vast dupli-  
6 cation, and we use the reader sheet. So I was not aware that  
7 anyone was putting any pressure on -- to have less noncon-  
8 formances. We wanted to have less flaws in our work and tried  
9 hard to have that, but if we did have it, we certainly  
10 remedied it in the proper form, which was not always a non-  
11 conforming item sheet.

12 Q Do you recall me taking your deposition, Mr. Wells?

13 A Yes, I do.

14 Q Do you recall discussing the subject of volume of  
15 nonconforming items at Catawba?

16 A I believe that was in there.

17 Q Do you recall your statement at page 63 of your  
18 deposition, beginning at line 2, "Q Anything generally about  
19 him expressing that opinion?

20 "A No. You know, you're asking in general, and  
21 everyone is worried when you get too many NCI's, and you want  
22 to do something to reduce, so you don't have as many, but I  
23 don't recall anything about Mr. Davison or anybody.

24 "Q Well, there has been testimony subsequent to  
25 your tenure, Mr. Wells, that welding inspectors were writing



1 nonconforming item reports for minor deficiencies that were  
2 readily correctable by the class identified in the course of  
3 a pre-plant inspection. I think that's the best characteriza-  
4 tion I can remember. Perhaps Mr. Grier, were you aware of the  
5 opinion that that was an occurrence at Catawba?

6 "A Yes, and there's nothing wrong with that. The  
7 purpose of the inspectors in the QA program is to assure that  
8 the product that we build meets the requirements, and if we  
9 can develop ways that would cut down on paper or cut down on  
10 time, in my opinion, that makes the plant safer when you do  
11 that. No plant is safe just because you have tons of paper."

12 Do you recall that testimony?

13 A Yes, I recall that.

14 Q Do you recall the criticism that you were writing  
15 too many NCI's?

16 A I think that what you're after, I said we were  
17 very interested in cutting down the number of nonconformances.  
18 If you have too many bad welds, you have to do something so  
19 you don't have as many. I don't see anything wrong with that.  
20 If you have a method to document various types of noncon-  
21 formances, then that's what we want to do. We're required to  
22 by procedure.

23 Q You are aware you changed the way of documenting  
24 construction deficiencies and the effect is to change the  
25 number of nonconformance items.

1 A No, I'm not aware of that.

2 Q Perhaps, Mr. Grier, you could answer that last  
3 question, and please -- do you agree that there was a change  
4 in the Q-1 procedure and that that had the effect of reducing  
5 the number of NCI's at Catawba?

6 A (Witness Grier) Yes, we've changed the QA pro-  
7 cedure. It had the effect of having some items of workmanship  
8 that don't comply with standards being documented on other  
9 forms instead of the Q-1A. The other form would be the RQA  
10 form, the deficiency report.

11 Q Or use of the process control itself, process  
12 control documentation?

13 A That's another method of documenting workmanship  
14 that doesn't comply with standards.

15 Q And can we agree that not only have the RQA's been  
16 used in place of Q-1's, but so also have the process control  
17 methods of documenting deficiencies, more than NCI's?

18 A I believe principally the change would be to  
19 increase the number of construction workmanship that doesn't  
20 comply with standards that would be on RQA as opposed to a  
21 Q1-A.

22 Q You have also changed process control procedures  
23 and documentation to now provide for use of process controls  
24 to reflect an accept or reject decision by a QC inspector  
25 whereas process control, it was either accepted or not filled

1 out; is that correct?

2 A No, sir, that's not correct.

3 Q Please clarify if I misstated.

4 A I'll have to ask you, when you say "previously,"  
5 previous to when?

6 Q All right. Well, earlier you spoke of process  
7 control simply having the inspector withhold his approval as  
8 a method of identifying and getting workmanship deficiencies  
9 corrected; isn't that correct?

10 A No, that's not correct. On some -- but in some  
11 process control procedures and the documentation for those  
12 procedures, we've always had accept/reject spaces on the forms.  
13 On other types of process control or inspection documentation  
14 sheets, we've had -- not had that, and that's the current  
15 situation as it stands today.

16 Q Well, in the welding area, in former times, you  
17 have not had an accept/reject box -- isn't that true -- in  
18 process control?

19 A The procedure that primarily governs the process  
20 control for welding is procedure M-4, and we've had an accept/  
21 reject space on those forms for quite some period of time. I  
22 can't answer as to whether the original procedure that was  
23 written in 1974/75 had that, but for some substantial period  
24 of time it has had an accept/reject box.

25 Q You will agree, Mr. Grier, won't you, that even for

1 the M-4 procedure, there is now, after the changes, provisions  
2 in the process control documentation that more thoroughly  
3 document the identified deficiency through process control,  
4 where formerly the NCI procedure had been used.

5 A Well, again, I don't understand your reference to  
6 formerly, and changes. Do you mean at any point in time or  
7 in reference to some specific --

8 Q At any point in time.

9 A Well, as I say, I can't recall the specific  
10 situation in the original draft of that procedure, but it is  
11 my recollection that for some substantial period of time we've  
12 had accept/reject boxes or spaces on the M4-A form, which is  
13 the process control for welding.

14 Q And you also now have a place where you can indi-  
15 cate the nature of deficiency; don't you?

16 A That's also been present on that form for some  
17 substantial period of time.

18 Q But not always.

19 A It may have been always on the form.

20 Q You don't recall?

21 A I just can't say whether it has or not, but it  
22 certainly may have been there since the original issue of  
23 that form.

24 Q Mr. Grier, the question I asked to Mr. Wells  
25 earlier, you'd agree, would you not, sir, that the number of

1 nonconformance items, NCI's, Q1-A's have significantly  
2 decreased if you compare the period of time during Mr. Wells'  
3 tenure with the period of time during your tenure?

4 A There has been a big decrease in the number of  
5 NCI's written over any given period of time in the last year,  
6 and that has been primarily, I believe, as a result of the  
7 procedure revision that I described that now documents those  
8 construction items on RQ-A's as opposed to documenting them  
9 on Q1-A's.

10 Q All right, sir. How many more, how many less?

11 A I don't have any --

12 Q In rough terms.

13 A I'm not sure I can give you a rough number.

14 Q Well, how many NCI's did you have in the last  
15 period of time, that you recall, at Catawba, a month or a  
16 week?

17 A I really don't have those figures in mind.

18 Q Are you talking about one, two, three, four, or  
19 five during a week at Catawba, that order of magnitude?

20 A My knowledge of the rate that NCI's have been  
21 produced over any given period of time is by recalling a  
22 graph that shows this rate, and I recall the shape of the  
23 curve which does show that rate decreasing in the last nine to  
24 twelve months, but as far as a numerical number, I just  
25 couldn't say.

1 Q We can go back and check, but just so that we can  
2 put this in some perspective, does it sound way off if I was  
3 thinking in the neighborhood of NCI's in a month now, counting  
4 on one hand; the number of NCI's before the procedural  
5 changes, a hundred?

6 A Those would not seem correct to me.

7 Q Okay.

8 A I would --

9 Q You dispute that?

10 A I would take a rough guess, which I'm sure will be  
11 proven not to be a very good guess, but perhaps the rate has  
12 gone down by maybe a third or by -- the rate has gone down by  
13 maybe 30 percent, or so.

14 Q And the objective measure of that, by your recol-  
15 lection, is shown in the trend analysis report that shows  
16 graphs of the NCI's for the period?

17 A No. The graph that I'm referring to is a graph  
18 that's attached to our project review meeting minutes.

19 Q Would the trend analyses that were obtained in  
20 discovery also reflect relative numbers?

21 A They should reflect that information.

22 Q Do you know of any reason why that isn't a reliable  
23 source of information?

24 A No, I don't. It does indicate the number of NCI's  
25 written over a period of time.



1           Q     Any of you gentlemen -- Ms. Addis, I'm not trying  
2     to leave you out; if you want to chime in on these subjects,  
3     please feel free. I see a reference here, Mr. Baldwin  
4     stating in his deposition that there used to be 25 NCI's per  
5     week. That sounds about a hundred a month. There are only  
6     two --

7           MR. GIBSON: Could we get a page reference?

8           MR. GUILD: Page 53; June 29, 1983.

9           BY MR. GUILD:

10          Q     Was Mr. Baldwin way off base there?

11          A     I would presume that Mr. Baldwin would be referring  
12     to the number of NCI's written by welding inspectors. My  
13     discussion was in terms of all NCI's at the Catawba project.

14                     (Continued on next page.)

1 BY MR. GUILD:

2 Q Oh, well, if there are only 25 by welding  
3 inspectors, there has got to be more by others, aren't there?

4 A (Witness Grier) Well, I did remark I thought that  
5 100 -- that handful was not correct.

6 Q Well, Mr. Baldwin, if that's the correct reference  
7 in his deposition, says 25 per week and now only two per week,  
8 and you don't dispute that as being --

9 A No, I don't dispute that.

10 Q Mr. Baldwin was over the welding inspectors for a  
11 time?

12 A I would presume that his remarks in deposition  
13 referred to his experience as a number of NCI's written by  
14 welding inspectors under his supervision.

15 Q Yes. And that's a subset of all the NCI's that  
16 are written?

17 A That's correct.

18 Q So if he says 25 a week, that at least 25 total,  
19 probably more than 25?

20 A I didn't clarify myself when I said I didn't think  
21 your numbers were right. I thought they were too low.

22 Q Too low?

23 A Yes.

24 Q I'm sorry. I was just improperly reading something  
25 into your answer, Mr. Grier. I'm sorry. Help me if I'm

1 stumbling along here.

2 Are any of you gentlemen -- leave Ms. Addis out.

3 Are any of you gentlemen aware of the Nuclear  
4 Regulatory Commission ever criticizing you for writing too  
5 many NCI's; NRC personnel staff?

6 A (Witness Wells) I've never heard of any criticism  
7 in my time of NRC being critical about writing too many NCI's.

8 Q You put emphasis about writing.

9 A Well, they always criticized if you have too many  
10 nonconformances. See, there's a vast difference between  
11 reducing numbers of nonconformance and reducing NCI's.  
12 Certainly everybody's goal is to reduce nonconformances, but  
13 I've never heard them say, "You write too many NCI's, or you  
14 generate too many."

15 Q How about you, Mr. Grier, or, Mr. Owen?

16 A (Witness Grier) I attended a meeting at Catawba  
17 when I was -- when I held the job of planning manager at  
18 Catawba. I attended a meeting that essentially was the exit  
19 of a team that the NRC had sent to the Catawba site to look  
20 into the NCI process and our documentation of NCI's.

21 In the course of that meeting and in later discus-  
22 sions, I heard comments that indicated a feeling that we were  
23 writing NCI's on some items that were not significant in  
24 nature. The implication that I got from that is we were  
25 writing on Q-1A's some things that probably should have been

1 handled by other methods of documenting construction  
2 deficiencies or construction items that needed correction.

3 Q Now, why -- let me just put this in some perspec-  
4 tive, if we can. Why would it make any difference one way or  
5 the other whether you use Q-1 procedure or some other pro-  
6 cedure, Mr. Grier?

7 A The Q-1 procedure, as we have it -- or our Q-1  
8 procedure at Duke Power Company, puts several things into  
9 motion when a Q-1A is written. First, assuming that there is  
10 something there that violates a QA procedure or standard, in  
11 other words, the NCI is a valid NCI, there is several things  
12 put into motion. One is the investigation and work done to  
13 resolve the specific item that's deficient. Second, there's  
14 an investigation to determine whether or not the item is  
15 potentially reportable under the 10 CFR 5055(E) requirement.

16 There's also put into motion an investigation to  
17 determine whether corrective action in regards to the require-  
18 ments of criterion 16 are required. That's --

19 Q That's significant corrective action?

20 A Significant corrective action is the term we apply  
21 to criterion 16.

22 Q I see.

23 A All those things are put into motion. If you're  
24 writing some items on a Q-1A form and putting all those things  
25 into motion when they could just as well have been handled by

1 process control forms or by an R-2A form, then you are  
2 burdening your system with those investigations unnecessary.

3 Q Inappropriate inefficient use of people power, time,  
4 money, paper to address the level of deficiencies identified,  
5 in short?

6 A Inappropriate use of the intent and context of the  
7 Q-1 procedure.

8 Q And as a general matter, is it fair to infer that  
9 when you chose the alternative of R-2 or process control, such  
10 as N-4 procedures, less resources, in terms of people, power,  
11 time, money and paper are required in order to resolve that  
12 deficiency?

13 A Well, in those -- The R-2A and the process control  
14 resolution of those deficiencies, then those other investiga-  
15 tions are not put into motion. There is a review of an R-2A  
16 to determine whether it properly ought to be a Q-1A. But if  
17 it's determined that it's proper for it to be an R-2A, then  
18 the reportability and significant corrective action investiga-  
19 tions are not put into motion.

20 Q That's the point that you refer to of the upgrade  
21 question, of upgrading the R-2A to an NCI?

22 A R-2A's are reviewed to determine whether they need  
23 to be upgraded, yes, that's correct.

24 Q Now, Mr. Owen, I guess the same basic question,  
25 without maybe the detail of Mr. Grier or Mr. Wells who have

1 addressed it accurately and completely. The question  
2 originally started in this line is, are you aware of the NRC  
3 having criticized Duke for writing too many NCI's; anything  
4 to add?

5 A (Witness Owen) I think I recall -- I wouldn't  
6 characterize it as criticism of writing too many. As I  
7 recall, the discussion we had with respect to at least one  
8 meeting that I attended, we had some discussion about the --  
9 I guess you'd say philosophy of how you can make your review  
10 for significant corrective action criterion 16 more effective.  
11 And that was along the lines that you ought to have this  
12 grading system, and you ought to try and stick to it with  
13 respect to handling things in process, as opposed to writing  
14 NCI's, when some of the R-2 or the in process would serve  
15 adequately to make the correction. And then the idea that in  
16 NCI's there's a number of things. You can put them in bins.  
17 Some are very obviously not things that could be -- that need  
18 to be looked at from the criterion 16 approach. Others,  
19 there may be some that are definite, and the idea being that  
20 if you can make that kind of screening, then you can certainly  
21 spend more manpower and effort on the more significant things.

22 That was my impression of the discussion we had  
23 with the NRC, and our efforts, as I recall, were direct -- were  
24 headed, aimed in that direction.

25 Q Are any of you gentlemen, lady, aware of sort of



1 the scuttlebut on the job, or a formal communication, if  
2 there is one, to the effect that writing an NCI costs a  
3 thousand dollars, or some other dollar figure?

4 A (Witness Grier) I'm not aware of that.

5 Q Never heard of that, Mr. Grier?

6 A No, I haven't.

7 Q Mr. Owen?

8 A (Witness Owen) I never heard a value placed on  
9 the writing and resolution of NCI's.

10 Q Mr. Wells?

11 A (Witness Wells) No, I have not.

12 Q Any other number? Is a thousand dollars too dear  
13 or too cheap?

14 A No.

15 Q Anything? So you're not aware of that as a piece  
16 of guidance put out in the field that an inspector might have  
17 in mind when he faces a decision of writing an NCI?

18 A I'm not aware of it.

19 Q Now --

20 JUDGE KELLEY: Let me just ask if you're approaching  
21 a break point.

22 MR. GUILD: Getting close.

23 JUDGE KELLEY: No one will object.

24 Go ahead.

25 BY MR. GUILD:

1           Q     One is left, gentlemen, and lady, with the ques-  
2     tion, after having read the 1981 SALP report and the under-  
3     lying findings, one's left with the question of how one  
4     addresses the finding that Duke at Catawba reflected a large  
5     number of items of noncompliance by comparison to other  
6     facilities. You assumed the validity of that conclusion, and  
7     one is left with the question, how does one -- how did Duke  
8     respond to that in terms of reducing items of noncompliance.  
9     And my question is, why is it a fair assumption that Duke has  
10    tried to reduce the items -- the number of items of non-  
11    compliance by simply reducing the items of identified  
12    deficiencies, reducing NCI's at Catawba, and, therefore,  
13    simply making sure that the score card for the future compari-  
14    sons reflects less adversely on Catawba. Focus on the numbe-  
15    of NCI's and the actual change in workmanship. Can you  
16    gentlemen or lady respond to that?

17           A     (Witness Grier) Yes, I'd like to respond to that.

18           Q     Please.

19           A     The change in procedure Q-1 that we were discussing  
20    would not take place until this year -- the middle of this  
21    year. There have been two SALP reports that have been issued  
22    since the 1981 SALP report. There was no change in procedure  
23    Q-1 that had the effect that this change had.

24                   So those evaluations were based on the same type of  
25    Q-1 procedure that was in effect when the 1981 SALP report was

1 issued and the examination of those two SALP reports was  
2 definitely not the same as the '81 conclusion. The last  
3 SALP report indicated the QA program at Catawba was rated in  
4 the highest category.

5 Q Rated 3?

6 A Most favorable, No. 1.

7 Q I'm sorry. The same question, if you're through,  
8 Mr. Grier. Mr. Owen, Mr. Wells, anything to add to that point?

9 A (Witness Owen) Well, I guess my -- would you  
10 phrase it again for me?

11 Q Yes. Why isn't it -- How about address the  
12 question that arises in my reading of that criticism that you  
13 simply remedied the symptom and not the cause. Did you simply  
14 reduce the number of NCI's?

15 A Just wiped them out. Well, I'd make a couple of  
16 points, and that is quality assurance inspectors don't -- are  
17 not responsible for the NCI's and the number of NCI's. They  
18 flow out of the quality of the work, unless that NCI is being  
19 written on something that doesn't require under our program an  
20 NCI. An in process whole point is one method. The construc-  
21 tion deficiency is another. So I'd say that is one thing.

22 Secondly, if you set a goal for yourself, I think  
23 the goal would be not to have any violation, because if the  
24 NRC issues no violations, it would be awfully hard to feel  
25 that you had any part of the program in any serious position

1 if you wanted to look at it from these kind of numbers that  
2 you're talking about. And then if you looked at the viola-  
3 tions that you have, I guess you would be more -- obviously be  
4 more concerned about the more significant the severity levels  
5 that the NRC uses. I believe it's 1 through 5 now. It was  
6 something -- little different categorization some years ago;  
7 but still that same sort of grading system that you use.

8 If you change your procedures or your training  
9 with respect to what you're using NCI versus R-2 versus in  
10 process, then, obviously, you're going to have to take that  
11 into account when you look at the numbers, as well as the  
12 amount of work that's going on. If you have no concrete pouring  
13 going on, then, obviously, you're not going to get any NCI's  
14 on the concrete placement. So that needs to be a consideration  
15 if you're looking at those numbers.

16 (Continued on next page.)  
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126ml

1 BY MR. GUILD:

2 Q Mr. Wells, anything to add?

3 A (Witness Wells) I can only say that in my  
4 judgment there's no direct correlation on the number of  
5 nonconformances we write and the number of noncompliances  
6 that the NRC might find. I just don't -- you could go to  
7 the extreme and say if somebody gave out the word, don't  
8 ever write another NCI, then there would be more violations  
9 and that's certainly not true.

10 I just don't see the correlation. We want to  
11 reduce the number of reasons to write NCI's but in my  
12 opinion, the more you write, that determines that you're  
13 finding things and the NRC -- I just don't think there's  
14 a correlation.

15 MR. GUILD: All right, sir.

16 Mr. Chairman, that could be a stopping point  
17 for me.

18 MR. JONES: Mr. Chairman, there was one point  
19 the Board asked for, point of information, on Friday, and  
20 it would take about two minutes and I could clear it up.

21 I believe it was in cross-examination of either  
22 Mr. Owen or Mr. Grier, the April 25th, 1977 letter signed  
23 by Mr. Dick that was brought up.

24 JUDGE KELLEY: Yes.

25 MR. JONES: And the question was raised as to

26m2

1 whether the language at the bottom of the page is NRC  
2 language or the company's language.

3 What I have is -- and I'll hand it to everyone --  
4 is an April 6th, 1977 letter from Mr. Volgenau, the director  
5 of --

6 JUDGE KELLEY: Former head of OIE.

7 MR. JONES: Which was sent to the utilities  
8 and asked they post that language.

9 JUDGE KELLEY: Fine. That sounds like that would  
10 clear it up.

11 Thank you.

12 Mr. Guild, we would like to get an idea of  
13 where you stand on your cross, an idea of when we might get  
14 on to the next panel.

15 From this perspective this evening, what would  
16 you estimate would be your time requirement to complete  
17 cross of this panel?

18 MR. GUILD: I really don't have an -- I can't  
19 give you a realistic figure off the top, Mr. Chairman.  
20 Perhaps if you give me a moment in the morning, I can  
21 tell you, but I do have considerable examination on the  
22 second half of the two witnesses' testimony which is the  
23 subject of the welding inspector concerns and the initia-  
24 tion of their inquiry. That's a separate subject that they  
25 raise in the second half of their testimony.



P26m3

1 I've concluded the portion that is sort of a  
2 general overview, which was Mr. Owen and Mr. Grier, the  
3 first part of SALP-1 and the SALP-1 analysis which was  
4 done now -- that line just concluded a moment ago. And I  
5 need to move on to the subject of the welding inspector  
6 concerns which they address at some length.

7 JUDGE KELLEY: Could you ponder it overnight  
8 and maybe give us an idea before we start tomorrow for  
9 our sort of planning purposes?

10 MR. GUILD: Yes, sir.

11 MR. JONES: Mr. Chairman, do we want to identify  
12 this letter for the record as an exhibit -- I don't know  
13 either as Board Exhibit or Additional Staff Exhibit? The  
14 question was raised on the record Friday, so it might be  
15 appropriate.

16 JUDGE KELLEY: Yes. Seems like a good idea.  
17 Do we have any staff exhibits?

18 MR. JOHNSON: No, sir. If you want it to be  
19 a staff exhibit, would be No. 1.

20 JUDGE KELLEY: Why don't we call it Staff  
21 Exhibit 1 and admit it for the information it conveys,  
22 really a comparison of text.

23 (The document referred to was  
24 marked Staff Exhibit No. 1  
25 for identification and received  
in evidence.)

T26m4

1 JUDGE KELLEY: Anything else before we quit?  
2 Very well. Then 9:00 tomorrow morning.  
3 Thank you.

4 (Whereupon, at 5:27 p.m., the  
5 hearing was adjourned, to  
6 reconvene at 9:00 a.m.,  
7 Wednesday, Oct. 12, 1983)

8 \* \* \*

CERTIFICATE OF PROCEEDINGS

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

In the matter of: Duke Power Company

Date of Proceeding: October 11, 1983

Place of Proceeding: Rockhill, South Carolina

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

Terri Hague

Official Reporter - Typed

*Terri Hague*  
Official Reporter / Signature

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Susan Young

Official Reporter - Typed

*Susan Young*  
Official Reporter - Signature