

UNITED STATES
NUCLEAR REGULATORY COMMISSION
ORIGINAL

IN THE MATTER OF:

DOCKET NO: 50-413-OL
50-414-OL

CATAWBA NUCLEAR STATION

LOCATION: CHARLOTTE, NORTH CAROLINA

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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: DOCKET NOS. 50-413-OL
: : 50-414-OL
: CATAWBA NUCLEAR STATION :
: :
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BB&T Center
4th Floor - Carolina Room
200 South Tryon Street
Charlotte, North Carolina

Tuesday, October 9, 1984

Hearing in the above-entitled case was convened
at 9:35 a.m., pursuant to notice.

BEFORE:

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

DR. PAUL PURDOM,
Member, Atomic Safety and Licensing Board

DR. RICHARD FOSTER,
Member, Atomic Safety and Licensing Board.

SueTraylor¹APPEARANCES:

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On behalf of the Applicant:

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On behalf of the Intervenor:

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ROBERT GUILD, Esquire
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Charleston, South Carolina 29412

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I-N-D-E-X

<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>
R. L. Dick, G. W. Grier, T. H. Robertson, T. O. Mills, A. R. Hollins, Jr., S. E. Ferdon, D. H. Llewellyn, B. J. Kruse, L. C. Bolin, F. H. Fowler, M. J. Lewis, M. A. Sutton, J. C. Shropshire, S. H. Van Malssen, and D. Abernethy	13,130	13,171

INDEX OF EXHIBITS

<u>Exhibit No.</u>	<u>Identified</u>	<u>Received</u>
Applicant's Exhibit No. 113	13,136	
Applicant's Exhibit No. 114	13,137	
Applicant's Exhibit No. 115	13,138	
Applicant's Exhibit No. 116	13,144	
Applicant's Exhibit No. 117	13,144	
Applicant's Exhibit No. 119		13,151
Applicant's Exhibit No. 118		13,163

P R O C E E D I N G S

(9:35 a.m.)

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3 JUDGE KELLEY: Good morning. My name is James
4 Kelley, and I am Chairman of this Atomic Safety and Licensing
5 Board. On my left is Doctor Richard Foster. On my right
6 is Doctor Paul Purdom.

7 Why don't we have introduction of counsel and
8 others at the counsel table would be the next step.

9 MR. GUILD: My name is Robert Guild, and I am
10 Counsel for Palmetto Alliance. With me at the table is
11 Phillip Rutledge, and Ms. Billie Guard, of the Governor's
12 Accountability project. Mr. Riley will introduce himself.

13 MR. RILEY: Jesse Riley, Carolina Environmental
14 Study Group.

15 MR. JOHNSON: I am George Johnson. I am counsel
16 for the NRC Staff. With me is Mr. Bradley Jones, Regional
17 Counsel for Region II of the NRC, and sitting beyond him
18 is Michael Harrison, who is a paralegal in the Office of the
19 Executive Legal Director.

20 MR. CARR: I am Al Carr, Counsel for Applicant,
21 Duke Power.

22 MR. McGARRY: I am Mike McGarry, Counsel for
23 Applicant, Duke Power.

24 MR. CALVERT: I am Mark Calvert, Counsel for
25 Duke Power.

1-2-Wal

1 MR. McGARRY: I would note assisting Applicant
2 in this case is Malcom Philips, and Ann Cottingham.

3 JUDGE KELLEY: Thank you. Our subject today,
4 and for the next couple of days, perhaps, is foreman override,
5 which is as suggested, but if not wholly self-explanatory
6 phrase, that originally grew out of the testimony last
7 December or January, I think, with Sam Nunn, who was one of
8 the in-camera witnesses and testified publicly on this
9 subject, among others.

10 I might just give an example without attempting
11 to define the concept of foreman override precisely. But
12 basically, it contemplates a situation where a supervisor,
13 say a foreman, in response to production schedules, might
14 direct a craftsman to work, in violation of established
15 procedures, and this would then give rise to safety
16 concerns, since the procedures are presumably assigned to
17 promote safety.

18 There several instances alleged by Mr. Nunn
19 and those instances were all resolved in our Decision of
20 June 22nd of this year. However, at that point, and prior
21 to that time, the Board did and had to decline to close the record
22 on this foreman override question because of some concerns raised
23 in confidence by a person who became known as Welder B,
24 concerns some NRC investigators, I believe, last January.
25 It wasn't possible at the time that the hearings were over

1 last January to come to grips with those questions.

2 So, the Board specifically retained jurisdiction
3 over them, in the expectation they would be later receiving
4 an investigation or a report from the Applicant's and the
5 Staff about these concerns that Welder B had expressed.

6 We did receive from the Applicant's a rather
7 extensive report dated August 3rd 1984, and following that,
8 on the 31st, we received from the Staff likewise a report
9 on the subject, which was for the most part an analysis
10 of what the Applicant had done, and the Staff's view as to
11 whether that investigation was adequate.

12 The Board at that point, as we had said earlier
13 we would do, called for the views of the parties as to how
14 we ought to proceed. Whether we should, for example, close
15 the record or have some further written summation, or whether
16 we just should have a further hearing on these reports.

17 Palmetto took the position that there ought to
18 be a hearing, and the Board came to that same conclusion,
19 and we did direct that this hearing take place. And that
20 is a very quick sketch of what brought us here today.

21 We have had some discussion of procedural issues.
22 I think in general some of these issues are being resolved
23 along the lines they were resolved earlier. I might mention
24 what we have settled and then what we still have to discuss
25 by way of procedure for the witnesses and the scope of the

1-4-Wal

1 issue, and related matters. We are going to follow an order
2 of proof that is not entirely similar to the ones we had
3 in the past. It is going to be this. The Applicant's,
4 Duke Power Company panel, will come first this morning,
5 beginning this morning at least, and you may be questioned
6 as one panel or sub-groups. That is what remains to be
7 seen. Now, -- but in any case, the Duke case would come
8 on first.

9 It seems to us then logical to go right to the
10 Staff's position, because as we mentioned, they have done what
11 amounts to an analysis of the Duke Report, and in the interest
12 of keeping perspective on that, it seems sensible to go to
13 that next, and then last of all, we would hear from witnesses
14 being called by Palmetto.

15 When we initially announced this hearing, it is
16 not possible to know in advance exactly how long something
17 like this is going to take. It was our judgment that it
18 would probably take two to three days. That remains our
19 best estimate from this perspective, and we will see how
20 things progress.

21 We have, in the past, imposed time limits on
22 cross examination in order to ensure the case moves along
23 at a reasonable rate. We are not going to do that at this
24 point. We are going to hear from the Duke panel, and we will
25 see where that takes us today. And if we need to later,

1-5-Wal

1 particularly if we are going to be talking about Palmetto's
2 list of witnesses, which number 60, plus a couple of others,
3 I think it is obvious if we have any number approaching that
4 we are going to be within time limits, but we will talk about
5 that a little bit later.

6 Right now, we will just go with the questioning,
7 and see how much we can get done.

8 As to order of questioning, that will be based on
9 past practice. In the case of the Applicant, the panel going
10 first. They will be questioned by Palmetto, and also by
11 the Staff, followed -- now, this is frankly a slip on the
12 Board's part. We did get a formal notification that the
13 State of South Carolina, Mr. Richard Wilson, who had been
14 in this case in the past, we must remember him. We are
15 calling him this morning. If he wants to come, and I hope
16 he comes, and he would be next, if he does wish. He is not
17 required to, and we just don't know whether he will or not.

18 But should he be here, he will follow the Staff.
19 Then the Board would have their questions, then there would
20 be an opportunity for recross examination by Palmetto directed
21 toward any new matter that has been raised by questions either
22 from the Staff, the State or the Board.

23 And then finally, redirect examination would be
24 conducted by counsel for the Applicants.

25 So far, I understand that we are on common ground.

1-6-Wal

1 As most of you notice, we have an informal so-called
2 conferences of a few minutes shortly after we arrived, in which
3 we went quickly through a number of things to isolate what has
4 been agreed upon and what we might have to argue about, and
5 we have a few things that we do need some on the record
6 discussion.

7 I think it might be best to go to that now. Let
8 me just tick those off, and make sure that we have that
9 straight.

10 We have the question of the number of witnesses
11 to be called by Palmetto. Mr. Guild indicated he wanted to
12 address the question of adequacy of access during the
13 discovery process. Mr. McGarry indicated a need to talk a
14 bit about in-camera procedures; whether they were going to be
15 needed, and if so, how we would employ them.

16 Now, if there are other things that I should have
17 here, -- Mr. McGarry indicated a desire to talk a bit about
18 scope. Anything else, Mr. Guild?

19 MR. GUILD: Yes, sir. The item of discovery,
20 Judge. Some pending disputes on discovery matters.

21 JUDGE KELLEY: I characterize that just based on
22 our informal discussion, that you are having some problems
23 with access in discovery. Is that the kind of thing you
24 have in mind?

25 MR. GUILD: Generally. It is two set of sub-parts.

1-7-Wal

1 One is evidentiary discovery documents, basically, that
2 are pending from our depositions of Friday, and we were
3 not able to reach an agreement on, and secondly, it is a
4 general question of access to Catawba site workers, who
5 have expressed concern, or who have evidence of foreman
6 override.

7 That is a separate section.

8 JUDGE KELLEY: We will talk about that. Is
9 there anything else, Mr. Johnson?

10 MR. JOHNSON: No, sir.

11 JUDGE KELLEY: Mr. McGerry, have we covered the points?

12 MR. MCGERRY: Yes, sir.

13 JUDGE KELLEY: Okay. Well, we have a list from
14 Palmetto a list of witnesses to be subpoenaed by Palmetto
15 Alliance and Carolina Environmental Study Group.

16 Let me clear clear at the outset. CESG, do you
17 view yourself as -- how do you view your status in this
18 particular hearing. I ask the question, because as I
19 understand it, you are out of so-called Contention 6, which
20 is Palmetto's contention.

21 MR. RILEY: That is correct. We wish maybe at
22 times to give some technical assistance to Palmetto.

23 JUDGE KELLEY: You are entitled to ask some questions
24 on the Contention anyway. I am not questioning your right to
25 be here. I am just trying to get a fix. And your characterization

1-8-Wal

1 is fine with us.

2 If you want to ask some questions in the course
3 of this, then that would be acceptable to us.

4 Okay. We have this list. I think the Board's
5 initial reactions -- that is an awful long list. We did not
6 set a limit on numbers of witnesses, nor or we sure we should
7 have, but we think that the fact that we did make an indication
8 of, I think, 12 people for depositions, is some indication of
9 whatever number of witnesses we were going to have, it would
10 be a good way short of sixty. But if you want to speak to
11 that, Mr. Guild, then we can hear that or we can hear from
12 the parties and come to grips with it.

13 MR. GUILD: Let me see what I can do with it.

14 MR. McGARRY: I might make an observation. Perhaps
15 it might be helpful if we discuss scope first, because scope
16 could have a direct bearing on the witnesses that would be
17 called.

18 MR. KELLEY: Any objection to speaking to that
19 first.

20 MR. GUILD: I think we will wind up touching that
21 subject in the context of addressing it. What kind of evidence
22 the Board need hear. You can handle it anyway you like, Judge.
23 If you want to tackle the scope question first, that would be
24 just fine.

25 Much of this introductory approach is going to

1-9-Wal

1 require us to basically characterize and state our position
2 on where we are, and I think that involve trying to define
3 what the issue is, and also our vision of how we go from here
4 in resolving the issue, so my suggestion, taking up the
5 scope as the first question, is fine with me. As long as
6 we get it all out.

7 And I think Applicant's have a position they want
8 to express about what they have got on the table, and we
9 likewise.

10 JUDGE KELLEY: The matters are inter-related.
11 Why don't we just speak to scope first, and we might have to
12 go back and forth between the two issues.

13 Mr. McGarry, you nominated that. Do you want
14 to speak to it first?

15 MR. MCGARRY: Certainly. The Board ruled at transcript
16 page 12,850, that the scope of this hearing was to be narrow.
17 The focus of this hearing is essentially the applicant's
18 August 3, 1984 report.

19 That report is some 27 pages in length, with two
20 attachments, Attachments A and B comprise the Applicant's
21 -- primarily comprise the Applicant's evidence in this case.
22 This Board said that certain matters contained in that report
23 will not be the focus of this hearing. Those subjects are
24 non-safety issues, and secondly, technical issues that don't
25 implicate foreman override.

1 JUDGE KELLEY: Is that a quote?

2 MR. McGARRY: Yes, sir. 12,850.

3 JUDGE KELLEY: I am having a little difficulty
4 finding the exact words. What lines are you on?

5 MR. McGARRY: It is actually the entire page. If
6 you start over at 12,849, at the bottom, you talk about the
7 issue is clearly limited to foreman override. Then you go
8 on at the bottom -- you say we make that point because there
9 appear to be sections of Applicant's report that speak to
10 sort of miscellaneous safety concerns not involved in foreman
11 override.

12 And then you go down -- lines 1 through --

13 JUDGE KELLEY: I see that.

14 MR. McGARRY: Then you go down further to line 14
15 or 15, and we might add, too, there are some indicated concerns
16 in the Applicant's report which related to non-safety items,
17 Class G pipe or whatever. You recall back in In-Camera
18 sessions we were pretty systematically excluding non-safety
19 matters.

20 JUDGE KELLEY: Are you paraphrasing before? I
21 have no quarrel with it.

22 MR. McGARRY: I was paraphrasing.

23 JUDGE KELLEY: I understand.

24 MR. McGARRY: What that leaves us with is

25 Applicant's Attachment A. Those are the technical concerns

1-11-Wal

1 which one could allege involved foreman override, so we maintain
2 that is the focus of this hearing.

3 And we should look to discovery requests, and we
4 should look to subpoena requests with that view in mind. Are
5 the individuals in question, or documents in question, relating
6 to Attachment A. If they are, then we can hear argument on
7 that point.

8 If they aren't, then we should not discuss it
9 further because they should not be the subject of this
10 hearing.

11 Now, I think that essentially, in a nut shell is
12 the scoping argument. I think it is clear. it is clean, but
13 I do have several additional comments that touch on scope,
14 and then I think, as Mr. Guild indicated, really are to
15 articulate the the Applicant's position of where we are today,
16 so I would like to continue, if I may.

17 JUDGE KELLEY: Sure.

18 MR. McGARRY: Despite our view that the scope of
19 this hearing is narrow, it is clearly apparent, looking at
20 Intervener's witness list, looking at the testimony outline
21 of Dr. Mikowowski, and looking at the discovery actions taking
22 place in the last two weeks, that the Intervenors have indicated
23 that they will seek to raise matters clearly beyond the scope
24 of this hearing.

25 It is our view that this Board must not permit this

1-12-Wal

1 to happen. Otherwise, this hearing has a serious prospect
2 of bogging down.

3 There is a clear need for firm hands, similar to the
4 Board action in In-Camera phase of this proceeding. From
5 our view, two actions of the Board are necessary.

6 First, we would like the Board to reaffirm what
7 are the topics to be discussed in this hearing. To reaffirm
8 what we view as its ruling set forth in transcript pages
9 we have referenced.

10 Second, we would request that the Board conduct
11 these hearings in the same expeditious fashion as it did in
12 In-Camera phase. Now, the Applicant has no quarrel at this
13 particular point in time, with the imposition of time limits.
14 I think it is advisable to see how it works out, but like the
15 In-Camera phase, I think we are going to need a firm hand to
16 explain with respect to the first, and the reaffirmation
17 of the topics.

18 In addition to Attachment A, the Board should be
19 aware that it is our view that the Interveners intend to
20 challenge the adequacy of this report in terms of the sample
21 technique, and in terms of the adequacy of the interview.
22 With regard to the sample size, it is Applicant's view that
23 it is obvious to any reasonable person that a sample size of
24 well over two hundred people is adequate.

25 Indeed, this Board when it examined the Staff's

1 methodology in January of 1984, and ascertaining from the
2 Staff that they used a random selection, found that that
3 indeed was adequate.

4 What the Applicant has done, in the first instance
5 they were given a name of a foreman and a general foreman,
6 and we exhaustively combed our list and talked to all present
7 employees who could have worked for that particular foreman,
8 who Welder B focused on.

9 We then went out on a random basis and talked to
10 other individuals.

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2 That should be specific. That should be satis-
3 factory for this Board's purpose to come to grips with the
4 issues that this Board has before it. And we do not need
5 to engage in the adequacy of the same size.

6 With respect to the interview techniques, again
7 it is obvious to anyone who has read the transcript, read
8 the affidavits, that our employees are not shrinking violets.
9 They have come forward and they have expressed themselves.

10 Therefore, it is clear that the interview techniques
11 did engender and did elicit information. And we need not
12 engage in any evidence or testimony regarding the adequacy
13 of the interview techniques.

14 In addition, based on the discovery actions we
15 believe that the Intervenors will again attempt to raise
16 allegations of intimidation and harassment and of the
17 effectiveness of the QA program. The Board has come to
18 grips with those matters in the extensive hearings held
19 last year, has ruled on those matters, and now we are
20 focused on Attachment A and not those matters.

21 Now, this goes on, Your Honor, somewhat of an
22 opening statement but it clearly sets forth our position
23 so I will continue again, if I may.

24 JUDGE KELLEY: I'm just wondering. Your three
25 points so far are all scope points, right?

MR. MC GARRY: Essentially correct, yes, sir.

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JUDGE KELLEY: I think we will stick with the scope for a moment and clear everybody on that. If there is a need for an opening statement we can consider that.

2

Mr. Johnson, any words on scope?

3

MR. JOHNSON: Yes, sir. The Staff essentially is in agreement with the position that Mr. McGarry has taken with regard to scope.

4

Based on the condition that was placed in the initial partial decision and the nature of the issue that we are dealing with, that is an outgrowth of the quality assurance, Contention 6, and the issues that were tried and decided on the quality assurance matter, the Staff would agree that we have come down to a relatively narrow question that was presented under the foreman override question by Welder B and his concerns.

5

And the question that the Board requested to be addressed, and now we are addressing it here in this hearing, seems to me two questions. One is, are the allegations that Welder B made evidence of pervasive breakdown in quality assurance at Catawba. Thus, as a result of looking at the question of pervasiveness you have to look at the adequacy of the Duke and the Staff investigations into the allegations by Welder B. You have to decide whether based on those two reports, the Board can reach

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#2-3-SueT 1 a conclusion whether the allegations, if substantiated,
2 are indications of pervasiveness breakdown in quality
3 assurance. And that means that it isn't a retrial of all
4 the other aspects of quality assurance.

5 Quality assurance, as we know, can lead to an
6 extensive number of witnesses, an extensive number of
7 days of testimony. And there is the chance if not subject
8 to certain types of controls that we could be here for a
9 very long time.

10 Secondly, as in the earlier phase of the hearing
11 the question ultimately comes down to safety significance.
12 And, therefore, the question is not just was the problem
13 scoped but whether the problems that were identified make
14 a difference in the safety of the plant.

15 The Staff has thought that the problem of
16 managing the hearing -- and this is related to scope, but
17 it is more of a procedural matter, and that is in the
18 preceding hearings on quality assurance the Board stated
19 that it did not intend to act as a traffic cop or an umpire
20 calling balls and strikes. One question is good, one
21 question is bad; this is relevant, this is irrelevant.
22 It's not going to sit up there and make those calls as
23 such and is relying on the parties to do that.

24 Now, there is one way to do this, and that would
25 be for you to umpire, this is within, this is without. In

#2-4-SueT

1 the past you found this was impractical. Instead, you
2 determined to allow the parties to focus, as they chose,
3 after several days, time limitations, various sorts were
4 put in place giving the parties the opportunity to choose,
5 to focus an emphasis in the amount of time that was to be
6 given to the presentations.

7 Given the nature of the issues, the possibility
8 of going significantly beyond the relatively narrow focus
9 that has been presented in the context of all of the
10 decided issues, it seems to the Staff that the only practical
11 way to manage this proceeding is to impose rough time limits.
12 This will allow the parties to focus their attention, as
13 they see fit, focus on the more relevant matters and allow
14 the proceeding to go forward on the issues that really are
15 in question.

16 And, lastly the Staff counsel asked the Board
17 what the time frame for the hearing was, and this morning
18 the Board reiterated that it had in contemplation two to
19 three days, two to three days. This morning, I don't remember
20 hearing two at all as a guideline. And it seems to me,
21 with that in mind, we ought to be thinking about Applicant's
22 case, Staff's case, Palmetto's case.

23 And it seems to me that the proper allocation
24 time might be one day each and go from there. And in that
25 way try to indirectly keep the scope as it should be.

#2-5-SueT 1 JUDGE KELLEY: Do you join the Applicant's point
2 that the matter of selecting the sample is beyond the scope
3 of the hearing?

4 MR. JOHNSON: No. I don't necessarily exclude
5 the question of the sample, because that goes to the
6 question of the adequacy of the investigation.

7 The question really is one of choice, it seems
8 to me, on the part of Palmetto Alliance. If they wish to
9 spend their time to attack the scope -- the adequacy of
10 the investigation on the choice of a sample, that's their
11 prerogative to do so.

12 The ultimate question is did the Duke study, if
13 that's the sample that they are looking at, did it have
14 a technical or other basis for establishing whether there is
15 a pervasive breakdown or not. And if they are going to look
16 at the sampling, to show that, it seems to me that's not
17 irrelevant.

18 JUDGE KELLEY: How about interviewing technique?

19 MR. JOHNSON: Again, it seems to me that it's
20 conceivable in the way in which the questions were asked
21 may bear on the answers that they got.

22 JUDGE KELLEY: Mr. Guild, the subject is scope.

23 MR. GUILD: Yes, sir.

24 JUDGE KELLEY: You may have other points you want
25 to raise. If you can speak first to the ones that have been

#2-6-SueT 1

put to you, we can go on to points we want to make.

2

MR. GUILD: I will be happy to do that, Judge.

3

I am particularly troubled to hear Applicant's characteriza-

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tion of the narrowness of the scope of this issue. It's

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certainly understandable. But I think it bears very directly

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on the fundamental theme that we've seen in the hectic ten

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days in which we have tried to digest and understand and

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investigate these issues, since the Board has set out the

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process leading to today's hearing.

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And that view as to the narrowness of the scope

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of the issue appropriately reflects the narrowness of the

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scope of Duke's investigation. I think counsel's characteriza-

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tion of what is properly before the house here very aptly

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sets the bounds on the scope of the investigation performed

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by Duke and ultimately endorsed by the NRC as to the question

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of foreman override.

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Perhaps an admission as to that would save us

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considerable time in disputing the narrowness of the scope

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of that inquiry. Our view is essentially, the Company

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didn't want to find out. Despite the fact they didn't want

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to find out, they found out much more than they had ever

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heard before about practices of foremen pressuring craft

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to get work done at any cost, including the cost of violating

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quality procedures and construction procedures.

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The scope of their findings, the conclusions about

#2-7-SueT

1 the -- strike that. The scope of their -- of the evidence
2 that they uncovered, because it's not reflected in their
3 findings, the scope of the evidence they uncover is truly
4 astounding and truly belies the general ascertain that
5 quality assurance at Catawba worked. It didn't work.

6 And I think all you have to do is look at Vice
7 President's R. L. Dick's deposition, when he is asked the
8 question: Why didn't you find these things in '80 and '81
9 when they happened. And his, I think, honest inability to
10 answer that question supports the fundamental problem that
11 the Duke investigation uncovers.

12 Foreman override is defined by the Board, and
13 I think that Applicant's definition post hoc that they offer
14 today in the scoping discussion is revealing, because it
15 suggests that the investigation didn't set out to find what
16 the Board put before the house as the issue.

17 At 272 of the partial initial decision -- and
18 this is acknowledged by all the parties, they quote the
19 language in their report -- the Board sets out this as the
20 unresolved question: Demonstration to this Board and a
21 reasonable assurance that the Welder B and related concerns --
22 described at a part of the decision above -- do not represent
23 a significant breakdown in quality assurance at Catawba.

24 What is foreman override? The Board describes
25 that in, I would say, transactional terms in the partial

#2-8-SueT 1 initial decision, that it's a set of circumstances. I don't
2 think the Board provided a more finite definition of it,
3 even at the transcript citation that Mr. McGarry offered.

4 And I don't think that's the fault of the Board.
5 But let's take a stab at it. Duke, in their final report,
6 at Page 4 defines foreman override this way, and actually
7 they characterize it as the Board's definition: The Board
8 expressed a concern only with the latter category -- and
9 that's work in violation of procedures as opposed to work
10 that was not necessary. The Board expressed a concern only
11 with the latter category and defined foreman override as a
12 situation in which a foreman orders a craftsman to do work
13 in violation of procedures.

14 Well, if that's truly what the Company sought to
15 find out and only what they sought to find out in their
16 investigation, then I submit that the question they posed
17 is not the question asked. And it's not surprising that
18 their conclusion is as it states, no problems.

19 I don't know how many people have talked to me
20 in the last ten days who were involved in this investigation,
21 the workers who raised these complaints, and said it would
22 take a fool to think that a foreman need order you to violate
23 procedures in order to accomplish a violation of procedures.
24 Laws get broken all the time without anybody explicitly
25 saying, "Violate the laws." It's consequence and the result

#2-9-SueT

1 that matters. And by analogy, and I think one that applies
2 very directly, I would point the Board to part of your
3 decision where you define the issue of harassment. And
4 that appears, looking at Page 162 of the Board's partial
5 initial decision. Again, we are talking about a different
6 subject but I think that the connection between the --
7 the relationship between a foreman, the wrongdoer, if you
8 will, the person putting the pressure, and the actor who
9 feels that pressure, the craftsman, in this instance, is
10 what I'm focusing on.

11 It's the nexus between the pressure and the
12 result that I'm targeting for definitional purposes. And
13 your definition there, members of the Board, at Page 162,
14 is: Any action taken by another employee or superior
15 intended to modify the actions of the inspector, in that
16 case we are talking about welding inspectors, for the
17 purpose of impeding the proper performance of the inspector's
18 task is considered to be harassment. The use of, or threat
19 to use physical force or other violence, is obviously the
20 most overt form of harassment. But harassment can be more
21 subtle, taking the form of oral invectives or behavior
22 designed to intimidate, embarrass or ridicule the inspector.
23 To be effective, harassment policy has to be applied to
24 conduct offsite as well as onsite.

25 Well, I think that the point that I draw the

#2-10-SueT 1

2 Board's attention to there is, it's not comforting to the
3 integrity of the quality assurance program at Catawba to
4 simply say that there is no proof that any foreman ordered
5 craftsmen to violate a procedure. The fact of the matter is,
6 if you look at the affidavits, they are ripe, replete, with
7 statements of pressure adversely effecting the quality of
8 their work, and pressure adversely effecting the compliance
9 with quality assurance and construction procedures.

10 Now, that amounts to accomplishing the result,
11 and I submit that the person who was talking to me most
12 recently on this subject, he was one of the concerned indi-
13 viduals, said that even in the most egregious circumstances
14 all it took was a foreman telling you, "Get the job done."
15 And you've got X amount of time to get it done. And when
16 everyone knew that the job could not be done and abide the
17 quality assurance and construction procedures within the
18 parameters set out by that foreman, the foreman well knew
19 that his course of conduct, his pressure, constituted foreman
20 override by any meaningful definition of the term and
21 resulted in a violation of construction, quality and safety
22 standards.

23 And perhaps the performance of faulty work, in
24 this case -- the case I have in mind -- welding may or may
25 not be detected, may or may not fail in service in the
Catawba station in operation.

2-11-SueT

1 So, as to scope, Judge, in sum we think the Board
2 has established what the issue is. The issue is contained
3 in the partial initial decision. It reflects whether or
4 not a practice that has been defined as foreman override,
5 that I submit in a meaningful sense has to focus on the
6 result, and that's the violation of procedure because of
7 foreman pressure that is attributable to cost and scheduling
8 considerations result in violation of violation of procedures,
9 quality, construction, or the performance of faulty work.

10 In a nutshell, Judge, the root allegation is
11 contained in Contention 6. And that's pressure to perform
12 faulty work, work that is faulty by standards or by codes
13 or by workmanship. The question before the house is, given
14 that operative definition of foreman override, what is its
15 significance for the adequacy of quality assurance at
16 Catawba. Does it reflect a significant breakdown in quality
17 assurance.

18 I think that's the issue before the house. And
19 I think that that issue is well defined in the Board's pre-
20 vious considerations of Contention 6.

end #2

e flws

1 JUDGE KELLEY: You mean -- not to try to capture
2 the whole thing with one example, -- but suppose the foreman
3 -- construction foreman over a bunch of welders is behind on
4 his schedule, and he says: Hurry up fellows, we are behind.
5 We really have to get this done, and they go out and various
6 of them violates various procedures to speed the thing up.
7 Is that foreman override in your view?

8 MR. GUILD: Just a second. The question is: Is
9 that work bad in the sense that it violates quality or
10 construction procedures. It is bad work, it is work that does
11 not meet Duke's regulatory requirements. Regulatory obliga-
12 tions.

13 JUDGE KELLEY: But doesn't it follow from a general
14 exhortation to speed things up, in your view?

15 MR. GUILD: The question is whether the quality
16 assurance system works, and that is whether or not work that
17 is done in violation of procedures is identified, is corrected,
18 and that the quality assurance system sees that the violation
19 doesn't occur again. It is the implication for quality
20 assurance. And the answer to your question generally is: Yes.
21 If a foreman's course of managing his crews work is such that
22 it results in the violation of procedure -- I am not talking
23 about an instance where it happened by mistake, or an error
24 on the part of the craftsman, because let's face it, quality
25 assurance is designed to catch human error. We all make

3-2-Wal

1 mistakes. That is not the issue. The issue is not accidental
2 violations of assurance quality standards. The issue is
3 violation of quality standards of procedures that is caused
4 by a course of conduct by supervision that we define as
5 foreman override; that is, pressure by a foreman to perform
6 that work in violation of procedures.

7 I submit that the need to argue about this is
8 less compelling, given the fact that there are sets of
9 circumstances that are well defined before the house, and
10 those are reflected in the affidavits that Duke conducted.

11 Now, whether they are fully reflected in those
12 affidavits, whether those are an honest and complete statement
13 of the actual action -- actual facts that occurred, I submit
14 is an issue that is also in doubt.

15 But the point is, all you have to do is look at
16 the affidavits, Judge, and you know the kind of circumstances
17 where they were reflective of the concerns by these workers.
18 Now, when Duke in its final report makes the cut that it
19 makes, that is, it takes Attachment A and says these are the
20 only instances of foreman override, all right, and it defines
21 foreman override -- and I will just point out to you. For
22 example, resolving the concern that they described as quality
23 work affected by production pressure.

24 They say of 199 supervisory craftsmen who were
25 interviewed, only five expressed a concern that the quality

1 of specific safety work was alleged, unsatisfactory.

2 That is just a misrepresentation of the evidence
3 that is even available to us on the face of those affidavits.
4 There are myriad numbers of people who state that their work
5 under production pressure by their foreman was of substandard
6 quality, violated construction quality procedures, or
7 constructual quality procedures.

8 JUDGE KELLEY: Okay. I think I follow your point.
9 What about this other point of whether we are interested in
10 non-safety related matters? G Pipe or whatever.

11 MR. GUILD: I think that is less troublesome. I
12 think on the first point, it has to be open to dispute how
13 Duke characterizes these things, because what they have done
14 is narrowed the issue to the point where there are no problems.
15 If you define it narrowly enough, there is no problem. There
16 is a problem, and the problem is attested to by the fact that
17 almost a majority of the on-supervisory people that they
18 interviewed expressed serious concerns.

19 Now, the question then is, does it have safety
20 significance, and I submit that where a foreman produces a
21 violation of quality standards, and it turns out that that
22 particular practice, that particular incident, is not of safety
23 significance in that specific, because it happened that that
24 piece of work was a non-safety related system, then we eliminate
25 the first prong of let's say, the Calloway decision of concern.

3-4-Wal

1 You don't have a piece of defective work that impunes the
2 safe operation of the plant, and you can resolve that. We are
3 not going to fight about that. That is not an issue.

4 What still remains an issue, it seems to me, is
5 what is the implication of the foreman's conduct for the
6 integrity of the quality assurance system, and the answer
7 may be the same: None. If it is a non-safety system that
8 doesn't require quality assurance --

9 JUDGE KELLEY: We can get into these arguments
10 as they arise, but I am just putting a proposition to you.
11 If it is a pipe coming out of the water coolant, we just
12 don't care. I say to you that the Board doesn't care about,
13 and there are a lot of other pipes that we don't care about.
14 It is not hooked up to the reactor, and that is that.

15 I mean, last January when we through out all that
16 stuff, why should we get into it now. That is my view, quite
17 frankly.

18 MR. GUILD: I don't think that is an unfair view.
19 All I can say is, if you have a foreman and a worker comes up
20 and says, you know, I can remember -- my foreman is guilty of
21 foreman override. He drives us in violation of procedure
22 to get the work done at any cost. Violation of the quality,
23 and violation of the rules.

24 And here are some specific instances that are
25 evidence of that. And one of those incidents happens to turn

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1 out to be on a Class G pipe. Then you quickly pass from the
2 question of whether or not that failure has any safety
3 significance. I agree with you, but I still think that you
4 ought to listen to the craftsman say why that foreman, and
5 what the circumstances were of that foreman improperly
6 pressuring the craftsman to do that work.

7 JUDGE KELLEY: He should listen to somebody. Now,
8 can't you represent to us in advance when this guy comes in
9 here he is going to tell you about safety related work? Not
10 Class G pipe, but safety related work.

11 MR. GUILD: To the best of our ability. Now, let's
12 talk about --

13 JUDGE KELLEY: We want to get to the witness list
14 pretty soon here. I think those scope points we understand.

15 MR. GUILD: Let me just mention something here.
16 This is the NRC's Staff position on this issue, September 12,
17 and I am looking at Page 9. Here is the issue they put
18 to us before we got this hearing, before we got discovery.

19 They have changed their position significantly,
20 I think. The questions then were whether there is any evidence
21 of defective work resulting from foreman pressure.

22 Two, whether QA procedures were violated as a result
23 of foreman pressure.

24 Three, if either defective work or QA procedure
25 violations will result in whether there is a basis for

3-6-Wal

1 filing that such defective work or procedure violations that
2 have been identified are not pervasive. That is the Calloway
3 formulations, as I understand it.

4 And four, if there has been either defective work
5 or QA procedure violations as a result of foreman pressure,
6 whether appropriate corrective steps have been taken, including
7 evaluation of the safety significance of such actions.

8 That is where you get the issue is it a G pipe or
9 something you have to worry about.

10 And five, whether appropriate steps have been taken
11 to prevent recurrence thereof.

12 That is the Staff's formulation, when we didn't
13 have the evidence in front of us. I submit that is a much
14 fairer and sounder view of what the issues should be than
15 the supposition advanced by the Staff today.

16 So that is our position on scope, Judge. Now,
17 if this is an appropriate point --

18 JUDGE KELLEY: Excuse me. Why don't you pass to
19 the witness list, Mr. Guild? Because, what kinds of things
20 these people -- you can do it by category, what are they
21 going to testify to.

22 MR. GUILD: Let me start maybe at this point.
23 I have been told by a number of potential witnesses on that
24 list, how are the NRC judges going to reach a valid decision
25 about this question in three days? How are the going to be

1 able to get to the bottom of this problem, given what -- the
2 limitation of time and opportunity to consider evidence.

3 Duke had from January to August to conduct
4 an investigation. All the resources at their disposal, with
5 all the sources of information in their employ, and subject
6 to their direction, to come forward and provide information.
7 The question has been troubling to us. We had had since the
8 Board's Order of the 21st of September the mandate, if you
9 will, to prepare for hearing and to attempt to examine the
10 basis for Company and staff positions.

11 We conducted fifteen depositions last week, and
12 those depositions were only of supervisory personnel. We
13 spend --

14 JUDGE KELLEY: Are these sixty people, are they
15 all among the two hundred and seventeen?

16 MR. GUILD: Yes, sir. And again -- I am sorry,
17 there is one who is not. Who is a supervisor, that occurs
18 to me.

19 JUDGE KELLEY: The people out of the sample?

20 MR. GUILD: These are people out of the sample,
21 not beyond the sample. The cut is essentially the first
22 grouping of sixteen -- sixteen are supervisors who were
23 implicated in one fashion or another in concerns of foreman
24 override. And the balance of them are persons -- the balance
25 of them are 32 welders and 12 non-welders who expressed

1 concerns implicating foreman override.

2 That reflects on its face, Judge, where the sampling
3 was so thin by Applicant's of persons outside the welding
4 craft that a much larger proportion of respondents outside
5 the welding craft provided evidence of foreman pressure, than
6 even inside the welding craft.

7 So, we are limited in the selection of witnesses
8 to those who Duke has identified with the flaws that exist
9 in that system.

10 Now, the rough cut of two hundred and seventeen
11 affidavits reflects approximately use of -- you subtract the
12 supervisors affidavits, half of the persons interviewed expressed
13 concerns as a result of the interviews.

14 Now, we have have made a cut from that half -- that
15 approximately 90 to 100, down to the 44 that appear on the
16 list here. We submit to you that it is our effort to -- we
17 don't know. There may be others out there who have, given an
18 affidavit, the affidavit doesn't fairly reflect their knowledge
19 of foreman override, and we will never know about it unless they
20 come forward independently.

21 But given what we were able to do in the ten days
22 we have had to do it, we have made a cut from the affidavits.
23 Now, --

24 JUDGE KELLEY: Those affidavits, of those 44 people,
25 I understand you would define foreman overrode, I understand

1 the way Mr. McGarry would define foreman override, which is
2 narrower -- which as I understand you, Mr. McGarry, means a
3 directive from a supervisor either expressed or implied,
4 to disregard some procedure, and just to do it the quick way.

5 MR. MCGARRY: Absolutely.

6 JUDGE KELLEY: But there is some kind of command
7 there. How many of your 44 spoke of that kind of a problem?

8 MR. GUILD: I can't answer that question. Probably
9 none. Probably not a single worker Duke interviewed would
10 have said to either Duke, and probably wouldn't have said to
11 us, that a foreman said commit a crime. Violate this
12 procedure.

13 MR. MCGARRY: That is just incredible.

14 MR. GUILD: I submit to you that there are workers
15 who said get it done this way. If you tell anybody to do it
16 this way, I will kill you. They have said that, and there are
17 affidavits to that effect. And if you exclude that second
18 class and feel comforted that somehow the result is not a
19 violation of the quality assurance requirements of the Nuclear
20 Regulatory Commission, or something that the NRC should consider
21 relevant to licensing of a nuclear power plant, you are missing
22 the point. Least the point that the workers themselves raise,
23 and that is, that there is pervasive pressure, and have been
24 from a number of supervisors far beyond the limited characterization
25 of Applicant's that with one supervisor on the job that that

1 pressure resulted in QA violations or bad work, but went
2 undetected for years at the Catawba site, even in the instance
3 of the one supervisor's '80-'81 time frame we are talking about.

4 JUDGE KELLEY: But these witnesses that you list
5 here are people, as I understand it, who have concerns relating
6 broadly to production pressure which they say resulted in
7 defective work, is that right, but you don't have any people
8 here where the foreman said: Forget the paper work, just
9 weld it.

10 MR. GUILD: Oh, yes, sir. Yes, sir.

11 JUDGE KELLEY: Let me get this straight. Either
12 you do or you don't. I want to know if you have any witnesses
13 on this entire list who claim foreman override in the narrow
14 sense, characterized in Mr. McGarry's sense of the word,
15 don't follow procedures, let's get it done fast.

16 MR. GUILD: That is not his definition, Mr.
17 Chairman. If that is your definition, yes.

18 JUDGE KELLEY: I thought it had been out on the
19 floor. You want to try it again? What is your definition?

20 MR. GUILD: Yes, let's hear the definition of the
21 Company. What foreman override is, Judge. Because they have
22 been real slippery about it, frankly.

23 MR. McGARRY: Oh, come on now. Let's not get into
24 that. We haven't been slippery about a thing, Your Honor.

25 JUDGE KELLEY: Could you redefine --

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MR. MCGARRY: I our view the issue is straight-forward. A foreman on a regular basis telling craft to violate procedures and or do work which renders the plant unsafe.

JUDGE KELLEY: And even not on a regular basis for the moment, because that is a pattern issue. I want to know if you have witnesses here that are prepared to testify that the foreman instructed them to violate QA procedures.

MR. GUILD: You are missing the boat again, Judge.

JUDGE KELLEY: That might be, it is my boat, and I want to know how many witnesses you have got.

MR. GUILD: I don't know. I can't answer the question. What I can tell you though is they told people to get those welds done. I don't care whether or not -- how you get them done, get them done, and it should be done by the end of the shift, and they glowed red hot and they burned black, and they couldn't possibly have been done in procedure. The foreman knew that and told that worker -- there are number of them -- that I will kill you if you tell on me. That in short, is foreman override, Judge.

End 5.

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JUDGE KELLEY: I think you can hypothesize the situation where things subtly shade into one from the other. Who knows what all you've got.

But what I'm after though is Mr. McGarry's definition, as a place for starting anyway, and I understand you to say that -- number one, you don't know how many you have got, and you are not real sure whether you've got any, right?

MR. GUILD: I can't speak for these people. These people are for the most part -- Judge, the definition that I've been following is the definition that I understand from the Board's definition from the beginning, and that is essentially the definition that says it's the result that counts, it's the violation of procedure, it's the faulty work that counts. It's pressure.

JUDGE KELLEY: I don't know that I elaborated all that much.

MR. GUILD: Okay.

JUDGE KELLEY: I think what we want to get to now is this now that we've heard some general discussion, why is it that you need sixty witnesses to come in here as opposed to twelve or fifteen?

MR. GUILD: Well, let me start -- if I can approach that question and make my points about what we've got.

In ten days, Judge, we tried to essentially

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2 replicate what Applicants and the NRC Staff did and go beyond
3 that. And in addition to being nonstop from dawn to dusk in
4 depositions during the last week -- and the court reporters
5 can bear me out on how much time and effort was required of
6 all parties to get that much done -- we have attempted to
7 reach as many people outside of that process for interviews
8 as we possibly can.

9 Some general observations. The process -- it
10 has been very difficult for us to get access to the people
11 who had these concerns. All right. Some of it's mechanical.
12 First, a large number of the phone numbers simply are in-
13 accurate or don't work. People without phones, that have
14 been disconnected, phones that have been taken out of
15 service, phones that are just plain wrong numbers on the
16 list. All right.

17 There are people in a large proportion who say
18 they have already said too much, quote. You know, "I said
19 too much when I gave the information to Duke. I'm scared."
20 The message has gone out very clearly that you are not to
21 talk to Palmetto Alliance. And we have heard that time and
22 time and time again. All right.

23 I have taken this up with counsel. But I've had
24 people tell me that, "I was so instructed." That they could
25 not talk to me, they could not talk to counsel for Palmetto
Alliance or they could only talk to counsel for Palmetto

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Alliance if Applicant's counsel was present.

2

JUDGE KELLEY: Okay. We may have to get into that between counsel. But I would like to know why you need sixty instead of fifteen.

5

MR. GUILD: Well, Judge --

6

JUDGE KELLEY: That's the question.

7

MR. GUILD: The reason is that if you want to get to the truth, you've got to hear from the -- you've got to hear it from the people who have the concern. Now, the people who have the concerns, to the best of our ability given the limited tools that have been made available to us, and that's questioning the people who conducted the investigation, reviewing as much paper work that has been made available to us -- and that isn't all there is, okay, that isn't all that's important -- is this is the best samples we can come up with. All right.

17

It's not exhaustive but it's meant to be representative and of added evidentiary significance. Okay. It includes people who are simply on the crew that received the vast amount of investigative effort from the Company, because there was a foregone conclusion from the beginning that it was only one crew, so it's a very limited inquiry beyond the single crew where the NRC found the problem. Okay.

24

So, we are very thin on that crew because we think that's a foregone conclusion. It's established that

25

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2 there is a problem there. We made efforts to try to be
3 representative of welders who were in other crews, to the
4 extent that they were interviewed. And they raised very
5 significant questions.

6 The Company has filed a report, Judge -- the
7 Company's documentation -- the Company has filed a report
8 suggesting only two supervisors were found to have committed
9 a wrong -- and a wide definition of that term which we will
10 get into. And yet the documentation of the report implicates
11 thirteen. Duke's own analysis implicates thirteen. The
12 affidavits themselves implicate a much larger number of
13 supervisors engaged in foreman override practices. All
14 right.

15 We have made an effort to be selective from those
16 in other welding crews outside of the single crew where
17 the Applicant and the Staff have targeted, and to the extent
18 that there is any information -- and there is very significant
19 information, although the sampling is very thin -- to be
20 representative of workers in other crafts, power house
21 mechanics, steel riggers, fitters, people in the piping
22 craft. All right. Electricians, people in instrumentation.
23 All right.

24 They are represented as best we could given the
25 information we had. So, the effort, Judge, was to be narrow
in the sense that we were selective from the information we

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1 had, the affidavits, the investigation in concerns, all
2 safety stuff as far as we are concerned. Okay. That was
3 our target. And to be representative of the scope of the
4 problem as we saw it developing, and that is the scope of
5 the problem far extends beyond the individual crew that
6 Applicants and the Staff report was the extent of the
7 problem. It includes crews supervised by other higher
8 supervision in the welding craft and crews outside the
9 welding craft extending into others who are involved in
10 safety-related work in the plant.

11 But that, in short, is the basis for the list.
12 Now, let me put something on the table, Judge, because I
13 think the ultimate problem that you are grappling with
14 is one that is, you know, a fair one. It's obvious. And
15 that is, how are you going to manage, you know, even if
16 you take at face value what I'm telling you, how are you
17 going to manage what appears to be an enormous number of
18 people. And I appreciate the fact that it's a very, very
19 difficult problem.

20 And here is what we suggest. We haven't been
21 able to interview many people. Mechanical problems, the
22 problem that they have a fear of retaliation and needing
23 some intercession from this Board in order to open up
24 that process. The problem is just time. Many people live
25 hours from Charlotte or hours from the job site, and we

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1 spent hours, literally hours, on the road going out and
2 seeing people.

3 But there are very, very distinct limits on,
4 you know, how much a handful of people can physically
5 accomplish in ten days. We have done as much as we possibly
6 can. All right. We need more time. All right.

7 Now, here is what I would offer for your considera-
8 tion. I think the only way that this Board can reach a
9 reasoned conclusion on the issue that I think is before the
10 house, and that is, what are the implications of the evidence
11 of foreman override and quality assurance at Catawba. Can
12 you reach a reasonable assurance determination based on the
13 evidence available?

14 That's Duke's report, Staff's review and the
15 evidence in chief of, you know, the concerns themselves.
16 In order to that, you've got to hear these concerns, Judge.
17 Now, mechanically how can that happen? First, I can't do my
18 job of most effectively focusing and presenting this
19 evidence given the state of my knowledge and ability to
20 prepare. I can't do it. I've done the best I possibly can.

21 And if somebody can tell me something I've missed,
22 you know, I will do better next time. But I don't think
23 there is anything I've missed. I've done everything I can.

24 More time is needed. All right. Second, we
25 are ready to go. Now, these people are here. Many of them

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2 I have talked to in depositions. And I'm very eager to lay
3 before the house on this record, you know, what I think is
4 the evidence that I've acquired so far that impunes the
5 validity of Duke's study and conclusions.

6 But I think you have to set in motion a process
7 for gathering this evidence from the people, from the horse's
8 mouth, so to speak, the workers. And here is my suggestion.
9 Either the Board provide us the time after we've completed
10 the review of what -- the paper work, you know, I will call
11 it that. You know, the study, its methodology, its conclu-
12 sion, its technical resolutions. The Staff's work on this
13 question. The witnesses we have identified and are before
14 the house.

15 And you give us some more time. You give us
16 the amount of time we need to get out and talk to these
17 people and do the kind of investigative work that we have
18 to do. The Applicants have done it. Their counsel that
19 haven't been in deposition with me have been out talking
20 to the workers. And I hear that back from the workers.

21 All right. And you schedule a second set of hear-
22 ings to consider the direct evidence from those with concerns.
23 It's either this list or it's a list that's narrower. But
24 it's a sample that as reasonable as we can come up with.
25 Okay. And you do that in an evidentiary fashion. You do
that on the record. Okay.

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2 Give us a week. Give us some period of time after
3 we conclude the technical phase or the investigation review
4 and then we work up the firsthand evidence from the crafts-
men themselves.

5

Or, alternatively I will put this before the house.

6

I am prepared to handle this portion of the evidentiary
7 record, and that is the direct evidence from workers and
8 supervisors of foreman override in a less formal cumbersome
9 process than us all sitting here on the record in a hearing
10 before this Board. And what I would submit is a practical
11 alternative that has been employed in licensing is the use
12 of the evidentiary deposition as a method where the parties
13 basically produce the evidence, with ground rules established
14 for how it's done, and that that evidence then becomes the
15 submission for the record. It becomes submission that can
16 be debated, can be the subject of motions to strike, objections
17 as to relevance or admissibility on other grounds, and it's
18 something that is put before the house, which is then the
19 subject of the argumentation, finding or further narrow
20 evidence to the extent there is a need for rebuttal or
21 to clarify issues that the Board sees as still before the
22 house.

23

Now, that practice was followed in the pending
24 Commanche Peak proceedings. And counsel from Mr. McGarry's
25 firm represented Applicants in that case. I participated

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briefly in conducting some of those depositions.

2

JUDGE KELLEY: I understand the procedure.

3

MR. GUILD: All right. The procedure, I think,

4

is administratively efficient for accomplishing a task that

5

is a difficult one but that I think nonetheless has to be

6

accomplished.

7

Now, it seems to me --

8

JUDGE KELLEY: Let me ask you a question. Now,

9

I understand you don't want to go ahead as we planned this,

10

and you've got two alternatives. One is to have a postpone-

11

ment and the other is to have evidentiary submissions.

12

Let me ask you why you are not in the position --

13

I might say just with regard to time, where we are and why

14

we are here today; we set up this whole procedure on the

15

21st of December and we called on parties to comment on these

16

time limits and procedures as they saw fit. And nobody made

17

any complaint about time. I realize it's tight. We said

18

it was tight. But we did not hear any complaints.

19

We think that -- I think that complaints about

20

time are late.

21

MR. GUILD: Judge --

22

JUDGE KELLEY: And beyond that, my question to

23

you is this. Whatever amount of time that you have had

24

to talk to these sixty people, I can't help but believe

25

that you know who on there are your best witnesses from your

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2 standpoint. Now, what is to prevent you from choosing your
3 top twelve or fifteen from your standpoint of what you want
4 to prove, and then we would then hear as many of those as
5 we can hear.

6 And if they were all very strong witnesses and
7 really substantially shook the Applicant's presentation,
8 then I assume that your view on the whole thing would be
9 substantiated. Conversely, if they didn't, wouldn't it be
10 fair to assume that we've heard the worst that we can hear
11 and that we can decide it on that basis? What's wrong with
12 that?

13 MR. GUILD: What's wrong with that, Judge, is
14 that we are forced to make those decisions with both hands
15 tied behind our back. Now, I can make a cut. But it has
16 to be very clear that the cut is based on very -- I've had
17 ten days. Duke has had since January to focus and figure
18 out who the people are with the most significant evidence.
19 The NRC likewise has had since that period of time.

20 I simply do not have the powers that would allow
21 me to, in an effective fashion, make that selection process
22 without further opportunity to to prepare. I mean, I think
23 that I've been forthright with you, Judge, and I certainly
24 haven't tried to save up objections to a process that's
25 difficult and one that all of us are trying to accomplish
in as efficient a manner as possible.

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2 I simply can only tell you that I can only make
3 decisions based on what I know. I know now more than I did
4 ten days ago. And I didn't call you up this weekend. I
5 could have called you Friday night or Saturday or Sunday,
6 but frankly it just didn't seem to be an efficient and
7 effective way of dealing with the issue that requires all
8 the parties to participate and have the documents in front
9 of us.

10 So, we are adjoining this issue, as far as I can
11 say, at the earliest possible time I could do it. Now,
12 I can detail you problems. I can tell you specific problems.
13 I can tell you that I learned only Friday that there was
14 testing done of -- done of welds in the plant that reflect
15 that they violate the ASTM standards for sensitization.
16 There are bad welds out there that were rejectable by that
17 standard.

18 MR. MC GARRY: That's a mischaracterization.

19 MR. GUILD: Well, it's not a false characterization.

20 JUDGE KELLEY: Gentlemen, gentlemen, this argument
21 has gone on too long anyway. I would like you to wrap up,
22 Mr. Guild.

23 I've got to hear from these other two counsel on
24 the question of number of witnesses. We are going to take
25 a break and then we are going to move to the next point.

MR. GUILD: All right, sir. Well, my point is

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2 the -- and you haven't allowed me to be heard on other than
3 what the agenda Mr. McGarry has set, because I had discovery
4 questions that I hope will --

5 JUDGE KELLEY: We will get to that. We will get
6 to that but we are going to have to be a little briefer than
7 we have been in the last hour.

8 MR. GUILD: All I'm saying to you, Judge, is that
9 on Friday afternoon for the first time we found out that
10 they tested the welds that they define as most critical by
11 the crew that they targeted and they found twenty-four percent
12 welds did not meet the ASTM acceptance standards. Nowhere
13 is that fact disclosed in Duke's report to this Board. No-
14 where is it disclosed anywhere that I know of to the parties
15 or to the NRC.

16 Now, learning that Friday afternoon raises some
17 very serious questions for us about how to focus on the
18 number one technical issue, and that's bad socket welds
19 that are welded in violation of interpass temperature
20 control.

21 I submit to you that when I've had Saturday,
22 Sunday and Monday to try to process the information that I
23 learned Friday afternoon on the number one technical issue
24 in this case, the burden should not be on me to explain why
25 I am not prepared to go forward and exhaustively put up an
affirmative case on that subject. I've done the best I can,

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Judge. And frankly I've been sandbagged on this, in my view.

Now --

JUDGE KELLEY: I think that's enough. Mr. Johnson, any comments on the number of witnesses by Palmetto?

MR. JOHNSON: Well, the Board's point concerning selection of witnesses by Palmetto Alliance in this situation I think reminds of a similar observation that the Board made in the earlier phase of the quality assurance proceeding in the partial initial decision in which you reached the conclusion about the -- whether there were systematic deficiencies in construction at Catawba or construction through faulty workmanship based on the evidence that was presented.

It wasn't based on all the witnesses that Palmetto sought to present. It was based -- and the Staff would agree with the Board's position and it should be implied here, that it can assume that we have competent attorneys here presenting the cases and we will choose the evidence wisely.

In the case of Palmetto Alliance, that they could be presumed to, based on their -- the information that has been made available to them, to choose the strongest witnesses for their case, and that as the Board has just said that if they are able to substantiate the allegations from those witnesses, then so be it. And if not, then it wouldn't seem to be any reason to go into a long list of witnesses who would

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2 appear to have isolated concerns or concerns which the
3 Palmetto Alliance themselves don't believe are the strongest
4 witnesses.

5 So, we subscribe to the Board's position that
6 you alluded to here and took in the quality assurance issue.

7 JUDGE KELLEY: The hearing of witnesses?

8 MR. MC GARRY: Your Honor, we subscribe to the
9 Board's observation of picking out the best. That's what
10 we did before to satisfy the Board's needs in a much more
11 extensive hearing than this hearing. And that could satisfy
12 the Board's needs in this regard.

13 The Intervenor raised many other issues, and I
14 am prepared to address them. But I think the Board just
15 wishes me to address the issue of number of people.

16 And that's our view.

17 JUDGE KELLEY: I think that would be best at this
18 point anyway. Now, just a moment.

19 (The Board members are conferring.)

20 end #4
21 Joe flws

22
23
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25

1 JUDGE KELLEY: All right. We are going to take a
2 ten minute break. Let me just say when we get back we intend
3 to spend ten minutes on discovery points you alluded to, Mr.
4 Guild, and ten minutes, if necessary, on the in-camera points
5 that you alluded to, Mr. McGarry. Hopefully we can then swear
6 the panel and go on to matters that have been argued to us
7 this morning, or yet to be argued. We will decide as soon as
8 we can.

9 Let's take a break.

10 (Short recess taken)

11 JUDGE KELLEY: All right. We are back on the record.
12 Just a word to the panel. Some of you know already we sometimes
13 spend about as much time discussing procedural points than in
14 taking of testimony.

15 It is our hope to get you sworn in shortly, and get
16 into the meat of the case certainly before lunch. We have a
17 couple of items left in which we will spend no more than ten
18 minutes apiece. ~~There are some discovery points with Palmetto,~~

19 There are some discovery points from Palmetto. I am
20 repeating what I said before we broke, and a couple of in-camera
21 matters by Mr. McGarry, with the Staff's comments, if appropriate.
22 Mr. Guild?

23 MR. GUILD: With respect to discovery matter, the
24 Board schedule indicated a request on Friday by Palmetto to the
25 Applicant for further documents, and we weren't able to reach

1 agreement after discussion about requests for further
2 documents, and they need to be brought before the house at
3 this point.

4 I classify those in four groups. First, the
5 meat of what was made available to us that reflects the actual
6 evidence of the concern by the craftsmen documentation is
7 concerned, are contained in the affidavits. There are
8 supposed to be 217. The number is slightly different
9 than 217. There are multiple affidavits for individuals.
10 The short of the process is that we understand from discovery
11 is people called in on one, or in some cases, many occasions.

12 In the first meeting, their statement was committed
13 to writing in hand and signed by the interviewer. Written by
14 the interviewer. That statement was then translated into
15 an affidavit. The individual then came back and either was
16 reinterviewed to get more clarification, as they call them
17 technical interviews in some cases, they may just be interviews,
18 where there was just further information brought forth by
19 the individual.

20 Ultimately, an affidavit was either signed or
21 not signed, and then there was a third and sometimes fourth
22 affidavit where it is called sign-off affidavit. The sign-off
23 affidavit is a little one paragraph prepared affidavit that
24 was presented to the individual at the time when they were met
25 with by the interviewer and the technical person who resolved

1 or investigated the concern.

2 And is reported to reflect individual satisfaction
3 with the investigation solution. And there are those -- are
4 most the class. A number of the affidavits reflect what
5 appeared to be prior affidavit that just hasn't been passed
6 to us.

7 On the face of those, they suggest that there is
8 some documentation of statements given to Duke by the
9 individual. The documentation is not available to us. It
10 has not been made available to us.

11 And we seek those. The statements -- the affidavits
12 in a number of cases from information that has come to our
13 attention, principally talking to the individuals, are purported
14 not to reflect the full and complete and true statement of the
15 individual's concerns or evidence given to the interviewers.

16 Some of that is probably in the process of just
17 innocent reinterpretation of language, but some of that may
18 be significant, and some of it has been identified as
19 significant by people we have talked to. They make general
20 characterizations, and all of the concerns that I stated are
21 not documented in my affidavit. All of the facts that I
22 communicated are not documented in my affidavits. My affidavits
23 do not reflect full and complete statements as I gave them to the
24 interviewer, aside from subjects that were never touched on.
25 I am talking about actual information transmitted.

1 So, in short, we have a need for documentation with
2 regard to the affidavits. The statements given by the
3 individuals that has not been transmitted to us.

4 I suggest that the form of that is in prior written
5 statements given by the individuals, or prior affidavits that
6 are not among the universe of documents that have been transmitted.
7 Since the integrity of the interviewing process, including the
8 interviewing techniques and sampling techniques and the bias
9 of the interviewers, and I mean that in a technical sense, bias.
10 Prejudgment, if you will. Selectivity if you will. It is
11 absolutely critical that this Board and Palmetto to present
12 to this Board, have access to documents that reflect as best
13 we can the true extent of the evidence that the people
14 communicated to the Company.

15 All we have are a smaller class of those documents,
16 and that is the affidavit. So we ask that the Board require
17 the production of any written statements that Applicant's have
18 in their possession for individuals interviewed which may be
19 an even larger class of people than the affidavits we have.
20 We don't know. In that any affidavits signed or unsigned that
21 are in the Applicant's position that reflects statements given
22 by craftsmen or individuals at Catawba.

23 Secondly, technical documents. The Board directed
24 Applicant's to make available to Palmetto and CSG underlying
25 documentary basis for their report's conclusions. And the Board

1 made the observation that drafts of reports were not within
2 the purview of what the Board contemplated being turned over,
3 if you will, in expedited discovery process that was set forth
4 at the time.

5 The problem is, we believe that material that can
6 be characterized as draft -- has been characterized by drafts
7 by Applicant's, represents in fact the underlying basis for
8 their reports conclusions on technical issues. Let me
9 explain.

10 The document that you have before you, the
11 August 3rd report, it is the collegial product. It is an
12 advocacy product. It is in large part the language of
13 counsel. That statement is pointed out by the deposition
14 testimony of a number of technical witnesses who describe
15 counsel writing the technical portions of the report in part.

16 MR. MCGARRY: I think the record will reflect that
17 it is not a large part. That is not correct.

18 JUDGE KELLEY: We will decide that.

19 MR. GUILD: I can't speak to how large or how small
20 except I submit material, and in any event that it is
21 suggested -- what you have in front of you, it is not simply
22 raw evidence. It is evidence that has been packaged, and I
23 don't mean that unfairly or majoratively, but it is an
24 advocacy document, so therefore, it already has received
25 processing beyond the underlying documentary basis that has

1 been presented to a decision-maker, this Board, by counsel,
2 -- it is counsel's product in part.

3 That suggests what is behind Counsel's product,
4 the evidence that they stack, meaning theirs, needs to be
5 discoverable for us to be able to say no, it should stack up
6 some other way. Mean something different.

7 We find that there is 27 page report, and then the
8 meat of it, if you will, the thing that is not judgmental or
9 argumentative, or not presented in any judgmental or
10 argumentative fashion, are the two attachments that reflect
11 the -- what they call foreman override and other safety
12 concerns.

13 Each of those concerns are -- were to have been
14 investigated and resolved by a technical person to perform
15 what they describe as an investigation/resolution, and they
16 are presented in discovery form. They are entitled Investigation/
17 Resolution of Concerns.

18 They have the name of the person assigned to a
19 concern number, and then they have a title. All right.

20 Curiously, while the final report is dated August 3,
21 1984, the forms that reflect the investigation/resolution of
22 concerns reflect that the investigation/resolutions were
23 performed thereafter, August 9th and 10th. I am looking at
24 one right now that is called concerned by quality of work
25 affected by production pressure, if you will, the whole shooting

1 match assigned to Mr. Llewellyn. Investigation/resolution
2 performed by him on August 9th, 1984.

3 Another example that is particularly significant
4 is interpass temperatures. The investigation/resolution
5 of that concern is dated August 10th, 1984, reflects that
6 it was performed by Mr. Brian Kruse, who is one of the panel,
7 and reviewed by Mr. Llewellyn.

8 So, in no stretch of the imagination can the
9 post hoc investigation/resolution of concern documents be
10 the underlying basis for a report that was published a week
11 before.

12 Now, what we understand was the basis for that
13 report was what I will characterize as drafts that may or
14 may not be the language the applicants have attached to that,
15 but it is the prior version of documents that provide an
16 investigation/resolution of that particular concern. It
17 is a version of that that may differ from what is in the
18 report, and therefore, may be called a draft.

19 We sought from applicant's those documents because
20 we believe that the completeness and accuracy of the final
21 report as reflecting a resolution of the concerns, the
22 evidence that was considered is in question, and we should
23 have the opportunity impeaching the validity of tueur final
24 report to have the document or the basis behind that report.

25 And that in our best understanding is reflected by

1 documents that have not been made available to us.

2 So that is the second class. I will call that
3 the technical documents or the investigation/resolution
4 documents that predate the August 3rd report.

5 In part that is important, because - if you just
6 take the interpass temperature, for example, and in my earlier
7 argument I tried to state that we don't believe that the report
8 fairly discloses a known series of institute testing that was
9 performed on Welder B's crews welds that reflected a very
10 high level of rejection rate. That is very significant
11 evidence. We only learned about that on Friday. Couldn't
12 possibly have known before, because it wasn't disclosed in
13 the report.

14 JUDGE KELLEY: Third class?

15 MR. GUILD: Third class. We believe that -- we
16 sought and counsel for Applicant declined to make available
17 documents reflecting the prior evaluations of the foremen who
18 were implicated in foreman override, as a result of the Duke
19 investigation.

20 Two in particular who were the subject of removal
21 from their supervisory positions, a general foreman and a
22 foreman. There were additional class of eleven who were
23 subjected to some form of reprimands, written or oral
24 counselling, okay, as a result of findings of the investigation.

25 Those extend beyond the individual crew, and even

5-9-Wal

1 beyond the individual foreman and general foreman in welding,
2 to other crews involving other crafts, and form part of our
3 case in demonstrating that there is, in fact, a pattern of
4 foreman override at Catawba that extends site wide, it
5 extends beyond --

6 JUDGE KELLEY: This is a request for evaluation?

7 MR. GUILD: Yes, sir.

8 JUDGE KELLEY: Personnel evaluations?

9 MR. GUILD: Exactly. Let's put it as narrowly
10 as we can as we described it with the Applicants. In the
11 previous case, where an individual was the subject of
12 specific numerous allegations, Mr. Davidson, the site quality
13 assurance manager, we sought and the Board directed the
14 production of his PPP -- it is a performance evaluation,
15 and there was an objection that that had privacy problems with
16 it, and the Board reviewed it in Camera and determined that
17 there were no policy objections to it, with an agreement
18 deleting one small part of that that is not relevant to this
19 discussion, and it was produced, and it was a piece of evidence.

20 Now, we sought in discovery the documentation
21 reflecting the evaluations, the appraisals of the foremen
22 who were implicated, and we believe that is clearly discoverable.
23 It is clearly calculated to lead to the production of relevant
24 evidence; for example, in the case of the individuals who were
25 found most culpable, what prior actions have been taken by

1 applicants to account for the practices that foreman engaged in,
2 three years before, '80-'81 time frame. Had there been prior
3 warnings that were unheeded, or was the quality assurance
4 system of applicants such that there was no prior indication
5 whatsoever that a practice that may now have existed for years
6 in that foreman and general foreman had, in fact, existed? It
7 never was documented. It was never brought to the attention
8 of supervision.

9 Did the supervision, did management of Duke Power
10 Company condone knowingly the misconduct of foreman and
11 general foreman and the other class of foreman? Did they
12 have reason to know, yet not inquire further? Did they simply
13 have no knowledge?

14 MR. KELLEY: I understand that point. Move on.

15 MR. GUILD: The fourth item is evidence that we have
16 characterized generally as production pressure, documentary
17 evidence. We inquired as to a number of witnesses about what
18 documentary indicia there were of production pressure. Many
19 of the affidavits indicate that foreman can do work efficiently
20 and are good supervisors, and don't violate the rules during
21 some periods, and they violate the rules during others, depending
22 on who they are being supervised by, and also depending upon the
23 levels of production pressure placed on them by that supervision.

24 Now, we sought evidence from a number of witnesses
25 in discovery, saw an identification of evidence from a

5-11-Wal

1 number of witnesses in discovery, reflects empirical evidence
2 of production pressure, if you will.

3 I generally describe that evidence as follows:

4 There was discussion that there was scheduling documents. There
5 were documents that reflected milestones for various systems in
6 the plant. Various turnovers that were required to be conducted,
7 and the particular crews who were assigned to that work knew
8 that there was a particular schedule for turnover system,
9 tended to increase the level of production pressure, and those
10 are the time frames when violations of procedure occur. Those
11 are the time frames --when instances of foreman override
12 dominated.

13 So, there are scheduleing documents that were
14 identified in Mr. Dick's deposition that are known to counsel.
15 We talked about it with general foreman, -- with general foreman
16 that there are reports maintained as to, among other things,
17 the absentee rate of a particular foreman. A tool that
18 management uses regularly to monitor the levels of morale on
19 particular crews.

20 If your crew has a high level of absenteeism, it
21 is indicative we are told of low morale, and problems in
22 managing your people. People don't come in to work.

23

24

25

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Perhaps, we submit, it should have been an index for particular foremen, of the need for management to take action to inquire into problems that existed with that foreman's work.

5 JUDGE KELLEY: You are suggesting we should look at absentee rates for crews?

7 MR. GUILD: I'm say as a matter of discovery it should be available to Palmetto and CESG to review objective evidence of production pressure to make our case that there are patterns of production pressure, patterns of foreman override that extend beyond this individual crew.

12 And, with regard to this individual crew, to be able to do similarly to the point about personnel evaluation, be able to demonstrate whether there were prior objective indicia of foreman pressure, for even the foremen that were found to have been wrongdoers. Should they have known, based on the evidence of work under the general foreman who was implicated, namely Billy Smith, and the foreman who was implicated whose name is Arlon Moore, should there have been evidence well-known to Applicants as a management tool that there was production pressure.

22 JUDGE KELLEY: What is in the category besides scheduling information?

24 MR. GUILD: Scheduling information, documentary
25 information regarding crew, foremen and crew performance such

1 as absentee rates.

2 There is a measure that we are told was used for a
3 time at the facility of a weighted value system in the welding
4 craft -- weighted value being a determination of in effect of
5 the amount of welds that were done, inches of weld calculated
6 on a consistent measuring basis. And that there were data
7 kept to use for production scheduling of that sort of welding
8 craft.

9 Two other points. This is a list that we basically
10 said we are looking for this information. All of it may not
11 be necessary. We will be happy to take it in manageable form.
12 It all may not be necessary, but these are the indicia that were
13 identified to us and I am trying to identify them for the
14 record.

15 Applicants took the position it was all irrelevant,
16 we couldn't have any of it. So the weighted value measures--
17 in the welding craft we are told there is a measure that are
18 reports reflecting rejection rates for X-ray welds, safety-
19 related welds, you know what levels of acceptance and
20 rejection is assigned to particular craftsmen, welders and
21 crews. And they keep statistics on the reject rates and
22 use that as a measure of presumably work quality.

23 And finally in that category, overtime records.
24 We are told that production pressure often can be reflected
25 when a particular system, particular piece of work is critical,

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1 overtime is assigned, is authorized only by upper management
2 for that particular crew.

3 Does the crew in question -- when did they learn
4 their overtime, when were Arlon Moore's second shift people
5 working particularly large numbers of overtime -- not
6 numbers of overtime, hours, an index again of the level of
7 production pressure for a period of time.

8 We believe that information and that class is
9 clearly discoverable. It is not the kind of thing I want to
10 put en masse in the record, it is something I want to be able
11 to examine in a scientifically sound fashion to be able to
12 understand whether from it we can adduce evidence that is
13 admissible that will prove production -- pressure of foreman
14 override and a significant breakdown of QA at Catawba.

15 Those are the four subjects of documentary
16 discovery at this point.

17 JUDGE KELLEY: Mr. Carr or Mr. McGarry? You
18 can have a little bit more than five minutes. If you can
19 say what you have to say in less time, fine.

20 MR. CARR: Yes, sir.

21 I will try to follow generally Mr. Guild's
22 outline.

23 As far as -- he is correct in saying that we did
24 have a discussion Friday afternoon. Perhaps I missed it, but
25 I don't recall the first category of information being

mm4 1 requested Friday afternoon. That is dealing with either
2 notes from which affidavits were prepared, or affidavits that
3 might be missing.

4 Let me just make a few points on that: In our view
5 we have made available to the Intervenors all the affidavits
6 that are in our possession and that form the basis for the
7 report.

8 Second, with respect to the manner in which the
9 affidavits were prepared, those affidavits were prepared on
10 the basis of interviews. The interviews that were reflected in
11 written notes. The written notes were not turned over because
12 the affidavits track the written notes.

13 We are not aware of any instance in which someone
14 who was interviewed says that the affidavit does not reflect the
15 concerns that he or she expressed in the interview. It is
16 not what we have been told.

17 I believe that an examination of the affidavits
18 will disclose that they expressed that the affidavits reflect
19 their concerns.

20 Our position is that had we been asked, we would
21 have responded: A, you have all the affidavits, and, B, we
22 will not turn over to you what handwritten notes may exist
23 from which the affidavits were prepared.

24 JUDGE KELLEY: Do you say further though that the
25 affidavits track the notes?

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1 MR. CARR: Yes, I did, your Honor.

2 JUDGE KELLEY: Do you mean by track, repeat them?

3 MR. CARR: No, in most instances it is verbatim,
4 as I understand the process, and of course the panel can answer
5 that.

6 But what they did is interview, take notes of all
7 that was said. At the conclusion of the interview, the person
8 being interviewed and the interviewer or interviewers would
9 then go over the notes together, and both would sign the
10 handwritten notes.

11 The handwritten notes were then turned over to a
12 typist to complete.

13 My information is that in no cases were substantive
14 changes made. There could have been changes of a grammatical
15 nature, putting something in a complete sentence.

16 The person that was interviewed was then called and
17 asked to come to review the affidavit and execute it if they
18 desired to.

19 JUDGE FOSTER: Do I understand that there may be
20 some affidavits that have not been turned over?

21 MR. CARR: No, that is not the impression I
22 wished to convey. To my knowledge all the affidavits that
23 we took as a result of this investigation, were turned over
24 to the Intervenors.

25 MR. GUILD: Judge Kelley, let me just add a point

mm61 for clarification.

2 First, some of this discussion was with other
3 counsel besides Mr. Carr, including Mr. Calvert. Different
4 counsel were at different depositions. The practice we under-
5 stand was followed, and the Board should understand, was that
6 the affidavits were prepared after one or more interviews,
7 and were submitted to the individual for signing. The
8 individual came in and signed them.

9 No individuals were allowed to have copies of those
10 affidavits, so if you call an individual up and say, "Is your
11 affidavit full, complete and correct?" He is going to say,
12 "What did I say?" They don't have them.

13 And, in a number of cases they asked for copies of
14 their affidavit so they could know what they were purported
15 to have said and make additions and changes, corrections if
16 need be. They were not given an opportunity to do that.

17 Further, let me point you to one affidavit as an
18 example.

19 JUDGE KELLEY: All right, you made your argument
20 Mr. Guild. I would like to finish this morning sometime,
21 so let's go back to Mr. Carr and see what he has to say.

22 MR. GUILD: I can show you an example if you like.

23 JUDGE KELLEY: Go ahead, Mr. Carr.

24 MR. CARR: I have completed my discussion at this
25 point, with one exception, your Honor. That is, it is our

mm7

1 understanding that Mr. Guild acknowledged when he started that
2 there may have been a lot of things that came up in different
3 depositions.

4 It is true, we weren't there for all deposition.
5 But the Board contemplated that we would sit down sometime
6 Friday and get a complete list of the documentation that
7 Palmetto wanted. This wasn't part of it.

8 JUDGE KELLEY: Okay. Among the affidavits that
9 were signed by these 200 -- is it 217 or 222?

10 MR. CARR: My understanding is 217 people were
11 interviewed, a number of them more than once. So, there are
12 quite a few more than 217 affidavits.

13 JUDGE KELLEY: I am thinking of the list on the
14 front of the package. It runs like 222.

15 MR. CARR: I think some were names that weren't
16 interviewed, I am told.

17 JUDGE KELLEY: How many of those people that were
18 interviewed for whom you prepared affidavits, signed the
19 affidavit?

20 MR. CARR: The majority, but I don't have the
21 precise number.

22 JUDGE KELLEY: Can you give us some idea as to why a
23 large number did not?

24 MR. CARR: Yes. First, it wasn't a large number,
25 it may be five to ten. I can give you a perfect example.

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1 JUDGE KELLEY: Then it is the overwhelming majority.
2 It is almost everybody?

3 MR. CARR: That's correct. One person that didn't
4 sign it put a statement on there, I have been interviewed at
5 random by the NRC, I have been interviewed at random by the
6 Department of Labor. I have been interviewed at random by
7 Duke, and I am sick and tired of signing documents. I am not
8 going to sign this one.

9 JUDGE PURDOM: There were also some that didn't
10 sign because they weren't given a copy.

11 MR. CARR: That is correct, sir.

12 MR. GUILD: And because the statement didn't
13 reflect a full and complete statement of their concerns of
14 the statement at the interview.

15 JUDGE KELLEY: That's what I'm trying to get at, if
16 a man signs an affidavit, presumably that is what he has got to
17 say. Now, did everybody but five or ten sign?

18 MR. CARR: That is correct.

19 JUDGE KELLEY: Is that what I hear?

20 MR. CARR: Yes. We can go through this and get
21 it through the panel later, but in instances where people came
22 in and said, "I have additional concerns," they were then
23 interviewed for those additional concerns.

24 That is why we have, in some cases, follow-up
25 affidavits.

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JUDGE KELLEY: Okay, go ahead.

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MR. CARR: Now, with respect to technical documents, this is a matter in which, as Mr. Guild points out, the Board said that drafts of the reports were not necessary for discovery. We didn't have to turn those over.

If I understand how the process worked, under my analyses, basic analytical work was done. The results of that work which have been turned over in discovery, but the results of that work were then put in draft form on a sheet that I believe we called an "Investigation Resolution" sheet. Those Investigation Resolution sheets are drafts of the technical attachments to our report.

From those sheets, which may have gone through a couple of versions, came our report. The reason that some of the Investigation Resolution sheets that Mr. Guild referred to are dated after the reports, is that once the report was written, the report, the language in the report which came from earlier Investigation Resolution sheets, was turned back into Investigation Resolution sheets at the request of Mr. Grier, who was in charge of the oversight panel.

It is our position that those Investigation Resolution sheets, that category of documents represent drafts of our report. Under the Board's instructions, they do not have to be made available.

JUDGE KELLEY: I make one point that has been made

nm101 before. Some of these questions are perhaps best answered by
2 the people we are going to be swearing in a little bit later.
3 And that may have some bearing ultimately on how we decide
4 the discovery question, which we hope will get decided before
5 tomorrow, anyway.

6 Go ahead.

7 MR. CARR: With respect to the third category, the
8 documents reflected in the prior evaluations of the foremen
9 in this matter. I believe they are thirteen in number at this
10 point. In our view, those documents are simply irrelevant
11 to this issue.

12 If I understood what Mr. Guild said both Friday
13 and today, they want to try to use these documents or
14 performance evaluations as an indication of whether there
15 were prior problems with supervisory performance with at
16 least the principal two individuals mentioned.

17 Those subjects were explored on deposition, and
18 the general response was that, yes, there were areas that we
19 had counseled these people on, but generally we were surprised
20 at the results of the investigation. The issue here is
21 whether an event occurred, not whether three years ago there
22 may be something on a performance evaluation that would
23 indicate there was a prior problem.

24 I think Mr. Dick, who is here on the panel,
25 Mr. Rogers, who is welding superintendent, whose deposition

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1 was taken, both indicated that there is nothing in the
2 performance evaluation -- or only a minimum in the performance
3 evaluation -- that would have indicated problems of the nature
4 that led us to take the actions that we took.

5 And there is another issue -- and I appreciate that
6 the Board has addressed this before -- that is an issue of
7 privacy. And I have to say in all candor, none of us are
8 comfortable discussing this, but I think there is an element
9 here to embarrass and harass in large measure. And I think
10 that this request moves close to that area. So, in our view
11 it is both irrelevant, and would invade the privacy of persons
12 whose privacy should be protected to the extent possible by
13 this Board.

14 The so-called production pressure documentary
15 evidence. I will go through these matters and discuss them
16 in more detail. I am prepared to do that. But, let me just
17 make the essential point.

18 Mr. Guild is correct, he did explore at some length
19 with both Mr. Dick, Mr. Rogers and one or two of the
20 other people of supervisory nature -- he was very candid about
21 what he was trying to do, he was trying to find some documen-
22 tary indication of a period during which production pressure
23 may have been high on a particular crew. And each of the
24 people being deposed said we had no such tool.

25 They went through and identified the documents

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1 that I am going to discuss in a moment, and they basically
2 said that these documents are not tools to do what you want
3 to do. If you take it out to its alternate, basically what
4 you would have is under the best scenario, assuming that you
5 could get what Mr. Guild wants from these documents, you
6 might have an identification of when work occurred on a
7 particular system on a priority basis, and when some crews
8 worked overtime. And from that you might be able to tell when
9 a particular crew worked on a particular area.

10 The issue here is whether some foremen put pressure
11 on workers to violate procedures.

12 We have got affidavits of 217 people there. Do we
13 really need a stack of scheduling documents three feet high
14 to get essentially to where we get with the documents already
15 before us?

16 We say no, those documents are irrelevant.

17 Let's look just briefly. The production schedules.
18 Mr. Dick discussed those. They are in the form of bar charts
19 and they are in very gross terms.

20 Moreover, if I understood Mr. Dick's deposition
21 correctly, what you are talking about is from the bar charts
22 you really cannot break out individual systems, except in an
23 exception when some supervisor asked that an individual
24 system be written in on the bar chart. It won't accomplish
25 what we want to accomplish.

1 Reports on crews absentee rates. When this came
2 up, it was acknowledged by Mr. Rogers, the welding superinten-
3 dent that, in fact, if you reviewed the crews' absentee records,
4 you could perhaps pick up a trend of excessive absenteeism
5 that might indicate a morale problem. Mr. Rogers then said
6 he has been reviewing the reports since he has been on site,
7 and he has noted no such trend. Nor, if I state the deposition
8 correctly, has anybody called that to his attention.

9 The third area, reports on rejection or acceptance
10 rates for X-ray welds. These aren't -- these particular
11 documents exist, but they exist as an indication of how well
12 we are meeting our standards. And they are not broken down
13 to any particular crew. The welder's stencil number is there.
14 Weighted value measure of the welds, as I understand it, that
15 was an attempt to try to measure an amount of work that needed
16 to be done. It is dependent on so many variables, that it was
17 my information -- and I believe said in the deposition --
18 that it just didn't do what we wanted it to do.

19 And finally, the overtime records. I understand
20 from listening to Mr. Guild that that request has been somewhat
21 narrowed because, if I remember Friday afternoon we were asked
22 for the overtime records of all the crews on the site.

23 Again, what this would indicate is perhaps a
24 time period for which a particular crew worked overtime.

25 It would not indicate in our view when a particular crew -- if

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1 it even occurred -- was having pressure put on it by its
2 foreman.

3 And finally as I indicated when I started discussing
4 the scheduling documents, the documents allegedly relating to
5 production pressure are beyond the scope in our view of a
6 definition of foreman override which is usually the case.
7 They may be consistent with Mr. Guild's view.

8 JUDGE KELLEY: Okay, thank you.

9 Now, I think that in the course of talking to this
10 panel we might get some further light shed on how affidavits
11 got written up and signed and the like, and that might be
12 helpful on some of the points we have talked about. But for
13 now I think that we have heard adequately from counsel. We
14 don't need any further argument on the remaining points.

15 We will decide the matter as soon as possible.

16 Mr. McGarry, I believe the subject of privacy or
17 in camera was raised. What did you have in mind?

18 MR. MC GARRY: Yes, sir.

19 Very briefly, your Honor, we have previously advanced
20 reasons for the proprietary treatment of discovery documents
21 in this proceeding. The reasons we advanced in that regard, we
22 would likewise advance for the in-camera phase, for the
23 ruling in camera. Let me, perhaps, just sum it up.

24 JUDGE KELLEY: Go ahead.

25 MR. MC GARRY: We promised the employees

mm 1 confidentiality. And it is our view that this promise should
2 be honored. The subject matter should be held in confidence.
3 That is, what does an employee think, in essence, of his
4 boss?

5 And, we don't think that is something that
6 necessarily should be brought out in public. If the individuals
7 who come forward wish it to be in public, then that is their
8 choice and we have no problem going public. But at this point
9 in time, given the fact that Duke Power Company offered the
10 confidentiality, if that is breached, it will inhibit our
11 ability to do subsequent investigations. And that, indeed, is
12 a rationale that has been recognized by the Appeal Board and
13 the Commission when it has to rule upon matters traditionally
14 involving the confidentiality extended by the Staff. But, it
15 likewise applies to our situation.

16 JUDGE KELLEY: I am not quarreling with you, I just
17 wonder, are there cases extending beyond the Staff to Applicant?

18 MR. MC GARRY: Except the one, the Catawba case, and
19 your ruling in the In-Camera phase of the hearing. We thought
20 that was the best precedent. We didn't look any further.

21 (Laughter.)

22 JUDGE KELLEY: The exercise of our prehearing powers.

23 MR. MC GARRY: That is correct. And we mentioned
24 that point before to the Board.

25 JUDGE KELLEY: But seriously, we did technically

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1 have Board witnesses which we had called, and we had an
2 exchange that, you come forward and we will keep this
3 confidential.

4 So, I suppose the analogy between us and the Staff,
5 we both work for the NRC anyway, might be drawn. But, you
6 might yet represent a different point.

7 Are you saying, Mr. McGarry, take your panel here,
8 that we should close this hearing?

9 MR. MC GARRY: Yes, sir.

10 And, I would say in addition to the reasons I
11 have advanced, we have numbers, we have listed numbers that
12 can be equated to names. But these individuals all worked with
13 names, they dealt with people, not with numbers. And it really
14 will inhibit, I think, their ability first to understand the
15 question, and then in responding have to worry about, now
16 what is the name, because immediately the answer is going to
17 be, well, John Doe, when I talked to him, this was his concern.

18 So, I think it has the potential of inhibiting their
19 response.

20 But, our primary reason is really to honor the
21 confidentiality that we did extend to these people. We think
22 that was -- it would be a breach of trust. We think it would
23 have a potential chaotic impact. I don't want to measure
24 what chaotic impact would be, but I think it has that potential.
25 I think it would assist the Board to be able to talk in

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1 names and get a better picture of what we are talking about,
2 as opposed to numbers.

3 JUDGE KELLEY: Is there any way that one could
4 segregate or bifurcate the appearance of this panel in terms
5 of what you are talking about -- I am thinking about questioning
6 on procedure and methodology and who did what -- before you
7 get to anybody's name?

8 MR. MC GARRY: No, sir. The folks down here -- I
9 am pointing to the right-hand side of the panel as you are
10 looking at them -- they are the interviewers. They talked
11 to the people.

12 The people in the middle, are the people who did the
13 technical evaluations. But many of them had follow-up
14 interviews, so they talked to the people. And then they went
15 off in a technical sense, they went back and talked to people,
16 but they were always thinking in terms of the people who they
17 had to deal with.

18 And then the people at the end, Mr. Dick the overview,
19 and Mr. Grier did the oversight, and they looked at it in
20 terms of people. So, it is quite difficult.

21 JUDGE KELLEY: So you would suggest a procedure like
22 the in-camera procedure we had before?

23 MR. MC GARRY: I think so, your Honor. I think it
24 will facilitate the proceeding. I think the proceedings are
25 more cumbersome without it, just as a practical matter, aside

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1 from our confidentiality arguments.

2 JUDGE KELLEY: Right now we are just talking about
3 this panel. The Staff may have a different view on its own
4 panel, as well as a different view on this panel.

5 Why don't we just stick with your panel for the
6 moment. They may have waivers as to individuals.

7 Mr. Johnson, what is the Staff's view on this?

8 MR. JOHNSON: Well, in some measure we would defer
9 to the Applicants on this, since they know better what
10 individuals they are presenting, and the way in which they
11 can and are prepared to deal with the evidence.

12 If, in fact, they don't know the code numbers for
13 the individuals in order to talk about the evidence, since
14 a good deal of the evidence will turn upon the source of the
15 information as well as the objects of the information, that
16 just presenting their discussions will be -- it will be
17 required if it were to be on the record, for everyone to
18 have a list of the codes and as they are talking to be
19 talking in terms of the code and be careful not to make a
20 slip. During the depositions we, I think, did a pretty
21 good job of keeping the names of sources off the record, as
22 Mr. Guild indicated, but there were slips. And, with this
23 many witnesses and being on the record here, I think the
24 chances of slips will be ever present.

25 I recall there were problems in the in-camera

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1 proceeding when we were on the record in the open session.

2 It tends to happen as you go along. I recall several
3 instances in which either the parties or the panel inadver-
4 tently mentioned a name.

5 I think it will inhibit the give and take of the
6 proceeding if we are on the record. It is not that it couldn't
7 be done on the public record. I think it is a close question.
8 But I think -- Mr. McGarry was making the point, I think it
9 will assist the understanding somewhat to be dealing with
10 names.

11 I think the Board and the parties will get a
12 better understanding of what is happening with names, rather
13 than numbers. But it is a fairly close question in the
14 Staff's view.

15 JUDGE KELLEY: Mr. Guild, Palmetto's view on whether
16 we should close.

17 MR. GUILD: Our view is similar to to as previously
18 stated, enhanced by our knowledge since essentially the only
19 confidence we are talking about here is the confidence of
20 Duke Power Company as the company that has been caught red-
21 handed committing a widespread practice of violating the rules.

22 JUDGE KELLEY: That is testimony, Mr. Guild. Please
23 speak to the area.

24 MR. GUILD: That is my view.

25 JUDGE KELLEY: That is your view.

mm20 1 MR. GUILD: And I intend to support that position
2 with the evidence that we have seen.

3 But, the bottom line is there is no legally
4 recognized privilege that allows Duke Power Company to shield
5 evidence of wrongdoing from the public scrutiny. Confidentiality
6 is a privilege, is a protection for individual people and
7 I submit to you that the individual people are victims of
8 pressure by Duke management and it turns the principle on its
9 head for Duke management to be suggesting that what they are
10 trying to do in this instance is protect people who in
11 numerous instances in their own statements have been victimized
12 by that very management.

13 We think that the confidentiality of the individuals
14 involved here in raising these allegations is largely
15 nonexistent, in short. That is the information that has
16 come beyond what was made available to us and this Board
17 on the record already from the individuals. It is almost to
18 the point of being a joke for individuals who are widely known
19 at the site as having been the source of this information.

20 One example, without naming a name, the company
21 figures out who a particularly critical source of information
22 is. They go to that individual and they get that individual
23 to do welds in the fab shop, so that they can simulate a
24 practice that that individual talked about.

25 Now they did that because they could tell who it

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1 was. Now that was further buttressing the position that we
2 earlier argued that the circumstances of those allegations
3 made known to Duke management by the NRC made it absolutely
4 clear who these people are.

5 So in short, confidentiality at this point is only
6 a shield for Duke from the public and from the participants
7 in this hearing process, because everybody else knows as a
8 practical matter.

9 Now we have stated earlier that we think there are
10 many instances that are identified in affidavits of individuals
11 expressing very concrete fears of reprisal from their super-
12 vision. And that is something, since these individuals here
13 in this whole hearing process for licensing this plant, it
14 has been Catawba workers who have been the source of the critical
15 evidence that has borne on the licensability of this facility,
16 the safety of its construction. Because if you listen to Duke
17 managment, there have been no problems. The source of informa-
18 tion has always been from the workforce who have critical
19 knowledge.

20 We want to protect that source of information and
21 keep it as open as possible.

22 JUDGE KELLEY: It doesn't protect them if we talk
23 about it in public.

24 MR. GUILD: Well, it doesn't.

25 JUDGE KELLEY: What does that do for them? Everyone

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1 at the site knows who they are, but it isn't in the newspapers
2 yet. It may be tomorrow morning if we are going to talk
3 about them this afternoon.

4 MR. GUILD: The approach that we have been following,
5 Judge, is one that has worked just fine. And, in fact, if
6 there is any legitimate concern about using names, it is well
7 protected by the process that has been employed in the
8 depositions. And the process that has been employed in
9 their own report. And that is simply having a chart that has
10 the names in front of them. Everybody uses those names, they
11 use them all the time in their report.

12 I won't represent to you that we are all perfect.
13 We have made slips. But I submit to you that the process has
14 worked well, that we can manageably go through these concerns
15 that have been organized by number, with the members of the
16 panel having the list of numbers in front of them.

17 The only thing that this Board has protected over
18 our objection, from public disclosure, are the association
19 of specific names with the confidential information that they
20 provided. Most particularly a name that has been associated
21 with an affidavit. Counsel for Applicants said very
22 specifically, and I think it is -- this is a fundamental basis
23 for the Board's earlier ruling -- that the only thing they
24 sought to protect were the names, literally, without -- the
25 names even with information that was identifying. If that

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1 information could identify the individual, that was not the
2 subject of their request for protection. Simply the names.

3 We have protected those names and will continue to
4 do so under the Board's direction. But we think that at
5 this point you have had a series of discovery depositions.
6 None of them were protected. If Applicants were so assiduous
7 about being concerned about the names of individuals, they
8 never raised that concern during 15 depositions that were
9 conducted last week.

10 Now there was only one instance that even comes to
11 mind where a name was elicited improperly, and that name was
12 deleted from the transcript.

13 JUDGE KELLEY: Okay.

14 MR. MC GARRY: What the Board has to remember is that
15 those depositions were taken under protective order. Even
16 at that instance, we were being additionally careful.

17 JUDGE KELLEY: I think it is a kind of close question.
18 I think we have heard from everybody, I think we can decide
19 it.

20 MR. GUILD: Let me add one other point if I may,
21 Judge. One fundamental problem we are finding is that each
22 individual when presented with the final affidavit to sign
23 off on their concerns, is led to believe that their concerns
24 are isolated, they alone raised this question.

25 Nobody is given a feeling, let alone factual

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1 understanding of the true scope of corroboration for concerns
2 that they raised. Even gross numbers, "Well, 30 other people
3 expressed the same concern you do." They asked us what the
4 result was, they wanted to know from us, "Well, how many other
5 people raised this question?" And we would give them a rough
6 number and they would say, "Really!" I was told I was it, I
7 was an isolated case.

8 There is a fundamental purpose served by this Board
9 on the public record setting forth what the violations of
10 quality assurance standards and procedures are, because that
11 is a mechanism for acquiring the truth, for learning the full
12 truth and the scope of this problem. To the extent that we
13 can't talk about it in public, the public is a loser. The public
14 is a loser because they don't know what happens. And workers
15 that may have further information are unable to contribute
16 that information to this process.

17 JUDGE KELLEY: Is there any problem -- let's pose that
18 we do close this hearing, we get the transcript, we go through
19 the transcript and you black out every such name and put it in
20 the public document room. Does the public know what happened
21 then?

22 MR. GUILD: No, sir. Who is going to read a transcript?

23 JUDGE KELLEY: Well, you know, you can only take it so
24 far. It is public.

25 MR. GUILD: I think it is a poor substitute for the

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1 contemporaneous --

2 JUDGE KELLEY: It is not the same thing, I admit.

3 MR. GUILD: It is better than no access at all. I
4 can set that point, too. I think the Board Chairman made an
5 observation that is useful. And that is that clearly all
6 subjects that have nothing to do with the names of people. I
7 mean, there are depositions where not even a name came up, not
8 even a number came up because numbers -- the source of
9 information was never the subject of discussion. And those
10 depositions reached the substance of wrongdoing, they reached
11 the substance of the Duke investigative methodology and
12 findings and the resolution of concerns.

13 So, it isn't necessary that large parts of the
14 examination of this panel even deal with the subject of
15 identifying specific people. And I think it is easily
16 segregable to the extent that you have to even talk about
17 numbers that are associated with names.

18 In short, we think that you ought to approach it on
19 the public record; that the protection of using numbers is
20 fully adequate to accomplish the desire to protect the sources
21 of information and if there is any further concern you can
22 segregate subject matter and talk about subjects that have
23 nothing to do with the individual sources. And further
24 protect from inadvertent identification, sources through
25 inadvertence.

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JUDGE KELLEY: Is there anything else that

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absolutely has to be raised and dealt with before we swear

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the first panel?

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MR. GUILD: Before you do that, I wanted to bring

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to your attention on the scope questions, just a reference.

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If you would refer to Individual 114's affidavit -- I am

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not asking you to do it now -- just read a line.

end T7

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JUDGE KELLEY: Let me ask, do we have that particular code?

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MR. GUILD: It should be -- at the first several pages of that stack of affidavits should be a handwritten list of names from one through --

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JUDGE KELLEY: Oh, you are just referring to the number?

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MR. GUILD: Exactly. That's the number of the individual. All right.

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And this is with regard to the issue of how you define scope and I think it would be useful in understanding how individuals approached the issue and how I think the Board should.

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The quality of my work was important to me. On the 84 tubing work I felt pressure to violate interpass temperature between passes. And here is the relevant quote: I was never specifically instructed to do this but felt in a round about way this is what was expected.

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And then the detail. And I submit to you that that is the meat of the concern expressed by that individual and reflective of the problem, and that is the result was procedures were violated, a clear understanding of the individuals that that was within the knowledge of the foreman and the expected result.

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JUDGE KELLEY: Okay. He might be an appropriate

#8-2-SueT 1 witness for you.

2 Mr. McGarry, are you ready to present your first
3 panel?

4 MR. MC GARRY: Yes, sir. The panel is seated and
5 at this point in time we would like them all to stand to be
6 sworn in.

7 JUDGE KELLEY: Some of them are previously sworn
8 but I don't know if it matters.

9 MR. MC GARRY: Mr. Dick, Mr. Grier, some of them
10 are. I think for ease they could all be sworn.

11 (The panel of witnesses are sworn by Judge
12 Kelley.)

13 MR. MC GARRY: Your Honor, what we thought was
14 the simplest thing to do was start with Mr. Dick on the far
15 left hand side, have Mr. Dick identify himself, his name,
16 his title and then explain his role as a panel member here,
17 and his role in the Duke investigation effort.

18 And then we would ask each other individual to
19 follow Mr. Dick.

20 JUDGE KELLEY: Let me say in expectation. It is
21 around 12. Would that part of it take only a few minutes?
22 Do you want to do any overviews or --

23 MR. MC GARRY: No, I think that is what we would
24 do.

25 JUDGE KELLEY: Maybe we could do that much and

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1 quit for lunch. All right. Why don't we quit for lunch
2 after we have done that?

3 All right. Go ahead.

4 MR. GUILD: Excuse me. If Applicants have some-
5 thing they want to present as evidence perhaps we could
6 identify that before lunch so we will know what is on the
7 table.

8 Whereupon,

9 R. L. DICK,
10 G. W. GRIER,
11 T. H. ROBERTSON,
12 T. O. MILLS,
13 A. R. HOLLINS, JR.
14 S. E. FERDON,
15 D. H. LEWELLYN,
16 B. J. KRUSE,
17 L. C. BOLIN,
18 F. H. FOWLER,
19 M. J. LEWIS,
20 M. A. SUTTON,
21 J. C. SHROPSHIRE,
22 S. H. VAN MALSSSEN,
23 - and -
24 D. ABERNETHY

25 were called as witnesses by and on behalf of the Applicant,
Duke Power Company and, having first been duly sworn, were
examined and testified as follows:

DIRECT EXAMINATION

BY MR. MC GARRY:

Q Mr. Dick?

A (Witness Dick) My name is Robert L. Dick. I am
Vice President Construction for Duke Power. I was responsible

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for managing the investigation that led to the report.

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Q Mr. Grier?

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A (Witness Grier) I am George W. Grier, III.,

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Corporate Quality Assurance Manager for Duke Power Company.

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I served as member and chairman of a review board that Mr.

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Warren Owen appointed to overview the investigation.

7

Q Mr. Robertson?

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A (Witness Robertson) My name is Tom H. Robertson.

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I am Construction Engineer Support Restraints at Catawba.

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I did various technical interviews and sponsoring the

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drill hole repair on Attachment A.

12

Q Thank you. Mr. Mills?

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A (Witness Mills) My name is Tommy D. Mills. I

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am Construction Engineer Mechanical at Catawba. My role

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was technical evaluations.

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Q Mr. Hollins?

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A (Witness Hollins) I am Ed Ray Hollins, Jr.

18

I am the Division Manager at Station Support Division North,

19

and my job was, I was the day-to-day director of the

20

investigation.

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Q Mr. Ferdon?

22

A (Witness Ferdon) My name is Steven Eric Ferdon.

23

I am an Engineering Associate with Design Engineering. My

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role is to assist Mr. Kruse in the development and carrying

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out the field testing of the interpass temperature question.

#8-5-SueT

1 I also evaluated the aggressiveness of the
2 environment.

3 Q Mr. Shropshire?

4 A (Witness Shropshire) My name is Joe C. Shropshire.
5 I am a Quality Assurance Engineer. And my role on this
6 particular panel is that to speak to the affidavits taken
7 from inspectors.

8 Q Mr. Llewellyn?

9 A (Witness Llewellyn) My name is David H.
10 Llewellyn. I am Associate Field Engineer in the Construction
11 Department. I was responsible for assisting in technical
12 interviews, in performing resolution of technical concerns,
13 one being the interpass temperature concern, another being
14 work on an item that was non-conformed, and the third being
15 on the item of the stenciling of welds.

16 I was also responsible for performing the
17 follow-up technical interviews at the conclusion of that
18 resolution of work.

19 MR. GUILD: I'm sorry. The last statement I
20 missed. Could you repeat that?

21 WITNESS LLEWELLYN: I was responsible for perform-
22 ing the follow-up technical interviews.

23 BY MR. MC GARRY: (Continuing)

24 Q Mr. Van Malssen?

25 A (Witness Van Malssen) My name is Stephen H.

#8-6-SueT 1

2 Van Mallsen. I am Construction Staff Engineer. I was in-
3 volved with the technical interviews that resulted from the
4 initial interviews, involved with writing of the report,
5 and with the vertical stiffeners question.

6 Q Mr. Kruse?

7 A (Witness Kruse) My name is Brian J. Kruse. I
8 am Assistant Field Engineer at Catawba, Duke Power Company.

9 I conducted the technical evaluations on the
10 interpass temperature concern, arc strike removal concern
11 and the sequence of making socket welds.

12 Q Mr. Abernethy?

13 A (Witness Abernethy) My name is David Joe
14 Abernethy. I am Manager of Construction Personnel Administra-
15 tion. My role was to look at personnel issues identified
16 and make recommendations to management.

17 Q Mr. Bolin?

18 A (Witness Bolin) My name is Leroy Bolin. I am
19 an Employee Relations Assistant, Station Support Division
20 North. And my role was to interview designated employees
21 in various craft and determine and document any quality or
22 concern each had.

23 Q Ms. Fowler?

24 A (Witness Fowler) I am Faye H. Fowler. I am
25 the Supervisor Employee Relations in the Construction Depart-
ment. My role was to provide input to Mr. Hollins in

#8-7-SueT 1

2 developing the essential interview questions to interview
3 various employees for any concerns they might have relating
4 to quality and also to assist Mr. Abernethy in the wording
5 of some of the personnel craft.

6 Q Thank you. Ms. Lewis?

7 A (Witness Lewis) My name is Melita Joyee Lewis.
8 I am an Employee Relations Consultant in Corporate Human
9 Resources. And my role was to interview designated employees
10 at Catawba in order to define and determine and document
11 the scope of production and quality concerns.

12 Q Mr. Sutton?

13 A (Witness Sutton) My name is Michael A. Sutton.
14 I am an Employee Relations Assistant assigned to the
15 Catawba Nuclear Station. My role was to introduce employees
16 in an effort to identify and document their concerns.

17 MR. MC GARRY: Your Honor, that concludes the
18 statements of each of the panel members. Would you like us
19 to move the testimony?

20 JUDGE KELLEY: Why don't you go ahead?

21 MR. CARR: I have questions of Mr. Dick and Mr.
22 Grier.

23 BY MR. CARR:

24 Q Mr. Dick, you first, sir, do you have in front of
25 you a document entitled "Testimony of R. L. Dick" with
Attachments A through C?

#8-8-SueT 1

2 A (Witness Dick) I have the testimony but not
the attachments, Mr. Carr.

3 Q All right.

4 (The attachments were provided to the witness.)

5 Take a moment to review those attachments to make
6 sure they are consistent with what is described in your
7 testimony, please.

8 A (The witness is looking at documents.)

9 Yes. I have Attachments A, B and C.

10 Q Thank you. Was this document prepared by you or
11 under your supervision?

12 A Yes.

13 Q Do you have any corrections or additions you
14 would like to make to this document at this time?

15 A No.

16 Q And do you adopt this document as your testimony
17 in this proceeding?

18 A I do.

19 MR. CARR: Thank you, Mr. Dick. Your Honor, at
20 this time I will ask that the document entitled "Testimony
21 of R. L. Dick" be marked for identification as Applicant's
22 Exhibit 113 and received into evidence.

23 MR. GUILD: Your Honor, subject to our examination
24 of the witness and potential motions to strike, we have no
25 objection.

#8-9-SueT¹

2 MR. CARR: That's consistent with our prior ground
3 rules.

4 JUDGE KELLEY: Yes, I believe it is. You are
5 correct. Mr. Johnson?

6 MR. JOHNSON: No objections.

7 JUDGE KELLEY: So ordered.

8 (The document referred to
9 is marked Applicant's Exhibit
10 113 for identification.)

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11 MR. CARR: Thank you.

12 BY MR. CARR: (Continuing)

13 Q Mr. Grier, do you have in front of you a document
14 entitled "Testimony of G. W. Grier" with Attachments A through
15 C?

16 A (Witness Grier) Yes, I do.

17 Q And was this document prepared by you or under
18 your supervision?

19 A Yes, it was.

20 Q Do you have any corrections or additions you wish
21 to make to that document at this time?

22 A No.

23 Q And do you adopt this document as your testimony
24 in this proceeding?

25 A Yes.

MR. CARR: Thank you, sir. Your Honor, at this

#8-10-SueT time I would ask that the document entitled "Testimony of
2 G. W. Grier" be marked for identification as Applicant's
3 Exhibit 114 and received into evidence.

4 JUDGE KELLEY: Numbered and received under the
5 same understanding as before, under the usual practice,
6 which I won't keep repeating.

7 (The document referred to is
8 marked Applicant's Exhibit 114
9 for identification.)

10 BY MR. MC GARRY: (Continuing)

11 Q Mr. Hollins, do you have before you a copy of a
12 document entitled "Testimony of Alton Ray Hollins, Jr."
13 before you?

14 A (Witness Hollins) I do.

15 Q Six pages in length; is that correct?

16 A That's correct.

17 Q Do you have any additions or corrections to make
18 to this testimony?

19 A I have one correction.

20 Q Yes, sir, what is that?

21 A On Page 4, just about halfway down the page, e.g.,
22 the Number 133 should read 136.

23 Q Do you have any further corrections or additions
24 to this testimony?

25 A I do not.

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#8-11-SueT 1

Q Do you adopt this document as your testimony for
2 use in this proceeding?

3 A I do.

4 Q Is it true and correct to the best of your
5 knowledge?

6 A It is.

7 MR. MC GARRY: Your Honor, we request the
8 testimony of Alton Ray Hollins, Jr. be marked for identifica-
9 tion as Applicant's Exhibit 115 and received into evidence.

10 JUDGE KELLEY: Marked and received.

11 (The document referred to is
12 INDEXXXXXXXXXX marked as Applicant's Exhibit
13 115, for identification.)

14 BY MR. MC GARRY: (Continuing)

15 Q Mr. Hollins, do you have a copy of a document
16 bearing an August 3rd, 1984 that's entitled "Duke Power
17 Company's Investigation of Issues Raised by the NRC Staff
18 in Inspection Reports 50-413/84-31 and 50-414?84-17?"

19 A (Witness Hollins) I do.

20 Q Mr. Hollins, are you responsible for this
21 document?

22 A I am.

23 Q Was it prepared by you or under your supervision?

24 A Yes, it was.

25 Q Now, there were various members of the panel

#8-12-SueT

responsible for various sections of this report?

2 A They were.

3 Q And I will ask this of the panel collectively.

4 Ladies and gentlemen of the panel, have you indicated to
5 the Board and the parties in a general fashion the portions
6 of this report that you are responsible for?

7 A (The panel witnesses replied in the affirmative.)

8 Q Now, Mr. Hollins, do you have any corrections or
9 additions to make to this report?

10 A (Witness Hollins) I do.

11 MR. MC GARRY: I might add, the record should
12 reflect that by letter of August 13th, 1984 from Mr. Carr
13 to the Board, with copies sent to the parties, there is a
14 list of corrections.

15 BY MR. MC GARRY: (Continuing)

16 Q Are you familiar with that letter, Mr. Hollins?

17 A I am.

18 Q And do you subscribe to those corrections and
19 additions?

20 A I do.

21 Q Do you have any further corrections or additions?

22 A I do.

23 MR. GUILD: Mr. Chairman, excuse me. Would
24 counsel share a copy of that letter? I don't have that with
25 me.

#8-13-SueT

MR. MC GARRY: Yes.

(Mr. Guild is provided with a copy of the document referred to.)

BY MR. MC GARRY: (Continuing)

Q And what are your further corrections, Mr. Hollins?

A Down where the column, section, page, line, Page 5, Line 5 should --

Q Just a minute.

A I'm sorry.

Q Are we looking at the August 13th document?

A I'm looking at the August 13th document.

Q All right. What is that correction, Mr. Hollins?

A Page 5, Line 5 should read Page 9, Line 5.

Q Okay.

A In both instances there. Two corrections there.

Q So, the second one would be Page 9, Line 6?

A Page 6, that's correct.

Q Any further corrections?

A Not to the August 13th document, no.

Q Any corrections -- any further corrections to the August 3rd document?

A Yes, there is. On Page 14 --

Q Yes, sir.

A -- Line 6, it presently reads five steel workers,

#8-14-SueT 1

it should read six steel workers.

2 Q Any further corrections?

3 A Page 19 --

4 Q Yes, sir.

5 A -- Line 3, 195 should read 196.

6 Q Any further corrections?

7 A That is all the corrections I have.

8 Q Do you adopt the August 3rd investigation report
9 as your testimony for use in this proceeding?

10 A I do.

11 Q Do the members of the panel who were responsible
12 for sections of this report adopt their sections of the
13 report as their testimony for use in this proceeding?

14 A (The witnesses replied in the affirmative.)

15 Q Mr. Hollins, is the report, to the best of your
16 knowledge true and correct?

17 A It is.

18 Q Members of the panel who were responsible for
19 certain portions of this report, to the best of your
20 knowledge are your portions true and correct?

21 A (The witnesses replied in the affirmative.)

22 MR. MC GARRY: Your Honor, at this time we would
23 move and ask that the subject investigation report be marked
24 for identification as Applicant's Exhibit 116 and received
25 into evidence, and that Applicant's letter of August 13th,

#8-15-SueT 1

2 which reflects various corrections be marked for identifica-
3 tion as Applicant's Exhibit 117 and be received into
4 evidence.

5 JUDGE KELLEY: A question about the identification
6 of portions of the report that are attributable to particular
7 people.

8 MR. MC GARRY: Yes, sir.

9 JUDGE KELLEY: Now, how is that to be done? I
10 don't see any initials that sometimes we see in testimony.
11 Or, is it going to be done at a later date?

12 MR. MC GARRY: We can do that. Specifically,
13 we asked them in a general fashion to tell the sections they
14 are responsible for.

15 JUDGE KELLEY: They've done that, yes. That's
16 what you meant, though, just sort of a headline description.

17 MR. MC GARRY: You don't mean page by page and
18 line by line?

19 MR. MC GARRY: No, sir.

20 JUDGE KELLEY: All right. Go ahead. So, they
21 are offered for marking and admission; is that correct?

22 MR. MC GARRY: Yes, sir.

23 MR. GUILD: Mr. Chairman, let me suggest an
24 approach this way. We do have a basis for objections as
25 to the admissibility of the report based on qualifications
of the persons who have offered to sponsor the report, based

#8-16-SueT

1 on in addition hearsay objections, and do have general
2 questions that are of the sort that one would address
3 through a voir dire of the witness as to their competence
4 to sponsor through qualifications or knowledge portions of
5 the report.

6 I would suggest that that's generally speaking a
7 pretty cumbersome way of approaching this issue at this point
8 in time. I don't want to waive objections I have as to that
9 on those grounds. I guess what I would suggest is that I
10 am willing to incorporate generally a voir dire examination
11 as part of my examination of the panel and reserve my
12 objections until the time of my cross, the completion of
13 my cross, and perhaps on that basis move to strike portions
14 of the report.

15 That would seem to be administratively more
16 simple here and not require, as we have had in the past,
17 lengthy voir dire examination line by line, a preliminary
18 analysis.

19 I would like to direct one general question to
20 the panel at this point that would be characterized by
21 way of voir dire if I may. And with that limitation simply
22 reserve my objections as to the admissibility until the
23 time comes.

24 JUDGE KELLEY: Let me just make sure I understand
25 this.

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Honor.

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MR. MC GARRY: It seems reasonable to us, Your Honor.

JUDGE KELLEY: In effect, we are deferring the ruling. It's marked. We will go ahead and hear from this panel and in the course of your cross you will include some questions in the nature of voir dire?

MR. GUILD: Yes, sir.

JUDGE KELLEY: Then, when you are through with cross you will probably make a motion to strike various portions and identify them and make an argument, correct?

MR. GUILD: Yes.

MR. MC GARRY: And, Your Honor, I think for ease of the record it would be best if we have it received now subject to the recognition of Mr. Guild not waiving his rights of voir dire or subsequent cross examination of the document. Then, he can move to strike.

MR. GUILD: Just so we don't lose it. That's all I'm saying.

JUDGE KELLEY: All right. Admitted subject to that understanding.

(The documents referred to are marked Applicant's Exhibit 116 and 117, respectively, for identification.)

MR. MC GARRY: There is one more item.

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#8-18-SueT

JUDGE KELLEY: Fine.

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BY MR. MC GARRY: (Continuing)

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Q Mr. Hollins, reference has been made to affidavits.

4

Are you familiar with the affidavits? When I use the term

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affidavits, are you familiar with what I am referring to?

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A (Witness Hollins) Yes, I am.

7

Q And that's the affidavits that were taken by

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Duke Power Company of numerous construction personnel; is

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that correct?

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A That's correct.

11

Q And do those affidavits form the underlying

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basis of your report?

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A They do.

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Q Did you rely upon those affidavits in arriving

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at your report?

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A I did.

17

Q Members of the panel, with respect to your specific

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sections, did the affidavits in question serve as a basis

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for your conclusion?

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A (The witnesses replied in the affirmative.)

21

Q And did you rely upon those affidavits in your

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work as forming the conclusions that you reached?

23

A (The witnesses replied in the affirmative.)

24

MR. MC GARRY: Your Honor, at this time we would

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request that the affidavits in question be marked for

#8-19-SueT1

2 identification as Applicant's Exhibit 118 and received into
3 evidence.

4 We have previously served copies of these affi-
5 davits on the Board and parties, although we do have
6 additional copies for those people who do not have them.

7 JUDGE KELLEY: Does this include then the first
8 several pages, the printed names, handwritten, 222, something
9 like that?

10 MR. MC GARRY: No, sir. These are the affidavits
11 that Mr. Guild has. They are typewritten affidavits.

12 JUDGE KELLEY: Just the affidavits themselves?

13 MR. MC GARRY: That would be correct, yes.

14 JUDGE KELLEY: Of which there are how many?

15 MR. MC GARRY: There are approximately 217 people,
16 and I would say that the number probably is in the range of
17 300 affidavits, because of the 217 those people who articulat-
18 ed concerns we went back and took supplement affidavits for
19 them to assure ourselves we thoroughly understood their
20 concern. So, for certain individuals it meant two or three.
21 They are in the set of documents I am referring to.

22 JUDGE KELLEY: Just for identification it starts
23 with Abernethy and goes to Zagry, or something like that?

24 Are they alphabetical?

25 MR. MC GARRY: Yes.

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2 MR. JOHNSON: May I ask Mr. McGarry a question.
3 I received some supplementary materials. I actually got
4 them last night. Do you mean to include some affidavits
5 in that supplementary pile as part of this exhibit?

6 MR. MC GARRY: They would be the follow-up
7 affidavits and they would be included, yes, sir.

8 MR. GUILD: Mr. Chairman --

9 JUDGE KELLEY: I've got one thing to straighten
10 out. The supplementary as Mr. Johnson just referred to,
11 have they been served on everybody?

12 MR. MC GARRY: Yes, they have. They were served
13 on Mr. Guild and I believe they were served on the Board.
14 If they weren't they are in this pile.

15 JUDGE KELLEY: Maybe you could give us the stack
16 after lunch.

17 MR. MC GARRY: Yes, sir. I will be glad to go
18 through this stack and make sure it is consistent with what
19 was previously handled.

20 MR. GUILD: If there is an extra set of these that
21 the Applicant could make available to us, that would be the
22 exhibit set, we would appreciate that since most of ours are
23 now marked and out of order.

24 MR. MC GARRY: We have that and we will give it
25 to you in two minutes.

JUDGE KELLEY: Fine.

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2 this last offer if we can be heard. We would object to the
3 receipt in evidence of the affidavits on the grounds that
4 those affidavits are hearsay and should not be received for
5 purposes of proving the truthfulness of the matters con-
6 tained there.

7 First, the authors of the affidavits themselves
8 are, of course, the people we are seeking to, in large
9 measure, examine. They are the best source of evidence as
10 to what they saw, what they know, and what their concerns
11 are. And, they are also, I would submit, also the best
12 source of evidence as to what they told Duke Power, the
13 interviewers, the technical interviewers, the people who
14 sit before us today and say they relied on the statements
15 made by those individuals.

16 We think there is a strong basis for questioning
17 the completeness and accuracy of those affidavits as reflect-
18 ing the information known to the individual affiants and
19 further reflected by the information transmitted by those
20 affiants to the people who heard their statements.

21 Ultimately, it's going to be important for this
22 Board to be able to know what the facts are. We submit that
23 those affidavits are a part of the picture, but they are
24 only a part of the picture. Since based only on the
25 affidavits, this Board and this record will only have a

#8-22-SueT 1 part of the picture. And we submit an inaccurate and dis-
2 torted part of the picture at best.

3 We think those affidavits are inappropriately
4 relied upon for substantive evidence. Now, I submit it is
5 not in dispute that the affidavits exist. And while the
6 circumstances and perhaps the issue of duress or influence in
7 the endorsement of those affidavits is not waived and is,
8 in fact, something we intend to address the fact of the
9 matter is I have no basis for suggesting, and don't suggest,
10 that the affidavits are not an accurate reflection of what
11 was presented to an individual and signed.

12 I don't dispute the accuracy of signatures, for
13 example, or the typing or reproduction of an affidavit.

14 JUDGE KELLEY: Authenticity in short?

15 MR. GUILD: That's not the point. The point is
16 whether those statements reflect fully and completely the
17 evidence that would be given by the individual in the
18 statement that was made by that individual to Duke Power
19 Company.

20 We think that the probative value of those
21 affidavits is subject to serious doubt because of the
22 circumstances of their composition and the circumstances
23 of their signing them.

24 And we would object to the affidavits as being
25 received as substantive evidence for those reasons.

#8-23-SueT 1

JUDGE KELLEY: Okay. Response, Mr. McGarry?

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MR. MC GARRY: Yes, Your Honor. We faced this

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issue on January 31st, 1984 with respect to the Staff

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document. And I direct your attention to Pages 12,319

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through 12,322. And I think that ruling is dispositive of

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the issue here.

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JUDGE KELLEY: Is that Exhibit 27?

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MR. MC GARRY: I believe it was, yes, sir. And

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the critical thing I think in the Board's determination

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was that these affidavits, or those affidavits, they were

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interview statements, serve as a basis for the Staff's

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report and the authors of those statements -- you heard

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Mr. Economos -- was here and subject to cross examination.

14

It's the same situation. That's indeed why

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the panel is larger than we normally would like it. We

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made sure we had every single interviewer on this panel,

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and we have done that.

18

And as the panel has indicated, they have relied

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upon those affidavits to form the basis subsequently which

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found itself in the report.

21

JUDGE KELLEY: Mr. Johnson.

22

MR. JOHNSON: On that basis, we would agree that

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the affidavits should be admitted for the purpose of showing

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the basis for the Duke report.

25

JUDGE KELLEY: Let's put it in law school terms

#8-24-SueT 1

2 now so we all understand it. They are offered for the
3 truth of the matters asserted therein, are they not?

4 MR. JOHNSON: Correct.

5 JUDGE KELLEY: They are hearsay; we can stipulate
6 to the fact they are hearsay.

7 MR. JOHNSON: Yes, sir.

8 JUDGE KELLEY: Okay. It's 12:30 --

9 MR. GUILD: Judge --

10 MR. MC GARRY: Your Honor, there is one more
11 thing. I'm sorry. A quick procedural matter. We marked
12 that exhibit Applicant's Exhibit 118 and we ask that that
13 be received.

14 JUDGE KELLEY: 118 is the affidavits?

15 MR. MC GARRY: That is correct.

16 JUDGE KELLEY: We will take that under advisement.

17 MR. MC GARRY: We have resumes for each one of
18 these ladies and gentlemen. We would ask that they
19 collectively be marked for identification as Applicant's
20 Exhibit 119 and received into evidence.

21 We can pursue the matter in more detail on the
22 desire of the Board and parties.

23 MR. GUILD: I have no problem with that.

24 JUDGE KELLEY: 119, then.

25 (The documents referred to are
marked and received as

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Applicant's Exhibit 119,
collectively.)

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MR. GUILD: We are now half an hour beyond the point I was trying to raise and we are going to lose this in the transcript. But I do have two problems.

First, a question with regard to the sponsorship of what now is 116, the Duke report, and a point on the affidavits.

As to 116, the remaining question that I don't waive, that I would like to pose to the panel, that was the point we missed and went beyond, was whether each member of the panel would respond to the following question.

JUDGE KELLEY: Oh, you wanted to ask a question and go into something else?

Go ahead.

end #8
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BY MR. GUILD:

1 Q With regard to the August 3rd 1984 Duke Power
2 Company investigation report, the document that has been
3 marked Applicant's Exhibit 116, with regard to the report
4 as a whole within the knowledge of the members of the panel,
5 responded to counsel's question whether or not the report was
6 a true and correct reflection of your conclusions.

7 I ask you the following question: With regard
8 to the report as a whole, in any manner does it not reflect
9 a true, correct, and complete report of your investigation
10 and conclusions?

11 A (No response)

12 JUDGE KELLEY: Do you want to go down the line.

13 MR. GUILD: No, sir. I want to give any member
14 of the panel an opportunity to respond if they -- if -- what
15 their response would be to that question, if their response
16 would be in the negative. Is there any negative response to
17 that question. I am asking the panel to so respond at this
18 time.

19 BY MR. GUILD: (Continuing)

20 Q I want to make it clear --

21 MR. McGARRY: Could you say it again?

22 BY MR. GUILD: (Continuing)

23 Q Is there any extent to which this final report
24 does not reflect a true or correct and a complete report of
25 your investigation and conclusions, and I add the term, 'complete,'

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1 and I ask if there is any member of the panel who would answer
2 that question in the negative to identify themselves, and I
3 ask them to explain.

4 MR. McGARRY: In other words, you are asking them
5 if they feel there is something that should have been included
6 in the report --

7 MR. GUILD: No, sir. If they don't understand
8 the question, I would appreciate it if someone would pipe
9 up.

10 MR. HOLLINS: I do not understand the question.

11 JUDGE KELLEY: The way I heard it, if somebody
12 wanted to say, 'yes,' they would be criticizing the report.

13 BY MR. GUILD: (Continuing)

14 Q Is it a true, correct, and complete statement
15 in your investigations of resolutions?

16 A (All witnesses nod affirmatively)

17 Q All members of the panel answer affirmatively?

18 A (All witnesses nod head affirmatively)

19 Q This is a very important point as to that -- I know
20 the luncheon hour is almost here, but on the basis of the
21 sponsorship of the interviewers, this Board contemplates
22 receiving this report as substantive evidence, I would seek
23 an opportunity to voir dire the interviewers and demonstrate
24 the basis for, in my opinion the limitations on the probative
25 value of the document, why it should not be received, because

9-3-Wal

1 of its lack of trustworthiness, and that may be a fairly
2 exhaustive exercise. But since I think we are largely taking
3 a wholesale set of documents, offering them for purposes of
4 proving the truth of the sustance of those affidavits, I
5 believe it is necessary in order to protect our rights.
6 I would seek to do that after lunch.

7 JUDGE KELLEY: Well, we will come back with a
8 ruling on the offer of affidavits, and also speak to the
9 point you just made at that time.

10 Shall we say a quarter to two? Why don't we say
11 a quarter to two for resumption. Thank you.

12 (Whereupon, the hearing is recessed at 12:35 p.m.,
13 to reconvene at 1:45 p.m., this same day.)

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AFTERNOON SESSION

1
2 Whereupon,

3 R. L. DICK,
4 G. W. GRIER,
5 T. H. ROBERTSON,
6 T. O. MILLS,
7 A. R. HOLLINS, JR.,
8 S. E. FERDON,
9 D. H. LLEWELLYN,
10 B. J. KRUSE,
11 L. C. BOLIN,
12 F.H. FOWLER,
13 M. J. LEWIS,
14 M. A. SUTTON,
15 J. P. SHROPSHIRE,
16 S. H. VAN MALSSSEN,
17 - and -
18 D. ABERNETHY,

19 resumes the stand, and further testified as follows:

20 JUDGE KELLEY: Let's go back on the record. The
21 Board went to lunch with some of these procedural issues submitted
22 to us, following counsel argument, and we do have some rulings
23 that we can make now, not on everything that we talked about
24 before lunch, but at least the ones we think we have to rule on
25 now, and maybe a couple of others.

1 The first matter concerns the question whether this
2 session -- I am speaking now to the session with this panel --
3 whether it should be held in the Latin phrase, In Camera,
4 meaning with the doors shut, or whether it should be held as
5 a public session.

6 And we did hear argument from counsel on that. We
7 think it is a close question, and debatable question. We
8 don't know of any clear precedent, where a hearing was closed
9 in order to uphold the pledge of confidentiality made by an
10 Applicant as opposed to ones made by the NRC.

11 So, there is nothing that we can point to that
12 really shows us how to go on this. Normally, NRC hearings are
13 open to the public. They are open to the media, and there
14 is an independent value in having the public decision, which
15 is reflected in the practice; in favor of closing at least
16 part of this hearing does seem to us as being able to do that
17 to assist the licensees like Duke and others in similar
18 situations in obtaining candid evaluations by employees of
19 their supervisors, if those evaluations are sought under the
20 pledge, their confidentiality would be maintained as far
21 as possible, as was done, as we understand it, in this case.

22 Conversely, if we could not close this hearing,
23 and it were open and publicized, it might very well compromise
24 the ability of the licensee to get the kind of candid information
25 that they may need in these kind of situations. We are going

1 to strike this concededly close balance in favor of closing
2 this portion of the hearing, and possibly others later, but
3 this one for now.

4 We are going to direct the Applicant's as the
5 proponents of closing, or at least this one, to provide us
6 later with an expurgated version of the transcript or
7 placement in the public document room so that what actually
8 got said will eventually be published.

9 I just mention the final consideration that
10 we took into account. Since we have to go one way or the
11 other on the closed question, we might eventually be reversed
12 by the NRC's Appeal Board, by the Commission, or by Court,
13 it seems to us if we have to go one way or the other, there
14 is something to be said for taking the route that would cause
15 less harm if we turned out to be wrong. And we think that
16 if we ran the hearing open and a lot of names were divulged,
17 it would be kind of injury that could not be repaired.

18 We concededly by choosing this option, lose a public
19 hearing now here today, and obviously a pale substitute of
20 the transcript further down the line is not really a full
21 substitute. If it is not a full substitute, if it is not
22 a full substitute, perhaps not an adequate one, but still we
23 think that on balance, taking all those considerations into
24 account, that is what we should do.

25 So, when we resume here following these procedural

1 rulings, we will ask people -- I am not sure who we have back
2 in the audience, but in effect, we will be clearing the
3 courtroom with the exception of people who filed affidavits
4 of non-disclosure during the question of this panel. We will
5 come to that in a few minutes.

6 We discussed this question of the scope of the
7 hearing, and we feel we can offer you some guidance on it
8 which ought to be helpful in questioning this afternoon. The
9 evidence of one kind or another. We don't put this out
10 as a definitive resolution that is designed to answer all
11 questions, because what is or is not foreman override is
12 partly dependent on the facts and circumstances under different
13 cases, and it is not something we can judge down to a very
14 fine point in advance.

15 Still and all, we did hear some rather strikingly
16 different views of the concept of foreman override earlier,
17 and we are prepared to say that as we understand the concept,
18 and therefore as we understand the scope of this hearing,
19 and indeed the jurisdiction of this licensing board, the
20 foreman override that we are dealing with basically is situations
21 where an employee is directed, either explicitly or implicitly
22 to violate established procedures.

23 Now, this directive to violate procedures doesn't
24 have to be in some words; can be implicit. Mr. Guild this
25 morning gave an example where, and I am paraphrasing, roughly,

9-8-Wal

1 Mr. Guild, something like a foreman directing employees to
2 finish it off by a certain time, and a situation where there
3 is so much work that there wasn't anyway in the world that
4 that could have been done.

5 In that kind of a situation, that might be a
6 directive to violate procedures.

7 And we would have to judge that as it arises in the
8 course of the hearing.

9 But we want to emphasize, on the other hand, that
10 the mere fact that a foreman might have applied pressure for
11 production and the employee then decides to bend to that
12 pressure, and one way to bend to it is to violate procedures,
13 that is not what we consider foreman override. The mere fact
14 that a foreman is pushing and in connection with that some
15 procedure violation is disclosed, doesn't make that a case
16 of foreman override.

17 Now, that isn't to say that there wouldn't be
18 situations that are outside our definition that reflect
19 undesirable work practices, but we are not here to hold a
20 hearing on all undesirable work practices. We are here to
21 hold a hearing on a rather narrow concept that arose last
22 January from Mr. Nunn's testimony.

23 Indeed, the examples that he gave, the clearest
24 ones were cases where there were explicit directions to
25 violate procedures.

agb/agbl

1 So we trust that that will cast at least some
2 helpful light on the scope as the Board sees it.

3 We had an issue between counsel over the
4 admissibility of a stack of affidavits just before lunch.
5 That was Exhibit Number 118, is that correct? 118 was the
6 number of that. And I won't describe them, they are described
7 in the record but then the objection was made essentially
8 that they were hearsay and that under all the circumstances
9 they ought not to be admitted as substantive evidence.

10 Here we get into some legal terms of art. I
11 believe it is stipulated by all that their authenticity is
12 not in question, the issue was should the matters addressed
13 in those affidavits, should that be considered proof of
14 those matters.

15 And law school evidence, of course, is asserted --
16 offered to prove the truth of the matter asserted therein.
17 That is the classic hearsay formulation.

18 We recognize that these affidavits are hearsay.
19 The mere fact that the document is hearsay doesn't mean that
20 it is inadmissible in NRC proceedings and, indeed, Federal
21 laws involving evidence that we can take is hearsay in
22 the technical sense.

23 We are overruling the objection to these
24 affidavits and we are admitting these affidavits into evidence
25 as substantive evidence of the assertions in them.

agb/agb2

1 It seems to us several considerations call for
2 that result:

3 In the first place, the people who put together
4 the affidavits -- not the employees who were the craftsmen
5 but at least the people who were on the interviewing team
6 aren't here to be asked -- available to answer questions
7 about how those affidavits were put together.

8 Beyond that, Palmetto and other parties, for that
9 matter, are free to call some of these affiants as witnesses
10 so that on a sort of a sampling basis it is possible to see
11 face-to-face the person who signed the paper.

12 Beyond that we are not really interested here
13 in the precise detailed truth or falsity of these individual
14 affidavits. What we are concerned about is whether there
15 is a pattern of foreman override as we have defined it or
16 whether there were -- or at least strong indications are
17 that there appear to have been a widespread occurrence of
18 foreman override. So the detail of what one particular
19 employee may have said one way or another is not that
20 significant.

21 Conversely, if we were really homing in on what
22 one particular employee said one afternoon, then I would
23 propose to call that person in. But we are not. So because
24 we are looking for a pattern, we think that not calling in
25 all these people is unimportant.

agb/agb3

1 So for those reasons we are admitting Applicant's
2 Exhibit 118.

3 (Whereupon, the document previously
4 marked for identification as
5 Applicant's Exhibit 118 was
6 received in evidence.)

7 JUDGE KELLEY: That raises a related consideration,
8 namely the one of timing.

9 Mr. Guild, you mentioned that if this exhibit
10 were let in for its substantive assertions that you would
11 contemplate rather extensive voir dire of the interviewers
12 who had compiled the affidavits.

13 And I guess the Board would just like to observe
14 in that connection we have got a certain amount of time to
15 cover a certain amount of ground. The questioning of this
16 panel, the questioning of the next panel will be largely
17 given over to your cross-examination. So as we see it,
18 it comes down to your simply making judgments about how you
19 want to spend your time. If you want to spend a good chunk
20 of the afternoon in doing that, well then you are free to
21 do that. If you feel that there are other things that you
22 you want to focus on then you have to make some judgments.

23 We have not, as we observed earlier, set any
24 deadlines, yet we can't be entirely disregarding of where we are
25 and where we are trying to get. We discussed where we think

agb/agb4

1 we would like to be approximately, let's say, close of
2 business tomorrow: we would like to be through this panel
3 and the Staff panel so we can turn to your people, some of
4 the people you want to call. And that is not a precise
5 thing, it is sort of a guideline but we say it in that
6 connection so that you can be guided in your judgment on
7 how you want to use your time.

8 Those are the rulings we have right now. We
9 have pending some four groups of discovery points. We are
10 simply not ready to rule on those yet but we might be able
11 to by this evening or first thing tomorrow morning.

12 MR. GUILD: Mr. Chairman, with regard to the
13 first point, we take exception -- although I am sure
14 exception is not necessary, to the ruling with regard to the
15 closing of the hearings. We believe that that is such
16 an unusual and erroneous decision that it will adversely
17 affect the ability of the Board to reach a full and complete
18 decision on the issues before you. We believe it has
19 serious effects because it deprives us of an opportunity
20 to fully gather evidence regarding the issue itself.

21 JUDGE KELLEY: The in camera ruling?

22 MR. GUILD: Yes, sir, that is the in camera ruling.

23 JUDGE KELLEY: I think I forgot to state we
24 did think, but I forgot to say it, we can't see how open or
25 shut has any effect whatever on our decision. If it had

agb/agb5

1 impaired our ability to decide, we might have felt differently.

2 MR. GUILD: I think it will, sir, and I have
3 tried to allude to what I believe is the need for us to
4 be able to be in a position where those who have knowledge
5 of facts that bear on this issue can learn of the evidence
6 of similar circumstances -- of evidence of foreman override
7 that is available on the public record of this proceeding
8 as that record is being developed so that in the process of
9 what we are doing right now, which is interviewing
10 witnesses and trying to prepare craftsmen from Catawba so
11 that they can testify in this proceeding, that they will
12 have a complete understanding of the scope of the issues
13 that this Board is considering and the evidence that is being
14 offered on those issues by others in deposition.

15 I don't mean to debate the point, I understand your
16 ruling. I only would ask at this point that the Board would
17 consider a stay of your ruling so that we can seek guidance
18 from the Appeal Board.

19 We would like to call Judge Rosenthal and put
20 the question to the Appeal Board. We think it is clearly
21 erroneous, it is unprecedented, there is no basis for
22 closing the hearing, particularly under the circumstances
23 here where it is Applicant's competence that the Board is
24 honoring, particularly in light of the only precedent that
25 we are aware of that bears on the matter and that is the

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1 Midland decision where the Appeal Board came down in just
2 the contrary fashion on this substantive point and ruled
3 that a non-NRC party mismanaged, since the Government
4 Accountability Project had no privilege to protect workers
5 who brought safety concerns that were subject to license.

6 JUDGE KELLEY: Ironically they protected them
7 anyway. I don't understand that.

8 MR. GUILD: Based on a specific showing by those
9 individuals that they needed some protection.

10 JUDGE KELLEY: Let's do this, let's get to this
11 point as quickly as we can: Do you want us to stop right
12 now --

13 MR. GUILD: Yes, sir.

14 JUDGE KELLEY: -- so you can go call the Appeal
15 Board?

16 MR. GUILD: I want to be able to stop right now
17 and try to reach Judge Rosenthal and see if this issue can
18 be considered by the Appeal Board.

19 I believe that there is irreparable harm that will
20 flow if we go forward and close this proceeding and conduct
21 it in a non-public fashion and I would like the opportunity
22 to at least have the opportunity to take that matter before
23 the Appeal Board with a request that they consider this
24 as an emergency appeal.

25 JUDGE KELLEY: I am extremely reluctant to stop

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1 this case for that purpose. Let's just ask the counsel
2 what they want to say.

3 Mr. Johnson?

4 MR. JOHNSON: We would oppose the request for a
5 stay. It seems to me that the Board has stated that there
6 is no irreparable harm that is going to accrue to any party
7 or to the Board as to hearing the evidence with the result
8 of closing the hearing. And we believe that it can be
9 the subject of appeal at the appropriate time.

10 JUDGE KELLEY: You don't see any irreparable harm?

11 MR. JOHNSON: I frankly don't understand the
12 theory that Mr. Guild is putting forward with respect to
13 irreparable harm.

14 JUDGE KELLEY: Mr. McGarry?

15 MR. MC GARRY: We agree with Mr. Johnson, we
16 think we should go forward. Whatever harm there is can
17 certainly be cured. We don't think there is any harm.

18 MR. BOWMAN: Your Honor, may I address the
19 Court?

20 My name is Charles Bowman, I am here representing
21 the Charlotte Observer. We would just like to go on record
22 as opposing any closing of this hearing on the grounds that
23 it is in the public interest and this is a matter that is
24 highlighted in the public interest. And we would just like
25 to go on record at this time as objecting to any closing

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1 of any part of this hearing.

2 JUDGE KELLEY: Thank you, Mr. Bowman.

3 I think the Board ought to take a moment here.
4 Don't go away.

5 MR. GUILD: Mr. Chairman, excuse me, before
6 you confer, I apologize. Just so we have it on the table,
7 if the Board would entertain that as a request for a stay
8 or for a direction or a certification to the Appeal Board;
9 the bottom line point is we want to put the issue before
10 Judge Rosenthal and his panel is what I meant to communi-
11 cate. Sorry to interrupt.

12 JUDGE KELLEY: All right. We will treat it as
13 an application for a direction or certification.

14 MR. GUILD: Thank you.

15 (The Board conferring.)

16 JUDGE KELLEY: We are back on the record.

17 The Board has considered the request that we
18 suspend the hearing pending Palmetto's going to the
19 Appeal Board to seek to overturn our order closing the
20 hearing. And here is the way we would like to approach it:

21 As for right now, the request is denied. What
22 we suggest, Mr. Guild, is this: some one of your people
23 there might call and see if they can line up Mr. Rosenthal
24 and/or his colleagues. We can take a break at quarter to
25 3:00 -- maybe just pass the word on that you want to make

agb/agb9

1 this as an emergency appeal -- break from quarter to 3:00
2 until 3:00, let's say, and I am sure if he is there and he
3 can do it I think he will take the call -- and Mr. Wilbur
4 and the other members....

5 Hopefully they are there, at least a quorum. And
6 if somebody could alert them now that such a call would be
7 forthcoming.

8 How are we going to set this up, though? I
9 assume that they will want to hear from Mr. McGarry and
10 Mr. Johnson --

11 MR. GUILD: Judge, may I make a suggestion?

12 When we faced the question of taking a matter
13 before the Appeal Board last January I think the folks
14 u airs in the Duke Endowment were kind enough to make
15 available an office where we could have a speakerphone
16 and if we would need to do that perhaps we could make an
17 inquiry and see if there is a facility upstairs where we
18 could all get around a phone.

19 MR. MC GARRY: That sounds reasonable.

20 JUDGE KELLEY: Well let's proceed on that basis
21 then.

22 Have you got somebody --

23 MR. GUILD: Yes, sir, if someone who is with me
24 could go upstairs and use one of those phones. We don't
25 have access to any phones in the building, other than that

1 office, so that would be a help.

2 MR. MC GARRY: Yes, we will take care of that.

3 With that, your Honor, the panel is available for
4 cross-examination.

5 JUDGE KELLEY: Let me go off the record for a
6 minute.

7 (Discussion off the record.)

8 JUDGE KELLEY: Back on the record.

9 MR. GUILD: For the record there are 217, at
10 least, affidavits and perhaps at couple more. Because of
11 the process, we have a basis for questioning the reliability
12 of those as reflective of the statements given by the
13 individuals.

14 It puts us to, though, an impossible burden to
15 be able to go affidavit through affidavit, as we are now
16 put to, to focus on -- to inquire of members of the panel
17 as to the specifics of each affidavit that go to its
18 reliability as substantive evidence.

19 And to suggest simply that it is a matter of us
20 using our time -- either deciding to devote all of our time
21 to doing that and therefore forego other substantive
22 evidence just can't cure the difficulty.

23 I appreciate the Chair's ruling and the basis
24 for it. I would just like that observation noted and I hope
25 that there may be some basis -- I hope to bring the matter

1 to the Board's attention at a later point when there is
2 a more fully developed record on this particular issue
3 and with that preserve our objections to the introduction of
4 the affidavits at this time.

5 And Mr. Chairman, I am prepared to go forward.

6 JUDGE KELLEY: Well the panel has been tendered
7 for cross-examination and Mr. Guild on behalf of Palmetto
8 will begin his cross.

9 CROSS-EXAMINATION

10 BY MR. GUILD:

11 Q Members of the panel, a number of you I had
12 an opportunity to question last week in preparation for
13 this hearing and a number of you I have not met yet and,
14 just for the record:

15 Mr. Dick, you and I had a chance to talk about
16 this subject.

17 Mr. Grier, we have not.

18 The gentleman next to you -- are you Mr. Robertson,
19 sir?

20 A (Witness Robertson) Yes.

21 Q You and I have not had a chance to speak.

22 Mr. Mills, nor you, sir.

23 Mr. Hollins, you and I spent some time together
24 and talked about this subject.

25 Mr. Shropshire, we did not.

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1 The gentleman next to Mr. Shropshire -- I'm sorry,
2 I just can't keep your name --

3 A. (Witness Van Malssen) Van Malssen.

4 Q Mr. Van Malssen, you and I have not spoken, no
5 deposition of you, sir.

6 Front row, Mr. Ferdon, you and I spoke.

7 Mr. Llewellyn next to you -- we talked about the
8 investigation.

9 The gentleman behind....

10 A. (Witness Abernethy) Abernethy.

11 Q Mr. Abernethy, you and I did not speak.

12 Mr. Kruse, you responded to my questions.

13 Mr. Bolin, I haven't had a chance to talk to
14 you.

15 Ms. Fowler, nor you.

16 Ms. Lewis, nor you.

17 Mr. Sutton, we did not speak either.

18 And that is correct, is that true?

19 (Witnesses on panel nodding assent.)

20 Q Mr. Dick, you are the vice-president of construction
21 of Duke Power Company, correct?

22 A. (Witness Dick) Yes.

23 Q And I understand for the last several years you
24 have worked directly at the Catawba site and managed the
25 construction of the Catawba facility, correct?

1 A. Yes.

2 Q. How many employees are engaged in construction
3 at Catawba, approximately?

4 A. At the present time about 37-, 3800.

5 Q. And how would that compare with the maximum
6 work force you have had at the site?

7 A. We had something over 4000, 42-, -300, I believe.

8 Q. Of those 4000-plus, can you give me a rough
9 approximation of how many of those people would be involved
10 in safety-related hands-on construction work?

11 A. A rough cut, Mr. Guild, two-thirds of the total
12 work force would be direct hands-on roughly.

13 I can't answer your question as to how many of
14 them at any given time or in total worked strictly on
15 safety-related or strictly on non-safety-related.

16 Q. Is it generally true that most craft work on
17 both safety-related and non-safety-related work at the
18 facility from time to time?

19 A. It would depend on the classification. Utility,
20 for instance, they wouldn't do much safety-related work.

21 Q. Give me an example of what a utility --

22 A. Clean up, sweeping, handling material.

23 Q. All right.

24 Are there any other crafts, as a craft per se, that
25 you could exclude from the identification of persons at the

agb/agb15

1 site who engaged in safety-related construction?

2 A. I can't recall whether cement finishing in and
3 of itself is safety-related or not, but that is another
4 craft I would think of.

5 Q. There certainly are safety-related concrete pours,
6 are there not?

7 A. Yes.

8 Q. And those have to be finished, correct?

9 A. Yes.

10 Q. Anything else come to mind?

11 I am trying to get just a very rough feel for
12 how many people we are talking about that would be engaged in
13 safety-related construction work at a maximum period of
14 construction activity at the site.

15 A. That's all I can think of.

16 Q. All right.

17 Now the matters that were the subject of the Duke
18 investigation, they were brought to your attention by
19 representatives of the NRC's Region 2 offices, is that
20 correct?

21 A. Yes.

22 Q. And I believe Mr. Brownley called you, is that
23 right?

24 A. That was my recollection.

25 Q. Some time in the second week in March?

1 A. Yes.

2 Q. And relate what Mr. Brownley told you, sir.

3 A. As I recall, he said that the investigation that
4 the NRC had been conducting had developed information which
5 they felt should be passed on to us and asked if it
6 would be possible to set up a meeting possibly in connection
7 with a meeting which had already been scheduled in Atlanta
8 on a different subject.

9 MR. GUILD: Just for the record, could we identify
10 the individual who just came into the room, please?

11 MR. MC GARRY: That is Mr. Steve Griffin, General
12 Counsel, Duke Power Company, who will sign an affidavit of
13 non-disclosure.

14 BY MR. GUILD:

15 Q. All right, so could you continue Mr. Dick?

16 A. (Witness Dick) I --

17 Q. We can start again, okay?

18 Mr. Brownley related to you that the NRC had
19 developed information --

20 A. And that was just about the extent.

21 I agreed to attend the meeting in Atlanta.

22 Q. All right. And you did?

23 A. Yes, I did.

24 Q. That was the 13th of March?

25 A. Yes, it was.

agb/agb17

1 Q Would you describe what transpired at that
2 meeting?

3 A At that meeting Mr. Lewis introduced the subject,
4 as I recall, and in very brief and in general terms, that it
5 had come out of their investigation of a welder B issuance.

6 And he turned it over then to Mr. Economos and
7 Mr. Uryc, who gave me examples of some of the things that
8 they had learned during their investigation at Catawba.

9 Q And what did Mr. Uryc describe?

10 A Specifically Mr. Uryc?

11 Q Yes, sir.

12 Was it Mr. Uryc principally the staff person
13 with the Region 2 office who described the results of that
14 investigation?

15 A It is difficult for me to recall who said
16 what, Mr. Guild, specifically since they interwove,
17 Mr. Economos and Mr. --

18 Q I don't mean to focus necessarily on one or the
19 other, but relate what they told you, if you would, please.

20 A They told me that there were individuals, welders,
21 principally they thought on the second shift, principally
22 on Unit Number 1 and probably working for a single
23 supervisor who, though they supervisor had never told them
24 to violate procedure, they had perceived that it would be
25 necessary for them to violate procedure to do what they

1 thought he was asking them to do; and that, as a consequence,
2 that they had performed welding where they had probably
3 violated the interpass temperature limit on stainless steel
4 socket welds.

5 There was also an incident which concerned the
6 removal of an arc strike on a valve body by a supervisor.
7 These individuals had said that their foreman seemed to be
8 under more pressure -- or to act differently when he was
9 working for a particular general foreman.

10 Q Did they identify the general foreman and the
11 foreman in question?

12 A They told me the names of those two individuals,
13 yes.

14 Q And who are those individuals?

15 A The foreman was J.A. Moore and the general
16 foreman was Billy Smith, I don't recall his initials.

17 Q Continue.

18 What else did they tell you?

19 A There was discussion about how many interviews
20 they had conducted. There was discussion about where most
21 of this information came from. As I recall, most of it
22 was from about six members of the crew.

23 I think they said they had done some interviewing
24 outside of this crew and had not found anything and that,
25 as I recall, is about the extent of the allegations.

1
2 Q What did you understand your task was to be based
3 on that information?

4 A I understood that I now had enough information
5 that we needed to conduct an investigation to see if we
6 could develop the same information or additional information
7 that we should satisfy ourselves as to the extent -- to see
8 if this affected any other areas, to decide what effect it
9 had had on the work and to take whatever corrective action
10 might be appropriate or necessary.

11 Q All right.

12 Did the NRC give you -- NRC people you spoke with
13 give you any basis for believing that the practice extended
14 beyond this particular crew?

15 A No, as I recall they had not found indication
16 that it had extended beyond. I am not certain about that,
17 though.

18 Q Well sir, I want to show you some documents that
19 I think were previously identified in your deposition.

20 (Documents handed to the witness.)

21 Why don't you identify them?

22 MR. CARR: Can you show them to us?

23 MR. GUILD: Sure.

24 WITNESS DICK: The first page is my writing,
25 the second and third are my writing, the fourth is not.

BY MR. GUILD:

1 Q All right.

2 Can you identify the fourth?

3 A (Witness Dick) I believe the fourth are notes
4 taken by Clarence Ray, a member of design engineering, who
5 was present but attending for a different purpose.

6 Q He gave you his notes of the meeting?

7 A He handed them to me as I left the room.

8 (Documents shown to counsel.)

9 BY MR. GUILD:

10 Q Now Mr. Ray's notes --

11 JUDGE KELLEY: Are these going to be exhibits?

12 MR. GUILD: They may, Judge. For the time,
13 I want to just examine from them.

14 JUDGE KELLEY: If you could introduce one copy
15 we could follow the questions.

16 MR. GUILD: I apologize, Judge, but there is a
17 massive amount of material here and I have been doing
18 depositions every day, I don't have copies of this stuff
19 except what Applicants have made available to me.

20 MR. CARR: Could you give us just a minute to
21 find our copy?

22 (Pause.)

23 JUDGE KELLEY: This is a problem. Again, we
24 could get along with one copy but we can't follow the
25 questioning at all without at least that.

agb/agb21

1 Have we been given that?

2 MR. GUILD: You have, Judge. You have been given
3 the whole stack of material as far as I know.

4 JUDGE KELLEY: It is out of that stack.

5 MR. JOHNSON: I will lend the Board my copy and
6 I can look on with the....

7 MR. GUILD: There is one problem, just to flag
8 it at the beginning. This material was turned over quickly,
9 I am aware, but there is no index, there is no road map as
10 to what is in this, it's just a stack of papers. And I am
11 as much in the dark about it as you.

12 (Document handed to the Court.)

13 JUDGE KELLEY: Thank you, we will try to dig out
14 our own.

15 MR. GUILD: Sir, if I may?

16 JUDGE KELLEY: Go ahead.

17 BY MR. GUILD:

18 Q Mr. Dick, directing your attention to Mr. Ray's
19 notes of that meeting, the line we spoke of in the deposition
20 reads "foreman override, not generic problem, not broad
21 sweep."

22 Now does that reflect your understanding of what
23 the NRC Staff communicated to you, to the effect that the
24 practices they identified were limited to Mr. Moore's crew?

25 A. (Witness Dick) That is my recollection.

agb/agb22

1 Q And does that fairly reflect the judgment that
2 they expressed as you recall that judgment, Mr. Uryc and
3 Mr. Economos?

4 A I would not have characterized it as a judgment
5 that it was not a generic problem, Mr. Guild. I think that
6 what they communicated to me was that their investigation
7 had not turned up anything that I recall beyond that crew.

8 Q All right.

9 A bracket and -- let me show you further, more
10 of the same (indicating) -- a bracket and it says "one
11 foreman," and then a list of the technical questions that
12 you have just related, the socket welds, the arc strikes,
13 et cetera.

14 A Yes.

15 Q All right.

16 Indicative of their evidence, the NRC's,
17 isolating this to Mr. Moore's crew?

18 A I am not sure they said they isolated it, I
19 think they said that most, if not all of the information
20 they had had come from people who worked in that crew.

21 Q All right.

22 "Possibly problem on second shift with
23 one crew/foreman...", and the name by that is -- it is
24 incorrect -- but "Arlon Moore," that would be Mr. Moore?

25 A Probably.

agb/agb23

1 Q All right.

2 And the general foreman, "Bill Smith."

3 That would be Billy Smith?

4 A Right, yes.

5 Q And another indication with that "...never
6 problem with J.R. Wilson," and that is indicative of
7 the observation that when Mr. Moore was under another
8 general foreman, that is, Mr. Wilson, the crew had no such
9 problems with Mr. Moore?

10 A Someone had said that, yes.

11 Q And that is what you knew at the time you left
12 this meeting, correct; that is the information that was
13 communicated to you by the NRC Staff?

14 A Yes, sir, essentially.

15 Q And is that largely what your investigation
16 conclusion confirmed, that the problem was limited to
17 Mr. Moore's crew and during times when he was working for
18 Mr. Smith?

19 A We confirmed that information. We also, as a
20 result of our investigation, learned other things.

21 Q What do you have reference to there?

22 A We had isolated events under other foremen,
23 other crafts, other shifts, matters that were given to us
24 by the people that were interviewed.

25 Q Now what do you mean by the term "isolated,"

1 Mr. Dick?

2 A That they were pretty scattered, that we found
3 more -- we found a concentration, if you will, in Arlon
4 Moore's crew and we didn't find that same sort of pattern
5 elsewhere on the job.

6 Q When is something -- I am trying to get some
7 understanding of your perception of how you approached this
8 now.

9 When does something go beyond being isolated and
10 become reflective of a pattern or characterized by the
11 term "pervasive?"

12 A Mr. Guild, we had several categories that we put
13 these in and I don't recall the specific numbers but I
14 believe there were some foremen where only one person said
15 one thing. There may have been one or two others where
16 there was more than one, but as I recall -- I don't
17 remember the numbers, but there were enough so that I recall
18 there was a concentration in Moore's crew.

19 Q All right.

20 Well is there any empirical definition of those
21 terms, of "pervasive" on the one hand of a "pattern" in
22 that same sense or of "isolated" in the other?

23 A My judgment is the only basis and I did not
24 apply any empirical formula or --

25 Q -- or definition in that fashion?

agb/agb25

1 A. -- or definition to that, no, sir.

2 Q. And as far as you know your report doesn't either?
3 Are you aware of your report employing any
4 empirical definition of those terms?

5 A. I think, as I understand the question -- Would
6 you ask the question again, please?

7 Q. Sure.

8 You stated your understanding and now I want to
9 know: as far as you know is it similarly the case that in
10 your investigation report those terms: "isolated, pervasive,
11 pattern," had no empirical definition?

12 A. I don't believe so.

13 Q. Now is it fair to say that you left the meeting
14 with the understanding that one task you had to do was
15 corroborate or confirm the findings by the NRC Staff?

16 A. I think, Mr. Guild, that I may have put that
17 characterization on it in the sense that we would know how
18 effective we were being in our investigation if the same
19 kind of information came out; if the people talked to us
20 when we interviewed them then I would feel that we were
21 corrolating and that we were being effective.

22 Q. You also, I presume, wanted to know if in fact
23 these things occurred in Arlon Moore's crew when he worked
24 for Billy Smith?

25 A. Certainly.

agb/agb

1 Q So you wanted to establish whether the things
2 the NRC was learning happened?

3 A Yes.

4 Q And is it fair to say that you determined that
5 they did happen?

6 A We found much of the -- if not all of the same
7 information as the NRC told me that they had found.

8 Q All right.

9 And does that stand up as confirming that those
10 problems happened on Arlon Moore's crew when he worked for
11 Billy Smith?

12 A We confirmed that a number of people who worked
13 for Billy Smith told us that this is the way they felt and
14 this is the way that they perceived their supervisor
15 acting when he worked for Billy Smith.

16 Q Okay.

17 So on the one hand you sort of identified a
18 feeling or a perception, correct; is that what you are
19 telling me?

20 A We got the same information.

21 Q You identified a feeling or a perception among
22 members of Arlon Moore's crew?

23 A They expressed it that way, yes.

24 Q What I want to know is did you confirm the
25 practices; did you confirm that Arlon Moore exerted pressure

agb/agb

1 on members of his crew to perform their work in disregard
2 of known quality procedures and standards; can you confirm
3 that, Mr. Dick?

4 A. In the sense of identifying hardware upon which
5 we could measurably run tests and conclude without any
6 doubt that the procedures had been violated?

7 Q. Unless that is the standard you set for yourself,
8 that is not really the import of my question.

9 A. Then what are you asking me?

10 Q. What I want to know is did you confirm that what
11 was alleged to have been done by Arlon Moore was done, that
12 as I have formulated it -- and if there is a problem with
13 my words or you are not understanding, tell me -- that
14 Mr. Moore, working for general foreman Billy Smith, put
15 pressure on his people to sacrifice quality in the sense
16 of complying with known QA requirements, known construction
17 procedures out of his demands that they meet schedule
18 requirements?

19 A. We did confirm that. We did not prove that.
20 But we had enough evidence based on the statements of people
21 who worked for him that we felt it necessary to take
22 action.

23 Q. All right.

24 And what was that action? What action did you
25 ultimately take?

1 A. We removed Mr. Moore from supervision -- we
2 removed him from the site. He had previously been removed
3 from supervision.

4 Q. He had been removed from supervision for his
5 conduct or wrongdoing?

6 A. A reduction in force.

7 Q. He had been removed from supervision only because
8 the job was cut back?

9 A. By the time that we got around to making a
10 decision that had happened.

11 Q. So when you removed Mr. Moore you removed him
12 from a position that he had already been demoted to simply
13 as a result from attrition or reduction in force?

14 A. Reduction in force.

15 Q. And what did you do with Mr. Moore?

16 A. We placed him in another department at another
17 location.

18 Q. Doing what kind of work?

19 A. I believe he is welding.

20 Q. All right.

21 And did you cut Mr. Moore's pay?

22 A. I don't believe so, Mr. Guild.

23 Q. So you took action against Mr. Moore and let
24 me understand the basis if I may:

25 You took action because you identified or confirmed

1 a perception among his people of this problem, is that fair?

2 A. Yes, that's fair.

3 Q. Did you even look to find out whether or not the
4 actual problems occurred?

5 I am not talking about perceptions now, I am
6 talking about did Arlon Moore put pressure on his people to
7 violate quality or construction standards; did you find that
8 out?

9 A. We asked the people and they said he didn't
10 tell them to do anything wrong but that they perceived that
11 he wanted it done in a time frame that would require him
12 to violate interpass temperatures.

13 Q. I sort of paraphrased earlier, you have been
14 here all this morning while we wrangled about procedural
15 questions and in the process of wrangling I paraphrased
16 what I understood to be one of the concerns expressed by
17 one of Mr. Moore's crew members. Let me re-tate it and see
18 if it is consistent with what you have found.

19 A crew member says that Mr. Moore assigned him
20 to the task of completing a certain number of socket welds,
21 stainless steel socket welds, let's say, two-inch diameter
22 heavy schedule socket welds, all right. And he is doing it
23 in the fab shop. And he is under explicit instructions to
24 get the job done by the end of the shift, it has got to be
25 done, okay. The second shift -- when the first shift comes

agb/agb3

1 on in the morning, those things had to be ready to go, all
2 right.

3 And that it is clear to the worker involved that
4 in order to do that you have got to burn up those welds, okay?
5 You have got to weld them at such a rate of speed now that
6 you can't practically observe the interpass temperature
7 requirements, you have got to burn them up -- and that is
8 the words used by the people -- they will glow cherry-red
9 in the process because you won't hardly pause between
10 passes except to add further filler material, do it as
11 fast as you can. When they are done they exhibit a
12 blackened condition on the exterior.

13 And that worker in question is doing it with
14 the knowledge of Arlon Moore that this is the practice that
15 is being done. There may not have ever been words exchanged
16 by Mr. Moore saying Ignore interpass temperature
17 requirements, don't observe welding procedure X but
18 Mr. Moore has knowledge that the practice is occurring.

19 Did you confirm that that was an allegation?

20 A. We -- and of course I didn't get this direct
21 because I didn't conduct the interviews, but Mr. Hollins
22 and I discussed this issue in trying to understand and
23 Mr. Hollins told me that Mr. Moore had said that he had
24 said to employees We are going to finish this tonight and
25 what he meant was We are going to stay here as long as it

1 takes to finish this tonight, that he never said, as I recall,
2 by the end of the shift, that it was a misunderstanding on
3 his employees' part if they took it to mean by the end of --

4 A. (Witness Hollins) Mr. Guild, could I maybe try
5 to help to put that in perspective?

6 Q. If you can hold on a second, Mr. Hollins,
7 I really want to talk to Mr. Dick about this. What I want
8 to understand is he was in charge of the investigation and
9 he delegated that corollary investigation to you, Mr. Hollins,
10 and I know you have closer first-hand knowledge. But what
11 I want to know is what management of the company understood
12 as a result, the details we will get to.

13 But Mr. Dick, aside from what you learned about
14 Mr. Moore's position on this, what I want to know is you
15 confirmed that there were concerns expressed by members
16 of his crew that he did as I described, and that is he
17 basically said You've got to get this work done and,
18 according to the crew members, Moore would have had full
19 knowledge of the circumstances in which that work would
20 had to have been done; isn't that a fair understanding of
21 the allegations that you are aware of?

22 A. I don't recall that he was aware of them glowing
23 cherry-red or them being black. It was alleged that that
24 was the product of the process but I don't recall that
25 Moore said he witnessed, nor do I recall the people on his

1 crew saying that he witnessed it.

2 Q Do you recall having confirmed from your interviewing
3 -- your investigating process that people said that they would
4 ask Mr. Moore about how they could possibly do this and still
5 abide by the procedures, still get it done within the data
6 sheet, within their pass temperature requirements and he
7 would just more or less tell them Get the job done; people
8 said they inquired of Mr. Moore whether or not this could
9 be done consistent with procedures, do you recall --

10 A No, I don't recall that, Mr. Guild.

11 Q Do you recall Mr. Moore being quoted by people --
12 upon questioning about this procedure problem, this pressure --
13 saying to them words to the effect If anyone messes with my
14 job I will kill them and being pretty graphic about how he
15 was going to accomplish that?

16 MR. CARR: Your Honor, I am going to object at
17 this point. First, the remark is taken out of context,
18 that is not its proper context.

19 And second if what we are talking about here is
20 whether what we learned -- whether the same allegations
21 that were made to the Staff were made to us, I think that
22 is afield from this point.

23 MR. GUILD: I would like the question answered,
24 Mr. Chairman.

25 JUDGE KELLEY: Well I think we are looking for

agb/agb

1 context. I will overrule the objection. He either heard
2 it or he didn't.

3 BY MR. GUILD:

4 Q Are you aware of that general allegation?

5 A (Witness Dick) We had one employee, as I recall,
6 who said that Moore, in a hypothetical situation, said if
7 anyone messed me up on my -- or messed up my job or something
8 like that I would kill him or words to that effect. The
9 employee said He didn't say that to me, but since I had
10 complained about being harassed or something previously I
11 took it that he meant it about me though he did not say it.
12 That's my recollection.

13 Q And do you remember also the employees saying that
14 because they were aware of Mr. Moore's reputation for
15 having committed violent crime -- to be direct about it --
16 that they took that threat as serious and considered it
17 as applicable to themselves; they feared for their safety
18 because of that knowledge?

19 A I recall that one employee said that specifically.

20 Q You are aware that Mr. Moore in fact had
21 plead guilty to shooting his wife, are you aware of that?

22 A I was aware that Mr. Moore had served some
23 time -- at least his records indicated that. I had heard
24 it involved shooting his wife. I don't know that, no,
25 sir.

1 Q Assault and battery of a higher and aggravated
2 nature, a guilty plea?

3 He had served 18 months. As soon as he got out
4 of confinement, within a matter of two weeks he was hired
5 back on by Duke Power Company to work at Cherokee.

6 Were you aware of that?

7 A. Yes.

8 Q And so he was put in a position of supervising
9 other employees and supervised them as a foreman since
10 1979 at Catawba, sir?

11 A. He was made a foreman in 1979, I believe it was
12 at Cherokee, though.

13 Q He had served in a supervisory capacity over
14 craftsmen for a number of years in Duke's employ and for
15 a number of years at the Catawba site?

16 A. Yes.

17 JUDGE KELLEY: Maybe I could just inform
18 counsel, I have a note here about this appeal procedure
19 from Ms. Garde, who I gather has been talking to the Appeal
20 Board. It says that the Appeal Board will entertain the
21 conference call at 3:30 -- I guess that means upstairs --
22 and secondly the Charlotte Observer, presumably the
23 gentleman who was here earlier, has requested permission
24 to make an oral amicus argument and to be present during
25 the call, both of which points I gather are up to the

agb/agb

1 parties and the Appeal Board and not this Board, we have no
2 objections. We are not even going to be there.

3 So we will have to break -- we will have to be on
4 a break at 3:30, I don't propose to wait quite that long
5 because we were going to quit about now anyway and it will
6 take whatever it takes.

7 I am somewhat concerned about time. We will have a
8 lot of people sitting around while we are arguing cases
9 before the Appeal Board, I just hope it won't take too long;
10 that's up to the Appeal Board and counsel I guess.

11 We also don't have any written-down version of
12 the Board's ruling but I guess it is fairly simple: we
13 voted to close and we waived the need to allow Applicants
14 to make pledges that would stick as opposed to the need
15 to have the door open to the public and the press and
16 we came out the way we did.

17 I don't think there is very much that we can
18 add, but counsel will have to describe what we said as
19 I understand it, I don't see any better way to do that.

20 Do you want to finish the line you are on,
21 Mr. Guild? We are going to need a little stretch here
22 before 3:30, you may want to think a little bit anyway
23 before you go in the conference.

24 Why don't you finish the line and we'll take a
25 short break and then do a little bit more before it is

1 call time.

2 MR. GUILD: Okay.

3 JUDGE KELLEY: Okay.

4 BY MR. GUILD:

5 Q Mr. Dick, back on the subject now: You are
6 aware that it was confirmed that members of Mr. Moore's
7 crew had heard him making statements that they took to
8 be threats?

9 A (Witness Dick) Mr. Guild, I recall only one
10 person who heard Mr. Moore make that statement.

11 Q Did you make any effort to determine whether or
12 not that was true, whether that actually occurred?

13 A As I recall we talked to Mr. Moore about that
14 and he, as I recall, denied having made such a statement.

15 Q All right.

16 Well do you consider if a foreman such as
17 Mr. Moore in particular or a foreman in general threatened
18 an employee should they raise a concern about violations
19 of procedures that might affect that foreman's job, that
20 would represent a serious violation of at least Duke Power
21 policy, would it not?

22 A Yes, sir.

23 Q But you made no effort to determine whether or
24 not such a threat had in fact been transmitted, did you?

25 A I think we made every effort that we could,

agb/agb .

1 Mr. Guild, to confirm or to just -- to find out what the
2 truth really was.

3 Q All right. And that will speak for itself.

4 And you reached no conclusion of whether that
5 had happened or not, did you?

6 A We were unable to prove that one way or the
7 other.

8 Q Well let's put it this way:

9 Did you try to prove it?

10 A Yes.

11 Q You did.

12 Did you find other persons who corroborated that
13 individual craftsman's sworn statement?

14 A Mr. Guild, I believe there may have been one
15 other person who had heard something about it, but I don't
16 recall that they had heard Moore make the statement. My
17 recollection is that only one person said that they heard
18 Moore say it.

19 Q Did you attempt to find out whether others had
20 heard Mr. Moore make similar threatening statements to other
21 individuals; whether he had a propensity for not only
22 committing crimes of violence, as the record appears to
23 bear out, but that he made threats of physical harm against
24 people under other circumstances that would tend to
25 corroborate or lend credence to the concern expressed by the

agb/agb

1 individual who took the threat to be directed at himself?

2 MR. MC GARRY: I would like to make a comment here,
3 your Honor: I understood that Mr. Guild was focusing on
4 Mr. Dick for the purpose of eliciting what management's
5 understanding of the overall situation was, but we have
6 gotten down to pretty fine details and obviously by virtue
7 of the testimony that has already been received Mr. Dick's
8 role is not as detailed as say, for instance, Mr. Hollins'
9 role.

10 If we are going to get in to the details, I
11 would certainly like the record to reflect the full body of
12 knowledge and if Mr. Hollins has anything to share I think
13 he should be permitted to share at the appropriate time.

14 MR. GUILD: My concern is, Mr. Chairman, that
15 I am faced with 15 people that I am supposed to
16 expeditiously and efficiently examine.

17 My interest right now is in focusing on the
18 senior manager of the company who has been offered as a
19 witness to attest to the validity of the study and I want
20 to test his knowledge.

21 And I appreciate that others may have more
22 detailed knowledge and I certainly would understand that
23 the record should reflect the fact that there are others
24 who have more hands-on familiarity with the information.
25 That is not my point.

agb/agb 1 My point is Mr. Arlon Moore, the foreman who
2 was the target of their investigation, I want to know
3 what the limit of management's understanding was of the
4 scope and the basis of their investigations conclusions.
5 And that is the line of questioning with Mr. Dick and
6 why it is not, for my purposes, useful to have Mr. Hollins
7 and other gentlemen and ladies who may have more detailed
8 knowledge on this particular set of facts chime in right
9 now.

10 JUDGE KELLEY: Let me just note you are not
11 obligated to question all 15 and if you don't question
12 half of them that is no problem. They are there for your
13 convenience and you can ask a lot of people a few questions
14 or a few people a lot of questions or somewhere in between,
15 but you don't have to cover all the bases behind those
16 tables over there.

17 I think that Mr. McGarry's point is that some
18 of your questions seem to be going into a level of detail
19 that one would reasonably expect that Mr. Dick would not
20 know about. I guess he can tell us if that is the case.

21 I think there is some merit in what Mr. McGarry
22 says.

23 BY MR. GUILD:

24 Q Mr. Dick, you --

25 JUDGE KELLEY: There also is -- there is the

1 panel device and to some extent when we have panels we
2 have people chiming in whether the questioner likes it or
3 not. You can ask the question in the first instance to a
4 particular person but if somebody wants to add something
5 normally we let them do it.

6 MR. GUILD: My desire would be to have Mr. Dick
7 respond to this line of questions for purposes of --

8 JUDGE KELLEY: Well but you may not get your
9 desire entirely. If Mr. Hollins could add something
10 profitable, let him do it.

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14 endAGB#10

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BY MR. GUILD:

T11 MIA/mh

1 Q Mr. Dick, you are the one who ultimately is
2 responsible for the investigation, you are the senior person
3 with the company who is responsible for management's
4 investigation?

5 A (Witness Dick) Yes.

6 Q And I think you were responsible for the corrective
7 action that was taken, including personnel actions regarding
8 supervisors who were identified in the course of the
9 investigation?

10 A Yes.

11 Q And you are the one who made the decision about
12 what to do about Mr. Moore?

13 A Ultimately, yes.

14 Q And similarly Mr. Smith?

15 A Yes.

16 Q And the other supervisors identified?

17 A Yes.

18 Q Now, Mr. Moore worked in part for a general
19 foreman named Billy Smith, correct?

20 A At times, yes.

21 Q At times he worked for other general foremen?

22 A Yes.

23 Q How many general foremen are there in the welding
24 craft -- this is a factual question. If there are others on
25 the panel who know the answer to that one, please chime in.

mm2

1 A Half a dozen.

2 A (Witness Hollins) Good estimate, five or six.

3 Q And there have been more at times when there were
4 more welders on the job, correct?

5 A (Witness Dick) Yes.

6 Q There have been upwards of 500 welders on the job
7 at peak times, Mr. Hollins, Mr. Dick?

8 A It sounds a few too many, but it is in the ballpark.

9 Q 450, 500?

10 A Yes, sir.

11 Q And when there were that peak number, Mr. Hollins,
12 how many general foremen were there?

13 A (Witness Hollins) I do not know the answer to that.

14 Q Close to ten, perhaps?

15 A I don't know, but I doubt if it was that many.

16 Q Less than ten?

17 Someplace between five and ten?

18 A I don't know the answer to that.

19 A (Witness Llewellyn) I believe there were seven,
20 Mr. Guild.

21 Q Seven general foremen, Mr. Llewellyn? That is one
22 period?

23 A Yes, sir.

24 Q Mr. Smith was simply one of seven of the general
25 foremen, right?

MM#3

1 A (Witness Dick) Yes.

2 Q Now let's work from the top down.

3 Present superintendent over the welding craft is
4 Mr. Bill Rogers, correct?

5 A Yes.

6 Q Under Mr. Bill Rogers there are these general
7 foremen, correct?

8 A Yes, sir.

9 Q Up to seven of them. And under those seven general
10 foremen there are foremen and crews. How many foremen
11 Mr. Llewellyn, Mr. Hollins, Mr. Dick, whoever?

12 A How many foremen work for a general foreman?

13 A Three to five.

14 A (Witness Llewellyn) Approximately six, Mr. Guild.
15 Three general foremen -- I think there are a maximum of
16 about 42 foremen.

17 Q Okay.

18 MR. GUILD: If I could just have a moment.

19 MR. KELLEY: I think gentlemen, we might go on for
20 a bit more waiting for that phonecall at about 3:15 or so.

21 Is that all right with the panel, another 15 or 20 minutes?

22 WITNESS DICK: Yes.

23 BY MR. GUILD:

24 Q I am looking for a chart of welding craft. There
25 is a chart, I think it has Mr. Rogers' name on the top

mm4

1 as the general foreman and crews under him.

2 Q Can someone help me with that document?

3 MR. CARR: I'm sorry, did you say you are looking for
4 an organizational chart?

5 MR. GUILD: Yes. There is a table of the welding
6 craft.

7 I have got my hands on it. Okay.

8 BY MR. GUILD:

9 Q It is a document, it is an organizational chart.

10 Gentlemen, maybe I could pass it around. Could
11 someone tell me who put that together, and maybe would be most
12 familiar with the detailing.

13 Mr. Hollins?

14 A (Witness Hollins) That was submitted to you as
15 part of my discovery. I obtained that document from Mr. Rogers.

16 Q Mr. Rogers is the welding superintendent?

17 A That's correct.

18 Q Okay. Do you know when this document was current?
19 What period of time does it reflect on the job, if you know?

20 A I obtained that from him during the investigation.
21 That probably would have been late March, early April.

22 Q Current about in 1984, spring?

23 A Yes, sir, spring of '84 is when I obtained it from
24 him.

25 Q Okay. Mr. Dick, this is spring of '84, and you are

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1 down in terms of the number of welders on the job. It is not
2 peak, is it?

3 A (Witness Dick) At that time we were still probably
4 pretty close to peak. That was before the first layoff.

5 Q Close to peak then. At that time you show Mr. Rogers
6 in charge of the welding craft superintendent, and seven general
7 foremen, correct?

8 A Yes.

9 Q All right. And those are Mr. Smith, Mr. T. J.
10 Spearman, Mr. J. T. Hammer, S. H. Wood, J. R. Wilson, D. E. Mills
11 and N. E. Chapman, correct?

12 A I can't read it, but I presume that is correct.

13 Q All right. Do you want to check?

14 (Document handed to witness)

15 A Yes.

16 Q Now under Mr. Billy Smith at that time there are
17 six foremen, correct?

18 A Yes, sir.

19 Q And Mr. Moore himself wasn't even under Mr. Smith
20 at that time, right?

21 A His name is not there, that's right.

22 Q Mr. Arlon Moore. A. Moore is under T. J. Spearman in
23 spring of '84, correct?

24 A Yes.

25 Q Now you were aware that the allegation that the NRC

mm6

1 communicated to you and the one that you pursued in your
2 investigation reflected that Mr. Moore engaged in the alleged
3 practice of pressure of the foreman override if you will, when
4 he worked for Billy Smith. That he worked -- otherwise he
5 was a good foreman, he worked according to procedures. He
6 didn't ride his people to the point where production pressure
7 impugned quality or compliance with regulations when he worked
8 under other general foremen.

9 You are aware of that allegation, correct?

10 A I am aware of that allegation, yes, sir

11 Q And I think, for example, the allegation was
12 specifically made when Mr. Moore worked for J. R. Wilson, for
13 example, that none of these practices occurred.

14 A Yes, sir.

15 Q And did you confirm through your investigation,
16 Mr. Dick, that that assertion was corroborated, that it was
17 Mr. Smith who was the link, and during the periods when it was
18 Mr. Smith supervising Mr. Moore, these problems occurred?

19 A It appeared that way based on the information we
20 were able to obtain. Yes, sir.

21 Q And Mr. Hollins, I am interested in the facts on
22 this particular point which you found. Is that a consistent
23 understanding of yours of the results of the investigation?

24 A (Witness Hollins) The affidavits indicate that an
25 awful lot of people felt that there was a change in Mr. Moore's

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1 behavior.

2 Q Okay. When he was under Billy Smith?

3 A When he was under Billy Smith.

4 Q And change when he wasn't under Billy Smith. He
5 was better, a better foreman when he was under Mr. Wilson, for
6 example?

7 A That's correct.

8 Q Did you attempt to corroborate -- Mr. Dick now,
9 did you attempt to corroborate the substance of that allegation?

10 A (Witness Dick) In particular what aspect of it,
11 Mr. Guild?

12 Q That Billy Smith was the source of the pressure that
13 produced the problem with Arlon Moore.

14 A The people in Moore's crew that talked to us said
15 that he appeared to be --

16 Q What I am trying to understand is, you are just
17 repeating that sort of hearsay on hearsay. I don't mean to
18 be technical about it. I just mean all you are telling me is
19 that so and so said such and such.

20 What I want to know is, did you confirm the fact
21 that the pressure came from Billy Smith, in short?

22 A Except to the extent that the people told us that,
23 and that they told us that when he was not supervised by
24 Billy Smith the pressure didn't seem to be there, their
25 perception of it. In that sense we did.

1 Are you asking me, did we prove that that was true?

2 Q Yes. Prove, confirm.

3 Now I am not trying to say, Mr. Dick -- don't
4 misunderstand, proof is not something that I had in mind as
5 requiring, you know, people swear on a stack of bibles or
6 the smoking gun. I don't want to know what was in your mind.
7 What I am going after really is confirm or corroborate, reach
8 the conclusion that any fairminded person would, or a manager
9 would, that in fact the practices occurred. Not just the
10 perceptions or the feelings or the understanding. But I am
11 concerned about the practice.

12 Did you confirm that the practice occurred with
13 regard to Billy Smith and Arlon Moore's relationship?

14 A I don't recall that we confirmed the practice.

15 I think that we did come to a judgment that based
16 on either the absence of or the presence of information in the
17 other interviews, we concluded that -- we came to a conclusion
18 that Arlon Moore's behavior was perceived as being different
19 when he was working for Billy Smith. And we didn't find this
20 perception in other crews that were supervised by Billy Smith.

21 Q Okay. So again your target was the perception, and
22 it was based on the statements you got in the affidavits?

23 A Mr. Guild, we searched very diligently for the
24 hardware that was discussed in the affidavits. And we looked
25 as hard as we could and did everything that we could to try to

mm9

1 either -- to find what the facts really were.

2 Q I want to get to the hardware question, because
3 that is another separate area.

4 But, is it fair to say you are telling me that you
5 didn't find any evidence -- you looked for it, but you didn't
6 find any evidence that would confirm, other than the perception
7 by Billy Smith that there was pressure, or the perception by
8 Arlon Moore of this pressure?

9 A That's my conclusion, Mr. Guild, is that Moore felt
10 pressure from Billy Smith and the people in the crew perceived
11 that and he passed it on to them.

12 Q Okay. Well I want you to tell me if you can, please,
13 Mr. Dick and Mr. Hollins at this point, what did you do to go
14 out and look to see whether these facts happened? I am not
15 talking about perceptions, I am not talking about a popularity
16 poll or, you know, feelings that people might have had about
17 each other.

18 What I am concerned about is the fact that the
19 foremen pressuring his workers to violate procedures and do
20 faulty work. And in turn the pressure by a general foreman,
21 a second-level supervisor on his foremen that results in that
22 product.

23 What did you do to go after the facts?

24 A (Witness Hollins) We interviewed nearly 200 crafts
25 people. I believe it was 110 welders. Anyone -- the affidavit

mm010

1 after the initial interview, that we felt could give us
2 additional information where we could, in fact, develop that
3 information, we went back then with the technical interviewers
4 to try to develop that.

5 Q So to do that -- that's what you did to investigate
6 whether or not this pressure existed?

7 A An individual would indicate whatever -- he thinks
8 Billy Smith is pressuring Arlon Moore, he thinks Arlon Moore
9 is pressuring him, he would tell -- he would relay that type
10 of information in our screening interviews to employee
11 relations people.

12 We would go back and try to develop that information.
13 "Tell us exactly what you are talking about, where did this
14 happen, what are the details surrounding that?"

15 Q All right.

16 And again, looking for evidence of this pressure?

17 A That's correct.

18 Q Now Billy Smith, he had been a general foreman in
19 the welding department for how long?

20 A (Witness Dick) I don't know.

21 Q Mr. Dick doesn't know.

22 Mr. Hollins?

23 A (Witness Hollins) I did know and I can't remember
24 now.

25 Q Mr. Llewellyn?

mm11

1 A (Witness Llewellyn) I'm not sure either.

2 Q Back at least before 1980, correct?

3 A Yes.

4 Q At least four years?

5 A Yes.

6 Q Now he had supervised other foremen in addition

7 to Arlon Moore, had he not?

8 A (Witness Dick) Yes.

9 Q How many other foremen had Mr. Billy Smith supervised?

10 A In his total career?

11 Q At Catawba as a general foreman.

12 A (Witness Hollins) I don't know, that's a very

13 difficult number to determine.

14 Q Did you try to determine it?

15 A Yes. What we did was, we identified those
16 individuals that Mr. Smith had performed a performance review
17 on. That was the only clear link that we had.

18 Q You didn't have records otherwise of who Mr. Smith
19 supervised?

20 A No, sir.

21 Q Well you do a performance review once a year, right?

22 A Correct.

23 Q So he could have people come under him and come
24 out from under him and come back under him again and maybe still
25 not do their performance review?

mm12

1 A That's correct.

2 Q So you got some of the people he supervised, but not
3 all, correct?

4 A I don't know that.

5 Q You don't know whether you -- did you get all --

6 A I do not know whether I got them all.

7 Q Help me understand this. How is it that a man
8 can be a second-level supervisor at the Catawba Nuclear
9 Station and you not know with some degree of clarity, what
10 foremen worked for him. Help me to understand how that
11 particular fact escapes your knowledge.

12 A There are just no records kept on that, as I under-
13 stand it. Mr. Abernethy maybe could help us with that
14 recordkeeping.

15 Q Well, I want to know -- I guess I am interested
16 in whether -- how much effort you put into try to find out.

17 You didn't find out exhaustively how many people
18 worked for him, or who worked for him. Did you ask anybody?
19 Did you ask people whether they were aware of others who
20 weren't on your list who worked for Billy Smith, for example?

21 A I do not remember doing that, no.

22 Q Mr. Abernethy, can you shed some light on that
23 question?

24 A (Witness Abernethy) I'm not aware of any report
25 that would contain that information.

mm13

1 Q You certainly are aware, aren't you, Mr. Abernethy,
2 that a person who was supervised by Mr. Smith, would have been
3 aware that Mr. Smith was his general foreman, correct?

4 A That's correct.

5 Q Did you ask anybody whether they were aware of
6 others who worked for Billy Smith?

7 A I did not ask anybody that, no.

8 Q Mr. Hollins, you are not aware of anybody asking
9 that?

10 A (Witness Hollins) I cannot remember ever doing
11 that.

12 Q Okay.

13 Now, what happened to Mr. Smith as a result of the
14 investigation? Mr. Dick, back to you, sir.

15 A (Witness Dick) Mr. Smith was removed from
16 supervision and was transferred to another department at
17 another location.

18 Q And was he disciplined in any fashion? Was he
19 reprimanded?

20 A I'm considering the technical term. We discussed
21 with him why he was being removed from supervision. That, in
22 itself is action -- I don't recall what we called it.

23 Q Okay. Mr. Smith was transferred to a nonsupervisory
24 position, correct?

25 A Yes.

1 Q Was his pay cut?

2 A I don't know, Mr. Guild. His rate of pay was
3 determined by the other department, and I don't know.

4 Q Mr. Abernethy?

5 A (Witness Abernethy) I don't know that.

6 Q Mr. Hollins, do you know?

7 A (Witness Hollins) I don't know.

8 Q Anybody on the panel have any idea?

9 (No response)

10 You are not aware, as part of the personnel action
11 taken against Mr. Smith, Mr. Dick, that you provided that his
12 pay be cut as a sanction for his conduct?

13 A (Witness Dick) No. What I provided for was that
14 he be removed from supervision.

15 Q Okay. Now in addition to Mr. Smith and Mr. Moore,
16 there were some 11 other supervisors who were implicated in
17 the investigation, isn't that correct, Mr. Dick?

18 A That sounds right, yes.

19 Q Now included among those is Mr. Rogers, the welding
20 superintendent?

21 A Yes.

22 Q All right. And Mr. Rogers, the welding superintendent,
23 he was counseled for having allowed the practices involving
24 Mr. Smith and Mr. Moore to have occurred under his supervision,
25 is that a fair characterization of the fault that was found

mml5 1 with Mr. Rogers?

2 A I would have come at it from another direction,
3 I guess. Failure to supervise in a way that he was aware of
4 what was going on.

5 Q And I think -- is it fair to say that you observed,
6 Mr. Dick, whether he knew or didn't know, it was his
7 responsibility to have prevented the problem from having
8 occurred?

9 A It was his responsibility, yes.

10 Q Okay. Did you try to determine whether or not
11 Mr. Rogers either knew of the practices by Mr. Smith and
12 Mr. Moore --

13 MR. CARR: Your Honor, I am going to object to
14 the word "practices." We have been through this thing;
15 Mr. Dick has testified, what we have are allegations and
16 the action was taken because the allegations existed.

17 Now, if we want to use the words, let's use the
18 correct ones.

19 MR. GUILD: It seemed to me to be as nonjudgmental
20 a term as I could find, except for being sanctioned for
21 breathing the air and walking the earth. I don't know how
22 to be any nicer about my choice of words than to say
23 "practices."

24 JUDGE KELLEY: Why don't you try allegations.

25 MR. GUILD: Well, because, Mr. Chairman, it seems

mml6

1 to me --

2 JUDGE KELLEY: I sustained the objection, Mr. Guild.
3 Why don't you go ahead with the question.

4 MR. GUILD: Are we punishing people for allegations
5 or are we punishing people for conduct, misconduct, Mr. Dick?
6 If this is wholly just a charade because all we are doing is
7 saying there are allegations made against you and because we
8 have got to satisfy somebody, we are punishing you.

9 BY MR. GUILD:

10 Q What I am trying to drive at, did you find anybody
11 did anything wrong, Mr. Dick?

12 A (Witness Dick) We came to the conclusion that their
13 supervisory practices were such that people had a perception
14 and we felt that among other things, that their effectiveness
15 had been destroyed. And we removed them for that reason.

16 Q Let's use practices. How about that? Is that a
17 fair nonjudgmental term? Then that is yours, not mine,
18 practices.

19 JUDGE KELLEY: Let me just interject on another
20 note. I have got 20 after. You gentlemen are scheduled to
21 go to a higher court on a higher floor. You might want to
22 gather your thoughts a little bit.

23 (Laughter)

24 Is this a good place to quit, Mr. Guild?

25 MR. GUILD: Yes, sir.

1 JUDGE KELLEY: I don't want to cut you off.

2 MR. GUILD: That's all right.

3 JUDGE KELLEY: I think you have all heard that
4 there is going to be this telephone conference, argument, up-
5 stairs on this ruling about closing the proceeding. Hopefully,
6 it won't take too long. I will just ask you to stay around
7 gentlemen.

8 We will go into recess now.

9 (Recess)

10 JUDGE KELLEY: Can we go back on the record. We are
11 back on the record. We adjourned to recess so that counsel
12 could discuss the question of closing this hearing or not with
13 the Appeal Board.

14 Maybe Mr. Guild could give me a resume of what
15 transpired.

16 MR. GUILD: Yes, sir. They heard us at length a
17 few moments ago, and said they would take the matter under
18 advisement and communicate back to us within half an hour.

19 I am informed there is a problem with just getting
20 a call back into the Duke Endowment switchboard since they
21 close at 5, so it may require one of us to go out and try to
22 call them and see what happens.

23 I also should have the record reflect that counsel for
24 the Charlotte Observer, Charlotte News was also heard as
25 amicus addressing the issue.

mm18

1 One question we were a little unclear about,
2 your Honor, was the status of a request I made to have the
3 matter directed or certified to them. I think our position
4 was that we just didn't think you had ruled on that req est.

5 JUDGE KELLEY: I think our intent was to do what
6 we needed to do so that you could get the question up there.
7 The question was, request the Director for certification, we'd
8 say denied, whereupon you could take it up. And that was
9 really all.

10 MR. GUILD: We communicated to the Judges that
11 you had agreed to recess the hearing while the conference
12 call was in process.

13 JUDGE KELLEY: That is certainly true. We didn't
14 want there to be any procedural contention to your being able
15 to put the issue to them, and I don't think that there is.

16 So, we were proceeding in the in-camera mode, and
17 I gather we haven't been stayed from so doing. And so, although
18 that may change depending upon the Appeal Board decision in
19 the next half hour or so, we would like to go ahead.

20 Now we understand that they may be communicating
21 or attempting to get ready to communicate at a quarter past
22 five or so. Is there some mechanical way -- is somebody at
23 this point assigned to line that up? That is only a short
24 time from now. Can we talk about that for a minute?

25 What do you want to do? What do you propose we do?

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1 MR. GUILD: I really don't know unless someone with
2 Applicants -- we left some people upstairs in the conference
3 room. If the Appeal Board does call back, we will have that
4 message relayed. At 5 o'clock, though, they are going to be
5 ejected. At that point we may have to find some other manner
6 of communicating back.

7 MR. RILEY: The receptionist has agreed to go until
8 5:10.

9 MR. GUILD: By 5:10, if we don't know by then
10 maybe we could take a little break and try to reach the Judge.

11 JUDGE KELLEY: All right, we will cross the bridge
12 then.

13 MR. GUILD: I am prepared to go forward, Judge.

14 JUDGE KELLEY: Fine, go ahead.

15 BY MR. GUILD:

16 Q Mr. Dick, we have talked about the action that was
17 taken with regard to two supervisors, and that was Messrs. Moore,
18 the foreman, and Smith, the general foreman.

19 And I think in sum you stated that they were taken
20 from supervisory positions and reassigned.

21 As to the eleven other foremen who were implicated,
22 what action was taken with them? I don't mean name by name,
23 just generally speaking if you could describe it.

24 A (Witness Dick) Counselling, performance feedback,
25 employee notice -- there were several levels.

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1 Q In what disciplines did those employees perform
2 supervisory jobs? What class, what departments of the project,
3 just generally?

4 A Powerhouse mechanic, as I recall.

5 Q And welding?

6 A And welding.

7 Q In the powerhouse mechanic area, that comprises a
8 number of subdisciplines. What supervision under the
9 designation powerhouse mechanic, were included?

10 A Powerhouse mechanic includes instrumentation and
11 hangers and pipe and millwright. And one was in instrumenta-
12 tion, as I recall, and one was in hangers.

13 May I correct an answer that I gave you earlier?

14 Q Yes, please do.

15 A I told you that Moore had, because of a reduction
16 in force, been reduced already from foreman. He was reduced
17 to the senior classification prior to our coming to the
18 conclusion as to what action we would take.

19 We did, in fact, reduce him, demote him again as a
20 result of this investigation from senior to welder.

21 Q Senior is lead man?

22 A Lead man, yes.

23 Q Does a lead man exercise any supervisory responsi-
24 bility?

25 A He is a pusher. He can take part of the crew when

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1 the foreman is not present.

2 Q The answer is he does, he exercises some supervisory
3 responsibility?

4 A Yes.

5 Q Now as to the 13, then; Mr. Rogers, the welding
6 superintendent, Mr. Smith, under him the welding general
7 foreman, Mr. Moore, and then the other foremen -- and was there
8 one general foreman among the group of 13?

9 A I don't recall a general foreman.

10 Q Do you recall a general foreman?

11 Okay, the other foremen, then, what was communicated
12 to them about the basis for the action taken? Did you tell
13 them they had done wrong? Address that point first.

14 MR. CARR: Mr. Guild, excuse me for a second. I
15 may have missed that. What was communicated to whom?

16 MR. GUILD: To the 13, the 13 supervisory people.

17 WITNESS DICK: We, as we were discussing earlier,
18 didn't try to prove that all of the allegations that were
19 made against supervision were accurate.

20 We did look at hardware to try to confirm anything
21 that we could. But, as a matter of fact we just took them for
22 what the people said and, because we had pledged confidentiality
23 to our sources, we talked in very general terms to supervision
24 when we were counseling them, because we did not want to tell
25 them anything that could in any way be traced back to its

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1 source in the craft.

2 And so we talked in general terms of the perception,
3 of the indications that we had gotten, and said that we are
4 taking this action because of these perceptions.

5 BY MR. GUILD:

6 Q Did you have people among that supervisory level
7 say to you words to the effect, "What did I do wrong?"

8 A (Witness Dick) Mr. Guild, I did not carry out the
9 action. I am sure there were questions along those lines,
10 but I can't testify specifically.

11 Q All right. Well the actions. Let's take, just for
12 example, Mr. Rogers was the senior supervisor who was
13 counselled, is that correct?

14 A That's correct.

15 Q And Mr. Rogers, the welding superintendent, who
16 was responsible for counseling him, do you think?

17 A Mike Couch, who was project administrator and
18 Ray Johnson who is the unit 2 construction superintendent.

19 Q Okay. Did Mr. Couch and Mr. Johnson have the
20 report, the August 3 report, for example to transmit to
21 Mr. Rogers, to communicate to Mr. Rogers what he had done
22 wrong, what had been found wrong?

23 A No, sir. As a matter of fact we did not -- we
24 kept this very close, the specifics. And Couch and Johnson
25 did not know the specifics of the allegation. They simply had

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1 enough information to enable them to communicate the concerns
2 and the action.

3 Q Is it a fair statement that essentially what
4 Mr. Johnson and Mr. Couch did to Mr. Rogers, they read him a
5 statement that had been prepared by maybe Mr. Abernethy or
6 someone in the personnel section?

7 A That's essentially correct, yes, sir. Although we
8 did have a meeting which I have described to you in my
9 deposition, at the site, where we talked in general terms
10 about what we were going to do. So, those people were in that
11 meeting and they were oriented in a general fashion.

12 Q Those people, meaning Mr. Couch and Mr. Johnson?

13 A Yes.

14 Q Mr. Abernethy, is that correct? You prepared, or
15 someone subject to your direction prepared those counseling
16 memos?

17 A (Witness Abernethy) I was responsible for preparing
18 the counseling memos, that's correct.

19 Q Is it fair to say -- I am just getting general now,
20 but those counseling memos simply stated, or perhaps as
21 Mr. Dick has paraphrased, there is a perception among your
22 people of problems, and it is your responsibility to not have
23 those perceptions occur, of sacrificing quality for
24 production, that kind of thing?

25 A I don't recall specifically what they said. That

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1 was --

2 Q In other -- I'm sorry, had you completed your
3 answer?

4 A They dealt with the perception that had been given
5 in some cases in some isolated instances, that they may have
6 been willing to shortcut procedures, I believe was the wording
7 on one, that generally dealt with perception.

8 Q Did it give -- did those counseling memos in your
9 opinion, Mr. Abernethy, provide anybody with a factual basis
10 for understanding what they had done wrong?

11 Did it tell them the charges against them in sort
12 of a technical sense?

13 A They in no way gave the specifics that were contained
14 in the affidavit.

15 Q Did it mention even the hardware that was implicated?

16 Did it say anything about interpass temperature
17 control for welding supervision that were involved in concerns
18 about failure to observe interpass temperature control, for
19 example?

20 A No.

21 Q Did it say anything about arc strike repair for
22 foremen who were involved in allegations about arc strike
23 repair without process control?

24 A Not that I recall.

25 Q Okay. Is it a fair statement they didn't have

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1 anything to say about the hardware or the procedures that were
2 alleged to be violated? Is that fair?

3 A I don't think that they did.

4 Q Do you reckon it was sort of a mystery to some of
5 these people what on earth it was they were being sort of
6 called on the carpet for? Do you think that is a fair conclusion
7 to draw from the tenor of the counseling memo? Perhaps because
8 I took their depositions, from talking to the individuals
9 themselves, Mr. Dick?

10 A (Witness dick) They did not know the specifics
11 except to the extent perhaps Mr. Guild that afterwards I
12 addressed supervision, all welding supervision and perhaps with
13 more specificity described some of the things that had come out
14 of the investigation and why, if that perception was held it was
15 wrong. And if anyone had done it, why they shouldn't and
16 wouldn't in the future.

17 Q Okay.

18 Well, would it be inconsistent with your understanding
19 of the counseling process, the remedial process, if individuals
20 who were the subject of counseling said, "What did I do wrong?"
21 And the counselor, the supervision, Mr. Rogers counseling
22 Mr. Smith, for example, Mr. Johnson, Mr. Couch counseling
23 Mr. Rogers and so on down, if the people who were doing the
24 counseling said, "You didn't do anything wrong," or, "I don't
25 know of anything you have done wrong, " that kind of thing?

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1 A Mr. Johnson was with Mr. Rogers --

2 Q Yes.

3 A -- when he counselled Mr. Smith.

4 Q Yes.

5 A And so there were two people there.

6 Q Okay, I don't mean to misstate the facts. I
7 appreciate that. But the thrust of my question is, is it
8 conceivable to you, given what you know about the substance
9 of the counseling, that the person who was supposed to be
10 called on the carpet would say, "What did I do wrong?"

11 The person who was administering the counseling
12 would say, "I don't know of anything you did wrong"?

13 A That would not be the way it came out.

14 Q That wouldn't be very effective corrective action,
15 if that were the tenor of the exchange that went on
16 between people who ostensibly did some wrong, or allowed
17 some wrong to exist under their supervision, who were
18 supposedly being called onto the carpet and counselled so
19 it would correct that problem.

20 MR. CARR: I will object to that question. Mr. Dick
21 has already said that is not what happened.

22 MR. GUILD: I intend to demonstrate otherwise, so
23 I guess it is a fair question to try to give him an
24 opportunity to try to address the problem. If that happened,
25 how would that reflect favorably on the effectiveness of your

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1 corrective action? The person who is supposed to have done
2 wrong isn't told that he has done any wrong?

3 WITNESS DICK: Mr. Guild, we don't know that they
4 have done wrong.

5 BY MR. GUILD:

6 Q So we would be -- it would be consistent for
7 someone in a supervisory position to say just as I submitted
8 to you, "I don't think you did wrong"?

9 A (Witness Dick) We didn't say it that way. We
10 told them how their actions may have been perceived.

11 Q All right.

12 Mr. Hollins, Mr. Billy Smith, the general foreman
13 appears in the spring of this year to have had six crews under
14 him, and the number underneath means there is -- it looks
15 like there is 71 people under his supervision. Maybe,
16 Mr. Llewellyn you might know. Does that sound about right,
17 the number of welders who would have been under Billy Smith
18 at that point in time?

19 A (Witness Hollins) 71 folks sounds about right
20 for six crews.

21 Q Now, do you know how many of the people, as of the
22 date of this chart's currency, in the spring of '84, how many
23 of those 71 people you interviewed? Did you interview all of
24 them?

25 A That was not our approach to interview everybody

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1 that had worked for Billy Smith.

2 Q So the answer is no, you did not interview all
3 those 71?

4 A The answer is I may have, but I can't testify to
5 that.

6 Q How do you know if persons that you didn't interview
7 among the 71, themselves had knowledge of foremen override
8 instances?

9 A In order to answer your question thoroughly, I
10 would have to take those crews and go through the information
11 that I supplied to you in discovery to make that determination.

12 Q Right. I guess the bottom line is, assuming that
13 you didn't interview all 71 of these, there may be welders
14 who worked for Billy Smith's crews, who were not interviewed
15 as part of your investigation, is that right?

16 A I never set out to interview every welder that had
17 ever worked for Billy Smith.

18 Q Right. Not even the welders who worked for him
19 in the spring of 1984?

20 A We did a very large percentage of Mr. Moore's
21 crew. We followed up everybody that had concerns and other
22 welders that were named in any of those interviews.

23 We also interviewed at least one welder off of each
24 crew that was working in a critical area. I believe that --
25 I am trying to recall that total number, and I believe that is

1 110 welders. It may be more.

2 I'm sorry, let me correct that. There were -- in my
3 testimony that I filed this morning, there were 65 of the 110
4 welders that had worked for Arlon Moore, and we interviewe d
5 an additional 69 welders in other crews.

6 Q Let me see. We may want to be more precise about
7 this as we go forward, but let me see if I can summarize my
8 understanding, Mr. Hollins, of your sampling.

9 You tell me if I am missing this. Reflected in your
10 final report, just to have it out on the table so we will
11 follow it, all the people who worked under Arlon Moore during
12 the specified period of time.

13 A That was still on the job site.

14 Q Still on the job, ckay.

15 Then you went out and looked for other welding crews
16 who worked on critical parts of the plant?

17 A That's correct.

18 Q You identified them?

19 A That's correct.

20 Q Now give me the simple definition of "critical"?
21 What was your definition of the term critical?

22 A Essentially assigned to the auxiliary and reactor
23 buildings and fab shops.

24 Q Okay. Is there any more particular definition, more
25 precise definition?

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1 A No, I think that is pretty much the definition.

2 Q Okay. And for them you took the crew with the
3 lowest crew number in those critical areas?

4 A That's correct.

5 Q And from that crew you identified the first
6 individual on the roster who met a seniority criterion -- four
7 years, they were in the job in 1980, I think.

8 A I took the crew list supplied to me. It was a
9 computer printout supplied to me by the employment office.
10 Recognizing that the NRC had indicated to us that the timeframe
11 predominantly of interest was in the '80, '81 timeframe, I
12 picked the first individual off of that list. That was a
13 craftsman, at least in early '80.

14 Q And that is in essence how you got your sample
15 outside of Mr. Moore's crew, correct, in the welders?

16 A That's correct.

17 I picked a welder off of each crew working in
18 critical areas.

19 Q Okay. And then -- and that got you approximately
20 how many more people beyond Mr. Moore's -- do you have that in
21 your prefiled testimony?

22 A That's in the report, Mr. Guild.

23 Q Okay.

24 A That was 35 additional welders.

25 Q Okay. And you had interviewed 33 individuals who

mm31 1 had been supervised by Mr. Moore?

2 A No, sir. I had interviewed 33 plus 19 welders, plus
3 his current crew which was a total of 8.

4 Q Okay. This is page 10 of your report?

5 A That's correct.

6 Q Okay. I am following you.

7 Then by going beyond -- that is Mr. Moore's crew,
8 past, present, et cetera?

9 A That's correct.

10 Q As defined and limited. That is Mr. Moore's crew.
11 Then outside of Mr. Moore's crew, you got 35
12 additional people from the process that you described?

13 A That's correct.

14 Q Critical areas of the plant. First crew number,
15 first person on the list that met the 1980 term criterion?

16 A That's correct.

17 Q Okay. That got you 35 more.

18 A Yes, sir.

19 Q And that was your initial cut of welders, correct?

20 A No, sir. In addition to that, I interviewed 16
21 other welders where their name had come up in previous
22 affidavits.

23 Q Right. That was the second catch. That was sort
24 of following leads from the first batch, correct?

25 A Yes, sir.

1 Q Okay. Now help me root this in some time. When did
2 this part of the investigation happen? When did you do the
3 interviewing reflected in this part of the investigation?

4 A We started the investigation in mid March. So my
5 best estimate is the first half of April. I don't have anything
6 in front of me that would help me with that date.

7 A (Witness Dick) Mr. Guild, my testimony says that
8 by April 6th, we had interviewed 147 people.

9 Q All right.

10 Did that April 6th date, that 147 people, that
11 represented not just the welders on Mr. Moore's crew in your
12 second set, but then the followups for the people who -- not
13 the followups, but the leads if you will, people who were
14 identified as having some level of knowledge of interest to
15 you.

16 A (Witness Hollins) That is correct.

17 Q And that was 147, right, by April 6th?

18 A Yes.

19 Q Now, when was the decision made to go beyond this
20 sample of welders and make a further investigation of the
21 extent of problems of interest to you outside of that group?

22 A That is spelled out under Section B there on page 11
23 of the report, what we call subsequent round of interviews.

24 Q All right. And when did that happen?

25 A Subsequent to, I guess the April 4th date.

mm33

1 Q All right.

2 Well that got you a followup interview of people in
3 the first cut who had technical concerns, right?

4 A Yes, sir.

5 Q Get more details, be able to identify specific
6 hardware locations, weld numbers, places in the plant, that kind
7 of thing?

8 A Now that was part of the subsequent interviews.
9 That was the details. There were some additional interviews
10 that were done based on leads, if you will. If there were
11 supervisors that were mentioned in adverse light in some of
12 the previous interviews, I evaluated how they were mentioned
13 and then made decisions on interviewing those crews.

14 Q I want to talk about, right now, is when did you
15 decide to go beyond the welding craft for interviews?

16 A And, tell me how that happened?

17 A I think we decided early on in the process that
18 we would go beyond the welding craft as indicated up here in
19 what we call our initial round of interviews.

20 A (Witness Dick) I came back from Atlanta knowing that
21 we would have to go beyond the welding craft, Mr. Guild.

22 Q After your March meeting with NRC?

23 A My March 14 memo, which I carried to Mr. Owens said
24 on a sampling basis, that the plan would include interviews
25 of selected craft personnel to determine if production

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1 quality concerns are broader than a specific crew craft.

2 Q Wasn't there a point in your investigation where
3 you made some determination that you needed to expand your
4 sample into other crafts? If it wasn't the first at the
5 very beginning, just tell me. But I understood that you had
6 made some decision that at some point in the process you
7 needed to go specifically beyond welding.

8 A (Witness Hollins) No, we did that in the very
9 beginning.

10 Q Okay. So you made your -- you determined your
11 sample beyond the welding craft at the outset?

12 A We determined that we would sample.

13 Q When did you make your determination of what the
14 sample would be outside the welding craft?

15 A That was made subsequent, obviously, to the
16 decision to sample, and prior to making the selections of
17 the March 13th, April 4th timeframe, that decision was made.

18 Q When did you actually conduct those interviews?
19 Same time you did those first interviews, or after?

20 A It was essentially after the first round of
21 interviews for Arlon Moore's crew. It was head to tail there.

22 Q Okay.

23 JUDGE KELLEY: I think we ought to interrupt,
24 Mr. Guild. Ladies and gentlemen, I have had handed to me
25 just now, what I take it was an indication of the Appeal Board

mm35

1 ruling. Ms. Sapp handed it to me. I gather it was simply
2 dictated over the phone. I am going to go ahead and read it,
3 and I can confirm if that is the case.

4 Ms. Garde, Ms. Sapp, let me just ask -- I gather that
5 what you handed me was taken down verbatim, or virtually so
6 from the Appeal Board?

7 MS. SAPP: Verbatim from the Appeal Board, yes, sir.
8 Can you read it all right?

9 JUDGE KELLEY: Yes. It reads as follows:

10 "The Appeal Board has summarily reversed the
11 Licensing Board order directing that the Applicant's panel of
12 witnesses testify in camera. In taking this action the
13 Appeal Board does not reach any other question, including
14 whether the testimony of any Duke employee subpoenaed by the
15 Intervenor should, upon the request of that employee, be
16 received in camera."

17 I think that is pretty clear. Does anybody want
18 me to read it again?

19 (No response)

20 So, that means that our earlier order directing
21 that this panel be heard in camera, with the public and media
22 excluded, has been reversed, and I take it at this point we
23 may open the door.

24 We may want to talk about -- let me ask counsel
25 who participated in the argument, did you get into at all this

mun36

1 question of whether, if it is open, we then go to codes and
2 numbers and the like?

3 MR. GUILD: Yes, sir. The clear understanding among
4 the parties was that we would be employing the number code,
5 and that would be the method we would use to proceed.

6 MR. JOHNSON: That is correct.

7 MR. MC GARRY: That is correct.

8 JUDGE KELLEY: Shall we begin by opening the door?

9 The reporter asked me, quite appropriately, whether
10 we have un-in-cameraed the past two hours or not.

11 Do counsel have thoughts on that?

12 MR. CARR: I don't think there was anything mentioned.

13 JUDGE KELLEY: There wasn't anything to speak of.

14 Just systematically, what is your view, Mr. Guild?

15 MR. GUILD: I think the record should be made public.
16 As far as I know the only names that were used were not
17 protected names. They were names of foremen who were implicated
18 and those have always been unprotected, those have always been
19 public, so to speak. And so our view is, I haven't heard a
20 single name. We probably used one number in argument is all I
21 recall.

22 So, I don't think there is any protected information
23 in the transcript today.

24 JUDGE KELLEY: Mr. Johnson?

25 MR. JOHNSON: The Staff would agree that it didn't

mm37

1 hear any names that are sources of information to Duke Power in
2 the interview process, apart from the names of individuals who
3 were mentioned in the affidavits and in the allegations as
4 supervisors. And therefore, there is no reason not to make
5 the transcript public.

6 JUDGE KELLEY: Mr. McGarry?

7 MR. MC GARRY: We agree with the other parties.

8 (Board conferring)

9 MR. MC GARRY: Your Honor, there is one other point.

10 JUDGE KELLEY: Yes?

11 MR. MC GARRY: The affidavits. I think what we will
12 have to do is code those affidavits.

13 MR. GUILD: Yes, sir, that's true. There was an
14 exhibit offered. It just didn't even get addressed because --

15 JUDGE KELLEY: We were going to take that up. I
16 know what you are talking about.

17 On the transcript end of it, I think everybody has
18 spoken now.

19 Counsel seem to be unanimous that the transcript
20 that has been taken of this panel this afternoon, in light of
21 the Appeal Board's ruling, it should be made public. Whether we
22 will have anything in camera remains to be seen, because there
23 are some separate issues that may come up later.

24 So, what began as the in-camera page just goes right
25 on in the normal sequence.

mm38

1 Does everybody have this number code, the names and
2 numbers?

3 MR. JOHNSON: The code was part of Duke's discovery
4 response.

5 MR. MC GARRY: We have typed up some copies for the
6 parties. Why don't we just hand that out.

7 JUDGE KELLEY: Thank you.

8 (Document distributed to Board and Parties.)

9 JUDGE KELLEY: Mr. McGarry, this question then that
10 you began to refer to, are we back at your Exhibit 118?

11 MR. MC GARRY: Yes, sir.

12 JUDGE KELLEY: And what happens to that?

13 MR. MC GARRY: Yes, sir. And our view would be
14 that probably the easiest thing to do would be to just mark
15 out the names and put numbers, handwrite numbers over it.

16 MR. GUILD: That sounds appropriate, Judge.

17 JUDGE KELLEY: Do you agree, Mr. Johnson?

18 MR. JOHNSON: Mechanically what would that entail?
19 Somebody supplying a different version for the record?

20 MR. MC GARRY: Can I discuss this just a second?

21 We have handed out these lists. How are we going to
22 treat these lists now? They have numbers and names. Is that
23 treated confidentially? The numbers and names?

24 JUDGE KELLEY: Would the list be a sort of tool for
25 the people here?

mm39

1 MR. MC GARRY: For people who entered into
2 affidavits of nondisclosure, they would get access to this
3 list. They would be in an affidavit of nondisclosure.

4 JUDGE KELLEY: That describes everybody that has
5 got the list so far, doesn't it?

6 MR. MC GARRY: That is correct.

7 There is two ways to approach the affidavit: To
8 also treat the affidavits the same way. I have no strong view.
9 Either we can mark them out and put numbers on them, or if we
10 don't touch them, they can be confidential documents. Anybody
11 who signs an affidavit of nondisclosure will be authorized --

12 JUDGE KELLEY: I am just sort of thing out loud. I
13 have got this stack here, it has got names. That would be my
14 copy, and I am under the affidavit, so to speak. All the Board
15 members have signed it. Do we really need to worry about masking
16 or marking out, except for the official copy that goes in the
17 PDR and becomes public?

18 MR. MC GARRY: I think not. We are all operating
19 under this affidavit of nondisclosure.

20 JUDGE KELLEY: I am really more concerned about
21 ease of mechanics, than anything else.

22 MR. MC GARRY: I think that is our concern, too.
23 We are amenable to work anything out. That seems reasonable.
24 We will make a copy for the PDR.

25 MR. GUILD: I guess the only comment I would make

mm40

1 is, in an effort to try to deal with this question of
2 inadvertence, it may be somewhat of an administrative burden.
3 But, it may be more useful to have a sanitized version of
4 that we do use in the course of discussing affidavits, that
5 would give one further level of assurance that inadvertence
6 wouldn't release names. And I would be perfectly happy to
7 work under that. So, that might argue for someone making a
8 set that has all been blanked out and reproducing it for the
9 use of the parties and witnesses.

10 MR. MC GARRY: I think that would be our druthers
11 also. So, we will hopefully get back and have it tomorrow
12 morning.

13 JUDGE KELLEY: Fine.

14 (Board conferring)

15 MR. CARR: Your Honor, could we have just a second
16 to talk among counsel?

17 JUDGE KELLEY: Sure.

18 (Discussion off the record.)
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#13-1-SueT

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JUDGE KELLEY: Let's go back on the record.

I would be happy to have counsel give their understanding.

My understanding is that we are protecting the the employee/craftsmen level people.

MR. MC GARRY: That is correct. The easy situation in talking about the affidavits, we have all agreed, that the affiant's name will not be disclosed. That will be coded. But in the affidavit if names are mentioned, those names will not be marked out. Those names will be disclosed.

So, it gets to be judgmental here, but because some of the supervisors, for example, signed affidavits, I think our position would be, from our frame of reference, we don't want any of the members of the panel to state on the record that Joe Blow who gave an affidavit, Joe Blow said thus and so. It would be -- whoever gave an affidavit, it would be Number One said thus and so.

So, when Mr. Guild is asking questions about a particular area -- right now we are in general, but when we get down to a particular area, who made this allegation, Number 112 made this allegation. What was the allegation? The allegation was that John Doe said that Betty Doe said. That can come out, but you can't tell the name of the person who initiated that conversation.

JUDGE KELLEY: How about the question of the

#13-2-SueT 1

supervisory level people, the foreman, the general foreman?

2

MR. MC GARRY: I would say as a general rule, I

3

don't think those names -- there are some supervisory people

4

whose names should not be disclosed, but I think we know

5

who they are because they gave specific affidavits that

6

raise concerns. But I think as a general matter, supervisors

7

were not affiants making allegations about particular individuals.

8

viduals.

9

WITNESS ROBERTSON: If a name is on this list,

10

you should reference them as a number?

11

MR. GUILD: No, that's not correct. Mr. Chairman,

12

I would like to state my understanding of the situation.

13

JUDGE KELLEY: Okay.

14

MR. GUILD: The ruling thus far -- the position

15

the Company agreed to when you entered the protective order

16

was that the only thing that was protected was the names

17

with addresses and phone numbers of sources of information.

18

It's the connection of the name with an affidavit that is

19

protected.

20

That person might be mentioned in other contexts,

21

he might mention a number of other people. That information

22

is factual and has always been public; it has been treated

23

as public. So, the fact that somebody coincidentally is not

24

only mentioned in an affidavit but happens to have given an

25

affidavit himself does not make the naming of that person in

#13-3-SueT¹

the affidavit protected. It's only the information and it's associated with a source that is protected.

MR. JOHNSON: The question is if the supervisor was himself an affiant, in his affidavit he would be a confidential source to Duke at that point. And for purposes of associating any allegation his name would also be a number even though his name would be freely used in other contexts.

JUDGE PURDOM: Could I direct the parties' attention to Number 184? Does that remain -- is that name protected or not?

MR. MC GARRY: I would say 184 would be protected to the extent of what is said in that affidavit.

MR. GUILD: Judge, there happens to be an affidavit from that individual. What he says or doesn't say in that affidavit associated with that name is protected information. It cannot be disclosed.

But if he is implicated by any number of other people in their affidavits, his name as stated in those affidavits is on the public record.

JUDGE KELLEY: I think I understand your proposition. I think Mr. Johnson agrees with it.

MR. JOHNSON: What Judge Purdom asked and the answer that was received was just exactly what I was addressing.

#13-4-SueT

JUDGE KELLEY: Okay. Now, is there a disagreement from the Applicants?

MR. MC GARRY: I don't think so. It worked fairly well in discovery, and I think counsel will be on our toes. And if it comes up it might come up inadvertently and I think we can correct it very quickly.

JUDGE KELLEY: Do the panel members feel they have a handle on how we want to proceed now? I think the lawyers agree. The Board will go with that.

(No reply from the panel of witnesses.)

Okay. Well, can we resume, then?

MR. GUILD: Yes.

BY MR. GUILD: (Continuing)

Q Mr. Hollins, we were talking about the extension of your investigation to interviews beyond the welder craft.

We established that you decided at the outset that you would do some sampling outside the welding craft, and I think you stated that you began interviews outside the welding craft to follow directly on the heels of interviewing people who had worked for Alton Moore?

A (Witness Hollins) That's correct.

Q All right. And that would have placed it in the late March, early April time frame, correct?

A Correct.

Q Now, would you agree that at least at the time you

#13-5-SueT 1

2 made a computation in the conduct of this investigation that
3 you calculated that there were 439 welders at Catawba?

4 A At the Catawba site, the total -- are you reading
5 off of my sheet that --

6 Q Yes.

7 A -- I turned in through discovery. Maybe I could
8 see that.

9 Q I will be happy to show it to you. You asked
10 someone I think, in your hand, you gave him a note saying:
11 Please comment on the number of employees in these welder
12 crafts.

13 A Yes, sir, that's correct.

14 Q All right. And the answers that were given to you
15 were current at the time that you asked. Is that what that
16 represents?

17 A That would represent that there were 439 welders
18 at the Catawba site.

19 Q At the time you asked?

20 A At the time I asked the question.

21 Q All right. And of those, how many did you
22 interview, if that's an accurate number that appears on
23 that document there? It says 103 there.

24 A I -- that doesn't look like mine. I can't read
25 mine.

Q Okay. What percentage of the welding craft

#13-6-SueT 1

measured against how many welders were there did you
interview?

2

3

A By this calculation, it came out to in excess of
23 percent.

4

5

Q All right. You did a computation or you ask
the computation be done by people in other crafts. How
many power house mechanics were at the site at the time?

6

7

8

A That shows 889.

9

Q Is that accurate as far as you know?

10

A That was the number supplied to me for total
power house mechanics at Catawba.

11

12

Q Okay. And how many power house mechanics did
you interview?

13

14

A We interviewed 19.

15

Q All right. And does that represent 2.1 percent
of that craft?

16

17

A That's correct.

18

Q All right. How many electricians were at the
site?

19

20

A 327.

21

Q And you interviewed eight?

22

A That's correct.

23

Q And that's 2.4 percent?

24

A That's correct.

25

Q And how many steel workers?

#13-7-SueT1

A It looks like 155.

2 Q All right. And of those you interviewed six?

3 A That's correct.

4 Q And that's 3.9 percent?

5 A Yes.

6 Q All right. Now, you don't represent that those
7 were statistically representative samples of persons who
8 had worked in those crafts as that term is understood, as a
9 term of art, from which you can make sound generalizations
10 in a statistically sound sense, do you?

11 A I never did calculations to determine that that
12 was a relevant sample.

13 Q And you didn't consult with any persons with
14 professional training or experience in scientific survey
15 methodology in order to determine the validity of your
16 sampling technique, did you?

17 A No, sir, I did not.

18 Q All right. And is it fair to say then that
19 your only basis for drawing generalizations from the samples
20 that you did employ was your own judgment?

21 A Using the selection process that I used, of
22 getting individuals from each crew out of the critical areas
23 in the plant, as I have previously described, I used my
24 judgment. Yes, sir.

25 Q You don't represent then that 2.1 percent of power

#13-8-SueT

1 house mechanics interviewed, all other things being equal,
2 assuming they told you everything that they knew that bore
3 on the issues under investigation, that that 2.1 percent
4 provided you a valid basis for generalizing as to 889 power
5 house mechanics and their knowledge of foreman override
6 issues?

7 A Well, we are not necessarily talking about those
8 representing 889 power house mechanics.

9 Q What do they represent?

10 A That was the total craftsmen on the site at the
11 time.

12 Q How many can you generalize to?

13 A Our records indicated that only about 80 percent
14 of those would be working in safety-related areas or the
15 critical areas. And, as I pointed out, that's where I pulled
16 my sample.

17 Q All right. So, you maintain that you can generalize
18 validly to 80 percent of the 889 number?

19 A Yes, sir.

20 Q 660, so to speak. About?

21 A My testimony that I submitted this morning has
22 those numbers.

23 Q How about pointing that out to me? If I can
24 have a moment, please. I'm trying to put my hands on your
25 testimony, Mr. Hollins.

#13-9-SueT 1

(Mr. Guild is searching through documents.)

2

Help me find it now. Would you give me the

3

reference, please?

4

A Yes, sir. On Page 2 --

5

Q Yes.

6

A -- as far as power house mechanics, Paragraph C.

7

Q You interviewed 48 power house mechanics?

8

A In total.

9

Q How does that compare with the 19 figure that

10

you previously testified to?

11

A Nineteen is the ones that came off of each crew

12

using the selection process that I talked about.

13

Q Okay. And where did the rest of them come from?

14

A They were follow-up interviews.

15

Q Okay. Now, help me understand this, then. How

16

accurately can you generalize to the population that you

17

now want to generalize to, and that apparently is the 792

18

from the sample of 48?

19

A We went through our scheduling system, if you will,

20

or our reporting system of where work is charged and that's

21

how on the average hours are charged.

22

Q I'm sorry, that doesn't seem to be responsive to

23

the question. Did you understand the question?

24

A I certainly did.

25

Q Well, could you explain, then?

#13-10-SueT1

A Yes, sir. We have to charge our time.

2 Q Right.

3 A Welders charge their time. Power house mechanics
4 charge their time.

5 Q Yes.

6 A And we look at those time records where the time
7 is charged.

8 Q Yes.

9 A And we know the different classifications of
10 systems so we can determine from that that approximately
11 80/20 ratio.

12 Q Oh, that's not the point of my question. I am
13 not being clear.

14 A Okay.

15 Q What I want to understand is how accurately you
16 can generalize from the sample that you performed as to the
17 results that would be found had you asked everyone in a
18 population?

19 Do you understand generally when I say --

20 A Yes, I understand what you are saying now. Again,
21 I didn't do the calculations to make that determination. What
22 I do tell you is that we talked to 48 power house mechanics.

23 Q All right. Now, of those only 19 were random --
24 I will use that term in the sense that you use the term,
25 correct?

#13-11-SueT¹

A That's correct.

2 Q All right. Now, of the rest, the rest were not
3 random. They were selected interviews, correct?

4 A That's correct.

5 Q All right. So, do you purport that you could
6 generalize from anything other than the 19 that were the
7 first selection?

8 And, if so, tell me what level of accuracy you
9 believe you achieved in your generalization from first the
10 19 and second the follow-up interviews together with the
11 19?

12 A Again, I cannot give you a calculated level of
13 confidence. What I'm telling you is I talked to 48 power
14 house mechanics at Catawba Nuclear Station.

15 Q Right. Do you purport that you can generalize
16 at all from the balance of those interviews the additional
17 power house mechanics whom you interviewed because you were
18 following up on the initial random interviews?

19 A I can make the judgment that after talking to
20 48 power house mechanics that there was not a pervasive
21 or widespread problem.

22 Q All right. Based on your own judgment?

23 A Yes, sir.

24 Q Do you have any other scientific basis for
25 generalizing from the 29 follow-up interviews that you

#13-12-SueT1

conducted?

2 You don't purport those to represent a random
3 sample from which valid generalizations are made as to the
4 population as a whole, do you?

5 A Is that a different question than I've already
6 answered several times?

7 Q I don't know whether it is or not, Mr. Hollins.
8 I'm just trying to be clear.

9 What do you -- what significance do you attach
10 to the results of the interviews of the additional non-
11 random power house mechanics that you talked to, if any?

12 A Let me say this one more time and maybe I will
13 capsulize it and put it all together.

14 I did not perform calculations to determine level
15 of confidence, if you will. What I do claim is that I had
16 talked to 48 power house mechanics at Catawba and from that
17 have concluded that there is not a widespread problem at
18 Catawba in relation to foreman override.

19 Q All right. You don't -- I think it's fair to say --
20 claim any background or training in survey methodology that
21 you employed in conducting your study, Mr. Hollins?

22 A I have no formal training in, say, conducting
23 studies. I have had some training in interviewing, and I
24 have conducted many smaller type studies.

25 Q Maybe you could point me to something in your resume

#13-13-SueT1

2 that reflects the experience that you are relying on? That
would be helpful.

3 A I don't know that there is anything in my resume
4 that reflects that information. I didn't list every training
5 session that I've ever had.

6 Q I'm just concerned about what bears on the issues
7 that are being looked into here.

8 A There are two sides of that. From an interviewing
9 standpoint, I have been to interviewing workshops.

10 Q Yes. And where did you do that, sir?

11 A At Duke Power Company.

12 Q And who gave that?

13 A That was by corporate personnel.

14 Q I'm looking at your resume, Mr. Hollins. And,
15 you are an engineer, right?

16 A That's correct.

17 Q You may well have very high technical qualifica-
18 tions and experience as an engineer, but you don't represent
19 yourself as an expert in investigatory methodology or survey
20 methodology, statistics, things like that?

21 A No, sir, I do not.

22 Q And you didn't consult anybody else with expertise
23 in those areas in designing methodology for your study of
24 this issue at Catawba?

25 A I used resources within Duke Power Company as I

#13-14-SueT 1 thought was appropriate.

2 Q Right. Just answer that question, if you would.
3 I know that you have got some interviewers here who work
4 in employee relations, but I think you told me in your
5 deposition you didn't consult anybody either in-house or
6 outside of Duke Power Company with the kind of training
7 experience that I'm asking you about right now, did you?

8 A That represents them as a professional investigator
9 director, the answer to that is no.

10 Q No, sir, that's not my question.

11 A Well --

12 Q I think I asked you in your deposition whether you
13 consulted anybody with professional training or experience
14 in survey methodology and statistical method, and you said
15 you didn't.

16 Isn't that right?

17 A What I remember from my deposition is, you were
18 asking questions did I contact somebody to do statistical
19 calculations, any professional survey taker, as I understand
20 what your question was there.

21 Q Just -- now let's just skip all the intermediary
22 steps and let's get to the meat of it. You didn't consult
23 anybody in designing your survey methodology with professional
24 training or experience in the disciplines that I've just
25 identified, did you?

#13-15-SueTj

A We are talking now survey methodology. What --

2 Q Mr. Hollins, let's try not to make it any more
3 painful than necessary. I would ask you to respond directly
4 to the question. Please feel free to explain it at length,
5 but please answer yes or no. It will make things a little
6 simpler.

7 MR. MC GARRY: I think the problem is --

8 WITNESS HOLLINS: I don't understand survey
9 methodology. We were talking statistics and then all of a
10 sudden we are survey methodology.

11 BY MR. GUILD: (Continuing)

12 Q I'm sorry. You don't understand the term survey
13 methodology? You --

14 A I --

15 Q When I asked you in your deposition you understood
16 it. You didn't have any problem with that.

17 And I think the answer was no. Is that the answer,
18 no?

19 A Is the question survey methodology, or is the
20 question did I consult anybody on statistics.

21 Q All right. Let me see if I can capsulize this.
22 You told me that you consulted a person who had provided you
23 guidance on sampling methodology but only as to the question
24 of sampling welds in the plant. That was an industrial
25 engineer named -- I can't think of his name. But it was

#13-16-SueT¹

an industrial engineer at Duke Power Company, correct?

2 A In selecting a sample size.

3 Q For welds in the field?

4 A For welds in the field. That's correct.

5 Q Now, did you consult anybody with similar training
6 or experience when you designed the survey methodology that
7 resulted in the interviews you conducted?

8 A I did not consult anybody for the sampling
9 method. I did consult people that had been trained in
10 interviewing techniques and --

11 Q Fine. Now, bear with me just a little bit, Mr.
12 Hollins, and others who have knowledge on this subject. I
13 am really trying to get at the meat of what the basis is
14 for your making generalizations.

15 Now, you acknowledged that you made generaliza-
16 tions from what you have done about the extent of foreman
17 override problems at Catawba. You conclude, in short, just
18 to try to kind of capsulize this, that there is no problem,
19 that there may be isolated instances but there is no per-
20 vasive or widespread pattern of foreman override problems
21 at Catawba?

22 A That is correct.

23 Q Now, you make that generalization and you don't
24 just limit it to the people you talked to or the welding
25 craft or Arlon Moore's welding crew. You want to make that

#13-17-SueT1

stand for the proposition generally that that's the case at Catawba, that there is no significant problem with foreman override at the plant, correct?

A That is correct.

Q Now, what I want to understand is what is the basis for your making those generalizations applying from what knowledge you did get, the sampling you did, the interviewing you did, what is the basis, scientifically, for -- or otherwise, what's the basis for making the generalizations to a larger number of sources of information that you did not sample?

A The basis is very simple. We interviewed 217 people off the Catawba Nuclear Station, and we ended up with a very, very small number of people that had foreman override allegations.

Q All right. And how many is that? How many turned up.

How many do you count as having foreman override allegations, Mr. Hollins?

A I believe that number is ten.

Q Ten. All right. And where would I find that number?

A On Page 14, we say in the interviews --

Q Page 14 of your report?

A Of the report, August 3rd report. In the interviews,

#13-18-SueT

less than a dozen specific instances of possible foreman
override were mentioned.

Q Okay. Now, help me, please. What are those
specific instances?

What are those ten individuals by number now,
please?

And if it's in the report, help me --

MR. MC GARRY: Wouldn't it be the people in
Attachment A?

MR. GUILD: It may be and it may not. I don't
know. I would like to hear Mr. Hollins' answer.

MR. KELLEY: We are coming up on a point where
we will take a short break and then come back for an hour
or so.

If it's going to take very long, maybe Mr.
Hollins could look for that information during the break.
Does that make sense?

MR. GUILD: (Continuing)

Q Could you maybe give me a reference and I can
look at it, too, over the break if you found it, Mr.
Hollins?

A The dozen specific instances that I'm talking
about, I can give you the numbers of the individuals.

Q That will be fine.

JUDGE KELLEY: Fine. Go ahead.

#13-19-SueT1

BY MR. GUILD: (Continuing)

2 Q Is there a page reference here I can follow?

3 A No, there is not.

4 Q Fine.

5 A Are you interested in the individual's numbers?

6 Q Yes.

7 A Or are you interested in the incident itself?

8 Q No, the individual's number so I can go track
9 the incidents themselves.

10 A Number 36.

11 Q Okay.

12 A Number 106.

13 Q Are you drawing these numbers from some part of
14 the report, Mr. Hollins?

15 Maybe you can identify the page reference as you
16 draw the number out if there is one.

17 A No, sir, I'm not. I can point out -- I maybe can.
18 Let's look at Attachment A.

19 Q Okay.

20 A Number 1, Individual 36, Individual 106,
21 Individual 70, Individual 196.

22 And now moving to Roman II, that same attachment,
23 Individual 168.

24 Q All right.

25 A In that same attachment, Roman III, Number 95.

#13-20-SueT1

Q What page is that?

2

A That's on 3-1.

3

Q Okay. Thank you.

4

A And Individual 88. I move to Page 4-1 of the Individual Number 27. 6-1, Individual 177.

6

Q Is that 77 or 177?

7

A That was 177, I believe. Let me double check. 177.

9

Q Thank you.

10

A And 8-1, Number 192.

11

Q All right. And those are the only individuals that alleged foreman override?

13

A They are the individuals that alleged a specific foreman override.

15

Q How do you define a specific in that sense?

16

A I know of a case, not I heard of or --

17

Q Okay. Firsthand knowledge?

18

A Yes, sir.

19

Q Okay. And how do you define foreman override?

20

A As it is defined in our report. Actions by supervisors that resulted in defective work or in violation of QA procedures.

23

Q And where is that definition?

24

A That's on the top of Page 2. That's at the

25

top of Page 2.

14-1-Wal

1 Q How about individuals who allege foreman override,
2 but did not -- whose affidavits did not reflect a specific
3 instance as you define. How many are there of those?

4 A Those that had some general feelings of foreman
5 override. We went back and reinterviewed those individuals
6 to try to determine in detail, and I do not have a tabulation
7 on those numbers.

8 Q About how many? Can you tell me to the best of
9 your knowledge?

10 A I just cannot answer. I don't have that tabulation.

11 Q Well, is that information reflected in the original
12 affidavit?

13 A Yes, sir.

14 Q And that information is, therefore, available
15 and provided to us.

16 A You have all the information we have.

17 Q What I mean to say is, if they made a general,
18 outright allegation in every instance that is documented, and
19 an affidavit has been made available to us.

20 A You have all the affidavits we have.

21 Q What I want to say to you is, if someone stated
22 in their interview general concern for foreman override, do we
23 have -- we have identified all of these individuals, and do
24 we have documentation of those statements from all those
25 individuals?

A If someone in their initial interview indicated

1 they had a general concern of foreman override, it was stated
2 in the affidavit and it was supplied to you.

3 JUDGE KELLEY: It looks like we are at a good
4 place to break for about five or ten minutes. Ten minutes.

5 (Short recess taken)

6 JUDGE KELLEY: We would like to resume. We
7 can go back on the record. We take up now with continuation
8 of cross examination until about seven, and then we have a few
9 procedural matters, and then we will quit for the evening.

10 BY MR. GUILD: (Continuing)

11 Q All right, Mr. Hollins. We were talking about
12 what would you characterize as the general concerns of foreman
13 override expressed by individuals, and I believe the testimony
14 was in each instance those concerns of foreman override that
15 were not specific as you define the term, were documented in
16 an affidavit, and those affidavits have been made available?

17 A That is correct.

18 Q Can anybody else on the panel help me identify how
19 large a class of people we are talking about specifically
20 about reference to some document, or generally in numbers,
21 included in that class; general concerns of foreman override
22 in the first interview? No volunteers.

23 A (Witness Robertson) Are you asking for any
24 cases?

25 Q I am asking for a number, an approximation, or

1 reference or something in here that will help me figure
2 out how many people you identified as having a general foreman
3 override concern, --

4 A (Witness Hollins) It just occurred to me that
5 I submitted an early matrix that may give you a feel for
6 that.

7 Q What would that look like. Will you give me a
8 little description?

9 A It is eight and a half by eleven sheet, sideways,
10 names down the ordinate, concern numbers across the top.

11 Q Are those the concerns, your 1 through 26?

12 A Yes, sir.

13 JUDGE KELLEY: Just so we are clear on this,
14 in discovery we got the affidavits, and we got a stack of
15 paper bound together called Review Board Report, which I
16 gather is Mr. Grier's board, and the papers from them.

17 And then there was another stack much thicker,
18 called Stack Two. Are those your papers, Mr. Hollins?

19 MR. MCGARRY: I think they were everybody's
20 paper, including Mr. Hollins.

21 MR. GRIER: Yes, sir.

22 JUDGE KELLEY: And that is why we are looking
23 now.

24 MR. GUILD: I have a document entitled Summary
25 of Concerns from Interviews.

1 It seems to meet your description and it does
2 have names, and it is a list. Is that the matrix that you
3 used to make that original identification or reflect that
4 identification?

5 A That was a matrix that was made, I believe, after
6 the initial round of interviewees.

7 Q That would include the information I just asked
8 you about, general foreman override concerns?

9 A Yes, sir. As I remember, it would.

10 Q Across the horizontal, left to right, you have
11 concerns number 1 through 26, and list some names by those.

12 A Correct.

13 Q All right. Now, I have another sheet that is
14 entitled tabulation of concerns from screening interviews,
15 with items No. 1 through 26. Would that be the key to
16 identifying those concerns, by numbers?

17 A It seems to me it may not, just because I one
18 time changed the numbering systems of the concerns.

19 Q There are a couple of versions of that. I checked
20 this. Why don't you check it. It seems to be consistent.

21 A See if the one he showed you might be slightly
22 different. If I can see that.

23 (Witness points to Mr. Carr)

24 MR. CARR: If you can bring them back.

25 BY MR. GUILD: (Continuing)

1 Q All right.

2 A (Witness Hollins) No. There should be one that
3 looks like this, but some of these numbers have been switched
4 positions.

5 Q It sounds warm.

6 A I think you have another one there somewhere.
7 Switch position on those numbers. The reason I did that is
8 so that my numbering system would be consistent with the
9 numbering system that was given to us by the NRC.

10 Q All right. Well, you have that identification
11 on here. NRC No. 1, NRC No. 2, etcetera. You added that
12 in here by your own numbering system. Shouldn't it follow
13 that the preprinted form which numbers 1 through 26, tracks
14 the list of 1 through 26 concerns on the second document,
15 entitled, Tabulation of Concerns for Screening?

16 A No, sir. This list was developed after this chart.
17 I tell you that the chart -- there is a chart that looks
18 almost identical to this, and the only thing that was changed
19 is the numbers. The numbers on the chart that I am describing
20 are now out of sequence.

21 Q Okay. Mr. Chairman, this is a problem. We have
22 tried to gather as much information as we can. It is not
23 a perfect system and I don't understand exactly -- I thought
24 I had the answer when I asked the question, Apparently I
25 don't. I am just learning that. It is an important point

1 because we are trying to identify how the Applicant narrowed
2 the field, if you will, from the ten that they acknowledge
3 as specific instances of foreman override from a larger
4 field that they describe as having a general concern.

5 That is part of the issue that is of significance
6 to us.

7 A I was just going to observe if you want to work
8 off of this document, we can use these NRC numbers that I
9 have penciled in by hand versus the first six off of this
10 list.

11 Q That is fine, except what I am interested in
12 are the instances from that schedule that tell you that
13 people expressed a general concern about foreman override
14 that you needed then to follow up on.

15 A I am not sure you and I are talking the same thing
16 when we say, 'general concern of foreman override.'

17 Q I am using your language. I am trying to use
18 your language.

19 A Maybe I didn't communicate with you. I don't know
20 that we have had anybody in an affidavit that says: I am
21 concerned about foreman override.

22 Q Right. You had to define it, and then you had
23 to do something about it. And what I am trying to say to you
24 is you identified 10, and I asked you are there those other
25 than the ten who expressed concerns of foreman override. You

1 said, yes. If it was a general foreman override concern, we
2 then followed it up.

3 Where we got to here was which individuals are
4 those?

5 A People did not use the words when we discussed
6 with them: I am concerned with foreman override. They
7 relayed to us information, and then we applied the
8 definition.

9 Q I recognize that, and that is why I am asking,
10 given your definition I thought we went through, to first
11 identify the number of individuals who have a general concern
12 about foreman override, as you define it.

13 A We would ask such questions as: Tell me about
14 any time that you were directed to violate a QA procedure?

15 And they would respond to that type of question.

16 Q Is the answer in short that you don't know how
17 many others identified general concerns of foreman override?

18 A I don't think I have tabulated the numbers the
19 way you want them tabulated.

20 Q Okay. Let's see if this helps. I have another table
21 that looks like the last one. Now, I want to see if you can
22 identify what this is. It is in the document stack entitled,
23 Review Board Report, and it appears to be --

24 MR. McGARRY: That would be stack one, I believe.

25 JUDGE KELLEY: Thank you.

1 BY MR. GUILD: (Continuing)

2 Q That appears to be my copy behind Attachment 6.

3 And it -- my numbers have A-6-C, D. on it --

4 MR. McGARRY: All the way in the back, Your Honor.

5 MR. GUILD: It is in the very bottom of that
6 stack.

7 JUDGE KELLEY: A-6 what?

8 MR. GUILD: A-6 C and D.

9 BY MR. GUILD: (Continuing)

10 Q I am afraid I can't tell you where the document
11 entitled the -- the tabulation, the list of concerns 1 through
12 26 appears to be at page A-6-a. Also, the same review
13 board report.

14 Now, looking at the summary of concerns for --
15 -- from interviews, A-6-C, you have changed some of the
16 numbers of concerns, correct?

17 A That is correct.

18 Q Do the renumbered concerns now correlate with the
19 tabulation, listing of 1 through 26?

20 A Yes, sir, they do.

21 Q Given that, is there a concern that you tabulated --
22 well, -- as reflecting foreman override concern?

23 A I broke down any allegations of foreman override
24 to the specific categories.

25 Q What are the specific categories are they; items

14-9-Wal

1 1 through 26?

2 A Yes, sir. Not all of which are foreman override
3 issues.

4 Q All right. Now, for example, Item No. 5, Concern
5 No. 5 reads from your tabulation: Feel that the quality of
6 work has suffered due to production pressure, correct?

7 A That is correct.

8 Q Okay. Now, I thought that meant foreman override.
9 That is not foreman override?

10 A No, sir. Somebody's feeling that quality has
11 suffered due to production pressure is not foreman override.

12 Q All right. So the fact that I took Item 5, feel
13 that quality of work has suffered due to production pressure,
14 went to Number 5 on your list of concerns, and found that
15 a total of 11 people are tabulated as having that concern,
16 that doesn't indicate that 11 people have foreman override
17 concerns?

18 A That is correct.

19 Q Okay. Well, what of the other 26 are foreman
20 override concerns?

21 A You have to apply the definition of foreman override
22 to each of those cases to make the determination if it is
23 foreman override.

24 Q Okay. So, Item 1, have knowledge of violation of
25 interpass temperature, that is not foreman override?

14-10-Wal

1 A Depending -- if interpass temperature were
2 violated because of actions taken by a supervisor, that
3 would be foreman override.

4 Q Okay. Is it fair to say that none of the 26
5 categories of concern are foreman override in themselves?
6 They all require you to take the concern, and then exercise
7 your judgment about the description of that concern, and
8 reach a conclusion about whether that -- given that judgement
9 -- the concern reflects existence of foreman override?

10 A That is correct. You have to evaluate each
11 situation.

12 Q What is the product of your doing that, when you
13 did your initial screening interviews to determine who you
14 were going to focus on for foreman override?

15 A I did my screening interviews. I tabulated these
16 concerns. From these concerns, I did follow-up interviews
17 in order to gain enough information to apply the definition
18 of, 'foreman override.'

19 Q All right. And what was the basis for your
20 decision about which ones have follow-up interviews.

21 Let me start again. I understood you to tell
22 me, Mr. Hollins, that there were ten identifiable people
23 who had specific concerns for foreman override. I may not
24 have formed that exactly right, but that is the number you
25 pulled out of your report.

1 A I used the number ten.

2 Q I asked you beyond that whether people who had
3 other concerns about foreman override -- we got into this
4 discussion about general concern of foreman override. I
5 think you identified yes, there were a larger number of
6 people there, as to them, when we identified the general
7 concern, we reinterviewed them for specifics, right?

8 A That is correct.

9 Q Okay. Now, you didn't have a number for the
10 larger class that you went back and reinterviewed. You
11 didn't have a tabulation of that.

12 A Right, at that point. A tabulation of what?

13 Q Of the people who were the larger class of the
14 general foreman override concern?

15 A We had not made determinations whether foreman
16 override was alleged or not.

17 Just because somebody would say: I feel work has
18 suffered due to production pressure, that is something we
19 needed to investigate further.

20 Q Okay. Well, let me ask you now. Take a look at
21 these schedules, and tell me how many people from looking
22 at those schedules had general concerns of foreman override?

23 A I can't look at that list and tell you people that
24 had general concerns of foreman override.

25 I can look at that list and tell you about people
that had concerns.

AGB/agbl

1 Q About one or more of the specific 26 concerns
2 you list in your tabulation?

3 A That's correct.

4 Q Well is there any other documentary source that
5 you can go to, Mr. Hollins, and tell me, given your first
6 interviews, how many people had concerns that meet your
7 definition of foreman override?

8 A Repeat the question please, I'm not sure I
9 understand what you are looking for.

10 Q Any other documentary source you can turn to
11 that will answer the question how many people expressed
12 general concerns of foreman override, specific or general
13 concerns of foreman override in your first interview?

14 A No, sir, I don't believe I can point you to a
15 document that does that.

16 Q So you have to go -- your source of information
17 in reaching the decision about what would constitute cases
18 of foreman override were the individuals' affidavits
19 themselves, correct?

20 A That is the base source, that is correct.

21 Q I want to read you three descriptions from
22 affidavits, Mr. Hollins, and I want you to tell me as to
23 each of the three whether they represent an allegation of
24 foreman override as you understand.

25 "The only incident I am aware of where

agb/agb2

1 a deliberate violation of a QA or weld procedure
2 was made was in 1979. The inspectors had been
3 red tagging a lot. The foreman I had at the
4 time thought the red tagging was ridiculous;
5 his name was Barney Cobb. Barney told some
6 of the welders to go ahead and weld some liner
7 plate that was red tagged. He said he would
8 take full responsibility. The welds were
9 made and the embedded angle was non-conformed."

10 All right. What about that one?

11 A. That was one of the ones I just referenced you
12 to, one of the ten.

13 Q. That is one of the ten. Okay.

14 The second one:

15 "Once when I first went on Leroy
16 Price's crew I had just finished a weld on a
17 teflon valve. When I checked the temperature
18 on one side of the weld, the critical area
19 turned a gray color and I wasn't sure I had
20 violated the interpass temperature on my weld.

21 "I reported this to my foreman and
22 he said that I would be written up if the
23 inspector found there was a violation. Price
24 said that other welders would sometimes just
25 remark the critical areas and the inspector

1 would not know there was any question."

2 Is that foreman override?

3 A. I believe, if you finish that paragraph, it will
4 answer your question.

5 Q. Well sir, I wanted to ask you based on what I
6 read.

7 MR. MC GARRY: Wait a second. The witness says
8 that is not a complete --

9 MR. GUILD: Well I am not reading the whole
10 affidavit, but based on that information is that --

11 MR. CARR: Well let us have the number and --

12 WITNESS HOLLINS: I can't make that determination.

13 BY MR. GUILD:

14 Q. Why not?

15 A. (Witness Hollins) Because I cannot determine
16 was the QA procedure violated and did defective work result.

17 Q. And that is not critical to answering the
18 question?

19 A. That is the test for foreman override laid down
20 to us.

21 Q. This is the third now:

22 "I don't know of any deliberate
23 attempts to violate QA construction procedures
24 unless the vacuum rings were not fit close
25 enough to the pipe. I seem to remember that

1 I told Arlon that the rings were not fitting up
2 right but he told me to go ahead and weld them.
3 He might have thought they fit good enough to
4 weld. The situation with the vacuum rings is
5 the only one I know of where proper action was
6 not taken to correct the problem."

7 On the basis of that reading, Mr. Hollins, can
8 you tell me is that an instance of foreman override?

9 A. Could I see the affidavit, please?

10 Q. I would be happy to let you see it, but based
11 on that information, tell me: can you answer the question,
12 if you can, do so; if you need further information, tell
13 me what other information you need.

14 I am posing a situation I submit to you it
15 is from the affidavit but I would like you to respond to
16 the best of your ability given the question as posed.

17 A. I need to determine whether a QA procedure was
18 violated or defective work resulted. I can't do that with what
19 you just gave me.

20 Q. All right.

21 So you would say that is not foreman override
22 based on what you know?

23 A. Based on what I know, I cannot conclude that it
24 is foreman override.

25 Q. Okay.

agb/agb5

1 JUDGE KELLEY: I take it what we are after
2 here is the witness' grasp of the concept and how he applied
3 it. He is not speaking of those particular instances one
4 way or the other.

5 MR. GUILD: No, sir. I would be more than happy
6 to allow him to speak to the instances at some point --

7 JUDGE KELLEY: In that case he would have to
8 see context.

9 All right.

10 BY MR. GUILD:

11 Q Let's talk in general terms, Mr. Hollins, a
12 little bit more on the subject.

13 Aside from the description of the interaction
14 between the individual craftsmen and the foremen, which is
15 the substance of what I was reading you in those three
16 examples, what other information do you need in order to
17 apply your definition of foreman override?

18 A. (Witness Hollins) What information do I need
19 to apply my definition of foreman override?

20 Q That's correct, the definition that was used
21 in your investigation.

22 A. I used the definition laid down to us by the
23 Board and I need to be able to have some assurance that
24 defective work resulted or a QA procedure was violated
25 and it was due to a foreman's or a supervisor's actions.

1 Q Now gentlemen and ladies, I would like to turn and
2 ask you to explain to me the circumstances under which
3 these individuals were sought out and interviewed and
4 their information was gathered, all right?

5 Now Mr. Hollins, you were in charge of the
6 investigation and you specified the individuals to be
7 interviewed, correct?

8 A That's correct.

9 Q Now you conducted some interviews yourself, did
10 you not?

11 A A very few.

12 Q Now who did you interview -- let's use numbers
13 for that purpose, how about that?

14 Well let's do this, I take it back: Why don't
15 you just tell me who you interviewed and we won't talk
16 about their statements but you tell me who you interviewed,
17 Mr. Hollins.

18 MR. MC GARRY: In terms of numbers?

19 MR. GUILD: No, people.

20 MR. MC GARRY: Not the name?

21 MR. GUILD: Yes.

22 MR. MC GARRY: No --

23 JUDGE KELLY: Wait, I think we may have some
24 difference on that.

25 MR. GUILD: We have already gone through the

1 whole thing in his deposition in the first instance and
2 that is why I shifted gears. I am not going to talk about
3 the individuals' affidavits, I am not pulling affidavits
4 out, I just want to know -- and I don't think the affidavits
5 even reflect that Mr. Hollins interviewed them so that
6 wouldn't help. I just want to know who Mr. Hollins
7 interviewed by name and I don't believe that is at all --
8 disclosing any confidence.

9 JUDGE KELLEY: You may be right, but I am not
10 sure.

11 Comments, Mr. McGarry?

12 MR. MC GARRY: I thought that when we got to
13 the affidavits -- well first of all, the affidavits that
14 are now going to be in the record are all going to be
15 coded by number. So if he is going to start telling you
16 whose affidavit he took and you go look at the affidavits,
17 they are going to have numbers so why don't we just stick
18 with the numbers.

19 MR. GUILD: The affidavits don't reflect
20 any connection between Mr. Hollins and the interview.

21 JUDGE KELLEY: I guess my question is this:

22 Is the general purpose of the number systems
23 or going in camera is to protect names, sources of
24 information, does the mere mention of the name in this
25 context affect -- undermine that in some way?

1 MR. MC GARRY: It is clearly one step removed
2 from people who made allegations.

3 JUDGE KELLEY: Sure.

4 MR. MC GARRY: -- I acknowledge that.

5 But what will happen now is a group, a universe,
6 217 has been carved out and Are you in that 217? I think
7 that is what we are protecting.

8 MR. GUILD: I submit that it is really a tempest
9 in a teapot. That answer is already on the public record
10 and the fact of the matter is Mr. Hollins interviewed a
11 number of supervisory people who didn't tell him anything,
12 so there were no confidences disclosed.

13 And it is important for me on the record to
14 establish what class of people Mr. Hollins interviewed and
15 why. And I am not asking the substance of interviews, I
16 am asking who he interviewed.

17 JUDGE KELLEY: Let me ask, do you object to
18 this or not?

19 MR. MC GARRY: Yes.

20 JUDGE KELLEY: Mr. Johnson?

21 MR. JOHNSON: It seems to me that it may tend
22 to disclose the name of the people who are going to be
23 the coded individuals; however, I am trying to recollect
24 back to Mr. Hollins' deposition and whether these
25 individuals' names were in fact mentioned by name. If

agb/agb9

1 they were, it was pursuant to certain protection, I believe,
2 and there is no such protection now in effect on this
3 record.

4 JUDGE KELLEY: Could you refresh my recollection?

5 We talked at one point a while ago about the
6 affiants who were foremen and supervisors. Where did we
7 come out on that?

8 MR. MC GARRY: What we talked about is if
9 someone gave an affidavit then we would keep that
10 confidential.

11 JUDGE KELLEY: Even if it is a foreman?

12 MR. MC GARRY: That's right, even if it is a
13 foreman.

14 JUDGE KELLEY: What is the problem with just
15 using numbers, what is the difference, Mr. Guild?

16 MR. GUILD: Because I want to freely use these
17 individuals' names. I submit that they are not protected
18 sources in any way, shape or form, any possible construction
19 of the meaning of that term.

20 We are talking about extending protection under
21 the protective order that we have objected to but we are
22 still living under to people who fear retaliation and
23 therefore could only give information with an assurance
24 of confidentiality; and I submit that the answer to this
25 question would turn that principle absolutely on its head.

agb/agbl0

1 It is silly to extend the principle to these
2 people at all. Now I am not talking about the content of
3 their affidavit, which I would submit would make it even
4 more apparent that it has no possible basis for protecting
5 these people.

6 JUDGE KELLEY: Just as a matter of history --
7 and I am not necessarily disagreeing with you -- but when
8 we talked about this before I thought the rule of thumb was
9 that if somebody gave an affidavit then their name was not
10 to be used in connection with that affidavit, that a number
11 was to be used, including foremen. I thought that was the
12 upshot of all that.

13 MR. GUILD: Yes, sir, and the upshot of that is
14 you don't connect the affidavit with the source and
15 protecting the individual as the source of information.
16 And I am not asking that information, I am asking now about
17 people he talked to, I am not asking about what they said.

18 JUDGE KELLEY: Is that really all you want to
19 know, the names of certain foremen that Mr. Hollins talked
20 to?

21 MR. GUILD: Yes.

22 JUDGE KELLEY: Just a moment, let me confer.

23 (The Board conferring.)

24 JUDGE PURDOM: We need some clarification:

25 Mr. Hollis, what was the bases for you interviewing

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1 some people? Was it based on the fact that they had made
2 an affidavit or did you interview some people who did not
3 make an affidavit?

4 WITNESS HOLLIS: I interviewed those individuals
5 that -- I guess it is follow-up from the three categories --
6 that were in some kind of supervisory management position,
7 an individual that was in another department and I also
8 interviewed -- did two close-out interviews on people that
9 had previously executed affidavits.

10 JUDGE PURDOM: Are you saying you interviewed
11 people who made affidavits and people who did not make
12 affidavits?

13 WITNESS HOLLINS: In two cases I did close-out
14 interviews going back and explaining their concerns.

15 MR. MC GARRY: And those close-out interviews
16 would be with regard to people who had already given a
17 company affidavit, is that correct?

18 WITNESS HOLLINS: That's correct.

19 JUDGE PURDOM: And what do you call a close-out
20 interview?

21 WITNESS HOLLINS: That is the time that we sit
22 down and explain the concerns, what we have done about
23 concerns to the individuals that had raised those concerns.

24 JUDGE PURDOM: So out of all of these interviews
25 you say there are two that might be associated with these

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1 affidavits?

2 WITNESS HOLLINS: There are those two. There is
3 another non-supervisory QC person that I talked with and
4 three supervisory management people within the construction
5 department.

6 JUDGE PURDOM: And the reason for interviewing
7 them was also affidavits or was not affidavits?

8 WITNESS HOLLINS: Yes, sir, I took affidavits
9 from each of those individuals.

10 JUDGE KELLEY: Were those persons given an
11 assurance of confidentiality?

12 WITNESS HOLLINS: The non-supervisory personnel
13 in QC was and surely the two where I did the close-out
14 interviews were. I do not believe I gave the assurance
15 of confidentiality of the, I guess it is, three construction
16 department supervisory managers.

17 (The Board conferring.)

18 JUDGE KELLEY: We don't see this as an over-
19 whelming point. We are concerned about the tendency of
20 some information to reveal other information and our
21 determination is that you mentioned three people to whom
22 you did not give an assurance -- and we believe you didn't,
23 we see no reason not to name them by name. As to the
24 remainder, we think the code numbers should be used.

25 MR. GUILD: It was as to those three I was

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1 directing those questions in the first instance.

2 BY MR. GUILD:

3 Q Would you identify the people in a supervisory
4 capacity that you interviewed, Mr. Hollins?

5 A Arlon Moore, Billy Smith and J.R. Wilson.

6 Q Why did you conduct those interviews, Mr. Hollis?

7 A I just felt it appropriate because they were
8 construction department supervisory management people that
9 I, as the construction department manager, should do that.

10 Q Did you know any of those individuals before
11 you interviewed them?

12 A I knew two of them.

13 Q Who were they?

14 A I knew Mr. Smith and Mr. Wilson.

15 Q And I believe you had known Mr. Smith for quite
16 some time.

17 A I had known Mr. Smith for some time.

18 Q Back to the time when you first learned of your
19 assignment to perform this investigation, you first
20 learned that Mr. Dick had received word from the NRC that
21 you needed to perform an investigation: he phoned back
22 -- you were in a staff meeting and he relayed the information
23 to you and the people present at that meeting that the NRC
24 had instructed Duke to go out and investigate these
25 matters, correct?

1 A. In general terms that was relayed.

2 Q. And it was relayed to you that not only Arlon
3 Moore but Billy Smith had been implicated in the information
4 the NRC had given, isn't that right?

5 A. Not at that staff meeting but later that day.

6 Q. Well didn't you tell me that when you got that
7 information that you expressed to others present your
8 surprise that Mr. Smith would have been implicated in that
9 fashion given your knowledge of Mr. Smith?

10 A. I don't know that I said I expressed that surprise
11 to others present. I think I indicated that I was somewhat
12 surprised.

13 Q. Why then was it appropriate for a person such
14 as yourself who had known the individual, who had some
15 pre-judgment about that individual's work practices, to be
16 the individual that conducted the investigative interview
17 with Mr. Smith himself?

18 A. I really don't see how that had a bearing on
19 anything. Mr. Smith's comments essentially were not even
20 factored into the investigation.

21 Q. You believed that you were capable of conducting
22 a fair and objective investigatory interview with Billy
23 Smith?

24 A. Yes, sir.

25 Q. And you did?

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1 A. And I did.

2 Q. Did you ask Mr. Smith the essential questions
3 that were provided for use in the interviews of all of the
4 other individuals that were interviewed in the investigation?

5 A. I asked Mr. Smith a modified version of the
6 essential questions.

7 Q. And how did you modify that version?

8 A. Some of the questions were not necessarily
9 appropriate for him.

10 Q. What did you ask specifically Mr. Smith?

11 A. I don't know that I can tell you specifically
12 what I asked, but I asked in the vein of Have you ever
13 given instructions to violate QA procedures, Have you
14 ever given instructions to violate welding procedures,
15 Have you ever said anything that could be misinterpreted
16 to violate welding procedures and QA procedures?

17 Q. Did you write down the questions you asked him
18 and his responses to those questions?

19 A. I wrote the responses down and that is contained
20 in the affidavit. I did not write the specific questions
21 down.

22 Q. What essential questions didn't you ask Mr. Smith?
23 Would you like me to show you a copy of the list?

24 A. That would help. I don't know that I could
25 answer the question completely, even with that list.

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1 Q -- to the best of your knowledge.

2 (Document handed to the witness.)

3 A Mr. Guild, I really cannot remember exactly
4 which questions I asked him and I would only be speculating
5 at this point in time to tell you.

6 Q All right.

endAGB#15

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1 Q How about Mr. Moore, did you interview Mr. Moore?

2 A Yes, I did. As I remember I used a similar line of
3 questions with him; "Tell me about the times, tell me about
4 any times that you feel like you have given instructions to
5 violate QA procedures or welding procedures or anything that
6 you have said in the past, tell me about any times they have
7 been misinterpreted."

8 You can look at some of his responses in his
9 affidavit, to those questions.

10 Q Did he admit to any instances?

11 A I believe I remember him giving a couple of
12 examples of where he had assigned a welder to a joint that
13 was -- the welder was not qualified. He indicated that that was
14 done in error, and he also indicated that he had a problem of
15 welders rotating on his shift, and a hard time keeping up
16 with those qualifications.

17 But he also went on to say that he quickly learned
18 that he better start paying attention to that.

19 I can give the affidavit here and go through it if
20 you would like.

21 Q If that would help refresh your recollection.

22 A He says here. "I have never had any problems with
23 any of my general foremen, felt pressured by a general foreman.
24 The only time I know of a deliberate attempt to violate the
25 QA procedure was Wade Hall." That is the only deliberate

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1 attempt that he knew of.

2 "I have never been directed to violate a QA
3 welding procedure. I cannot think of any case where I
4 knowingly directed anyone to violate a QA or welding procedure."

5 He talks about, "I did by error direct a welder to
6 make a weld prior to getting the NDE of the removal area."
7 He goes on to say, "It was caught and corrected."

8 He also admits to another mistake as I was mentioning,
9 about assigning a welder to make a weld who was not qualified.
10 And again he indicates that was caught.

11 "I don't know of any time where anybody has
12 deliberately violated interpass temperature."

13 Q Mr. Hollins, let me direct your attention to the
14 second full paragraph. Statement is made there, "After my
15 interview with the NRC, I pointblank asked some couple welders
16 what they thought I meant by telling them that we must get the
17 job done tonight."

18 Then he goes on to explain that. When Mr. Moore
19 disclosed to you that he apparently went back to the people
20 he believed to be the source of expression of concerns to the
21 NRC about pressure to perform welds in violation of procedure,
22 did you do anything when he told you that?

23 A He did not indicate that he had gone back to
24 anybody that had expressed concern.

25 Q He indicates that he went back and asked some

mm3 1 welders on his crew.

2 Did you make any inquiry to Mr. Moore?

3 You know, if we are talking about protecting
4 people's confidences, we are talking about protecting them
5 from retaliation by supervisors who might try to get back
6 at them for expressing concerns. And here is a statement
7 that in any fair reading, it seems to me that would indicate
8 that you might want to check into whether Mr. Moore went back
9 and got after some welders on his crew that had complained about
10 problems.

11 Isn't that fair to you?

12 A No, sir, I don't believe it is.

13 Q Let's just settle this. Did you do anything about
14 that statement by Mr. Moore to make sure that he wasn't, in
15 fact, retaliating against people on his crew?

16 A No, sir, i do not and don't know that I should have.

17 Q All right.

18 JUDGE KELLEY: Mr. Guild, we are right up close to
19 7. If you can see a logical point to tie it off for the
20 evening?

21 MR. GUILD: All right, sir.

22 BY MR. GUILD:

23 Q Let's look at Mr. Wilson's affidavit. Do you
24 have that?

25 Again now, we are dealing with the substance of

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1 these affidavits. These are supervisors.

2 JUDGE KELLEY: Do you really want to get into another
3 supervisor? It is 7 o'clock in the evening. We have got some
4 things to do in the way of ruling.

5 MR. GUILD: All right, sir, at your pleasure.

6 JUDGE KELLEY: We do have some other things. It
7 won't take very long. We would like to let the panel go, but
8 we have got a couple of questions that we would like to put
9 to some of you before you go.

10 It has to do -- you may recall earlier to day there
11 was some discussion about discovery and various categories of
12 documents. One of the categories we talked about somewhat, was
13 the documentary bases for technical conclusions in the report,
14 and the request from Mr. Guild, perhaps to paraphrase, was
15 that he thought there was some more out there than he had
16 received.

17 And Mr. Carr did respond as to what had been
18 produced.

19 So, we would like to go to you directly, if we might,
20 Mr. Hollins, as the Director, as to the technical aspects of the
21 report. Did you get reports from other participants here today
22 on different technical aspects? Or, how did you get your
23 information that underlie the technical conclusions that you
24 reached?

25 WITNESS HOLLINS: Let me go back. Initially, when

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1 we decided that we were going to write our report and do our
2 investigation, I concluded that the appropriate way is --
3 initially, I thought our report would be made of the
4 Investigation/Resolution sheets of which you have some copies.

5 As we got going through that process, it got to be
6 a fairly bulky process. It didn't work quite as well as the
7 way I wanted it to work.

8 We generated the final report. And then because I
9 had committed to use Investigation/Resolution sheets to
10 Mr. Grier, and his program was set up based on those, I went
11 back after the report and generated those sheets and then
12 submitted them to Mr. Grier.

13 In reality, what I did is I took the words of the
14 report by and large, manipulated it through the word
15 processor and generated those Investigation/Resolution sheets.
16 And that is the reason why they are dated after the report. I
17 submitted them to Mr. Grier after the report.

18 JUDGE KELLEY: But apart from those sheets -- I think
19 I understand that description of that process. Apart from
20 those sheets, what did you have in the way of data from which
21 to make the report in the first place?

22 WITNESS HOLLINS: Let's use, for example, the
23 interpass temperature.

24 JUDGE KELLEY: Okay.

25 WITNESS HOLLINS: There were procedures that we used,

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1 polishing out the samples, there was data that we used,
2 photomicrographs, that type of stuff. That is the information
3 that we used to compile the report.

4 Now it was drafted, if you will, on the Investigation/
5 Resolution sheet until we got to the point that the process was
6 too bulky. So we used those Investigation/Resolution sheets
7 as the draft of the report. But the underlying data for those
8 Investigation/Resolution sheets were supplied.

9 JUDGE KELLEY: So the stack of paper delivered in
10 discovery, does that comprise, in your judgment everything, or
11 most things, some things?

12 MR. MC GARRY: Your Honor, there is one thing I want
13 to make clear. Some information was bulky, like physical
14 samples and various photographs. They were made available in
15 Mr. Carr's office to the Intervenors. So it wasn't just
16 the stack.

17 JUDGE KELLEY: Actual welds and types of things?

18 MR. MC GARRY: Those types of things.

19 Computer printouts were in that package.

20 WITNESS HOLLINS: The things that easily were
21 producible, 8 1/2 by 11, 11 -- were supplied. I know of no
22 underlying data that was not supplied.

23 As Mr. Carr points out, there were some bulky items,
24 they were addressed in the cover letter.

25 MR. GUILD: Mr. Chairman, if I may. In my discovery

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1 examination, I think we identified two that are not before
2 the house. The question is not data. Data is reflected in
3 documents. Documents reflect testing, examinations. There
4 are documents that went into forming the basis for the report
5 which has not been made available. And any number of witnesses
6 here responded in such fashion to my questions on discovery.
7 They had documents before them that reflected information that
8 is not contained in the final report that was the basis for
9 that report. You can call it a draft, you can call it an
10 Investigation/Resolution sheet that was then not physically
11 incorporated in the report, then redone over again after the
12 report. I don't know what you call it.

13 But the point is there is something out there that
14 was a basis, a documentary basis for that report. And I submit
15 that it is htere and hasn't been produced.

16 JUDGE KELLEY: Let me just make a comment about
17 drafts. We did say back in the transcript on September 21,
18 that we were not referring to drafts. The exact language I
19 don't think I need to pull out. But what we meant was drafts
20 of the report. It is a very polished report. I assume it went
21 through several drafts and we are saying we are not asking that
22 there be disclosure of any of that material any more than we
23 are going to disclose drafts of our opinions.

24 If there is separate from that concept some technical
25 documents, some paper prepared by an engineer providing some

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1 analysis that goes to some technical point, I would think that
2 would be disclosed.

3 But, I hear Mr.Hollins saying that that kind of
4 thing has been disclosed. Is that right or not?

5 WITNESS HOLLINS: That is correct.

6 MR. GUILD: Mr. Chairman, our problem is, that first
7 there is nothing sacred about a draft. A draft is discoverable
8 as any other item is discoverable. I appreciate your trying
9 to narrow the scope of discovery to make it manageable.

10 Here we are trying to get to the truth, we are
11 trying to be able to get relevant evidence, or evidence that
12 tends to lead to production of relevant evidence. I submit
13 to you that the discovery reflects that this report is
14 largely an advocacy document that omits and characterizes --

15 JUDGE KELLEY: Are you asking for prior drafts of
16 the report?

17 MR. GUILD: I am asking for whatever it was that
18 went into this report, particularly given the fact that --

19 JUDGE KELLEY: I want to get clear. You know what
20 prior draft is. Do you want prior drafts of the report?

21 MR. GUILD: No, sir, I don't know what prior draft
22 is. I want to know what they have. You may characterize
23 it as a draft, and somehow say it is sacred and exempt from
24 discovery.

25 There is no principle that I am aware of that makes

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1 it so exempt. So, if I used the word draft --

2 JUDGE KELLEY: They are made exempt by the ruling
3 of this Board, and that is that. We thought about it, we have
4 got an opinion, and that is that. The prior drafts of this
5 report are not available to you, Mr. Guild.

6 Now I am talking about some documents, if there are
7 any such other than drafts of this report, fairly so characterize
8 them.

9 MR. GUILD: Your Honor, --

10 JUDGE KELLEY: Stop interrupting me until I finish
11 what I have got to say.

12 If you can focus on some document that you can
13 describe with sufficient specificity so that we know what you
14 are talking about, we will ask Mr. Hollins if there is any
15 such document.

16 Now are you talking about technical papers? Is that
17 what you want?

18 MR. GUILD: Yes, sir, that is what I am talking about.
19 If you will listen to me a second I will try to be as precise
20 as I possibly can, your Honor.

21 JUDGE KELLEY: Careful, Mr. Guild.

22 MR. GUILD: I am not trying to be facetious --

23 JUDGE KELLEY: Mr. Guild, I have listened to you all
24 day. Now, go ahead and make your argument. Briefly.

25 MR. GUILD: I am trying to be as respectful and

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1 polite as I can, Judge. I don't mean to make you angry. But
2 I really just wanted to focus on what is the real dispute here.

3 JUDGE KELLEY: Please do so.

4 MR. GUILD: Let's take the example that Mr. Hollins
5 picks, interpass temperature. I submit to you that the report
6 is a misleading statement of the investigation that was
7 conducted on the subject of interpass temperature.

8 I submit to you that the discovery depositions of
9 Witnesses Llewellyn, Kruse and Ferdon, will support
10 that observation.

11 I submit to you that there is basis for belief that
12 there was a document -- you can call it a draft, you can call
13 it a first version of that technical concern resolution, you
14 can call it -- I don't know how to characterize it, Judge,
15 except to say that I can tell you that the portion of the
16 Duke report that talks about that subject is not in my opinion
17 a full and complete and accurate reflection of the study,
18 investigation and testing that they conducted. It is deceptive.
19 It is deceptive to the NRC and deceptive to this Board and
20 Parties. I am trying to reach that through discovery.

21 JUDGE KELLEY: I understand what you are saying.

22 Let me ask Mr. Hollins: Are there documents of the
23 kind that Mr. Guild describes that you have not disclosed?

24 WITNESS HOLLINS: Again, I know of none.

25 JUDGE KELLEY: Is there anybody else on the panel

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1 who would know more about that than you?

2 WITNESS GRIER: Judge Kelley, I don't know whether
3 I know more about it than Mr. Hollins, but as he stated the
4 plan that he laid out was to produce the results of the
5 investigation on Investigation/Resolution forms. And those
6 were produced in a final form after the final report and
7 turned over to the review board.

8 Drafts of those Investigation/Resolution forms were
9 supplied to the review board prior to the final report. They,
10 as I understand it, formed the basis and our draft for the
11 final report. I believe that is what Mr. Hollins said a
12 few minutes ago, that there are drafts of the Investigation/
13 Resolution forms.

14 JUDGE KELLEY: Which were not turned over.

15 WITNESS GRIER: The ones that the review board used
16 specifically I believe were turned over.

17 JUDGE KELLEY: But there are some existing drafts
18 which may be different in some particulars which were not
19 turned over, is that correct?

20 I guess that is what I am hearing.

21 JUDGE PURDOM: Were these so-called drafts in the
22 form of a memorandum or a report from the study group, or an
23 individual that was transmitted from one person to another?

24 WITNESS GRIER: The draft of the Investigation/
25 Resolution sheets were for the most part, if not all, stamped

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1 preliminary. They were typed and with some handwriting on the
2 form that is the same form used for the final Investigation/
3 Resolution form. And the language on those drafts are similar,
4 if not pretty much the same as the language in the final
5 report from a standpoint of language.

6 MR. GUILD: Let me be as focused as I can.

7 The one instance that I know of that I am seeking
8 on the resolution of interpass temperature controll issue, the
9 issue is flagged as the number one issue of the technical
10 sort that was investigated by the company.

11 I learned in discovery on Friday that there were
12 samples taken of welds performed by Arlon Moore's crew that
13 were defined as critical welds, critical systems, defined as
14 systems where small break loca analysis is applicable. That
15 was the general description that was given to me.

16 Of that sample, depending on the interpretation of
17 the photomicrograph, as many of six of a sample of 25 welds
18 were shown to be rejectable as applied to the ASTM
19 standard for sensitivity.

20 Now the results of that examination are contained
21 solely, to my knowledge, on a handwritten piece of paper that
22 we had to go through three witnesses to get identified and
23 only identified late Friday afternoon. Messrs. Llewellyn,
24 Kruse and Ferdon.

25 MR. MC GARRY: Your Honor --

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1 MR. GUILD: That information showed that there were
2 welds that failed the acceptance standard for sensitivity in
3 place in the Catawba facility identified to Arlon Moore's
4 crew, including welds that were performed by the individual
5 that Applicants believed identified the most specific instance
6 of interpass temperature violation.

7 And that is what they looked for.

8 That testing, that examination is nowhere reflected
9 in the August 3rd report. It simply doesn't exist there. It
10 is as if it never happened.

11 Now I submit to you that the omission of that
12 information is a serious omission, and seriously distorts their
13 report of the results, study of that subject.

14 I suggest to you that if there was a draft of that
15 resolution and that draft of that resolution contained the
16 results of that investigation and the determination was made
17 to remove the results of that investigation from the public
18 report, that purported to reflect the investigation of that
19 concern, that is a very serious misrepresentation of what work
20 was done. That work was relied upon by the NRC Staff, that
21 work was relied upon by Brookhaven Labs, to my knowledge,
22 according to the witnesses' testimony, and I submit that
23 prior draft, prior documentary basis, whatever you want to call
24 it, of that specific technical concern should be discoverable
25 and should be made available in order to get to the bottom of

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1 this.

2 JUDGE KELLEY: Okay. Mr. Guild, by way of one
3 further point, I believe you indicated that in three of your
4 depositions the matter came up.

5 Would you bring along in the morning -- do you have
6 copies of the depositions?

7 MR. GUILD: I have a copy of two of those depositions
8 that I had reproduced by Applicants, that of Mr. Kruse and
9 Mr. Ferdon, who I am told actually did the metalographic
10 examination of those welds. Mr. Llewellyn's deposition simply
11 identified those other gentlemen as being responsible parties.

12 JUDGE KELLEY: We don't have any desire to read the
13 whole thing. But if you can bring them in and just mark the
14 pages where you think we ought to look, that will be helpful.

15 MR. MC GARRY: Your Honor, I don't want this Board
16 to go away with the impression that these depositions gave
17 rise --

18 JUDGE KELLEY: Just a moment, Mr. McGarry. I was
19 about to turn to you. We have got this matter, which the
20 Board is just about to close on. And, we have got some other
21 matters, and then we are going to leave. But, we have heard
22 from Mr. Guild, we will hear now from Mr. McGarry and/or
23 Mr. Carr on the points that have been discussed.

24 And, Mr. Johnson, if he wishes to comment. And then
25 we are going to move on to another subject, and we are going to

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1 be ruling on this probably tomorrow morning, but certainly
2 not tonight.

3 MR. MC GARRY: Mr. Carr will discuss the discovery,
4 but I don't want this Board to leave with the impression
5 tonight that it was the deposition conducted by Mr. Guild that
6 gave rise to the incident -- the information that he has just
7 conveyed to this Board.

8 The information concerning acceptance or rejection
9 of certain welds was contained in discovery document. It was
10 contained in documents that we turned over to him, and he was
11 inquiring on those documents.

12 With respect to the acceptance or rejections of
13 welds, all I can ask you gentlemen is to keep your minds open
14 because what you have heard from counsel is incorrect, that
15 the facts will speak for themselves at the appropriate time.

16 Now with respect to discovery, I turn to Mr. Carr.

17 MR. GUILD: Mr. Chairman, before Mr. Carr does that,
18 I would welcome counsel making a statement of how that
19 information was transmitted.

20 JUDGE KELLEY: The Board doesn't want to hear it
21 tonight. We just want to hear that argument. He says you are
22 incorrect. Let's not go on with further argument saying
23 those things.

24 Let's go to Mr. Carr and hear from Mr. Carr.

25 MR. CARR: Very briefly, your Honor, I think it was

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1 covered both this morning and in Mr. Hollins' explanation and
2 Mr. Grier's explanation.

3 The drafts of the final report were comprised in
4 some measure, written on a form called Investigation/
5 Resolution sheet. And therefore, under the Board's ruling are
6 not discoverable. The technical studies, analyses, what have
7 you, that form the basis for those draft documents were
8 turned over.

9 That is as simple as I know how to make it. And
10 I think that capsules the position.

11 JUDGE KELLEY: Okay.

12 Mr. Johnson?

13 MR. JOHNSON: I don't really have much to add. I
14 would only suggest that it seems like the question has pretty
15 much narrowed down to these drafts of the IR forms, and it
16 seems as though Mr. Guild's concern about the completeness of
17 the report, that doesn't necessarily suggest that there is
18 any discovery that hasn't been provided that was directed to
19 be provided.

20 JUDGE KELLEY: Thank you.

21 MR. GUILD: Mr. Chairman, as the proponent of the
22 request, I will only state that that is the only specific one
23 where I have demonstrable cause to believe that there is
24 discoverable evidence that I need, that I seek. I believe good
25 cause is shown for obtaining drafts, whatever you want to

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1 call it, of the report, underlying documentary basis. And we
2 would request that those be provided in discovery.

3 JUDGE KELLEY: All right. We will rule on that
4 tomorrow morning.

5 We have some other matters that are pending that
6 we would like to rule on now.

7 Mr. Guild had a series of discovery requests that
8 were argued this morning by counsel.

9 Category one had to do with more affidavits. We
10 are not going to repeat the whole discussion. What it comes
11 down to is, we understand that the affidavits as such were
12 provided, but there are some underlying notes of interviews
13 that were not provided, and we understand that in some cases
14 the affidavits may have been derived indirectly from that.

15 Nevertheless, there is the concern about whether
16 what the person said actually got translated into the affidavit
17 or vice versa.

18 We think that is a legitimate request, so we are
19 going to grant it and ask the Applicants to turn over to
20 Palmetto a set of the notes taken in association with the
21 Intervenors, which led to the affidavits.

22 Is that a clear enough designation? Do you know
23 what I am talking about?

24 MR. CARR: Yes, sir.

25 JUDGE KELLEY: Do you think you could do that, or

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1 cause it to be done, pulled together and Xeroxed tomorrow
2 noon?

3 MR. CARR: We may be able to do it more quickly.
4 Certainly, we will do it by noon.

5 JUDGE KELLEY: All right, fine. Thank you.

6 My colleagues point out that the name should be
7 treated under protective order, just as the names of affiants
8 are. After all, this is the predecessor of the affidavit
9 we are talking about.

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EVENING SESS.

7:20 p.m.

#17-1-Suet¹

2 And we have already talked about technical infor-
mation. We will rule on that tomorrow.

3 We have two other categories of discovery re-
4 quests. One was evaluations of certain forms, personnel
5 evaluations. And the second was a category that contained
6 five sub-categories and it had to do with different kinds
7 of evidence relating to scheduling pressure and the like.

8 All five are in the record. Some scheduling
9 documents, absenteeism, measurements, productivity, re-
10 jection rates arising from x-rays, and overtime records.
11 And we think that all five of these have some, at least
12 distant connection with this topic, but we think that it
13 is too far remote, balancing their relevance against their
14 likely productivity as something to get into.

15 We are going to deny requests for those five
16 categories of information. I might add as to the foreman
17 evaluations, there is the additional privacy consideration
18 which we think is quite weighty in this context. And we
19 are going to deny that request as well.

20 There were two requests, related requests. One
21 was a request to postpone the hearing to allow Palmetto
22 further time to prepare for calling witnesses and doing
23 related things. We are denying that request.

24 We think that sufficient time has been allotted
25 for that purpose, and no good cause has been shown why we

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1 should postpone under the circumstances, namely with all
2 these people down here ready to do business. We intend to
3 proceed.

4 Similarly, the related request has to do with
5 trying some of issues, at least in part, by evidentiary
6 submission, that is to say by deposition approach. This
7 system of approach has been used in a few cases, notably
8 Commanche Peak recently. It's cumbersome, it takes a lot
9 of time. And we think it's unnecessary.

10 And we are denying the request that we take that
11 approach. We intend to proceed with this hearing as it has
12 been scheduled and as it has been laid out.

13 To that end, we will be hearing from this panel
14 again tomorrow morning. We are not going to set any precise
15 cutoff time but we will state our expectation. We expect
16 to get through this panel and through the Staff panel at
17 least pretty well by tomorrow evening at an hour to be
18 determined. So, I think that all parties, particularly
19 Palmetto in cross, has to take into account the Board's
20 expectations in that regard.

21 We have before us, too, the question of witnesses.
22 Palmetto has submitted to us a list of sixty names. We had
23 some discussion earlier today about the dimensions of that
24 list and the feasibility of that many people being called.

25 And it is the Board's considered view, based on

#17-3-SueT 1

2 considerable experience in this particular case, that that
3 list is much, much too long and that going over that many
4 witnesses would be unnecessary and cumulative.

5 We reiterate the view that we expressed this
6 morning that a much smaller number of witnesses, perhaps a
7 dozen to fifteen called in, say, produce evidence that's
8 particularly favorable to Palmetto's submissions, particularly
9 unfavorable to the Applicant, would have presumably an
10 adverse result on the Applicant. And if, on the other hand,
11 the witnesses Palmetto picks out don't make any significant
12 dent in the Applicant's submission, then we see no reason
13 why 45 more could make a bigger dent.

14 And we have decided that Palmetto can take their
15 list of 60 and cut it down and supply us by tomorrow noon
16 with a tentative list of 15 out of that 60. And further a
17 designation of the top six, the most important six of the
18 15. You are not required to rank order those people. You
19 just tell us who are the six most important in your per-
20 spective and beyond that nine more that you think you want
21 to call.

22 Now, beyond that we are going to give you an
23 opportunity to look over these affidavits and these notes
24 of interviews so that you can find out whether on the basis
25 of that review there aren't people that you want to substitute
on your list, move up your priority, or whatever. Then, we

#17-4-SueT 1

2 will call that your final list. And we want that final list
3 by Thursday in the morning based on your review of those
4 notes and whatever else you want to consider.

5 The objective here is to get into the hands of
6 the Applicant at least a tentative list of people so they
7 can begin finding out whether these people are available
8 with an emphasis on the most important six people, the thought
9 being that they would be the first ones that we can see when
10 we get to that point presumably on Thursday morning.

11 And that I think covers it from the Board's
12 standpoint.

13 MR. GUILD: I would like to observe as to the
14 last point, you have already heard our view that we are
15 severely handicapped on not being able to have the time to
16 conduct the investigation of these concerns in any reasonable
17 fashion given the time constraints you placed on us.

18 It further hampers us, though, and I think causes
19 just the harm that the Board reported to be trying to prevent
20 to single out from this list Palmetto's designation persons
21 whom, as the Board characterizes, we expect the most favorable
22 testimony. If you ever wanted to subject witnesses to fear
23 of retaliation, all you have to do is ask that Palmetto
24 Alliance provide the list of the ones that they think are
25 likely to be the most critical of Duke Power Company and
provide that list to the Applicant.

#17-5-SueT 1 If you have any interest in protecting these
2 people from reprisal from Duke management or supervision
3 that they might implicate, you've got to give us some basis
4 for being able not to point the finger or, you know, put
5 the scarlet letter on the forehead of six people or nine
6 people.

7 Can't we at least submit this to you In-Camera,
8 Judge, because you really do mark these people when you
9 suggest that Palmetto identify the people who are most
10 likely to present favorable testimony. That is exactly the
11 evil that I understood this entire process to be designed
12 to avoid.

13 I'm really fishing for some way to try to do
14 this, Judge, because many of these people are just scared
15 to death. I'm going to tell you that, from the contacts
16 we've had with them.

17 JUDGE KELLEY: Well, we had a hearing, Mr. Guild,
18 on harassment and the outcome is in this blue document.

19 MR. GUILD: Yes, sir. And you found that the
20 Company was guilty of harassment.

21 JUDGE KELLEY: Sometimes, yes.

22 MR. GUILD: Right up to the top levels of manage-
23 ment. We are talking about specific individuals here.
24 There has got to be some basis for --

25 JUDGE KELLEY: We can consider overnight whether

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the six as opposed to the 15 can be In-Camera or whatever.

2

I understand your point.

3

It's getting awfully late. We would like to resume tomorrow morning at 8:30 and so we will see you here at that time.

4

5

6

All right. Good night. We will see you at 8:30 tomorrow morning.

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(Whereupon, the hearing is recessed at 7:30 p.m., Tuesday, October 9, 1984, to reconvene at 8:30 a.m., Wednesday, October 10, 1984.)

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CERTIFICATE OF OFFICIAL REPORTER

This is to certify that the attached proceedings before the
UNITED STATES NUCLEAR REGULATORY COMMISSION in the matter of:

NAME OF PROCEEDING: CATAWBA NUCLEAR STATION

DOCKET NO.: 50-413-OL & 50-414-OL
PLACE: CHARLOTTE, NC
DATE: Tuesday, October 9, 1984

were held as herein appears, and that this is the original
transcript thereof for the file of the United States Nuclear
Regulatory Commission.

Ann Bloom

Ann Bloom

(Sigt) Mimie Meltzer

(TYPED)

Mimie Meltzer

Official Reporter

Reporter's Affiliation : ACE Federal

Court Reporters.

Garrett J. Walsh, Jr.

Garrett J. Walsh, Jr.

Myrtle H. Traylor

Myrtle H. Traylor