

ORIGINAL
UNITED STATES
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:
CATAWBA NUCLEAR STATION

DOCKET NO:
50-413-0L
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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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 4 In the matter of: :
 :
 5 DUKE POWER COMPANY, et al. : Docket Nos. 50-413-OL
 : 50-414-OL
 6 (Catawba Nuclear Station :
 Units 1 and 2) :
 7 :
 ----- x

BB&T Center
 Fourth Floor, Carolina Room
 200 South Tryon Street
 Charlotte, North Carolina

Wednesday, 10 October 1984

Hearing in the above-entitled matter was convened
 at 8:30 a.m., JAMES L. KELLEY, presiding.

BEFORE:

JAMES L. KELLEY, Chairman
 Nuclear Regulatory Commission
 Atomic Safety and Licensing Board

PAUL PURDOM, Member
 Nuclear Regulatory Commission
 Atomic Safety and Licensing Board

RICHARD FOSTER, Member
 Nuclear Regulatory Commission
 Atomic Safety and Licensing Board

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APPEARANCES:

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I N D E X

<u>WITNESSES:</u>	<u>CROSS</u>	<u>BOARD</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Resumed:	By:			
R. L. Dick	Mr. Guild	13,366	13,633	13,674
G. W. Grier	Mr. Riley	13,602		13,693
T. H. Robertson	Mr. Johnson	13,608		
T. D. Mills	Mr. Carr		13,700	
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. VanMalssen				
D. Abernethy				

<u>EXHIBITS:</u>	<u>IDENTIFICATION</u>	<u>EVIDENCE</u>
Intervenors' Ex. No. 144 (12-pp. doc. of schedules, and photomicrographs)	13,500	-
Intervenors' Exh. No. 145 (3-pp. doc. Welds, Requiring Metallurgical Eval)	13,500	-
Staff Ex. No. 28 (IE Notice 84-18 dtd 3/7/84)	13,615	13,617
Staff Ex. No. 29 (IE Notice 84-49 dtd 6/18/84)	13,615	13,617
Staff Ex. No. 30 (Memo, dated 7/16/84)	13,624	13,624

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JUDGE KELLEY: Good morning. We are going to begin this morning, as we did yesterday, with some rulings and some further comments and procedural discussions. Hopefully we can conclude that rather quickly and then get right back to the panel.

We discussed to some extent two matters last night that require some rulings and some further discussion this morning. First of all, on what I think is the relatively simpler matter, there was discussion about further discovery of underlying technical data, that is to say, data underlying the Applicants' report.

There was a specific discussion of some data having to do with interpass temperatures which, as I understand it, came up in the course of certain discussions -- not discussions, certain depositions that Mr. Guild took last week I believe with three people in particular -- I would indicate, Mr. Guild, that you might want to look at those depositions -- we decided that we would go ahead and rule though that the Applicants turn over any further material that they have got pertaining to last night's -- I'll just say last night's discussion of interpass. In that context, whatever else you have in your files, turn over as soon as possible, and I assume by the end of the day that is do-able.

MR. MC GARRY: We are hopeful to get that by before

agb/agb2

1 lunch, your Honor.

2 JUDGE KELLEY: Fine.

3 MR. GUILD: Your Honor, I have marked-up copies
4 of the transcripts of the depositions of Brian John Kruse
5 and Stephen Eric Ferdon and I would like to hand those to
6 the Board and they reflect the discussion that I had on
7 the record last night.

8 JUDGE KELLEY: Could you just put in the record
9 the pages you want to refer to --

10 MR. GUILD: There are numerous pages.

11 JUDGE KELLEY: All right.

12 MR. GUILD: They are marked pretty thoroughly
13 but I would like to hand them up.

14 JUDGE KELLEY: Okay. I asked you to do that,
15 so we will take them certainly. The Applicants -- you
16 heard Mr. McGarry say they hoped to have the material by
17 mid-day, and if there is any further disagreement among
18 counsel -- which hopefully there won't be -- then we can
19 hear it and we will have this reference material here in
20 front of us. I appreciate your pulling that together.

21 (Documents handed to the Court.)

22 JUDGE KELLEY: Now the other broader category of
23 information that we discussed was a category I will call
24 -- was it investigation resolution forms, Mr. Hollis?

25 MR. HOLLIS: Yes, sir.

1 JUDGE KELLEY: You know what I am reaching for.

2 There were some prior versions of these forms
3 that were developed and then I believe you explained that
4 the post-dating of certain of these in final form had to
5 do with the fact that the information was broken out of
6 the report and then put into a form that Mr. Grier had
7 earlier requested.

8 But the issue was whether earlier versions --
9 drafts, if you want to call them that -- of these forms
10 ought to be produced in discovery.

11 The Board may have been responsible for some
12 confusion in this regard in the undefined, undifferentiated
13 words the term "draft." When we said though in the order
14 that drafts weren't required, what we had in mind was the
15 draft of the final report in the sense of which Mr. Hollis,
16 maybe Mr. Carr, whoever, sat down and started to pull it
17 all together and write it up as a report. And I assume
18 that there was a first draft and a second draft and then
19 the drafts got finalized.

20 But separate and apart from that, as we
21 understand it, are at least some of these earlier versions
22 of investigation resolution forms. And we expect they may
23 well be repetitive reports, as either in the report or as
24 in versions of those that were turned over in discovery.

25 But still in all, we don't see those as in our

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1 -- quote -- draft exception and they do seem to be somewhat
2 analogous to the ruling -- somewhat analogous to the notes
3 of interviews that we directed to be turned over yesterday
4 in the sense that, if nothing else, they are a check on
5 completeness.

6 So we are ruling that such of those earlier
7 versions of investigative resolution forms that you have
8 got should also be turned over to Palmetto as soon as that
9 can be done. Can that be done today?

10 MR. MC GARRY: Yes, your Honor. What we would
11 envision is we are hopeful that we can have this
12 information to the Board and parties by noontime. And
13 then what we would suggest is perhaps taking a rather
14 longer lunch hour so as to give the Board and parties
15 an opportunity to read it. I don't think we are talking
16 about extensive material. I don't think it will even
17 approach an inch in size and the Intervenors could then go
18 back and the panel would still be here and they could
19 inquire further if they wanted to.

20 JUDGE KELLEY: That sounds like a reasonable
21 approach. We can kind of take it a step at a time. But
22 if you can produce this material before the lunch break,
23 I think that would be helpful.

24 Okay. The other area that we discussed last
25 night -- particularly on further reflection by the Board --

agb/agb5

1 we didn't really discuss all the interrelated aspects of
2 this particular procedural matter, the matter of identifying
3 and calling witnesses. We got into it a little bit.

4 The Board is clear on a couple of points but on
5 some other points we think we should hear further from
6 counsel, hear further what the concerns are, hear further
7 what the options may be in terms of how we proceed in
8 terms of mechanics.

9 And what we would like to do now is to state
10 the two points that we think we are clear on and that we
11 are ruling need be done. But then beyond that, we will put
12 to you a proposition for a series of interrelated
13 propositions such as confidentiality or not of this and
14 how people get called and whether they are in camera or
15 not and we will have some discussion of that and hopefully
16 we can reach a consensus.

17 It is clear to the Board -- and we restate our
18 ruling -- that the witness list of 60 that we were given
19 yesterday needs to be pared down, reduced to 15. We are
20 going to need that today.

21 We also need a list of six people to be called
22 initially, or to be among those called initially simply
23 so that the logistical arrangements for that could be made.

24 Now in saying that though both the reduced list
25 and the list of the first people, we would want to stress

1 that Palmetto can use whatever criteria seems best to them.

2 I guess as a lawyer last night I think I referred
3 to taking the people who would help my case most, and that
4 is just my reaction to what I would be doing if I were on
5 the other side of the table on a case like this.

6 But we don't want to label these people who are
7 selected as the most important or the most significant or
8 the most anything. The Intervenors who want to call these
9 people can use their own criteria.

10 Having said that much, we would then turn to the
11 proposition for comment part of what we had this morning
12 and then it will be open for counsel to agree or disagree
13 or suggest different approaches to the remainder of it
14 and we haven't really tried to sketch in all the details
15 as you will see but I think the major points can be stated
16 and then we can have some discussion.

17 It seemed to us that the list of 16 and the
18 sub-list of six could simply be handed to the Board and
19 parties in camera. There is no reason why those names
20 need to be public at this point.

21 So we would envision -- again this is a proposition
22 we are putting to you -- that that be done today so that
23 the Applicants can begin the process of contacting people and
24 finding out whether they are available.

25 Then the second, it seemed to us, major point is

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1 how do you deal with the witness when he or she is called in?
2 And I think I am assuming one conclusion that we can also
3 debate and that is whether--in light of yesterday's ruling--
4 these hearings, when we call these witnesses, can be
5 closed at all. And we can talk about that.

6 Assuming for the moment that they might be,
7 we would envision that the witness come in to the hearing
8 room on a closed, in camera basis and that the Board would
9 ask the witness whether, under the circumstances -- and
10 we would explain them -- the person wanted to be heard in
11 public session or whether they wanted to be heard on a
12 confidential, in camera basis and then that person would
13 decide which way they want to go.

14 And if they wanted to in camera, then we would
15 use that procedure and stay in camera, hear the testimony
16 and then the person would be dismissed and then go on to
17 the next person and use the same procedure and so on
18 through the list.

19 Conversely, if the person says they would just
20 as soon it be public, then it would be public and we could
21 open the door and go in that mode.

22 And I think that is about as complicated as we
23 want to make it for purposes of discussion. We can add
24 other points.

25 For example, if we went down this road, the

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Board would envision writing up a short statement sort of
along the lines of the statement last year on people not
talking to other people, that kind of a thing.

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1 And then we could have counsel hear that and see
2 if they thought it was satisfactory. Any preference on
3 sequence in commenting on this? Do you want to go first,
4 Mr. Guild?

5 MR. GUILD: It doesn't matter.

6 JUDGE KELLEY: Go ahead.

7 MR. GUILD: Judge, we have pretty thoroughly
8 considered our position in the few hours since last we were
9 together. And we are very troubled, as we tried to express
10 yesterday, about the posture that the case is in and what
11 we find ourselves confronted with.

12 Without rearguing the point, I would just observe
13 a foundation for the comments on your proposition. I don't
14 know how anybody can be put to proving a pattern and told
15 they have to do it with six witnesses or fifteen, particularly
16 when the selection of the witnesses is done by your adversary.

17 We have had ten days to try to extrinsically
18 investigate to do what limited contact we have been able to
19 do, given what we have tried to communicate as tactfully as
20 we could the -- what should be obvious pressures on these
21 individuals to not cooperate with Palmetto, to not speak
22 to counsel when called.

23 I submit to you as an officer of the court, an
24 officer of this agency, that there are individuals who
25 communicate to me that but for their employment at Duke

#2-2-SueT

1 Power Company, there are many things that they would have
2 told the interviewers, that they would have told this Board,
3 but that they are constrained by their employment to keep
4 silent. I'm told by people that there are things they told
5 the interviewers that never appeared in their affidavits,
6 and that their concerns that they raised to interviewers,
7 the interviewers told them, "We don't want to hear about it."
8 Either in those words or words to that effect.

9 We are frankly confronted with two difficult
10 problems. One is an adversary trying to prove a case. We
11 think there are significant quality assurance breakdowns at
12 Catawba. They are manifest by the stack of affidavits that
13 are now in the record.

14 Frankly, we considered coming in this morning,
15 simply resting on those affidavits, and saying we will
16 appeal. We think it's just fundamentally unfair to be
17 confronted with a task of fifteen witnesses on a panel and
18 asked to complete it in half a day. I'm told that the
19 maximum number the Appeal Board has ever even approved is
20 eight and that that was viewed as an unwieldy mechanism.

21 We have had fourteen before and we thought that
22 was outrageous. And now we have fifteen.

23 I come in this morning and I frankly, as a
24 lawyer trying to advise a client and trying to do the best
25 can, am at the point where I want to rest on the record

#2-3-SueT

1 as it stands and say we will go up as it is, because this is
2 a sham. And I don't mean any disrespect. All I'm saying
3 is that I don't think that there is any way as an officer
4 of the court I can represent my client's interests effectively.

5 That's the first point. That's as an adversary.

6 JUDGE KELLEY: Is that your position?

7 MR. GUILD: I'm trying to entertain the point that
8 you raised and how to approach this question.

9 The second point is this. I am very troubled by
10 the proposition of how the individuals who, at great personal
11 sacrifice and risks themselves, presented information to
12 their employers knowing, knowing, the implications of pre-
13 senting that information with their future employment. All
14 you have to do is look at the experience of Bo Ross to
15 appreciate what this record reflects on that score. And I
16 don't know how many people mentioned his name in my conversa-
17 tions with them. We know what happened to Bo Ross. They
18 know it.

19 So, I'm concerned about how to protect their
20 interests, because frankly although I don't represent them
21 I think the only way we are going to get to the bottom of
22 what the problems are at this plant is by being able to keep
23 those lines of communication open.

24 When someone told me, as I tried to communicate
25 yesterday, that they thought it was just ludicrous that --

#2-4-SueT 1

2 to try to get to the bottom of this in three days, I didn't
3 know what to say to them except at that point I thought that
4 we were going to grapple with the process -- a decision
5 hadn't been made to the contrary -- that might allow for a
6 thorough probing of the true scope of their concerns
7 through a mechanism that I thought was a fair compromise
8 given the obvious conflicting considerations and administra-
9 tive difficulties.

10 We are in the process -- so, on the second point
11 I don't think that there is any way of honoring the trust
12 that those individuals placed in this process. Okay. The
13 process of airing their concerns by approaching it in the
14 fashion of saying out of the forty who -- the forty-four
15 individuals who are non-supervisors who are on our list who
16 by definition now are already the focus of attention -- I
17 don't think there is any way that a subset of those can be
18 expected to come forward and present full and honest airings
19 of their concerns.

20 Your Honor, now addressing the proposition. I
21 don't think that -- I don't think that any of the mechanisms
22 you suggest will work. I don't think that -- it's not --
23 strike that. Let me start again.

24 Who are these people to be protected from? Their
25 identities will be known to the Company. They will be known
to everybody in this room who presumably are parties to the

#2-5-SueT

1 affidavits of confidentiality. They will be ultimately known
2 to their supervisors, if they are not known already to their
3 supervisors. I think it's just -- it's common sense to
4 think that after all these months, the individuals that are
5 likely to be on the list of six are well known to their
6 supervisors.

7 And I submit to you that that's the information
8 that comes to me from them, that as Mr. Moore's statement
9 reflects -- his affidavit reflects -- he went out and talked
10 to the welders who he thought were making these complaints
11 against him. They know who these people are.

12 So, I don't think that it cures anything to say
13 that these people's names ought to be handed over in private
14 to the Board or the parties. Frankly, I think at this point
15 if they testify their best protection is to have their name
16 and photograph perhaps on the front page of the local news-
17 paper simply because then it is absolutely clear to anybody
18 who is interested in this subject that that person has stuck
19 their neck out, that person has exposed themselves to risk,
20 that person is coming forward to speak.

21 I think public knowledge is their best protection.
22 And the worst protection that you could afford them is to
23 have them come in here under, you know, behind a screen or
24 something like that when the people who know their identity
25 are the people in the room that they should have fear from.

#2-6-SueT 1

2 And that's my point. So, I submit that the
3 process that the Board has proposed -- and I don't mean to --
4 I'm not trying to suggest, Mr. Chairman, that the Board's
5 not grappling on how to figure this out. That's not what
6 I'm saying at all. And it's a difficult problem.

7 But with this rush to judgment, this sense that
8 we have to get this thing done, there is no way in that
9 context, with all due respect, sir, that you can honor the
10 depth of concern that these people have. They want to come
11 in and tell their story, but they don't want to come in and
12 tell their story through my mouth asking them, you know,
13 you've got fifteen minutes, let's hear as much as I think is
14 important.

15 And I would ask you just to reflect on this. In
16 the prior proceeding, when you were talking to weld inspectors
17 remember the case of John Bryant. John Bryant -- I didn't
18 ask -- I didn't have an adversary's design of what I wanted
19 to extract from Mr. Bryant. I simply wanted to hear Mr.
20 Bryant and give him the opportunity to tell his story about
21 the concerns that he was still troubled about. And I know
22 the circumstances, but as it turned out we didn't get
23 through those. And I don't know whether it was -- I don't
24 think it was the problem of my lack of expedition. I really
25 think it was the problem that the process was just not
expansive enough to hear him out.

#2-7-SueT 1

2 That's my -- that's sort of the observation
3 generally. I think that this process, if it's to work, has
4 to give these individuals who are exposing themselves to
5 considerable risk an opportunity to be heard fully. And I
6 don't even mean me examining them in an adversary fashion.
7 I mean, if I could frame a process where you didn't rely
8 on me, Judge, and you simply allowed them to come in and
9 tell their story, that would be fine.

10 But the bottom line is, if you are relying on
11 Palmetto to make the selection from an adversary standpoint
12 it can't possibly be on the basis of adequate knowledge on
13 our part because of the time constraints and the problems
14 we've had in preparation. Second, you can't possibly honor
15 the scope of the concerns that these individuals have,
16 giving them the free rein to explain them to this Board.
17 And, third, it exposes them in my judgment to the very threat
18 of reprisal that would be the object in time to come, devise
19 a scheme for their protection.

20 What I'm trying to do right now, what I was trying
21 to do last night, is to start with a clean slate on the
22 assumption that these folks have committed their positions
23 in those affidavits. I think on the face of those affidavits
24 this Board has absolute unassailable confidence that there
25 is a significant problem of foreman override at Catawba and
a pattern of violations.

#2-8-SueT

1 And that's where I considered to rest. We are
2 revising our witness list, and we are revising our witness
3 list frankly in light of the rulings of the Board yesterday,
4 in an effort to try to salvage the record, if you will. But --

5 JUDGE KELLEY: I'm sorry. When you say rulings
6 yesterday, as distinguished from this morning or --

7 MR. GUILD: No, sir, yesterday in the sense of
8 the rulings with regard to denying us the right to have
9 the 60 witnesses.

10 JUDGE KELLEY: We are not going to hear 60
11 witnesses.

12 MR. GUILD: That's --

13 JUDGE KELLEY: I would say this, you know. You
14 can't tell how many people we can hear from. Our assumption
15 is that we could hear from a dozen or fifteen. We will
16 probably, one way or the other, have heard enough. Maybe
17 not. Maybe the whole thing will be very murky then and we
18 will feel we have to hear some more.

19 But I think we are pretty comfortable saying we
20 are not going to hear 60.

21 MR. GUILD: I think that message came through.
22 And I frankly have to say I was taken aback and perhaps I
23 should have understood your number of twelve in discovery
24 reflecting the scope of the evidence the Board wanted to
25 hear. Frankly, the guidance that I communicated to every

#2-9-SueT

1 individual I spoke to when I interviewed them was this, and
2 this is my paraphrase of your ruling. It was: The Board
3 said they wanted to hear as much noncumulative testimony
4 of site employees as they could.

5 That's what I told them.

6 JUDGE KELLEY: Within -- we said two to three
7 days.

8 MR. GUILD: And I told them that we did not know
9 whether or not the Board was aware of the scope and breath
10 of these concerns.

11 One of the questions, Your Honor, I just wanted
12 to ask for the record was, when that ruling was made and you
13 looked at the list of 60, did the Board look at the affidavits
14 of those 60 people?

15 JUDGE KELLEY: We thought you were going to do
16 that, Mr. Guild, because they were the 60 that you picked
17 out.

18 MR. GUILD: Yes, sir, we did. And what I wanted
19 to understand was when you decided that you would only
20 hear fifteen, was that on the basis of having read the
21 affidavits of the forty-four craftsmen and deciding on that
22 basis that we had somehow overshot the mark or we were
23 overbroad in our selection?

24 I didn't know. And I sort of assumed that the
25 Board members had read the affidavits, and frankly when the

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1 ruling was that only fifteen are the maximum scope --

2 JUDGE KELLEY: If your question is, did we read
3 all the affidavits to conclude there are only fifteen
4 people in there worth listening to --

5 MR. GUILD: Yeah.

6 JUDGE KELLEY: The answer is no. We didn't
7 do that. That is not what that reflects.

8 MR. GUILD: I'm trying to grapple with this problem,
9 Judge, and I don't know how concretely I addressed your pro-
10 position but I tried to honestly tell you what my reaction
11 was --

12 JUDGE KELLEY: Let me just ask you now, suppose
13 that we have a list. You decide you want to call some
14 witnesses. Is it your position that we should just do that
15 in public and forget about In-Camera entirely?

16 MR. GUILD: Let me address that. We grappled with
17 this a little bit in the conference call with the Appeal
18 Board. They raised the issue, and I think the general
19 position of the parties was, no need to reach that, we will
20 try to figure something out.

21 And I think that was sort of a net result. And,
22 as I understand the ruling, it said we are not passing on
23 how you do this.

24 JUDGE KELLEY: They didn't reach the issue?

25 MR. GUILD: They didn't reach the issue.

#2-11-SueT 1

JUDGE KELLEY: All right.

2 MR. GUILD: And I think that at least in argument
3 of that position that I recall advancing, and I don't
4 know whether it received criticism -- I can't really remember
5 in the give and take -- was this. As I recall the Midland
6 analysis, the only Appeal Board decision that I'm aware of
7 that deals with this sort of issue, or the privilege
8 extending to the private party, in that case the Government
9 Accountability Project, was not extended. The confidence,
10 the protection of confidence that ultimately was secured
11 by a protective order in that case, was based on a
12 particular showing by the individuals.

The individual came in and said I need some
protection. I want it. I need it. Okay. And that
individual was a subset of a larger group of people, the
rest of whom didn't want it or didn't make a showing of need.
All right.

18 And sort of following that line of analysis, what
I had in mind was this. The individuals come forward in a
public session and are asked as a threshold matter --

21 JUDGE KELLEY: Collectively?

22 MR. GUILD: No, individually, okay. And are asked
23 as a threshold matter on the basis of some statement that's
24 given to them about, you know, we -- I'm just paraphrasing
25 now, but we understand your original affidavit was given with

#2-12-SueT 1 some pledge of confidence. And, you know, it has been
2 distributed, explain the protective order that exists now,
3 and this is a public session, and the general principle is
4 the hearings are held in public. But if you have a particular
5 need for your confidence to be protected, we would entertain
6 a request from you that your testimony, or parts of it, be
7 taken in a non-public session.

8 And it's analogous to the sort of solicitation
9 this Board made of the In-Camera witnesses, do you want to be
10 In-Camera and give us a reason. I know you didn't probe
11 that at that time.

12 But what I would submit here is, you ask that
13 question on the public record. You elicit a response, and
14 if the response says I'm happy to be public or I don't
15 require confidentiality, the inquiry will go forward. If
16 the response is yes, I would desire protection of my
17 confidences, and I can tell you the reasons, and here they
18 are, and the reason, you know is stated; or, I can tell you
19 the reasons but I'm reluctant to tell you in public, then
20 you go In-Camera.

21 You get an explanation. If it satisfies the Board,
22 you take the rest of the statement In-Camera. And that was
23 just generally the mechanism. It is not frankly very detailed
24 or thought out, but it was what I had in mind approaching
25 that.

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1 JUDGE KELLEY: Let me just make sure I understand.
2 Under that approach, the name of the individual will be public
3 because he originally came in in public session. And what might
4 be protected or put in camera, would be part or all of what he
5 had to say about the foreman or whatever.

6 But the foreman may at some point -- he knows the
7 man testified because it is in the papers or wherever, but he
8 doesn't know what is said.

9 So that is sort of a compromise between the public --

10 MR. GUILD: It is a balance. I think it also
11 reflects the reality that the identities of these people as
12 sources of information in some way, shape or form is well known.
13 It is no secret that these people were called up to the welding
14 superintendent's office for interviews.

15 JUDGE KELLEY: You are saying protect the communication.

16 MR. GUILD: Protect the communication. You protect
17 the specifics of the communication if that is desired by the
18 individual based on the particularized need.

19 JUDGE KELLEY: So the witness list itself need not
20 be private either, in camera.

21 MR. GUILD: I don't believe it should be.

22 JUDGE KELLEY: The only thing protected would be
23 communications based on some justification of why that communica-
24 tion ought to be in private.

25 MR. GUILD: I think that is the principle.

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1 JUDGE PURDOM: Mr. Guild, looking at the transcript
2 of yesterday's session, last night, I get the impression that
3 at that time, page 13,309, you asked specifically that the list
4 be submitted to the Board in camera. You are now saying that
5 is not your desire?

6 MR. GUILD: I do not have the benefit of the
7 transcript page, maybe that would help, Judge. I think that
8 is important.

9 JUDGE PURDOM: I just wanted --

10 MR. GUILD: It may be inconsistent, I am not sure.

11 JUDGE PURDOM: We had that request under considera-
12 tion overnight, and were attempting to respond to it this morning.

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1 MR. GUILD: I did say that, and I think that
2 is a fair reading. All I am telling you is that --

3 JUDGE PURDOM: Would you like to have that
4 copied today, and give it back to me.

5 JUDGE KELLEY: We don't need it. You can borrow
6 it if you want. The Board doesn't need three copies up here.

7 MR. GUILD: I guess, frankly, when I said that
8 last night, it was more or less a spontaneous reaction of
9 trying to figure how to deal with the problem, and on reflection
10 the position I advance this morning, is a sounder one.

11 I think that you should if your intention is to
12 go forward as you have suggested, I think the mechanism should
13 permit a receipt of evidence in camera based on a particularized
14 request, and shown.

15 But I do reemphasize the position of this morning,
16 and that is I think the best protection for the individuals
17 at this stage, given the narrowing of the list to a smaller
18 number is that their names be widely known.

19 JUDGE KELLEY: Okay. Mr. McGarry?

20 MR. MCGARRY: Yes, sir. At the outset I would
21 like some clarification with respect to what we are talking
22 about. As I understand it, there are two issues. The first
23 issue involves the list of names, how many people that will
24 be comprised of, and who gets to see that list.

25 JUDGE KELLEY: The first part of it I don't think

1 is an issue. I think we crossed that bridge.

2 MR. McGARRY: You said fifteen.

3 JUDGE KELLEY: Whether it is public or private is
4 in issue.

5 MR. McGARRY: And then the second point is, how
6 are we going to treat those witnesses that are, indeed, called.

7 JUDGE KELLEY: Right.

8 MR. McGARRY: Now, with respect to the second
9 issue, how those people will be treated, if I understand Mr.
10 Guild correctly, he is advancing that they come and they be
11 asked that question by the Board if they want this hearing
12 to be held In-Camera, and then they explain their reasons
13 why, and the Board makes a decision whether or not to hold it
14 in camera.

15 If they don't want to hold it in camera, and
16 they want to hold it in public, I believe as I understand
17 Mr. Guild, his position to be that it should be held in
18 public. That seems reasonable to us.

19 JUDGE KELLEY: Let's make sure you are completely
20 together on this. I gather that the reason the individual
21 has for going in camera may very well have to be given in
22 camera.

23 MR. McGARRY: I would suspect so.

24 JUDGE KELLEY: I think Mr. Guild indicated agreement
25 with that possibility at least, did you not?

1 MR. GUILD: I had that in mind. I think the
2 presumption ought to be that the proceedings are public, and
3 that the individual can state his reason in public.

4 JUDGE KELLEY: If he can. But if he says: If I
5 give you my reason I I don't need in camera anymore, then
6 I assume you will hear it in private.

7 MR. McGARRY: What I think should happen, Your Honor,
8 it is similar to in camera. That the witness -- for that
9 -- before that witness enters this room, ought to be made
10 aware that when he enters this room there is a prospect it is
11 going to be a public hearing, and if that witness has any
12 desire that he not give his testimony in public, that ought
13 to be conveyed by counsel to the Board.

14 Then, at least, there is a basis for the Board
15 saying: All right, let's talk to this individual like we
16 talk to in camera individuals last year to determine whether
17 or not it should be held in camera.

18 If a person comes up here in a public session,
19 if there is any damage it is done.

20 JUDGE KELLEY: I guess Mr. Guild's submission, if
21 I understand it -- I am trying to see if we can't reach a
22 consensus here, was that there is no point in trying to protect
23 names. It is communications you ought to protect.

24 MR. McGARRY: We don't think the names are public.

25 JUDGE KELLEY: Then there is a difference of opinion

4-4-Wal

1 here. What about that list. Let's go back to the list. There
2 is a list that comes out today. Is that public or private?

3 MR. MCGARRY: The list of 60?

4 JUDGE KELLEY: Fifteen.

5 MR. MCGARRY: Let's look at the list of 15.

6 JUDGE KELLEY: That is step one. Is that public
7 or private?

8 MR. MCGARRY: Our position is that should be under
9 the protective order, that these are fifteen people that
10 presumably Palmetto is calling to advance its case, and
11 its case ultimately is the plant should not operate because
12 there are allegedly QA problems. Quality problems in the
13 plant. And these people are going to support that proposition.

14 So, I think that clearly under the protective
15 order affidavits of non-disclosure, it is only those people
16 who have the affidavit of non-disclosure who have this list
17 of fifteen.

18 MR. GUILD: Fundamentally we disagree with that.

19 JUDGE KELLEY: I understand that. We are trying
20 to get a matrix here of these points, and then we can go
21 out. But the Applicant's want to keep the list, today's
22 list if you want to call it, private. And Mr. Guild would
23 say no, it should be public.

24 MR. CARR: If I understood, it is our desire to
25 afford the person selected not in camera treatment until such

1 time as they demonstrate, by whatever mechanism, they no
2 longer care for that treatment. That, fundamentally, is
3 our suggestion.

4 JUDGE KELLEY: I understand that.

5 MR. GUILD: And, Your Honor, if I can respond.
6 I think the list of 60 witnesses has always been public.
7 There is no connection between names on that list and any
8 specific confidences. They simply are my selection as an
9 advesary, or people who I want to seek evidence from.

10 JUDGE KELLEY: And they aren't tied to affidavits
11 at this point, therefore it is not protected.

12 MR. GUILD: It is public, and I think likewise Mr.
13 McGarry's position with respect to status of the list of
14 names that I came up with as a subset of that has no greater
15 showing of need for protection.

16 I mean, I am not asking that it be privilged. It
17 is my list. It is an advasary list of witnesses. Again,
18 no connection between that and specific confidences.

19 My concern on the latter point Mr. Carr was
20 addressing, frankly we are told by people that Applicant's
21 counsel had communicated that these were going to be closed
22 hearings. Of course, that is not unusual. They sought it
23 as an advasary from the beginning to have the hearings closed,
24 so it is not surprising that people are operating under counsel's
25 representation -- not represeantation, but counsel's communication

1 that the Company desires that the hearings be held in camera.

2 JUDGE KELLEY: I think that the Board does now
3 appreciate the policy differences and positions. What we
4 are trying to get is a very clear matrix of where you are
5 on three or four particular points, and then we will decide
6 the matter.

7 The issues are pretty much on the table. They
8 don't have to be explored in great detail.

9 MR. GUILD: Your Honor, if I can, just to be
10 complete --

11 JUDGE KELLEY: One other thing. What else?

12 MR. GUILD: The point is, from an adversary
13 prospective, the Applicant wants these hearings closed. So,
14 I submit to you their own employees, who are under their
15 control, or presumably under their control, there is an
16 inherent, it seems to me, inference that a fair inference
17 can be drawn that they will seek in camera protection because
18 they identify with the interest of their employees, and their
19 employees stated they want the hearing in camera.

20 I only say that because it means that it is not
21 quite so simple as Mr. Carr suggests, that the presumption
22 ought to be that they are in camera until the person opts
23 out, because no one is going to opt out. Why should they if
24 they have been told by reading the paper that the Company wanted
25 the hearings closed?

4-7-Wal

1 JUDGE KELLEY: Okay. Thank you.

2 MR. McGARRY: Now, if we can respond to that last
3 point, and then I know what you are trying to do is get a
4 matrix and we will address it, but I would like one thing
5 to be reflected on the record because statements have been
6 made to the press, and it comes out in the press, that this
7 is not an open hearing.

8 The Company has no desire to have this hearing
9 closed as a Company position. The only reason that we have
10 advanced a need for in camera is to protect the confidentiality
11 and protect these people, at least to a point where they can
12 make a decision, and if they want to have the hearing open,
13 that that is their prerogative.

14 But we thought that we were obligated to advance
15 that to you, and it has now been advanced to the Appeal Board.
16 They have made that decision. So be it.

17 We have done the best we can, but as a company
18 policy, we have no desire to -- we didn't oppose when Mr.
19 Nunn decided switching from in camera to public. We didn't
20 oppose that. And if all four of those individuals decided
21 to go public, we wouldn't have opposed that.

22 JUDGE KELLEY: Thank you.

23 MR. McGARRY: Now addressing your matrix. The
24 first thing we discussed was a list of names. You have
25 our position in respect to how those should be treated.

4-8-Wal

1 There is a sub-set issue though, which Dr. Purdom
2 picked up on, and that is will that list be made available
3 to us, or just to the Board?

4 JUDGE KELLEY: I thought it is public or private.
5 Obviously, it is public. You mean -- you have to have it to
6 go find the people, don't you?

7 MR. McGARRY: There are two points I would like to
8 make now. First, I think the Board is operating under a
9 misconception. Not all these individuals are in our employe
10 any longer, so we have no particular access to them any more
11 than the Intervener has access to them.

12 JUDGE KELLEY: Well, you have an address don't
13 you? Some of them are former employees.

14 MR. McGARRY: We will use our best efforts to
15 assist the Board. I am not suggesting otherwise. I just
16 want to let the Board know that we can't call somebody up
17 and say be here at nine o'clock.

18 JUDGE KELLEY: We will take that into account.

19 MR. McGARRY: The second sub-set issue, I think
20 it is fundamental that we are entitled to be made aware of
21 who those fifteen people are at the earliest point in time,
22 because they are the Intervener's case. This is a trial by
23 surprise. We are entitled to know who they are, and perhaps
24 go talk to these people. I represent as to the list of these
25 60, I have not spoken, and Mr. Carr's lawyers have not spoken

4-9-Wal

1 to everybody on this list. We don't know what they are going
2 to say.

3 JUDGE KELLEY: Is any party advocating that only
4 the Board gets to see the list?

5 MR. McGARRY: I thought that perhaps what Mr. Guild
6 was advocating in the section that Dr. Purdom made reference
7 to. So, I want to be clear.

8 JUDGE KELLEY: That was last night. He said he
9 changed his mind on further reflection, just as we have.

10 MR. McGARRY: I will pass on. Now, what will be
11 the next issue you have?

12 JUDGE KELLEY: I have initial appearance, and when
13 a guy shows up, is that public or private. You say it is
14 private, he says it is public.

15 MR. McGARRY: For your matrix you ha-e?

16 JUDGE KELLEY: I may be missing something. Is
17 -- his actual testimony as I understand it, if a man gives
18 a particularized, persuasive reason why it ought to be
19 closed, Mr. Guild agrees it should be closed, but that the
20 Board should decide that on the facts.

21 Now, the question to you would be suppose a man
22 says: Look, I just don't want to be in public period. Never
23 mind the reason. Is that enough to close the hearing, in your
24 view? Or should we listen to the facts and weigh everything
25 and make an individual decision?

4-10-Wal

1 MR. McGARRY: You have now put me in your position.

2 JUDGE KELLEY: Uncomfortable, isn't it?

3 MR. McGARRY: You have got me squirming. My
4 instinct would be if the individual expressed a strong desire
5 that the hearing be held in confidence, I would lean toward
6 holding it in conference. I would be operating under the
7 assumption -- they are not familiar with the legal procedures,
8 and they are coming before you.

9 Some of them may not be the most articulate
10 people, and I would be grappling with that and seeing if I can
11 draw from them the reason -- trying to assist them to satisfy
12 myself, and if they balk and say that is it, I am not going
13 to give you any reasons, then I will say, then you have had
14 your chance, if you are not going to give me any reasons, then
15 I am going to hold it public.

16 I will try to see if I can glean from him some
17 reasons.

18 JUDGE KELLEY: But you are not advocating privacy
19 on request.

20 MR. McGARRY: I would say no. I think it is
21 incumbent --

22 JUDGE KELLEY: In matters of nuance there may be
23 some difference, but the essentials -- let's not talk about
24 what room they would go to and so on. We can work that out.
25 Is there sort of a major piece of the sequence that we are

1 missing, to deal with it?

2 MR. GUILD: I just ask this, Judge. I would
3 like, since you put this proposition to us, and I am giving
4 you my reactions as honestly as I can, but it is somewhat
5 spontaneous.

6 MR. JOHNSON: If I can interrupt.

7 JUDGE KELLEY: You are next. Just a minute.

8 MR. GUILD: I just want to say if we could at some
9 point before you etch this in stone, if I can -- if we could
10 take a brief recess like five minutes, and I can consult with
11 some other people, we can talk to some of these folks. I
12 would like to at least factor their observations. Ms. Garde
13 from the government accountability project, and she has done
14 a number of interviews. I would like to speak with her for
15 a moment.

16 JUDGE KELLEY: I don't know if I want to recess.
17 We have this panel here. It would seem to me that over a half
18 an hour of discussion on what is essentially a mechanical
19 point, if Ms. Garde wants to add some point, won't that do.
20 Give Ms. Garde a minute or two.

21 JUDGE KELLEY: Let's go over to Mr. Johnson.

22 MR. JOHNSON: I prefer the basic position, number
23 one, that Mr. Guild advanced last night over the position he
24 advanced this morning. It seems to me that if you look to the
25 question of what it is that these individuals are being accorded

1 protection at the present time for, that is, those people
2 who gave affidavits are now subject to protection of the
3 protective order, it is my understanding that it is to protect
4 them based on their fear of their allegations about particular
5 individuals coming to the attention of the individuals about
6 whom they are making the allegations.

7 It is clear to them and clear to everyone, that
8 the interviewers know who these people are. They took the
9 affidavits, and those people had reviewed the affidavits
10 to make their report. They also have that information. That
11 is no surprise to anybody. We can start with that assumption.

12 The question is: Are these people still entitled
13 to the protection based on their fear of retribution from the
14 people that they are implicating, or have implicated.

15 It seems to me that these people apparently are
16 being protected based on the fact that they are one of 217
17 individuals. If we were to allow a list of 15 individuals
18 to become public, those people who are the key appiance,
19 you might say, would almost immediately become known, because
20 some of those individuals would undoubtedly be the supervisors
21 on the list of 15, and those people can be eliminated. So
22 if you go beyond that, you are narrowing the list so small,
23 such a small number, that it seems to me that it would be
24 much easier for anybody who is --

25 JUDGE KELLEY: I understand your point.

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MR. JOHNSON: So that my point is understood, I am
in favor of keeping the list, the witness list, among the
parties and the Board.

End 4.
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1 JUDGE KELLEY: I understand your point.

2 MR. JOHNSON: Okay, that point is understood, so I
3 would say that keeping the list, the witness list among the
4 parties and the Board.

5 JUDGE KELLEY: Just a second.

6 Okay.

7 MR. JOHNSON: Secondly, I believe the most
8 expeditious way to accommodate calling the witnesses is more
9 or less the way it was done in the in-camera proceeding last
10 fall. That is, let the attorney for Palmetto Alliance
11 determine who he's going to call in what order. Speak to the
12 individual, inform the Board and the parties that this
13 particular individual wishes his name to be protected, his
14 testimony to be protected, and that the Board and parties
15 consider that question.

16 I am not sure whether that consideration should be
17 in camera or not.

18 JUDGE KELLEY: But what I will call the initial
19 appearance, before the proposition is put to the person, is
20 that in camera or open? It has got to be in camera, in your
21 reasoning.

22 MR. JOHNSON: If you are going to interrogate this
23 individual about the basis for his desire to maintain his
24 confidentiality, yes, I think that ought to be in camera.

25 JUDGE KELLEY: That's to the Board.

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1 MR. JOHNSON: I'm not sure that that is really
2 necessary. It might be necessary, I grant you. I am not
3 sure how I feel about that.

4 However, I would point out that in the fall all we
5 were doing was we were abiding by Palmetto Alliance's request
6 that these -- from these individuals that they be given
7 confidentiality so they could come forward and give evidence
8 as best they could of what they knew to the Board, so that
9 we had a true and full hearing of the facts about those
10 issues.

11 I don't see why this is any different.

12 JUDGE KELLEY: In my matrix, though, you think
13 the initial appearance should be in camera?

14 MR. JOHNSON: Of those individuals.

15 JUDGE KELLEY: Yes.

16 MR. JOHNSON: Yes, if they so request it.

17 JUDGE KELLEY: You mean they have got to convey a
18 request to us before they even show up?

19 MR. JOHNSON: That's what I was saying. I was saying
20 Mr. Guild will convey that request to the Board and parties
21 in camera.

22 JUDGE KELLEY: I must say, I'm lost.

23 MR. JOHNSON: He is selecting a list of 60 -- 15
24 individuals, okay?

25 Those names will be submitted to the parties and

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1 the Board in camera.

2 JUDGE KELLEY: Let's say there are some employees
3 on there. I assume Mr. Carr, Mr. McGarry are going to direct
4 that somebody go find them and bring them in here tomorrow
5 morning.

6 Then why is Mr. Guild making a request for
7 confidentiality or not. I thought it was the employee,
8 before he comes to speak to us.

9 MR. JOHNSON: That was one proposal. I don't agree
10 with that proposal.

11 JUDGE KELLEY: I want to understand it. What are
12 the mechanics of your proposal?

13 MR. JOHNSON: My mechanics are that the individual
14 convey to Mr. Guild.

15 JUDGE KELLEY: What difference does that make
16 practically? Doesn't that just complicate the thing?

17 MR. JOHNSON: Well, it seems to me that if the
18 individual doesn't request confidentiality, we will know from
19 Mr. Guild.

20 JUDGE KELLEY: Okay, go ahead.

21 It seems to me that this is an extra step in the
22 whole process. But, go ahead. Then suppose he does, he says
23 to Mr. Guild, I want to be in private.

24 Mr. Guild comes in and says the man wants to be in
25 private. Then we call him in in private. Can we get his

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1 reason?

2 MR. JOHNSON: If you so desire, that is okay with me.

3 JUDGE KELLEY: Or, are you saying you don't have to
4 have a reason, this is privacy on request?

5 MR. JOHNSON: I don't think it is privacy on
6 request. I think we are all talking about the fear of
7 retaliation that these individuals --

8 JUDGE KELLEY: Are we or are we not going to probe
9 the man's reason for wanting to be in camera?

10 MR. JOHNSON: Okay. What was the precedent -- I'm
11 sorry to answer a question with a question, but in the in-camera
12 proceeding, did we probe Mr. Nunn's reason for wanting to be
13 confidential?

14 JUDGE KELLEY: I think the record is contradictory.
15 Our initial notice indicated that the person should give some
16 reason, that it wasn't going to be automatic and on request.
17 As a practical matter, it was never probed. The four people
18 that came in were automatically treated in camera until
19 they decided they didn't want to be in camera.

20 MR. JOHNSON: I have no objection to bring the
21 man in here, having him questioned whether he has legitimate
22 reasons for being an in-camera witness.

23 JUDGE KELLEY: But that itself, that process would
24 be in camera?

25 MR. JOHNSON: I believe it should be.

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JUDGE KELLEY: Okay.

Just so I am entirely clear, once we have heard the man's reason for wanting to be in camera, do we then just accept it or do we weigh it and make a particularized fact-based decision?

MR. JOHNSON: It seems to me the latter, if you are going to consider it in the first place.

JUDGE KELLEY: Okay. Sure. Maybe it was a dumb question. If we are going to give it on request, why else do it in the first place.

MR. JOHNSON: One further point. Mr. Guild made a point about this is his list, et cetera, et cetera. Therefore, he ought to be able to make it public if he so desires.

I think this doesn't take full account of the protective order that is in effect and the source of the names that he got, the basis on which he got the information from these people, the affidavits being under protection, the depositions and the names being under protection. It seems to me that it isn't just his choice whether he announces who his list of witnesses is. And I think that ought to be considered a matter subject to protection.

JUDGE KELLEY: The list of 60, you would --

MR. JOHNSON: The list of 60? It may be a little bit too late for that. He seems to have said that --

JUDGE KELLEY: I misunderstood you. You are talking

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1 about the coming list of 15?

2 MR. JOHNSON: Yes. I'm sorry.

3 JUDGE KELLEY: I thought in our earlier discussion --
4 I thought Mr. Guild was talking about the 60 list. That's all
5 I was referring to.

6 MR. JOHNSON: Okay. Maybe I wasn't clear, maybe he
7 wasn't clear. But what I want to say is, my understanding is
8 that the 60 is already a public document according to what he
9 said.

10 JUDGE KELLEY: All right.

11 MR. JOHNSON: It seems to me if that is the case, so
12 be it. We should go from there.

13 JUDGE KELLEY: We are going to speak to whether the
14 15 list is public or not. That is one of the issues in the
15 matrix

16 Now we have heard from counsel. Mr. Guild requested
17 an opportunity either to confer with or have Ms. Garde speak.
18 I do think we have spent a fair amount of time to air this
19 matter thoroughly. If you want a minute or two, either
20 Mr. Guild or Ms. Garde, go ahead.

21 MR. GUILD: Just a moment.

22 (Counsel conferring)

23 JUDGE KELLEY: We want to welcome back Mr. Wilson,
24 representing the State of South Carolina.

25 MR. WILSON: Thank you, your Honor.

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1 JUDGE KELLEY: The Board's apologies for not
2 getting to you earlier on this. That was a slipup on our
3 part. Your opportunity for cross examination has not yet
4 arisen, so you haven't missed anything, or it hasn't been
5 very much.

6 (Laughter)

7 MR. WILSON: Very good. I guess I arrived in the
8 nick of time.

9 JUDGE KELLEY: Right.

10 MR. GUILD: Judge?

11 JUDGE KELLEY: Yes?

12 MR. GUILD: I don't think we have anything further
13 to add, except the request -- we understand that we turn into
14 a pumpkin at noon, that noon is the time that you wanted the
15 list, whatever form it is going to be transmitted.
16 I assume you are going to decide.

17 We would just ask an opportunity for perhaps a little
18 longer recess than usual, sometimes between now and then, so
19 that we can --

20 JUDGE KELLEY: How about after lunch?

21 MR. GUILD: That would be fine. We can submit the
22 list after lunch.

23 JUDGE KELLEY: I am assuming we get out of here
24 between 12 and 1 for lunch. If you do it after lunch, I
25 would think that would be better.

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MR. GUILD: Fine.

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JUDGE KELLEY: Next in order, I think we ought to just adjourn briefly and decide this question.

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Why don't we take a short -- five, no more than ten-minute break. Then we will get started with the panel.

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(Recess)

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JUDGE KELLEY: We are ready to resume.

The Board has rulings and some reasons for rulings to state at this point. I might just note initially that we found this set of related questions rather difficult and there is, we think, something to be said on both sides of the basic positions that were taken. But here is where we came out.

There are really three points that we want to speak to explicitly and we think that other issues would be encompassed within those rulings -- or subpoints that may arise:

But as to this list of 15 which we are to have after lunch today, we think that should be held in camera to the Board and to the parties and not made publicly available with one possible exception.

We don't know whether any foremen or ex-foremen are going to be on that list, some of them did get affidavits. There are some foremen, I believe, on the list of 60 and we see no reason for keeping their names in confidence because it was the foremen in the context of this case that were the reason for extending the pledge in the first place. So the in camera ruling would not extend to foremen.

And when I say "ex-foremen, I mean if there is an ex-foreman -- a person who was a foreman at the time

1 that a pledge of confidentiality was given and who is no
2 longer a foreman but ends up on the list, his name would
3 not have to be kept in camera.

4 The next step in the process would be when these
5 people arrive to testify as witnesses then there would be
6 an initial stage where the Board would determine whether
7 that person wants to be heard in camera or is willing to
8 be heard in public session. And that initial stage would
9 itself be in camera with the public excluded.

10 We are not granting in camera on request to
11 witnesses. It would be unlike the in camera witnesses
12 we had last winter where, in effect, that is what we did.
13 Here we would have to be persuaded by the individual that
14 there was some good reason why the in camera procedure
15 ought to be employed.

16 And when we hear whatever reason is given, we
17 would decide, pointing out to the person that there is a
18 presumption in favor of public appearances here, we are
19 not encouraging anybody to go in camera and we do need a
20 good reason to adopt that procedure.

21 But if we are persuaded there is a good reason
22 then we will honor that request and that person will be
23 heard in camera and then the final point would be the
24 actual testimony and that has already been anticipated:
25 upon sufficient cause we would hear it in camera, and other

1 witnesses would be heard in camera, those who are willing
2 to be heard publicly and those who aren't but who have no
3 good reason not to be.

4 So those are the rulings that we made. Briefly
5 I think our ruling on the arguments and the Board's
6 questions earlier brought out what the basic practical and
7 policy considerations are here; I will just mention a
8 couple of salient points which led us to this conclusion.

9 We do not assume that at this point and under
10 all the circumstances the confidentiality of all of these
11 people, or the 15 to come, has in fact been compromised.
12 To the contrary, this information has been under
13 protective order and we think that there is substantial
14 reason to believe -- although we can't establish it
15 person-by-person -- that that confidentiality to some
16 extent is still there.

17 We might, in that connection, simply note that
18 Palmetto pointed out -- and I think properly -- that an
19 employee, some employees at least, may be fearful of
20 retaliation for giving information that could be detri-
21 mental to a company's interest. I say that as a
22 generalization, I think that is true in any company, a big
23 company where an employee provides testimony that is
24 detrimental or may be seen as detrimental. That is a
25 consideration.

1 We are also influenced by the fact that in this
2 particular case some of these employees may be equally or
3 more fearful of retaliation by their foremen, in this
4 particular context, the information; after all,
5 foreman override is what this case is about.

6 We note that yesterday there was some testimony
7 about threats of violence by a particular former foreman
8 which we think brings some additional credence to that
9 concern.

10 From a practical standpoint the other approach
11 which we could have adopted of going ahead and going public
12 with the names and going public with the determinations
13 of whether we should treat certain testimony in camera
14 won't afford much real protection to anybody; once you
15 go public with all those names and you have public sessions
16 with people explaining -- I take that back, the
17 explanation could be in private, but even so the initial
18 appearance would be public, the name would be public,
19 we think it is awfully hard to reverse the process and
20 afford protection -- there are a lot of old sayings like
21 cats being out of bags, but I think there really is
22 something to that here.

23 Furthermore the fact that you give in camera
24 protection to certain parts of the testimony or even all
25 of the testimony we think won't really restore the

1 confidentiality that the person was initially promised and
2 may have good reason to wish to continue.

3 And we also think, finally, that the approach
4 that we are taking here is more likely to produce full
5 disclosure of the facts which is, at bottom, what this
6 Board is concerned about.

7 Obviously we thought about yesterday's decision
8 from the Appeal Board where we closed this session with
9 this panel and were reversed in doing that. I would just
10 note as we noted during discussion that the Appeal Board's
11 decision explicitly did not reach this particular point.

12 It is difficult to know which way to go on a
13 debatable question when your guidance is a summary
14 reversal which, by definition, is something that doesn't
15 give any reasons

16 So we have nothing more than the result to go
17 by but we think we can say at least that what we are doing
18 here this morning is not inconsistent with what the Appeal
19 Board said yesterday and that makes -- we think it is the
20 proper way under the circumstances for us to proceed.

21 So that is our basic ruling and I think two
22 of our basic reasonings for it.

23 Now it was mentioned earlier this list of 15
24 may contain some ex-employees, people who are no longer
25 under the control of Duke and we would just like to suggest

1 if that turns out to be the case could counsel confer about
2 that and see whether you can work something out in light
3 of what has been said. And if you need some further
4 guidance, we will provide it later on today.

5 But for now I would rather not -- we don't know
6 yet whether that is going to be a problem or what its
7 dimensions are going to be.

8 MR. GUILD: Judge, could I just ask if Counsel
9 for Applicants could assist by at least looking at the
10 list of 60 and flagging those on that list who they know
11 are not presently in the employ of the company. That
12 would help us. Some we know and some we don't.

13 JUDGE KELLEY: Is it possible for somebody to
14 do that later on in the morning?.

15 MR. MC GARRY: We will attempt to do that.

16 JUDGE KELLEY: If you could have that before
17 lunch, is that what you --

18 MR. GUILD: That would be helpful, yes.

19 MR. MC GARRY: We will endeavor to. I can tell
20 you, speaking for myself, I couldn't do it.

21 JUDGE KELLEY: I was just assuming somebody
22 who is back at the shop could figure it out.

23 MR. MC GARRY: Okay.

24 JUDGE KELLEY: Judge Purdom reminded me, and
25 you probably know it anyway but we should just state:

agb/agb7

1 In contacting these people about coming, we assume that
2 would not be done through the chain of command down through
3 the foremen that may be involved?

4 MR. MC GARRY: No.

5 JUDGE KELLEY: Thank you.

6 I think with that we can resume cross-examination,
7 Mr. Guild.

8 MR. GUILD: Two questions:

9 One is when you said "foremen" among that list
10 on the question of confidentiality, I assume you meant all
11 persons in a supervisory capacity, you weren't using the
12 term "foremen" as a narrow definition?

13 JUDGE KELLEY: I guess I have heard it as
14 foreman, as general foreman, if there is some dubious
15 category maybe we ought to shed light....

16 MR. GUILD: The supervisors, I think, is the
17 general category that reaches what you are focusing on and
18 I wanted to be clear that you didn't mean it more narrowly.

19 JUDGE PURDOM: That might lead to confusion
20 about the lead man. Is the lead man considered supervisory
21 or not?

22 MR. GUILD: I gathered he was in some sense but
23 I see a head shaking.

24 JUDGE PURDOM: I would think for our purposes the
25 lead man would be in the protected group.

1 MR. GUILD: I wasn't really focusing on that,
2 Judge Purdom, that is fine by me. I really was focusing
3 on people, foremen and above, in the supervisory chain.

4 JUDGE KELLEY: Foremen and above I think we
5 could say are not included. What we are talking about is
6 the word "employees" as a term of art.

7 MR. GUILD: The other point is I would ask the
8 opportunity over the lunch recess to submit to you a proposed
9 form of sort of notification.

10 One of the problems that was a -- for
11 transmittal to the designated employees, if you would, a
12 Board communication.

13 And the reason I have that in mind is that
14 Applicants certainly have the prerogative of counseling
15 with a witness in advance of the hearing, but I do fear
16 that the use of the in camera device, particularly now
17 given the Board's ruling about its threshold employment
18 here, will be used in an overbroad fashion, particularly
19 given the company's expressed desire that these proceedings
20 be held in camera.

21 JUDGE KELLEY: This would be a formal statement
22 to --

23 MR. GUILD: That's what I had in mind, building
24 on what the Chair's statement was.

25 JUDGE KELLEY: We were talking about then for

1 the later part -- why don't you submit that and submit a
 2 copy to counsel and we can take a look at them after a
 3 while?

4 MR. GUILD: I am ready to go forward.

5 JUDGE KELLEY: Go ahead.

6 Whereupon,

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

21 and

22 D. ABERNETHY

23 were called as witnesses and, having been previously duly
 24 sworn, testified further as follows:

INDEXXXXXX

1 BY MR. GUILD:

2 Q Mr. Dick, yesterday on examination we were
3 speaking about the company's corrective action with regard
4 to the supervisors who were implicated in the investigation
5 and I had turned -- we had talked about Mr. Smith and
6 talked about Mr. Moore a little bit, and I was on the
7 verge of showing you an affidavit.

8 (Document handed to the witness.)

9 That is an affidavit of a foreman, Mr. Wilson.
10 And Mr. Wilson, under the Board's previous rulings, is not
11 -- that affidavit and his name associated with that is
12 not in confidence.

13 Examine that affidavit, does that reflect the
14 conversation that Mr. Wilson, a welding general foreman,
15 had with Mr. Bruno Uryc of the Region 2 NRC Staff?

16 A (Witness Dick) It says: "I talked with
17 Bruno during the NRC investigation."

18 Q Now as previously described, Mr. Uryc communicated
19 to you when you went to Atlanta in March that the NRC
20 Staff identified problems in Mr. Moore's crew and those
21 problems had been most pronounced or noticeable when
22 Mr. Moore worked for Billy Smith.

23 And you started out with the finger pointed,
24 if you will -- the NRC had identified problems with those
25 two supervisors and, to some degree, you corroborated

agb/agb11

1 those problems and that is evident in the corrective action
2 you took; you took personnel action with regard to Mr. Moore
3 and Mr. Smith, correct?

4 A. Yes.

5 Q. Now that statement of general foreman Wilson
6 reflected some exchange between himself and Mr. Uryc,
7 and would you read the paragraph in full, please?

8 A. "I don't have any knowledge of anybody
9 being directed to violate a QA or welding
10 procedure. I talked with Bruno during the
11 NRC investigation. Somehow Bruno got on the
12 subject of Billy Smith. Bruno said that he
13 was not in the business of telling Duke Power
14 Company how to do business but they would
15 eventually have to do something about Billy
16 Smith's style of leadership. The reason was
17 that he was afraid that Smith's style of
18 leadership would force people to give up
19 quality for quantity and would make people
20 afraid to come to management with a quality
21 problem. I don't believe Bruno talked to
22 the welders about Billy by name but mentioned
23 it to me because he was interested in helping
24 Duke Power."

25 Q. Now that concern, or the basis for that concern

1 about Billy Smith's style of leadership, that basis was
2 confirmed as a result of your investigation, was it not?

3 A Yes, that is accurate.

4 Q All right, sir.

5 And were you aware, other than through reading
6 this affidavit, of the Region 2 Staff's expression of an
7 opinion with regard to Mr. Smith's style of leadership,
8 that subject, if you will?

9 A I was aware that they had picked up from the
10 crew, the people they had talked to, that Moore seemed to
11 react to Smith's leadership in a way that they felt put
12 more pressure on them.

13 Q Did you discuss with Mr. Uryc and others with
14 the NRC Staff the bottom line point of the need to take
15 some kind of corrective action to either remove Mr. Smith
16 from his general foreman position or -- to use his words
17 "do something about Billy Smith's style of leadership?"

18 A No, sir, no such conclusion or recommendation
19 was made to me by Mr. Uryc or anyone else in the meeting
20 with the NRC.

21 Q I am not talking about in that meeting necessarily,
22 I just want to know if in any other context, that meeting
23 or otherwise, you talked about the subject of Mr. Smith
24 and his style of leadership with the NRC.

25 A At no other time and no other place did anyone

1 in the NRC talk to me that way about Mr. Smith.

2 Q Okay.

3 I want to ask other members of the panel, and I
4 guess the relevant ones--if there are others I am missing
5 tell me:

6 Mr. Grier, did you speak with anyone with the
7 NRC about this subject, Mr. Smith's style of leadership
8 or Mr. Smith personally?

9 A (Witness Grier) No.

10 Q All right.

11 If there are any others -- Mr. Abernethy, perhaps,
12 did you have anything to do on this subject or talk with
13 the NRC about Mr. Smith, his style of leadership?

14 A (Witness Abernethy) There was one meeting that
15 I was in with the NRC and I don't think we talked about
16 Mr. Smith's style of leadership. We did talk about some
17 of the proposed actions that were going to be taken.

18 Q When would that meeting have happened, sir,
19 approximately, if you can?

20 A June, perhaps some time in June.

21 Q Was that an April meeting or a June meeting.

22 A This was in June perhaps.

23 Q And the corrective action -- Mr. Hollins, you
24 are showing some response --

25 A (Witness Hollins) I was in that same meeting and

1 the NRC reports reflected we discussed proposed personnel
2 actions.

3 Q And what did you discuss, just relate the subject
4 that was discussed with the NRC at that point.

5 A You remember the proposed personnel action plan
6 that we discussed in the depositions?

7 Q Yes, I do.

8 A That was discussed.

9 Q Was that proposed personnel action plan made
10 available to the NRC?

11 A Yes, they saw it.

12 Q They had that document?

13 A I don't know that they had the document.

14 Q They saw the document?

15 A Yes.

16 Q All right, sir.

17 And what was the NRC's response to that proposal,
18 Mr. Hollins, could you describe, please?

19 A I don't remember any negative response. I don't
20 remember particularly a concurrence.

21 Q Who was that meeting with at the NRC, who was
22 the most senior NRC person you can recall present?

23 A I don't think it was but two so I should name
24 them both perhaps: Bruno Uryc and Jerry Blake, if I
25 remember.

agb/agb15

1 Q All right.

2 So they made no response to your proposed action
3 plan?

4 A I didn't say no response, I said they looked at it
5 and made no negative response.

6 Q And subsequently that action plan, at least with
7 regard to Mr. Smith, was implemented, is that correct?

8 A The action indicated on that plan was implemented.

9 Q Mr. Smith was removed from his supervisory
10 position?

11 A That's correct.

12 Q Did you likewise discuss the proposed action
13 with regard to Arlon Moore, the foreman who, under Mr. Smith,
14 was implicated by their concerns?

15 A Yes, sir, that was on that same sheet.

16 Q And you discussed that?

17 A Yes, sir.

18 Q And did the NRC make any response to that
19 proposal?

20 A Again I don't think that response was much
21 different than Mr. Smith's, no negative response.

22 Q No assent?

23 A No, sir.

24 Q Mr. Dick, I show you two documents. Would you
25 identify those, please?

agb/agbl6

1 (Documents handed to the witness.)

2 A. (Witness Dick) They are forms that we use for
3 employee reports. One is written on Arlon Moore and one
4 on W.A. Smith.

5 Q To the best of your knowledge do those reflect
6 the personnel action taken with regard to Mr. Smith?

7 A May I take time to read them?

8 Q Please do.

9 (Witness reading document.)

10 A The words and the actions are according to my
11 recollection and the approval signatures I recognize.

12 Q Would you pass that on down to Mr. Abernathy?

13 And Mr. Abernathy, could you similarly identify
14 those documents, please?

15 A (Witness Abernathy) I recognize both.

16 Q Were you the author of those documents?

17 A Yes.

18 Q Another document entitled "Employee Relations
19 Concerning Action Plan."

20 (Document handed to the witness.)

21 Mr. Dick, is that the plan that Mr. Hollins
22 spoke of and that you have seen before?

23 A (Witness Dick) Mr. Guild, I most recently saw
24 it when you showed it to me when you were taking my
25 deposition. I believe I said at that time I could not

1 recall whether I had previously seen this or not.

2 Q How about passing that over to Mr. Hollins, please?

3 JUDGE KELLEY: Mr. Guild, are these papers out
4 of the discovery stack?

5 MR. GUILD: They are, sir.

6 While he is looking, Mr. Chairman, what I had
7 hoped to do is to have these documents identified at a
8 later point so I could move along and get them reproduced
9 and get them offered for the record, but I want to get
10 them identified.

11 JUDGE KELLEY: Go ahead.

12 BY MR. GUILD:

13 Q Mr. Hollins, is that the proposed action plan
14 you had reference to?

15 A (Witness Hollins) Yes, sir, this was the
16 preliminary plan.

17 Q And if you would pass it over to Mr. Abernethy.
18 And if you could identify it, sir.

19 A (Witness Abernethy) This is a typed version
20 from my notes on a preliminary plan of action.

21 Q And you are the author of that plan, is that
22 correct?

23 A Yes.

24 Q Mr. Hollins, I think in your deposition you
25 discussed this and see if I am paraphrasing it correctly:

1 This is the action plan that was proposed by
2 Mr. Abernethy, Mr. Dick, it went through some discussion --
3 you testified to that at your deposition -- with the site
4 management at Catawba; ultimately the actions taken with
5 regard to Mr. Smith and Mr. Moore and Mr. Rogers were indeed
6 taken, the basis in terms of the narrative explanation
7 Mr. Abernethy composed was toned down or it was determined
8 that the language was not in all terms appropriate and
9 you reduced the level of action against the 10 other
10 employees, other supervisors here on the list.

11 Is that a capsule of the end product? If not,
12 just correct my --

13 A. Mr. Guild, I think I can address that.

14 What you see is a typed version of my notes
15 based on one or two readthroughs of the affidavits. It
16 was never intended to be a report to anyone. I used it
17 in talking with Mr. Hollins, I used it at one point in
18 talking with Mr. Dick. It was certainly not a report
19 to anyone.

20 The language on it, as I said, was based on one
21 initial readthrough of the affidavits and a conversation
22 with Mr. Hollins and Ms. Fowler and I in no way intended
23 for that language to be the language that might end up
24 on any kind of counseling notes. It was not intended to be
25 a final product.

1 Q All right.

2 Despite the fact that it said specific action
3 will be taken with these individuals?

4 A That is correct.

5 Q All right.

6 And that is despite the fact that in a number
7 of places, Mr. Grier, your review board report says this
8 concern is addressed, corrective action was taken as per
9 -- and I am paraphrasing now -- employee relations?

10 A (Witness Grier) That is correct and the
11 review board reviewed the actions, some of which were
12 documented on the forms you just saw, Mr. Dick, to confirm
13 that they were compatible and that those same actions
14 were taken.

15 Q All right.

16 But when you were referencing in your review
17 board report the action plan, you had the document in mind
18 that Mr. Hollins has identified, correct?

19 A That's correct.

20 Q You didn't have any later permutation of that
21 document that resulted from a more or less preliminary
22 analysis, did you?

23 A I am not sure I understand the question.

24 Q Is there another version of this document that
25 reflected a final analysis, a final action plan?

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1 A Not that I am aware of. The documents, employee
2 reports that you showed Mr. Dick are a later version of
3 the action plan.

4 Q So to the extent that your review board report,
5 Mr. Grier, says this concern is addressed by the corrective
6 action or by the employee relations concerns action plan,
7 you are referencing an action plan that in fact was not
8 implemented, that in fact was only a preliminary plan and
9 has since been the product of further revision to the
10 effect basically that the actions that were recommended
11 in a number of instances were downgraded to less serious
12 actions: reprimands downgraded to counseling, written
13 counseling downgraded to oral counseling and that the
14 substantive basis for those actions was found to be
15 inappropriately harsh, if you will, isn't that the case?

16 A I wouldn't -- No, I don't agree with that. The
17 review board was referencing that preliminary action plan
18 to determine that appropriate action was being taken. And
19 in two cases there was recommendation that individuals be
20 removed from supervisory positions. That action was taken.

21 In other cases, there were recommendations
22 that there be counseling of individuals in regard to their
23 activities; those actions were taken.

24 Q Mr. Abernethy, when did you author this employee
25 relations concern action plan?

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A. (Witness Abernethy) Some time in mid-June, I

believe.

AGB#6

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#7-1-SueT

1 Q Now, Mr. Abernethy, was there further interview-
2 ing conducted after you wrote this preliminary action plan
3 that resulted in gathering more evidence that altered your
4 opinion?

5 Or, is it simply an additional review of the
6 existing evidence; in other words, an additional review of
7 the affidavits?

8 A (Witness Abernethy) I think by and large it was
9 an additional review of the existing affidavits. There may
10 have been some -- and I'm not sure on this, there may have
11 been some follow-up interviews with some individuals after
12 this.

13 Q Mr. Hollins, what I'm focusing now is the basis
14 for the personnel action plan, the actions taken against
15 the supervisors, was there any additional evidence that
16 resulted in the changes in the action plan?

17 Or, is it simply a reanalysis of the existing
18 evidence, the affidavits?

19 A (Witness Hollins) I can't specifically recall
20 any additional evidence that was provided.

21 Q Okay. Mr. Dick, with regard to Billy Smith, the
22 general foreman, he was removed from supervisory capacity.

23 The explanation stated as follows -- this is
24 in the employee relations concern action plan: The reason
25 for this action, for moving him from a supervisory position,

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1 the reason for this action is inability to provide positive
2 leadership and open, honest atmosphere among those under
3 his responsibility. Because of his actions and style of
4 leadership, some employees are fearful of expressing con-
5 cerns. Morale is low. A general fear of Smith exists.
6 He inspires no trust or confidence. His effectiveness as
7 a supervisor is so impaired that it cannot be restored.

8 That's the basis. Now, did your investigation
9 not confirm that finding with regard to Mr. Smith?

10 A (Witness Dick) Mr. Guild, my reading of the
11 affidavits indicated that some employees would have made
12 the statements that if they were true would lead you to
13 believe that some or all of those things were true. Other
14 affidavits were exactly the opposite and lauded and praised
15 the leadership style of Mr. Smith.

16 I have read the affidavits. I had a verbal
17 presentation from Mr. Abernethy that did not -- and I presume
18 he used those notes as a basis, but that came through in a
19 balance as I understood its sense, and supported the overall
20 conclusion that regardless of what Mr. Smith's action were
21 that the effect apparently had been caused and that we would
22 have to take action.

23 Q All right. So, I guess what I'm focusing on, Mr.
24 Dick, is what are the facts?

25 If some people said Smith walks on water and he

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1 is a fine leader and he does have great supervisory skills
2 and that's sort of the general thrust to what I've heard
3 you say, and some people said, and other people said he was
4 the worse supervisor you could possibly have and had the
5 attributes that are reflected in this action plan observa-
6 tion about him, it's not likely to be too difficult to
7 determine whether it is one or the other.

8 And what I'm asking you is, did you try to find
9 out? And, if you did, which of -- what are the facts with
10 regard to Mr. Smith and his leadership?

A Mr. Guild, we did not try to prove the allegations
in an absolute sense. I have other information available to
me, and it led me to conclude that he was not effective as
a supervisor to the degree that I would expect one to be.
And that we should take the action of removing him.

Q And what other information do you have reference
to?

18 A I was aware -- I believe I told you in deposition,
19 Ms. Fowler had made a statement to me that there had been
20 an employee relations concern expressed about him.

21 I believe that I had talked to his supervisor about
22 any counselling that might take --

23 Q Mr. Rogers?

24 A Mr. Rogers, yes.

25 Q What did Mr. Rogers tell you?

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2 A Mr. Rogers told me that he was aware of the
3 approach that Billy Smith sometimes used, that he had worked
4 with him through the past several years in the sense of
5 counselling of -- performance counselling relative to that.

6 Q So, I guess what I'm trying to understand is,
7 what did you get from, first, Ms. Fowler and then from Mr.
8 Rogers, the welding superintendent, that was the basis for
9 your conclusions regarding Mr. Smith's leadership and the
10 inappropriateness of him continuing as a supervisor?

11 A Enough information to tilt me to the direction
12 that the perceptions were probably accurate and that he was
13 perceived this way, that he did cause adverse reactions among
14 the people under his supervision.

15 Q Okay. And can you point to anything specific?
16 I'm not interested in the detail, the substance really.

17 What were the kind of things that were tangible
18 bases that persuaded you?

19 A He had a reputation for bird-dogging the work.
20 In his zeal to be sure that people worked, to slip into an
21 area and see what people are doing.

22 I had heard -- and I believe he confirmed it --
23 that people barked like a dog when he came into the area.
24 And he didn't understand why, but I did. As an example --

25 Q He had a nickname bird-dog?

A I was not sure I'm aware he had a nickname, but

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1 he was accused of bird-dogging people.

2 Q Bird-dogging, meaning you sneak up on someone and
3 try to catch them doing something wrong?

4 A Catch them not working principally, I guess.

5 Q And when people are working in various parts of
6 the plant and would see Smith come in, I think I saw
7 affidavits that people would bark and howl to let folks
8 know that the bird-dog was on the job, right?

9 A Yes, sir.

10 Q Well, if he had a reputation for being such a
11 supervisor and yet he had been general foreman since 1979,
12 supervised a number of crews, many welders for a long period
13 of time, how come this reputation did not come to your
14 attention back in 1980, '81 when he was supposed to have been
15 doing these things, Mr. Dick?

16 A Mr. Guild, supervision -- I guess all supervision
17 that is employed by us possessed skills to different degrees.
18 Mr. Smith was not universally perceived in the negative
19 light that he was by those who worked for Arlon Moore.

20 I guess I became, at least partially, persuaded
21 that it was Arlon Moore's zeal to get the work done, to do
22 a good job, that some way reacted with Billy Smith's zeal to
23 get the job done, and caused the perception within the crew.

24 Billy Smith knew more about quality. He was
25 probably the most quality-oriented person in the welding craft.

#7-6-SueT

1 He had worked in quality control. He was a
2 technical expert. Unfortunately, his supervisory skills
3 apparently were not as great as his technical skills.

4 Q Well, my question to you, I guess was really not
5 seeking to elicit either eulogies or praise for Mr. Smith.

6 All I want to understand is, as a matter of fact,
7 Mr. Dick, is did Mr. Smith's adverse conduct, his concededly
8 negative leadership skills, to put it as mildly as I can,
9 come to your attention any time before this investigation?

10 A I believe I told you that Ms. Fowler had said to
11 me that -- well, you are asking if it came to my attention.

Q Yes, sir.

A And I think I told you in deposition that I could
not recall whether I had heard anything specifically about
Billy Smith prior to the time Ms. Fowler told me or not.

Q Is it fair to say, if you had, you didn't take
any action with regard to Mr. Smith before this time?

18 A It would be fair to say that if I had, it was
not of such a nature that required me to take any action.

Q Now, who would have been responsible for supervis-
21 ing Mr. Smith, for taking action? Who was his most direct
22 supervisor, Mr. Dick?

23 A Bill Rogers.

24 Q And Bill Rogers was the welding superintendent?

25 A Yes, he was.

#7-7-SueT

1 Q And did you become aware that Bill Rogers and
2 Billy Smith were perceived as being close friends, or too
3 close for perhaps effective supervision of Mr. Smith by
4 Mr. Rogers?

5 A I learned that by reading the affidavits and
6 in the discussions we had onsite relative to the action that
7 we should take.

8 Q Both are from Westminster, South Carolina.
9 Do you remember that?

10 A I was not aware of that. I don't recall that.

11 Q Is that not the case? Am I misstating something?
12 Do you know, Mr. Hollins?

13 A (Witness Hollins) I don't know.

14 Q All right. Had gone back a long way. How about
15 Arlon Moore, Westminster, South Carolina?

16 A I don't know.

17 Q Do you know that?

18 A (Witness Dick) I don't know.

19 Q Did you ever ask, you, Mr. Dick, you or anybody
20 else, did you inquire of Mr. Rogers whether or not his
21 judgment with regard to Mr. Smith was clouded by his close
22 personal association?

23 A I discussed the matter of his close relationship
24 with him, and Mr. Rogers told me that that was -- though it
25 might be perceived, that they were not socially friends.

#7-8-SueT1

1 Q So, he denied that there was that level of
2 relationship in the first instance?

3 A I would have taken it as a denial that they were
4 close, personal, social friends.

5 Q Is it fair to say, then, that he denied that
6 that impaired his judgment about Mr. Smith? Meaning
7 the close relationship would be a basis for impairment.

8 A I don't believe I questioned him as to whether
9 it impaired his judgment or not.

10 Q All right. Let me ask you if you can identify
11 this document, Mr. Dick?

12 A (The witness is looking at a document handed to
13 him by counsel for the Intervenor.)

14 I believe it's a memo to file, dated August 8th,
15 1984, signed by Ray Johnson, who is Unit 2 General Superinten-
16 dent, documenting the counselling that he conducted with
17 W. E. Rogers on August the 2nd.

18 Q All right. And would you read the text to that?
19 It's very short.

20 A "I counselled W. E. Rogers on August 2nd, 1984
21 concerning the following: Two employees who work for you
22 will be removed from a supervisory position. The supervisory
23 skills of both employees and manner of dealing with people
24 were not what we expect from supervisors. Whether or not
25 you are actually aware of these situations, it is your

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1 responsibility as a welding superintendent to maintain the
2 lines of communication that would bring these types of
3 situations to light. It is also your responsibility to
4 take quick, positive action to correct these problems."

5 Q All right.

6 JUDGE PURDOM: Excuse me. What was the date
7 of that?

8 WITNESS DICK: August the 8th, '64.

9 BY MR. GUILD: (Continuing)

10 Q Are you aware now, Mr. Dick, of any inquiry of
11 Mr. Rogers as to whether he was aware of the problems of
12 the people under his supervision, Mr. Smith and Mr.
13 Moore?

14 A I personally discussed that with him, and I don't
15 recall exactly when, Mr. Guild.

16 Q All right. And what did you ask Mr. Rogers and
17 what did he tell you?

18 A Well, I talked to him a number of times and I
19 suppose that most of them were after we had made the decision
20 about the actions we were going to take.

21 He had difficulty initially recognizing that the --
22 that Billy Smith's supervisory shortcomings were serious
23 enough to cause problems that would warrant this kind of
24 action. And in further discussion with him, I found that he
25 was aware of weaknesses and had counselled Billy Smith on

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2 them; and, in fact, believed that the allegations all must
3 have been several years old because he thought that Billy
4 Smith had made progress and that they probably were just
5 old things that preceded the time that he had counselled
6 with him.

7 As far as Moore is concerned --

8 Q Let me hold you up one second, if I may. Mr.
9 Rogers stated, my notes reflect, in the deposition: Mr.
10 Smith's performance as a general foreman had been better
11 during the first couple of years when he was a general
12 foreman and had deteriorated during the last couple of years.

13 Now, does that refresh your recollection, or is
14 that inconsistent with what Mr. Rogers told you?

15 A That's inconsistent, I guess, with my recollection,
16 Mr. Guild, because my recollection is clearly as I stated it,
17 that he thought the events must be several years old.

18 Q Well, if in fact Mr. Smith's conduct was deteriorat-
19 ing and Mr. Rogers was aware of that, as his answer to me
20 would reflect -- if you accept that as his answer -- it
21 would argue even more strongly for Mr. Rogers having been
22 ineffective in not exercising more definitive supervision over
23 Billy Smith, would it not?

24 A I guess that's right. Yes.

25 Q Now, the employee relations concerns action plan
with respect to Mr. Rogers reflects: Rogers will be counselled

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1 concerning his role in allowing this atmosphere to exist
2 regarding Smith and Moore. Rather than using employee
3 relations as a service to assist in correcting employee
4 problems he has fostered among supervision and employees a
5 hesitancy to use the services of employee relations or to
6 address problems through the chain of command. Counselling
7 will be documented as employee report. The perception of
8 his personal relationship with Smith must also be addressed.

9 Now, Mr. Dick, do you agree with those findings
10 with regard to Mr. Rogers?

11 A As I recall, I agree with the initial part of it.
12 I did not have that -- I did not pick up -- I was not as
13 sensitive to the issue of perceived friendship between Smith
14 and -- in fact, I think that that only came through clearly
15 to me when David Abernethy briefed my staff at Catawba on
16 the proposed actions and we discussed the basis for them.

17 Q Laying aside the point about the personal relation-
18 ship, what is the basis behind the finding with regard to
19 Rogers discouraging use of employee relations, that point?

20 A Mr. Guild, I am very much concerned with the
21 welfare of people who work at Catawba for me. One of the
22 devices that I have implemented to assist me in knowing what
23 is going on is called the employee forum. Employee forums
24 are conducted with craft people in the absence of their
25 immediate supervisor by the second level of supervision with

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1 a human resources person present as the recorder and as a
2 resource to help assure consistent answers relative to
3 policy. I carefully read each of these forums. I had
4 picked up some-- what I consider adverse employee relations
5 matters out of some of these forums, not related to foreman
6 override or quality or anything like that.

7 I also had had some discussions with the manager
8 of human resources at the site relative to some concerns in
9 employee relations with their dealings with the welding craft.
10 I had counselled with Mr. Rogers' supervisor who is no longer
11 in the position at Catawba.

Q Who is that gentleman?

A That was C. B. Acock who was construction manager
and we do not have that position any longer. I had counsel-
led with him -- excuse me. I should have added another
thing, too.

18 I also had personally conducted a recourse in-
19 vestigation involving a power house mechanic who was terminat-
20 ed as a result of an incident involving welding supervision.
21 So, I had a sensitivity to and some knowledge of conditions
22 which I felt needed some attention.

23 I discussed this with Mr. Acock and explained to
24 him that my perception was that the welding craft and Bill
25 Rogers in particular were trying to do the best job that they
could do, that they were trying to make it a first-class

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1 outfit but that they were playing it too close to the chest
2 and that they needed to bring employee relations in as a
3 tool, as a resource, to help them accomplish this rather
4 than what I perceived was a sort of a macho attitude of
5 doing it themselves.

6 Q I'm trying to focus on Mr. Rogers and his relation-
7 ship with the people under him now, and his supervision of
8 Smith and Moore ultimately.

9 Did it come to your attention that commonly Mr.
10 Smith and Mr. Rogers, Bill Rogers, the welding superintendent,
11 would go about the job together, that to the extent that Mr.
12 Smith was bird-dogging that Bill Rogers was right along side
13 of him and aware of Mr. Smith's exercise of leadership in
14 that fashion because he was a participant?

Did that come to your attention, Mr. Dick?

15 MR. CARR: Your Honor, there has been no founda-
16 tion laid for that assumption. I don't recall that allega-
17 tion being made in the affidavits.

JUDGE KELLEY: Would you restate it, Mr. Guild?

18 MR. GUILD: Did it come to Mr. Dick's attention
19 that Mr. Rogers and Mr. Smith, in fact, together went out
20 on the job and that Rogers had personal knowledge of Smith's
21 negative leadership style because he was personally present
22 to observe it.

23 JUDGE KELLEY: I will allow the question. If we
24
25

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2 get into a technical application of the foundation laying,
3 it's just going to delay the whole thing.

4 WITNESS DICK: My answer has to be that I did not
5 have the personal knowledge that Mr. Rogers accompanied Mr.
6 Smith and watched him demonstrate these faults.

7 No, I didn't have that knowledge.

8 BY MR. GUILD: (Continuing)

9 Q Mr. Smith was an exempt employee. He was in a
10 supervisory job, a salaried employee, and as such he was the
11 subject of your performance management system, correct, Mr.
12 Dick?

13 A Yes.

14 Q And that system involves an annual evaluation of
15 Mr. Smith and other employees' past performance, does it
16 not?

17 A Yes.

18 Q And it involves the establishment of performance
19 objectives for attainment in the future period, does it
20 not?

21 A Yes, sir.

22 Q And then subsequently a review of the degree to
23 which those objectives have been attained?

24 A Yes.

25 Q Now, focusing on Mr. Smith, had Mr. Smith ever
received an adverse performance appraisal? Had he ever been

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1 rated less than -- I'm using this as a term of art --
2 less than satisfactory, less than adequate in his performance?

3 MR. CARR: Your Honor, I'm going to object to that
4 question. We went through this yesterday when Mr. Guild had
5 asked for those documents on discovery. We objected to them
6 on two grounds. One, they were irrelevant; two, on invasion
7 of privacy.

8 The Board sustained our objection and told us that
9 we did not have to turn those documents over. And I would
10 object to this particular line of questioning on the same
11 grounds.

JUDGE KELLEY: Mr. Guild?

12 MR. GUILD: Mr. Chairman, the question, in large
13 measure, was asked and answered in the deposition. So, if
14 they had a privilege claim that was not asserted. If it's
15 simply a relevance question at this point, I would submit
16 that the level of knowledge of management of deficiencies of
17 those for whom they are responsible bears on the adequacy
18 of quality assurance at Catawba.

19 There are supervision who have been found -- I
20 will submit who evidence indicates that engaged in improper
21 practices of -- we are going to call them foreman override
22 so we won't get into a fight about whether Duke found that
23 or not, we assert foreman override, Mr. Smith, for example.

24 The degree to which that conduct is or is not
25

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2 previously identified, the degree to which the Company,
3 the Applicants, have or have not noted those deficiencies
4 and taken appropriate action in the past, bears on the
5 adequacy of their quality assurance.

6 Quality assurance is not simply a matter of
7 seeing that a hole point is observed on a weld. And if it
8 were we wouldn't be in this hearing. It has to do with the
9 management of the Company, particularly when we are talking
10 about the highest level of welding supervision, and the
11 second highest level of welding supervision who have re-
12 ceived personnel actions as a result of this investigation.

13 It seems to me to be patently relevant to know
14 what information Duke management had about these practices
15 in the past. That line of questioning isn't the line that
16 I've been on, and I don't think that because we get to the
17 point where admittedly it's delicate because we are talking
18 about an evaluation. still it's relevant, particularly where
19 we are talking about people who have been identified ad-
20 versely.

21 I submit that it's absolutely critical to this
22 record that the information be disclosed.

23 MR. CARR: Just a second, Your Honor. There is
24 one point.

25 JUDGE KELLEY: I have a point I want to make. We
were asked to order that the evaluation of these people be

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2 turned over and we denied that on the grounds of unnecessary
3 invasion of privacy. And the issue in this hearing, which
4 after all is foreman override, not every mistake every
5 foreman ever made at Duke Power Company.

6 Now, in light of those considerations, Mr. Guild,
7 would you tell me a little more precisely where you want to
8 go with this information? We are not going to get ourselves
9 in the situation of drawing out the evaluations through
10 questioning that we denied on discovery.

11 MR. CARR: Judge Kelley, just a procedural point.

JUDGE KELLEY: All right.

12 MR. CARR: A series of questions were asked at
13 the deposition. The depositions were taken subject to the
14 stipulation that all objections were to be preserved.

JUDGE KELLEY: All right. How can this line of
questioning be kept in reasonable bounds, Mr. Guild?

15 MR. GUILD: It seems to me we are talking about
16 some fairly narrow facts contained in personnel evaluations.
17 They are very narrow facts.

18 I, of course, stand by the position that we should
19 have had access to that information through discovery and
20 they --

21 JUDGE KELLEY: Yes, sir. That position was
22 rejected.

23 MR. GUILD: Exactly. We are not rearguing that
24
25

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2 point. Here, we clearly are focusing on, you know, a fact
3 that bears on the level of knowledge by management of
4 practices that have been going on for years.

5 JUDGE KELLEY: If you had been asking about did
6 Mr. Dick know about Mr. Smith's deficiencies and we had
7 that line of questioning there, what difference does it
8 make whether it was in an evaluation report or not?

9 MR. GUILD: Well, sir, because in fact that's
10 the documentation. That's the process in the normal course
11 of business where one memorializes and documents the positive
12 and the negative performance of their managers.

13 Mr. Smith -- it's one thing now post facto for them
14 to say: Well, we had an inkling that this was going on here,
15 and we had a suggestion here. That's sort of like writing
16 history in a way that tries to find things that were not
17 known at the time.

18 I think the most dispositive evidence of the
19 level of management knowledge of this practice is practices
20 while they were occurring.

21 JUDGE KELLEY: But your questions are not confined
22 to what we have defined as foreman override, it's just
23 any deficiencies of supervisors.

24 MR. GUILD: No, sir. I --

25 JUDGE KELLEY: That's why we are here, foreman
overr. de.

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2 MR. GUILD: Yes, sir. And since foreman override
3 is a term that Duke Power Company certainly didn't coin and
4 has been assiduously avoided in any of their investigation
5 in terms of talking to people, I submit that if you look
6 for the words "foreman override" in anybody's evaluation
7 they are not defined.

8 The fact of the matter is, it's a question of
9 the course of conduct that underlies foreman override.

10 JUDGE KELLEY: I wasn't talking about the exact
11 words. These are all intelligent people. We all know now
12 what foreman override means if we didn't know before.

13 But as I hear you, you are going into the
14 evaluation area for general information about what might
15 be deemed supervisory deficiencies not restricted to foreman
16 override; is that right?

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end #7
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1 MR. GUILD: I want information that is relevant
2 to foreman override, Judge. I am not interested in Mr. Smith's
3 proclivities or conduct to the extent it has nothing to do
4 with the subject.

5 I submit to you that either Duke management knew of
6 Mr. Smith's conduct, had reason to know, or if they didn't,
7 then that is reflective in itself of deficiencies in their
8 management system. You can't have it both ways. Either
9 Mr. Smith is a free agent out there in doing this under the
10 protection of Mr. Rogers or someone else in the systems
11 communications, up to Duke management or such, they didn't
12 know. That is one set of facts, or on the contrary, they
13 had full knowledge, or at least every opportunity to know
14 the details and took no action.

15 This record should reflect which it is, or whether
16 it is some place inbetween.

17 JUDGE KELLEY: Your pending question was whether
18 Mr. Dick -- could you restate it, so we will have that once
19 more.

20 BY MR. GUILD: (Continuing)

21 Q With regard to Mr. Billy Smith, the general foreman,
22 had he ever received an adverse performance evaluation, as
23 a threshold question.

24 JUDGE KELLEY: Then the Board will take a minute
25 here to consider that.

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1

(Board confers)

2

JUDGE KELLEY: All right. We can resume. We have attempted to weigh these arguments -- maybe the gentlemen in the back, if you will join us.

5

Here is the direction that we are going to give.

6

In regard to both the pending question and some broader

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guidance. We are going to sustain the objection to the

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pending question, because it is being aware of anything adverse

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in a performance evaluation, and that could include whether

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a person were drunk on the job or whatever, having nothing

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to do with foreman override.

12

Secondly, we are not going to use cross examination

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as a basis for something elicited in these evaluation forms,

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and we decided we wouldn't order it turned over yesterday for

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reasons that we found sufficient in which we think are still

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obtained.

17

We will allow some questioning designed to elicit

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knowledge of either Mr. Dick or other knowledgeable members

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of the panel, about information that is in an evaluation which

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has a direct bearing on foreman override as this Board has

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defined it.

22

Once again, that is a situation where a supervisor

23

directs people under his supervision either explicitly or

24

implicitly to finish the job and sacrifice the procedures that

25

might apply, and otherwise slow it up.

1 Now, beyond that, that is at the core of the
2 hearing. Beyond that, Mr. Guild, if you want to ask a question
3 about information that bears directly on foreman override --
4 for example, just one example -- some supervisor had a
5 reputation for being a great producer and getting the job
6 done ahead of time. I suppose that would bear on foreman
7 override and it is a fair enough question. That kind of
8 thing, we would just have to take it case-by-case, but we
9 want you to restrict to the extent you want to follow this
10 line of questioning, restrict it to information that will be
11 within those parameters.

12 BY MR. GUILD: (Continuing)

13 Q Let me reframe the question. This may be objectionable
14 in the scope of your ruling, but I am not clear about this. Let
15 me frame it for purposes of the record. The foundation is
16 there is a performance rating system that -- there is a scale,
17 objective scale. Can someone tell me, is it one to five, is
18 that if Mr. Dick?

19 A (Witness Dick) Yes.

20 Q The question I was trying to elicit, on that scale
21 of 1 to 5, has -- what has Mr. Smith's performance evaluation
22 been, and that was over a period of time. If there is a
23 minimum -- if one is defined as adequate, and there is a
24 rating that is less than adequate -- and I am using those
25 terms not as terms of art, but -- you know, if 3 is adequate

1 and a 2 is not, has Mr. Smith ever been evaluated for a period
2 as performing in some less than adequate, below a 3. That
3 is the question I meant to have on the table at the beginning.

4 MR. CARR: Our view would be that that is objectionable
5 as being too broad, and the way I understand the Board's
6 ruling is that that is a general-type question, and is not
7 permissible.

8 JUDGE KELLEY: I agree with the objection. It is
9 too broad in our view.

10 MR. GUILD: As the matter of offer of proof then,
11 I would ask that I be allowed to submit excerpts from the
12 depositions. I think Mr. Dick and maybe Mr. Hollins, but
13 the questions were responded to in discovery, and I would
14 ask that those responses be included in the record as offer
15 of proof.

16 JUDGE KELLEY: Yes?

17 MR. CARR: I would tend to object to that not for
18 the normal standards for offers of proof, but because of the
19 fact that the depositions were taken under a stipulation that
20 in effect means that objections would be preserved to be made
21 at the hearing. I certainly would object to this line of
22 questioning during the depositions.

23 MR. GUILD: What is the objection.

24 JUDGE KELLEY: You made the objection, and we
25 sustained it. Mr. Johnson?

1 MR. JOHNSON: It seems to me that given the Board's
2 ruling, that putting this in as an offer of proof causes the
3 damage that is sought to be avoided. The fact that it couldn't
4 be considered -- would be considered as evidence.

5 JUDGE KELLEY: You are talking about privacy
6 information?

7 MR. JOHNSON: Yes. If it is in the record for
8 whatever purpose, the privacy is not protected.

9 JUDGE KELLEY: We have devices to protect privacy,
10 don't we? Do you want to have an in-camera offer of proof,
11 Mr. Guild?

12 MR. GUILD: I don't Mr. Chairman. If that is the
13 only way I can get an offer of proof, then that will be fine
14 by me. It is really a point of trying to preserve the record.

15 JUDGE KELLEY: I understand. Let's do it in camera.
16 Your point is a legitimate point. If it is privacy information,
17 then we would want to make some protective provisions. I think
18 we can do that.

19 MR. GUILD: I would offer the same line of questioning
20 with regard to Mr. Moore and the other supervisors here. I
21 went through a line of questions in discovery depositions
22 regarding prior evaluations of all of these people. There
23 were forthcoming answers made, and I ask the opportunity, so
24 I don't repeat this whole line of questioning, but the thrust
25 of my line of questioning is: Was there a prior evaluation

1 that reflected adversely on the performance of these supervisors,
2 and the answers were given in deposition, and that would seem
3 to be objectionable, giving the ruling, and I would respectfully
4 except from that ruling, and like as an offer of proof, to
5 submit under whatever Mr. Carr might suggest, those responses
6 to questions in deposition as my offer of proof.

7 JUDGE KELLEY: We will treat it that way. It should
8 be clearly labeled In-Camera, Exhibit, Offer of Proof.

9 BY MR. GUILD: (Continuing)

10 Q Now, Mr. Dick, I am aware that with regard to your
11 site quality assurance manager, Larry Davidson, his performance
12 evaluation was received in evidence in the earlier hearings
13 in this case, and one of the objectives -- in fact, the number
14 one objective that was in his performance, a term of art, his
15 worksheet, or objective for a period by which his performance
16 was measured, was meeting construction schedules, or words
17 to that effect.

18 Are you aware of whether or not, and this is
19 addressed to anybody on the panel, with regard to Mr. Billy Smith,
20 general foreman in question, was meeting production schedule,
21 or construction schedule, or scheduling -- meeting schedule,
22 words to that affect, one of Mr. Smith's performance objectives
23 at any of the time that he served as a general foreman at
24 Catawba?

25 A (Witness Dick) Mr. Guild, I don't recall.

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1 Q Mr. Hollins, do you know?

2 A (Witness Hollins) No. I think I told you in
3 deposition that I never saw Mr. Smith's folder.

4 Q Mr. Abernethy, do you know?

5 A (Witness Abernethy) No, I don't.

6 Q Is there any member of the panel that has knowledge
7 of that question, whether or not Mr. Smith's performance
8 objectives included an objective that related to meeting
9 construction schedule?

10 A (No response)

11 Q Nobody knows. Mr. Chairman, I would ask that
12 that information be required to be produced, either produce
13 the document, if that is the convenient way of doing it, but
14 what I seek to elicit is specifically the information with
15 regard to whether Mr. Smith was evaluated on a performance
16 objective that I can loosely describe as meeting schedule,
17 scheduling, construction schedules, some kind of measure of
18 a degree to which Mr. Smith and his people met production.

19 And it seems to me that clearly is relevant to the
20 question of whether or not Mr. Smith, in response to a
21 performance objective, that says you are supposed to meet
22 schedule, in effect thereby himself was under an influence
23 from management to break the rules, in effect, to get the
24 job done.

25 JUDGE KELLEY: This is a discovery request?

1 MR. GUILD: Yes, sir.

2 JUDGE KELLEY ; I am not sure I understand it.
3 You ask for Mr. Smith's performance evaluation and we denied
4 that.

5 MR. GUILD: Yes, sir. And now I am trying to be
6 as specific as I possibly can to bear on foreman override.
7 I understood this was within the context of your ruling of
8 what the Board, at least as a matter of guidance, thought
9 was within the purview of foreman override.

10 JUDGE KELLEY: I thought the question was
11 legitimate. They said they didn't know.

12 MR. GUILD: They don't know. The question is
13 material. We had an earlier discovery request which was refused
14 by Applicant, and the objections were sustained by the Board,
15 and I don't know any other way to proceed, Mr. Chairman, to
16 get what I believe is either relevant evidence or certainly
17 reasonably calculated to lead to relevant evidence, and that
18 is performance objective for Mr. Smith that bears on meeting
19 schedule.

20 I submit to you that as a factual basis for that,
21 the record of this proceeding already contains the performance
22 evaluation of one Larry Davidson, site quality assurance
23 manager, whose performance objective for the period in question
24 included the objective that I will paraphrase as meeting schedule.

25 We argued in our finding, in our proposed findings,

8-9-Wal

1 in the earlier phase of this proceeding, that that scheduling
2 pressure, or that objective of meeting schedule influenced
3 Mr. Davis in the performance of his quality assurance
4 responsibilities.

5 It seems to me that with even greater force we
6 are now talking about the specific issue of foreman override
7 motivated out of production pressure.

8 JUDGE KELLEY: I don't recall the exact set of
9 circumstances in which we let in that information. I know
10 we did, but that was a long time ago, and under a rather
11 different set of circumstances, as I recall it.

12 We have ruled that we are not going to force
13 disclosure of these evaluations, and beyond that, anyone
14 on this panel know? These evaluations are pretty much
15 standard form. You don't design an evaluation sheet just
16 for Billy Smith, do you? Isn't it just a group of questions
17 that everybody gets? That is what the Government uses, I
18 can tell you.

19 A (Witness Dick) It is not pre-printed, Judge Kelley.
20 Performance objectives are discussed and agreed to between the
21 two parties.

22 JUDGE KELLEY: But aren't they by category, at least,
23 pretty standard? Your foreman don't have more or less the
24 same objectives?

25 A (Witness Dick) In practice, I would say it comes

1 out that way, probably.

2 JUDGE KELLEY: But they really are personalized?

3 A (Witness Dick) They are personalized.

4 MR. CARR: If I can just make a point here.

5 Obviously, I picked up on a late discovery request, but
6 second, I think it is pretty clear that everybody at least
7 implicitly has the charge to achieve performance, to perform
8 production work. That is why they are there.

9 The question is: Did -- and while we are all
10 here -- did in performance of the production work, certain
11 foremen cause craft either to do substandard work or violate
12 QA procedures.

13 So, in our view, the request is a, untimely;
14 and b, irrelevant.

15 JUDGE KELLEY: We made a judgment on relevance
16 on trying to go down a certain road, but we hit a roadblock
17 and nobody knows the answer.

18 Mr. Guild, there is one other way you can get
19 the answer. You can call Billy Smith. Ask him.

20 MR. GUILD: Yes, sir, we can call the other eleven
21 foremen as we sought to do in the list of 60 to demonstrate
22 a pattern, and that is what we are trying to prove, Judge.
23 And that is what the Board ruled that we may not do.

24 So we are, in effect, damned if we, and damned if
25 we don't. We are foreclosed from getting this information.

1 I am simply trying the most administratively simple fashion
2 I can to get at what I think is relevant information.

3 JUDGE KELLEY: You are making indirectly the
4 request you made yesterday and got turned down on, that is,
5 to give you Billy Smith's evaluation, and the answer is no,
6 let's move on.

7 MR. GUILD: All I am asking for is -- Judge, you
8 told me that that was over-broad, that it was not calculated
9 enough to lead to discovery. You gave me guidance. I tried
10 to come back, and consistent with that guidance, reserving
11 my exception to the original ruling, and say let's focus
12 on something that had to do with production pressure, and
13 I have targetted it as narrowly as I possibly can.

14 I am not interested in the rest of this evaluation
15 subject to my earlier position.

16 JUDGE KELLEY: I am not hearing anything new, Mr.
17 Guild. Will you please move on to the next point.

18 MR. GUILD: Judge, what -- regardless of what I am
19 asking for.

20 JUDGE KELLEY: I think I know, and the answer is, no.
21 Will you please move on to the next point, Mr. Guild. The
22 Board has made a ruling. You have asked for Mr. Smith, somehow
23 getting information whether Mr. Smith was or was not given a
24 criterion, including given a criterion whether he was going
25 to be rewarded for being highly productive, right? And these

8-12-Wal

1 people don't know. And the discovery is over, and
2 there are witnesses here you can call, and beyond that
3 that is is.

4 Because as Mr. Carr pointed out, we think this
5 is marginal. We don't think it is crucial. We disagree with
6 you, and that is why we are rejecting the request.

7 MR. GUILD: All right, sir. I ask that those
8 documents be produced and made available. As offers of proof,
9 we can attach them as in-camera offers of proof, but I do
10 intend to press this point, Mr. Chairman, as best I can,
11 and I am trying with some difficulty.

12 I don't mean to irritate you --

13 JUDGE KELLEY: Don't worry about irritating me,
14 Mr. Guild.

15 MR. GUILD: I do, Mr. Chairman. It is unpleasant
16 enough, and I am really not trying to make you angry. I want
17 to try to have a record, and I am asking if there is a way
18 that I can have this narrow class of information now, somehow
19 made available in documentary form so that I can include it
20 as an offer of proof.

21 JUDGE KELLEY: It is essentially a discovery question,
22 and it is denied. The kind of thing that is being talked about
23 one can find in the record by looking at Mr. Davidson's
24 evaluation. As to these people, we are saying, no.

25 BY MR. GUILD: (Continuing)

1 Q Mr. Dick, are you aware of a general foreman in
2 welding craft named Bo Chapman?

3 A (Witness Dick) Yes.

4 Q Are you aware of Mr. Chapman's reputation with
5 regard to his leadership style?

6 A Only very generally, Mr. Guild. Not specifically.

7 Q What knowledge do you have of his reputation of
8 his leadership style?

9 A Mr. Guild, I know that Bo Chapman has worked for
10 Duke Power 35 years. I have known him most of that time, and
11 I don't know of anything -- I know that he is considered to
12 be an adequate supervisor. I am sorry, I can't tell you
13 anything on either side of that.

14 Q What I am asking beyond that, then, is by
15 comparison to Billy Smith, what is Mr. Chapman's leadership
16 style? Is it similar to Mr. Smith, like Mr. Smith, is it
17 a pole apart, wholly dissimilar? What is Mr. Chapman's
18 leadership style?

19 A I can't make that comparison for you.

20 Q Because you don't know?

21 A Because I don't know.

22 Q All right. Mr. Hollins, do you know?

23 A (Witness Hollins) No, I do not.

24 Q Mr. Abernethy, do you know?

25 A (Witness Abernethy) No.

8-14-Wal

1 Q Any other members of the panel?

2 A (No response)

3 JUDGE KELLEY: I think we will take a break. Ten
4 minutes. (11:23 a.m.)

5 (Short recess taken)

6 JUDGE KELLEY: Mr. Guild, we can resume.

7 BY MR. GUILD: (Continuing)

8 Q Gentlemen, ladies, after the initial rounds of
9 interviews with the site people, you identified a first cut
10 of concerns. I think there are 26 in number according to your
11 system of analysis. 26 topics. Mr. Hollins, is that correct?

12 A (Witness Hollins) That is correct.

13 Q And to the extent that they require technical
14 follow-up, you assigned those tasks, those concerns for
15 investigation and resolution by technical people, correct?

16 A Along with the employee relations person.

17 Q Well, the employee relations people would go back,
18 and after the first interview go back and reinterview,
19 correct?

20 A It was a joint effort.

21 Q But the investigation resolution was put in the
22 hands of the technical person?

23 A That is correct.

24 Q Can you tell me, from the list of 26 concerns, to
25 whom you assigned the responsibility for the investigation

1 resolution. This would have been approximately mid-May,
2 correct?

3 A That sounds like a reasonable time. If you can
4 give me that list I will try to reconstruct that.

5 Q All right.

6 A (Witness Dick) On May 10th I approved a plan
7 which approved the assignment of people.

8 A (Witness Hollins) And I believe there is a list
9 of that assignment in your discovery documents.

10 Q Yes, sir, we are trying to put our hand on it.
11 You don't happen to have a copy of that, do you?

12 A Not with me.

13 Q Mr. Llewellyn, do you have one?

14 A (Witness Llewellyn) Not with me, sir.

15 MR. GUILD: Perhaps counsel for Applicants may be
16 able to help us. We are searching through our files to find
17 it. How about telling me the best you can recall. Everybody
18 is here who was assigned a concern, right?

19 A (Witness Hollins) No, that is not correct.

20 Q Who is not here that was assigned a concern?

21 A Mr. Malcom Curtis.

22 Q Let's start with him. What concern did Mr. Curtis
23 have assigned to him?

24 A Mr. Curtis evaluated vendor welds, which is
25 obviously a non-foreman override issue.

1 Q I am not sure I want to concede the obviousness
2 of it, but it was something you didn't classify as foreman
3 override.

4 A That is correct.

5 Q It is in the sort of Attachment B, other safety
6 concerns, is that where it got categorized?

7 A That is correct.

8 Q Okay. Everyone else except for Mr. Curtis, who
9 was involved in resolving those 26 concerns, or who was
10 responsible for investigating resolving them is here on the
11 panel, right?

12 A No, sir. Mr. Davidson was assigned the resolution
13 to investigate the case where a welding inspector was alleged
14 to be welding in the turbine building.

15 Q And that is all of the concerns and technical
16 people assigned those concerns, who were not present.

17 A (Witness Stropshire) I did that investigation
18 for Mr. Davision.

19 Q You did. Which investigation?

20 A The concern that Mr. Hollins just mentioned.

21 Q Welding inspector, allegedly welding in the
22 turbine building.

23 A That is correct.

24 Q Any other concerns for which the person assigned

25

8-17-Wal

1 responsibility for investigation resolution is not present?

2 A (Witness Hollins) I believe that is all.

3 Q Now, let's kind of go from left to right here.

4 Mr. Dick, you weren't a technical person, and Mr. Grier, nor
5 were you. Mr. Robertson, what concerns were assigned to you
6 for responsibility?

7 A (Witness Robertson) From the Attachment A of our
8 report, I had repair of drill holes.

9 Q Attachment A from your August 3rd report?

10 A Yes, sir.

11 Q And if you look at Attachment A, the first page,
12 there is an index more or less. Table of contents. Issues
13 involving foreman override.

14 A Yes. Roman Numeral No. VII.

15 Q Okay.

16 A Repair of drill holes.

17 Q Does the Board want to follow this. It is half way
18 through the August 3rd Report. All right, sir, repair
19 drill holes. Anything else, Mr. Robertson?

20 A That is the only one I had involving Attachment A.
21 I had some others.

22 Q And which others, sir.

23 End 8
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1 Q All right. And which others, sir?

2 A From Attachment B, I had VIII, Advanced distribution
3 of tests.

4 Q One second, please.

5 (Pause)

6 I'm sorry, say again now, attachment B, Roman --

7 A VIII, Advanced Distribution of Tests.

8 IX, Missing nut in structural steel.

9 JUDGE KELLEY: The Board would like to raise a
10 general question. Does Palmetto contend that anything
11 from Attachment B, which on its face appears not to involve --
12 it's label does not involve foreman override. Do you
13 contend that any of these matters are within the scope of
14 this hearing?

15 MR. GUILD: Yes.

16 JUDGE KELLEY: Which are they?

17 MR. GUILD: Sorry, I can't identify them all without
18 examining the witnesses. But I submit to you that removal
19 of arc strikes and cold spring are just two that come to mind
20 off the top of my head, and involve instances where the
21 practice is the result or alleged to be the result of foreman
22 pressure, production pressure.

23 You remove an arc strike without getting a proper
24 process control documentat, because it is quicker and cheaper
25 to do it that way. You do it that way because you are under

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1 pressure.

2 You could spring a pipe in violation of procedure
3 because you have to otherwise cut it out and remake the fit.

4 JUDGE KELLEY: I asked the question because it
5 springs from the Board's reading just of the cover page, and
6 I wanted to clarify whether that is true or not. It does
7 not spring from the Board having read all of Attachment B
8 carefully against the definition and deciding whether it is
9 all in or all out, some in some out, or whatever.

10 But, I guess we will have to take it point by point.

11 MR. GUILD: Those are just two examples, Judge.

12 We just viewed the Applicant's analysis of these
13 as not being foreman override, and the others being foreman
14 override.

15 JUDGE KELLEY: I guess we have no options, but as
16 we get into these, if there is an objection, there is an
17 objection and we will rule on it.

18 BY MR. GUILD:

19 Q Mr. Robertson, you were identifying on Attachment B,
20 those concerns --

21 A (Witness Robertson) XII, painting the faceplates.
22 XIII, excess penetration.
23 XIV -- excuse me, XVI, building wall crack.
24 XVII, defective welds.

25 I also had some nonsafety-related issues.

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1 Q All right. Will you identify those, please?

2 A This is located on page 23.

3 Q That is the principal part of the report?

4 A Right. Located in the nonsafety-related concerns
5 section, Section E on page 23.

6 Q Yes, sir.

7 A Number 2, fitup of socket welds.

8 Turning to page 24, number 3, expansion loop; number
9 5, class G standpipe support welds; number 6, the method of
10 straightening concrete anchors. Those are all the concerns
11 I had technical responsibility for.

12 Q All right.

13 Now in the Review Board Report, page A6-I, there is
14 a document called signup sheet. That is your writing, isn't
15 it, Mr. Hollins?

16 A (Witness Hollins) Yes, it is.

17 Q It has the numbers 1 through 26. The numbers are
18 the first cut of concerns, I believe, Mr. Hollins, and has
19 responsible individuals by those concerns. And I notice the
20 initials THR, which I took to be yours, Mr. Robertson.

21 A (Witness Robertson) That is true.

22 Q You are assigned several of them, but they don't
23 seem to track the items you just mentioned.

24 Maybe, Mr. Hollins, can you give me a general
25 explanation?

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1 A (Witness Hollins) Yes, sir, maybe I can save you
2 some time by doing that.

3 The 1 through 26 items on that list do not have a
4 one for one relationship on the final report. As I mentioned
5 yesterday, I categorized those concerns, but the Investigation/
6 Resolution form didn't turn out to be quite the vehicle and
7 mechanism I had wished it to be. And, as the report was being
8 compiled, it appeared to be more appropriate to group the
9 concerns as they are here.

10 Q All right.

11 Mr. Robertson, working from my original list, you
12 were originally assigned Concern 15, told to do or did less
13 than acceptable work, right?

14 A (Witness Robertson) That's true, that's the
15 category.

16 Q Concern No.18, given copy of test prior to redhead
17 certification test.

18 A That's true.

19 Q 19, concern of all bolts not in structural steel.

20 A That's true.

21 Q And 26, concern over crack in reactor wall.

22 A That's true.

23 All those ones I named were in those categories.

24 Q All right.

25 You were just recategorized, but you retained

1 responsibility for those original ones?

2 A Yes, true.

3 Q All right, thank you.

4 Now, Mr. Mills, what concerns were you assigned?
5 First of all, give me your initials, if you would, sir.

6 A (Witness Mills) TDM.

7 Q On the original list, I see you were assigned
8 concern number 6, which reads, "been told to have" -- "been
9 told to or have performed work without process control in
10 hand."

11 A Yes, sir. That is on Attachment A, Item 3, process
12 control.

13 Q Okay. Same list, concern number 9, and that was
14 originally called concern over cold spring of pipe.

15 A That is on Attachment B, Item 3, cold springing.

16 Q Okay. Item 14 on the original list, originally
17 called, has concern over how system was tested.

18 What does that mean?

19 A That's on Attachment B, Item 5, system flush.

20 Q All right. Item 23 on the original, improper
21 welding technique on teflon-seated valves.

22 A Yes, sir, that is on Attachment B, Item 11, welding
23 temperature on plug valve.

24 Q Are there any others, Mr. Mills?

25 A Yes, sir. Number 1, on Attachment B, Item 15,

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1 rework after cold point.

2 Q How was that in the original assignment of concerns?
3 What was that called?

4 A I'm not sure. It may have been under process
5 control in the original. I'm not sure.

6 Q All right, sir.

7 Now we are going over a few other steps. Now,
8 Mr. Llewellyn, you and I talked about this in your deposition.
9 You were assigned a number of these concerns in this original
10 assignment sheet, correct?

11 A (Witness Llewellyn) Yes, sir.

12 Q By Mr. Hollins, in mid May?

13 A Yes, sir.

14 Q Now, if I recall you're telling me that you learned
15 the first week in June that you were to receive a temporary
16 assignment with the company -- I think you said you were
17 going to the Fermi plant in -- was it Michigan?

18 A Yes, sir.

19 Q So, your work on these concerns was completed by
20 the 1st of June. You said you did the writeups on them
21 Memorial Day weekend, correct?

22 A On some of them, yes, sir.

23 Q On most of them, right?

24 A The ones I worked on, yes, sir.

25 Q Now how many of the originals were you assigned, do

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1 you recall the number?

2 A I'm not exactly sure. I believe it is in the
3 neighborhood of eleven.

4 Q All right. We could count. But, of the eleven, how
5 many did you complete your Investigation/Resolution on when
6 you departed -- when you did the writeups Memorial Day
7 weekend, end of May?

8 A I would have to see that list to tell you exactly.

9 Q Didn't you tell me it was all but two?

10 A Yes, I believe so.

11 Q All right. And those two you turned over to some
12 of your associates to be responsible for, correct?

13 A Yes, Mr. Kruse.

14 Q All right. And then you, in fact, did depart and
15 were off for the month of -- sometime in June, return in July?

16 A Last week of June.

17 Q Okay. When you returned your responsibility had
18 been performed -- your task had been performed by others to
19 whom you had delegated this function, correct?

20 A On the two issues that I gave to Mr. Kruse, he
21 continued work on those.

22 Q Right. Okay.

23 Now, your initials are, sir?

24 A DHL.

25 Q And on the original assignment, you were assigned

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1 concern number 1, have knowledge of violation, interpass
2 temperature?

3 A Yes, sir.

4 Q And concern number 2, knowledge of arc strike
5 removed without process control?

6 A Yes, sir.

7 Q And item 3, knowledge of buddy weld, half weld
8 sequence technique?

9 A Yes, sir.

10 Q Item 5, feel that quality of work has suffered due
11 to production pressure. You were jointly assigned along with
12 Mr. Abernethy to work on that one, were you not?

13 A Yes, sir.

14 Q Number 8, instructed to work on something that
15 was nonconformed, that was your task?

16 A Yes, sir.

17 Q Number 10, told to work on weld when bevel was
18 wrong?

19 A Yes, sir.

20 Q 16, concern over proper preheat?

21 A Yes, sir.

22 Q 17, concern over excessive weave width?

23 A Yes, sir.

24 Q 22, was asked to stencil weld he did not make?

25 A Yes, sir.

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1 Q 24, stainless steel filler material in carbon steel
2 weld?

3 A Yes, sir.

4 Q Were there any others?

5 A Not to my knowledge.

6 Q All right.

7 Now the two that you did not complete resolution of
8 by the Memorial Day weekend -- and maybe delegate is not the
9 right term, but passed on to others, which were they, sir?

10 A The concern on interpass temperature and the concern
11 on the removal of arc strikes.

12 Q Those are concerns number 1 and 2, respectively,
13 from the list, are they not?

14 A In that list?

15 Q Yes.

16 A I'm not sure how they are numbered. I have to see
17 that list.

18 Q Number 1 is, "had knowledge of violation of interpass
19 temperature."

20 Number 2, "knowledge of arc strikes removed without
21 proper approval."

22 A I believe so, yes.

23 Q And to whom did you assign those concerns for
24 Investigation/Resolution?

A I gave those to Mr. Kruse.

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1 Q Now the concern identified as concern number 5,
2 quality of work affected by production pressure.

3 Did you perform the Investigation/Resolution of that
4 concern, Mr. Llewellyn?

5 A I performed interviews with the individuals who
6 were listed on the matrix, so to speak, that had that concern,
7 from a technical standpoint to see if there was any technical
8 prblem with that concern.

9 Q Yes. Did you perform the Investigation/Resolution
10 of that concern?

11 A After I had finished the technical reviews, I
12 reviewed the affidavits that had been taken. That was the
13 extent of my investigation.

14 Q Right.

15 Didn't you tell me in your deposition that that
16 concern was treated as a nontechnical concern, and that
17 Mr. Abernethy assumed full responsibility for its Investigation/
18 Resolution?

19 A After I had done those two things I just mentioned,
20 I discussed with Mr. Hollins what I had found and we mutually
21 agreed that that was an employee relations issue, not a
22 technical issue. To my understanding he turned that over to
23 Mr. Abernethy at that time.

24 Q All right. So when you, on August 9, 1984 indicated
25 on an Investigation/Resolution of Concerns form, with

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1 regard to concern number 5, quality of work affected by
2 production pressure, that you had performed that Investigation
3 Resolution, that was not correct, was it?

4 (Document handed to witness)

5 A My name was listed on this form as being assigned
6 that concern to resolve, which was the case at the initial
7 breakdown or the list that you went over. This -- I would
8 have to ask Mr. Hollins -- is a draft prepared for Mr. Grier's
9 report.

10 Q Is it a draft, or is it a final document? Your
11 signature appears on it, does it not?

12 A Yes, sir, my signature is on it.

13 Q And it is on it on the date I indicated, August --

14 A Yes, sir.

15 Q -- 9, 10, I can't see. Mr. Hollins, the date is
16 what?

17 A (Witness Hollins) 8/9 and 8/10.

18 Q Was that a draft, or is that your final
19 Investigation/Resolution of that concern? Is there something
20 else I don't have?

21 A This is the Investigation/Resolution of Concern that
22 was submitted to Mr. Grier, and it came -- this is the same
23 information found in the final report.

24 Q Why did you call it a draft, Mr. Llewellyn?

25 A (Witness Llewellyn) I looked at that as my

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1 definition of a draft.

2 Q That implies there is a final product that is in
3 some form different from what you then just characterized as
4 a draft. Is there?

5 A This piece of paper was not used in preparing the
6 report that was turned in on August 3rd.

7 Q Obviously, since it postdates the report of August
8 3rd. Why do you call it a draft.

9 A That may be an erroneous term.

10 Q You don't mean to imply that it is in some form not
11 final and there is some other document that reflects the
12 final resolution of that concern, do you?

13 A (Witness Hollins) Mr. Guild, let me try to explain
14 this one more time.

15 Q You don't need to repeat yourself. I am not
16 interested in repetitive testimony. If you already stated
17 an explanation, there is no need to state it again,
18 Mr. Hollins.

19 A The only reason that I would try to say it again
20 is to help you understand.

21 Q If there is something you haven't told me, and the
22 record doesn't reflect, that is important on the subject,
23 please so state.

24 If it is simply a matter of repeating something
25 you have already said, I have heard that explanation and my

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1 question stands.

2 MR. MC GARRY: Your Honor, I object to this
3 instructing the witness. That is the Board's job. If
4 Mr. Hollins has something to add that might be helpful in
5 reading this --

6 JUDGE KELLEY: I think the Board would like to
7 know the answer. I confess, I, for one am not up with you
8 on papers.

9 Are we supposed to be looking at the Welder B
10 concerns, the Review Board Report? What document are we
11 working on right now?

12 WITNESS HOLLINS: I have a document here called
13 Investigation/Resolution of Concerns, and it is concern
14 number 5.

15 MR. GUILD: It is Mr. Grier's report, the Review
16 Board Report. It is not the company final report.

17 JUDGE KELLEY: That's what I have.

18 MR. GUILD: These are the postdated forms that
19 we had alluded to earlier, Mr. Chairman. This is one of
20 them.

21 BY MR. GUILD:

22 Q Mr. Hollins, I am not trying to be disrespectful.
23 I just really am not -- I just need to move along. If there
24 is something that you haven't said already, please do feel
25 free to say it. But, if it is simply a matter of repeating

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1 yourself, I am not seeking that.

2 JUDGE KELLEY: The Board would like a clarification.
3 Go ahead, Mr. Hollins.

4 WITNESS HOLLINS: As I stated, initially I had
5 decided that the appropriate format would have been an
6 Investigation/Resolution of Concern. As we got going through
7 the process, it turned out to be a very bulky, burdensome
8 process. As the draft of these documents turned out to be
9 not working very well when we incorporated the final report
10 in the format that you see here to be submitted to the Board,
11 Mr. Grier still held my feet to the fire on, "give me the
12 Investigation/Resolution of Concern sheet, because that is
13 the way I have set up my process."

14 I took the data that was in the final report,
15 manipulated it on the word processor and thus printed out
16 these reports.

17 JUDGE KELLEY: The particular paper that you are
18 looking at now, Mr. Guild is looking at, you are looking at,
19 that is in back of the Review Board Report, correct?

20 I'm lost, because concern 5 to me is one area, and
21 you are talking about concern 5 in an entirely different
22 area. I must admit I am baffled.

23 MR. JOHNSON: Mr. Chairman, this is part of the
24 Review Board Report. It precedes page 54A. These two pages
25 that I have are not numbered. And then these two sheets, if

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1 I am correct it says concern number 5. It is related to
2 the matrix that was referred to yesterday that Duke had
3 prepared.

4 If you look in your stack of documents that has the
5 Review Board Report in it -- that is what the stack is. If
6 you look for page 54A, it is the two pages preceding it.

7 JUDGE KELLEY: Is this D. H. Llewellyn concern
8 number 5, page 1 and 2?

9 WITNESS HOLLINS: Yes, sir.

10 MR. GUILD: I don't have it. Mr. Hollins has it in
11 front of him, yes, sir.

12 JUDGE KELLEY: All right, I found that.

13 So, have you stated what you wanted to state?

14 WITNESS HOLLINS: What this is is a summary of the
15 technical evaluation, and then a reference to the main part
16 of the report for the personnel action.

17 JUDGE KELLEY: Let's go back to Mr. Guild.

18 BY MR. GUILD:

19 Q Mr. Llewellyn, my point is though, in your
20 deposition you told me that you reached the conclusion before
21 your Memorial Day weekend wrapup when you wrote off your
22 concern, that this concern which I read as really the whole
23 issue; quality of the work suffered due to production pressure,
24 was a nontechnical issue and that would be delegated -- not
25 delegated -- turned over to Mr. Abernethy in personnel to

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1 resolve as a personnel concern.

2 Therefore, you, as you state in your deposition,
3 had no further responsibility for that concern. All right?
4 But that in August, the paper got stuck in front of you and
5 you signed it, indicating that you had performed that
6 Investigation/Resolution.

7 Isn't that a correct statement of your testimony at
8 deposition, sir?

9 A (Witness Llewellyn) I received this paper in August.
10 I was aware of what had been done in resolving this concern.
11 My name was still listed at the top. Mr. VanMalssen asked
12 me to do the review and sign the form.

13 Q Indicating that you performed the Investigation/
14 Resolution, that's what it says by your name, does it not?

15 A That's what it says, yes.

16 Q But you didn't perform that Investigation/Resolution.
17 That was done by Mr. Abernethy, correct?

18 A That is correct, sir.

19 Q If you will pass that back up this way, please.

20 (Document returned to counsel)

21 Now, the Investigation/Resolution of Concern number
22 1, interpass temperature which correlates with item 1 on the
23 original tabulation number 1, has knowledge of violation of
24 interpass temperature, that was initially signed by you,
25 Mr. Llewellyn, correct?

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1 A Yes, sir.

2 Q And what did you do with it?

3 A I performed the technical interviews with the
4 people that expressed their concern with interpass temperature.

5 Having that information, and realizing the scope of
6 what was involved, I called upon the services of Mr. Kruse
7 to resolve that concern.

8 Q When did you do that? Approximately?

9 A It was over that Memorial Day weekend. I am not
10 sure which day it was.

11 Q Okay. But it was at the point where you were getting
12 ready to write up what you could, anticipating you were going
13 to go on assignment. And at that point you asked Mr. Kruse
14 to perform some work on this concern. Correct?

15 A At that time I turned that one over to Mr. Kruse
16 because I knew he was more knowledgeable in resolving that con-
17 cern than I. That was not done in relation to the other
18 concerns I was working on.

19 Q I guess I don't follow your drift on that. I didn't
20 mean any other implication.

21 You turned it over to Mr. Kruse. You were leaving.
22 You have work yet to be done on a concern, and Mr. Kruse had
23 knowledge and skills in that area, is that correct?

24 A That concern was not turned over based upon my
25 knowledge that I would be leaving. That concern was turned

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1 over based upon the fact that I knew he had the knowledge to
2 do a better job in resolving the technical concerns regarding
3 interpass temperature.

4 Q Didn't you tell me during your deposition that you
5 knew you couldn't continue to work on those concerns. The
6 ones that were unresolved had to be turned over to somebody
7 else because you were going away for the company.

8 A I said in my deposition that I was aware of the fact
9 that I was going to be assigned to the Fermi project for a
10 period of time. At that time I did not know how long I was
11 going to be assigned to that project, nor when that assignment
12 would begin.

13 Q But you believed it would begin early in June at
14 that time, did you not?

15 A At that time I was led to believe the project would
16 begin early in June, and my services would be called upon
17 sometime in June.

18 Q In any event, Mr. Kruse was asked to perform part
19 of the Investigation/Resolution of this concern, right?

20 A Yes, sir.

21 Q Mr. Kruse, you did so?

22 A (Witness Kruse) Yes, I did.

23 Q And Mr. Llewellyn's testimony so far is correct?
24 He contacted you about that point in time and asked you to
25 become involved?

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1 A At that time I was his subordinate and I was
2 already doing some technical aspects of that for him.

3 Q You were?

4 A Yes.

5 Q Now, Mr. Ferdon is sitting here, and you involved
6 him in working on this concern, did you not?

7 A Yes, I did.

8 Q All right. Now, between the two of you gentlemen
9 together, you, Mr. Kruse, and you, Mr. Ferdon, you performed
10 the investigation and resolution of the interpass temperature
11 concern, correct?

12 A (Witness Ferdon) Correct.

13 Q And, Mr. Kruse, your performance of that Investigation/
14 Resolution is reflected on an Investigation/Resolution of
15 Concerns form for concern number 1, interpass temperature?

16 A (Witness Kruse) Yes, it is.

17 Q You dated that performance August 10, 1984, correct?

18 A Correct.

19 Q And, Mr. Llewellyn, you reflected that you reviewed
20 that Investigation/Resolution on that same date, correct?

21 A (Witness Llewellyn) Yes, sir.

22 JUDGE KELLEY: Let me ask once more for clarity. I
23 am sorry to interrupt. But, you have been speaking of a
24 concern number 1, which is violation of interpass temperatures.

25 MR. GUILD: Yes.

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JUDGE KELLEY: I am looking at --

MR. GUILD: The numbering system --

JUDGE KELLEY: Concern number 1 doesn't seem to have anything to do with that.

MR. GUILD: You are right.

MR. MC GARRY: Can I help explain?

JUDGE KELLEY: Please do.

MR. MC GARRY: The primary document is the Applicant's August 3rd report. You have all those numbers.

There have been two other documents referenced today. There is a tabulation of concerns from screening interviews, and they are 26 in number.

JUDGE KELLEY: That tabulation is located where?

MR. MC GARRY: That is in discovery material that we provided the Intervenor. It came from Mr. Hollins. It was his initial cut.

And what has happened is initially, with the first two witnesses they were going through this tabulation list and showing -- let me add one thing, there were initials assigned to each one of these individuals. Mr. Guild was assuring himself that each one of these initialed 26 had been picked up in our final report.

So, the first two witnesses said, yes, if you look at number 1 of the tabulation form, then you go to B-VII, and that is that item.

1 But then we got into about the third witness and
2 we didn't make that correlation and we went off just on the
3 tabulation. So, you are hearing different numbers. That is
4 the first point.

5 Now, the second point with respect to what Mr. Grier
6 did, his report, his Review Report which is not in evidence.
7 What he did is, he looked at 29 concerns, and he listed each
8 one as an item -- item 1, item 2, item 3 -- all the way to
9 item 29, that have no relationship to the numerical system
10 in our August 3rd report.

11 But then what he did is, he had an Investigation/
12 Resolution sheet for each one of those. And some of them
13 happened to correspond to our August 3rd report.

14 MR. GUILD: You may appreciate the difficulty that
15 we have had trying to understand what on earth it is we are
16 dealing with as well. The numbers, in fact --

17 JUDGE KELLEY: In the Grier Report, the material
18 underlying the items and the concern items don't correspond?

19 MR. MC GARRY: That's correct.

20 I think what you have to do is you have to look at
21 the top. When you look at tabulation, when you look at
22 the Grier Report, the key is the August 3rd report. There
23 are the items all listed.

24 MR. GUILD: That is our problem, too, Judge, because
25 the August 3rd report recharacterizes concerns, reclassifies

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1 them, calls them by different names, lumps them together,
2 calls some of them nonsafety, some foremen override, and
3 some nonforemen override. It is very difficult tracking what
4 was in fact done. We are doing our best in a very short time
5 to do this.

6 JUDGE KELLEY: Go ahead -- well, let me ask, since
7 it is a quarter past twelve, has the information arrived yet?

8 MR. MC GARRY: Yes, sir.

9 JUDGE KELLEY: What is their bulk?

10 MR. MC GARRY: The technical information is this,
11 and I imagine it is about a half an inch.

12 JUDGE KELLEY: It is 12:15. Shall we break until
13 2 o'clock, then we will be an hour and forty-five minutes.
14 We are not expecting you to come up with a final witness list.

15 Do you want to defer your look at the interview
16 notes until this evening and make some changes on that basis?

17 MR. GUILD: If I may, I would like to complete these
18 concerns and I will do it as quickly as I can. But, it is on
19 the table and I would like to finish it before we break.

20 JUDGE KELLEY: Okay. But in any case we will go
21 for an hour and forty-five minutes right after Mr. Guild finishes
22 the point that he is on.

23 Bo ahead.

24 BY MR. GUILD:

25 Q Now, Mr. Kruse, you signed off on this concern and I

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1 believe in response to my question generally to the panel at
2 the beginning, you testified that the August 3rd report
3 represents a true, correct and complete report of your
4 investigation and resolution of the interpass temperature
5 concern, did you not?

6 A (Witness Kruse) Yes, I did.

7 Q Mr. Ferdon, you testified likewise, did you not?

8 A (Witness Ferdon) Yes, I did.

9 Q Now I am looking at the document, Concern Number 1,
10 Interpass Temperature. And I am looking at the description
11 of what you did. And I notice that if you look at page 2 of 6
12 of your Investigation/Resolution of Concern form, you have an
13 entry that is entitled "Investigation." And, it appears
14 two thirds of the way up the page.

15 MR. JOHNSON: Could you give us a reference to
16 which form that is?

17 MR. GUILD: That is the form for interpass temperature
18 concern number 1, page 2 of 6.

19 MR. JOHNSON: And where it is in the report?

20 MR. GUILD: Mr. Johnson, I am unable to help you on
21 that one.

22 MR. MC GARRY: What item?

23 MR. GUILD: Item number 1 -- concern number 1, I
24 don't know what item it is.

25 MR. MC GARRY: Doesn't it say at the top?

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1 MR. GUILD: No, it doesn't, it says Concern Number 1
2 assigned to D. H. Llewellyn, Interpass Temperature about
3 a third way through the report based on the number system
4 that we tried to employ to track these items.

5 BY MR. GUILD:

6 Q Mr. Grier, do you happen to know which item on your
7 review it is? It is concern number 1, interpass temperature.

8 A (Witness Grier) Could I see that?

9 Q Sure.

10 (Document handed to witness)

11 A That would be item number 12. The page number is
12 cut off.

13 Q All of them are.

14 MR. JOHNSON: I found it. It is around 100, page
15 96 or so.

16 MR. CARR: It begins on page 98, the interpass
17 temperature. That is one of the pages that on my copy the
18 number wasn't cut off.

19 MR. GUILD: It wasn't cut off?

20 MR. CARR: On my copy.

21 MR. GUILD: On mine it is cut off.

22 BY MR. GUILD:

23 Q All right, sir, if that helps the people find it,
24 it is concern number 1. Now, again, page 2 of that resolution
25 of Investigation/Resolution sheet, has at the top of it, it

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says, "Investigation," and it states there that the
"investigation consisted of interviews with welders and
supervisors." And that was conducted by your, Mr. Llewellyn,
correct?

A (Witness Llewellyn) Yes, sir.

end T9

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1 Q All right.

2 "Review of appropriate codes and procedures,
3 testing of weld samples and evaluation of the
4 chemistry of Catawba's process fluids in
5 regard to stress corrosion cracking."

6 Now let's work backwards: Mr. Ferdon, you did the
7 part of that that had to do with evaluating the chemistry
8 of the Catawba process fluids, correct?

9 A. (Witness Ferdon) Correct.

10 Q That's what you told me in your deposition,
11 correct?

12 A. Correct.

13 Q And that is the portion of the final report that
14 you had approval over and that you approved, correct?

15 A. Correct.

16 Q And none other.

17 A. I reviewed the portion of the final report
18 dealing with testing of stainless steel.

19 Q All right.

20 And did you approve the entire portion of the
21 report dealing with interpass temperatures?

22 A. I concurred with it, yes.

23 Q Now working backwards on that same paragraph,
24 it says the next item was testing of weld samples.

25 Now is all of the testing of weld samples that

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1 was performed set forth in the investigation resolution
2 of concern document in the August 3rd final report,
3 Mr. Kruse?

4 A. (Witness Kruse) I would have to see that document
5 to make sure.

6 Q. You have your August 3rd report in front of you,
7 don't you?

8 A. Yes, I do.

9 Q. Is it set forth there--all of the testing that
10 was performed set forth in that August 3rd report?

11 A. Yes, a summary of all the testing we conducted
12 is set forth in this report.

13 Q. A summary of all the testing.

14 A. Yes.

15 Q. And where is that summary described?

16 A. In several locations.

17 Q. How about showing me where they are, please?

18 A. Bear with me and I will go through it with you.

19 First under "b" under page 1-3, it says:

20 "Testing of weld samples" --

21 Q. Say it again now, "b."

22 A. Yes.

23 Where it says "testing of weld samples," that
24 indicates we conducted some testing.

25 Q. Again that is the same language I was quoting

1 under Investigation. The language says "testing of weld
2 samples," so that is the reference on line two of that
3 page, is that correct?

4 A. That's correct.

5 Under item 2, same page, testing of cooling
6 times. It is underlined --

7 Q. I see it.

8 A. Testing of cooling times.

9 Would you like me to elaborate on that?

10 Q. Not yet.

11 A. The results of the testing of cooling time go on
12 through page i-4.

13 The next instance would be item 4, page i-5,
14 testing of stainless steel.

15 Q. Okay. Page i-5.

16 (Pause.)

17 A. Under the evaluation of Catawba's process fluids
18 section there is a statement that would reflect our statement,
19 it says --

20 Q. You've got to give me a reference, please.

21 A. Page i-7 at the bottom. This may be a reference
22 to it:

23 "The possibility of sensitized welds
24 does not significantly increase the probability
25 of stress corrosion cracking at Catawba."

1 Q How does that reflect testing?

2 A We evaluated our tests that we did.

3 Q Okay.

4 Anything else now?

5 A In the resolution, page i-8, Item C, the
6 second sentence says:

7 "Further interviews and testing
8 demonstrated that in all likelihood these
9 allegations were not actual violations.
10 In short, there is little evidence to
11 confirm the allegations that interpass
12 temperatures were exceeded by craft."

13 That is the result of our testing.

14 Q All right.

15 A "In any event, if interpass
16 temperature requirements were violated
17 it is clear that the practice was not
18 widespread but consisted of isolated
19 incidents."

20 That may not fall under the testing.

21 Q All right, sir.

22 A It really would be the next sentence that would
23 really detail that where it says:

24 "Moreover, if interpass temperature
25 requirements were violated, as specifically

1 alleged, tests and research reflect that it
2 would not have an adverse effect on the
3 integrity of the welds in question."

4 Q Anything else?

5 A That would be it.

6 Q All right, sir.

7 A (Witness Hollins) Excuse me, I believe there is
8 one other reference he may have missed. On page 1-6, in
9 the middle of the page there there is a reference to our
10 field testing.

11 Q Where is that, sir?

12 A Almost in the middle of the page there is a line
13 there that says "250-750," the following sentence --

14 A (Witness Kruse) Maybe I can help. Go up to
15 that paragraph.

16 I think I indicated, Ray, that that was contained
17 in the entire section 4, testing of stainless steel. That
18 whole chapter, if it were detailed, summarizes what we did.

19 Q Mr. Kruse, in fact as part of your work you
20 went out and identified a sample of welds that were
21 performed by Arlon Moore's crew on critical safety systems
22 at the Catawba plant and performed a field metallographic
23 examination of those welds for sensitization as per the
24 ASTM practice A acceptance criteria for sensitization of
25 stainless steel, did you not?

1 A. We set out to determine --

2 Q. Could you answer the question yes or no and then
3 please feel free to explain?

4 A. The answer is yes, we set out.

5 And the explanation: We set out to determine
6 if the interpass temperature had been violated. We employed
7 ASTM A 262 practice A in that evaluation.

8 Q. And you in fact determined, did you not, that
9 from the sample of Arlon Moore's crews welds that you
10 examined that there were welds in the field on critical
11 safety systems that failed to meet the ASTM 262 practice
12 A acceptance criteria for sensitization, isn't that correct?

13 A. There were welds that failed to meet ASTM A 262
14 practice A. However that in itself does not tell us
15 whether or not interpass temperature was violated nor does
16 it say anything about the quality of the welds in question.

17 Q. Well sir, it took us quite some time to figure
18 out exactly what you had on this, and is there anywhere
19 reflected in your August 3rd report, Mr. Kruse, that you
20 in fact sampled Arlon Moore's crews welds that were actually
21 in place in critical safety systems of the plant and found
22 a number of those to be rejectable or to fail to meet
23 the acceptance criteria of that practice?

24 A. It is not spelled out specifically in those
25 words that we tested that crews' welds, no.

1 Q I want to pass a document over to you and it
2 has some markings on it that are not on the original but
3 it is the copy I have got.

4 Pass that along, first to Mr. Ferdon.

5 (Document handed to witness.)

6 Mr. Ferdon, can you identify that as a document
7 with which you are familiar?

8 A. (Witness Ferdon) Yes.

9 Q What is that, sir?

10 A. This is a note that I made to myself after
11 reviewing the replicas of the welds that we looked at in
12 the field.

13 Q All right, sir.

14 Do you have another copy of that with you?

15 A. No, I don't.

16 MR. GUILD: Judge, I am not sure exactly where
17 this can be found in the record because I don't know
18 exactly what it came out of. It came out of the stack
19 of technical documents and it is approximately 50 documents
20 down. It is a schedule. Let me hand it up to the Board.

21 (Document handed to the Court.)

22 JUDGE KELLEY: Can I ask the Applicants whether
23 what I will call stack two -- I think you know what I mean
24 by that -- would you have another set of stack two? Not
25 immediately, but do you think you could find us such a set?

1 MR. MC GARRY: Sure.

2 JUDGE KELLEY: I think that is where this came
3 from, is that right?

4 MR. GUILD: Yes, sir, that is my understanding.

5 BY MR. GUILD:

6 Q Now on the document, Mr. Kruse, there is some
7 handwriting in some pencil --

8 A (Witness Kruse) Which document are you speaking
9 of?

10 Q Mr. Ferdon, excuse me.

11 Mr. Ferdon, there is some handwriting in pencil
12 and it appears -- it is not your handwriting, correct?

13 A (Witness Ferdon) Correct.

14 Q You prepared the original of this document,
15 did you not?

16 A I did.

17 Q In the left-hand column there are a series of
18 weld numbers, are there not?

19 A There are.

20 Q And I think those welds -- are there 27 in
21 number?

22 A Yes.

23 Q And the second column is entitled, "Acceptable,"
24 correct?

25 A Yes.

1 Q And the third column "PIX."

2 A Yes.

3 Q Fourth, "Carbon," fifth, "Welder," and a sixth,
4 "Size," correct?

5 A Correct.

6 Q Now are the weld numbers that were identified
7 as being performed by members of Arlon Moore's crew on
8 critical systems in the plant during a particular period
9 of time?

10 A With the exception of a couple of -- what do I
11 want to say? -- inversions of numbers, yes, these are the
12 ones that we looked at.

13 Q Okay. And the "acceptable" reflects acceptable
14 as to the standard for sensitization, the ASTM practice,
15 correct?

16 A Under "acceptable," "y" stands for "yes," that that
17 weld met the acceptance criteria as spelled out in A 262.

18 Q And the "n" reflects your judgment that the
19 welds in question failed to meet that acceptance criteria,
20 correct?

21 A Correct.

22 Q Now there are some "y's" in parentheses and I
23 think you explained to me in your deposition that those "y's"
24 indicate your subsequent view, upon consultation with
25 Mr. Kruse and in comparing your results with his results

1 and a reconsideration per the acceptance criteria, correct?

2 A. Correct.

3 Q And in some instances you changed your mind from
4 an "n," not meeting acceptance criteria, to a "y" indicating
5 that in reconsideration it did?

6 A. Correct.

7 Q And in some cases -- two cases you went from a
8 borderline to unacceptable?

9 A. Correct.

10 Q That is questionmarked to a "y."

11 And in two cases you -- in three cases you
12 continued to hold the view that the welds in question
13 failed to meet the acceptance criteria?

14 A. Of A 262 practice A, yes.

15 Q Now how did you understand the definition of
16 critical that was employed in obtaining the sample of welds
17 that were field examined, Mr. Ferdon?

18 A. The critical welds were welds from this group
19 of Arlon Moore's welds that were most important for safety
20 considerations.

21 Q All right.

22 And what was the working definition of critical,
23 how was that selection made, if you know?

24 A. In that evaluation we turned -- or rather
25 construction turned a list of welds and locations of welds

1 over to our systems people and they identified locations
2 that were the most important with regard to safety concerns.

3 Q All right.

4 Does anybody have any more specific, clearer
5 definition of the term "critical," as it was employed in
6 the selection methodology? Mr. Llewellyn, do you know?

7 A (Witness Llewellyn) To be more specific than
8 that, my general understanding is we supplied them a
9 population of welds of Moore's and asked them to look at
10 what they felt would be critical welds that would be
11 necessary to examine.

12 How design termed "critical," I guess I would
13 have to rely on Mr. Ferdon for that information.

14 Q Did you understand, Mr. Ferdon, that those were
15 welds that were involved in small break loss of coolant
16 accident analysis?

17 A (Witness Ferdon) No, not necessarily.

18 Q Well did it have some other definition for
19 including one?

20 A Just what I said, out of that population they
21 were looking for welds that they felt were most important
22 on the basis of safety concerns.

23 Q Mr. Kruse, what is your understanding of the
24 term as it was employed for this sample?

25 A (Witness Kruse) It would be consistent with

1 Mr. Ferdon's. I have no other knowledge beyond that.

2 Q You weren't aware that they were welds on systems
3 that were included in a small break LOCA analysis?

4 A No. If you recall in my deposition I speculated
5 on that but I wasn't sure.

6 Q All right.

7 Something further, Mr. Ferdon?

8 A (Witness Ferdon) No.

9 Q But at any rate you understood them to be critical
10 welds and that was what your request was to design engineering,
11 Mr. Ferdon?

12 A Right.

13 Q Now tell me what you specified in terms of the
14 sample. You had a computer run of all Mr. Moore's crews'
15 welds for what period of time?

16 A (Witness Llewellyn) Let me speak to that,
17 Mr. Guild.

18 What we did is we found -- we were concerned with
19 all of the individuals who had worked on Mr. Moore's crew
20 in a given time frame in this investigation.

21 Mr. Hollins supplied me with a list of all of
22 the individuals who had worked on Mr. Moore's crews and
23 the time frames in which they had been employed under
24 Mr. Moore's supervision.

25 We developed a computer program to determine all

1 of the ASME welds of a two-inch and under diameter that
2 were done by those welders while under the supervision of
3 Mr. Moore. That was how we determined it.

4 Q What time period does that apply to?

5 A That would have been somewhere around that
6 Memorial Day weekend.

7 Q I'm sorry, over what period of time --

8 A The time of when that was taken, it was 1980 to
9 the present, I believe. Mr. Hollins may be able to
10 correct me.

11 A (Witness Hollins) That is correct.

12 Q What what was the size of that population, two-
13 inch and under, Arlon Moore's crew?

14 A (Witness Llewellyn) I don't remember the exact
15 number. Perhaps somebody else could help me with that
16 information.

17 A (Witness Kruse) It was on the order of 2000,
18 as I recall.

19 Q All right, sir. Thank you, Mr. Kruse.

20 And then from about a sample of 2000 -- now
21 these are welds of this description in critical systems --

22 A (Witness Llewellyn) No, those are the total
23 welds that fall under the two-inch diameter and under
24 criteria.

25 Q What class welds are those?

1 A. Those would be Class A, B and C as defined by
2 our piping classes.

3 Q. All safety-related welds?

4 A. Yes, sir, they are safety-related welds built
5 to ASME code.

6 Q. Fine.

7 So a population of 2000. Then what did you do?

8 A. We took the systems that were designated and a
9 list of those welds for that information to the design
10 engineering group, specifically the systems group, to have
11 them evaluate and make a determination which welds they
12 said were critical.

13 Q. And that reduced the population to what?

14 A. (Witness Kruse) I believe the population was
15 361.

16 Q. All right.

17 And you sampled from that population, correct?

18 A. Yes, we did.

19 Q. And what was the basis for the sample that you
20 chose from the population?

21 A. The most specific basis-- we have a statistician
22 on-site and when we were faced with looking at welds in the
23 field -- and the procedure we had developed was a time-
24 consuming procedure, it involved per weld approximately 10,
25 12 man-hours. We knew there would be no way that we could

1 test all 360. We needed to come up with a manageable number
2 that we could conduct.

3 We have a statistician on-site and I gave him
4 the parameters as I knew them and asked him to come up with
5 a number that might have a statistical bearing.

6 We didn't set out to do it in strictly a
7 statistical manner.

8 Q Who was that gentleman that you consulted?

9 A The gentleman was Mr. John Hurst, that would
10 be in industrial engineering.

11 Q And Mr. Hurst supplied you with a number that
12 would represent the sample that he thought was appropriate
13 to give you guidance?

14 A Yes.

15 Q And that sample size was how many?

16 A 23.

17 Q Did Mr. Hurst provide you information from which
18 you could determine a confidence level for the sample that
19 you performed?

20 A I don't recall that information.

21 Q How about error level?

22 A I don't recall that either.

23 Q Did you get any assurance from Mr. Hurst that
24 you would be able to generalize from the findings of the
25 sample?

1 A. I don't believe we spoke of that matter. I was
2 more concerned with how many welds I would need to be
3 testing and to get about the business that I had at hand.

4 A. (Witness Hollins) Excuse me, Mr. Guild, I seem
5 to remember a conversation with Mr. Hurst and we were talking
6 about a 99 percent confidence level with a 1 percent error
7 rate.

8 Q. On this subject?

9 A. Yes, sir.

10 Q. So you, Mr. Hollins, wanted to be able to
11 generalize from the sample that you were getting at that
12 level of confidence?

13 A. I was looking to Mr. Hurst to give me some
14 guidance in was I taking an adequate sample in this case.

15 Q. So you selected your sample, you had 23 that
16 you needed to find and I think you told me, Mr. Kruse or
17 Mr. Ferdon or whoever it was told me you had welds on
18 index cards -- maybe Mr. Llewellyn -- and more or less at
19 random reached in and selected these welds out of the
20 population of 360 and came up with your number of --

21 A. (Witness Kruse) That was me in my deposition.

22 Q. Is that correct, Mr. Kruse?

23 A. That is basically how it happened, yes.

24 Q. And you didn't use a random number or anything
25 like that, you just did it at random?

1 A. Yes.

2 Q. An informal process?

3 A. Yes.

4 Q. And you went out to the field and looked for
5 these welds?

6 A. That's correct.

7 Q. And you determined -- Did you find all of them?

8 A. We found all of the welds on our first cut and
9 our pulls from the cards. We would occasionally run across
10 a weld that was inaccessible. We needed some room to be
11 able to perform this observation; some welds were behind
12 other pipes or behind other devices in the plant, a
13 person couldn't physically get in there to test that weld.
14 This would be because at the time that weld was made that
15 space would have been clear but subsequently equipment
16 would have been put in place obscuring that particular weld.

17 Q. Are the inaccessible welds indicated on this
18 sheet reflecting Mr. Ferdon's results?

19 A. Two of the inaccessible welds are reflected on
20 that sheet.

21 Q. Were there other inaccessible welds that aren't
22 reflected?

23 A. As I recall there may have been some others, yes.

24 Q. How many others?

25 A. I would guess about a dozen. That's a rough

1 figure.

2 Q So you had to go back and select more out of your
3 population to arrive at ultimately your desired sample
4 size?

5 A Yes.

6 Q And that reselection or recut was based on
7 findings welds that were inaccessible?

8 A That's true.

9 Q Do you have documentation of the welds that you
10 found to be inaccessible?

11 A No.

12 Q Did you obtain any documentation?

13 A No, that card went face down and we went back
14 to the card file.

15 Q You list two welds that are inaccessible --
16 Mr. Ferdon does on his sheet there and you don't list the
17 other approximate dozen.

18 Why do you list the two that are down there,
19 Mr. Ferdon?

20 A (Witness Kruse) Perhaps I could answer that
21 better than Mr. Ferdon.

22 Bear in mind at the time we were beginning this
23 evaluation representatives from the Nuclear Regulatory
24 Commission came down and visited us to audit our procedure
25 to make sure that our technique was viable and that what we

1 were seeking to find could indeed be found.

2 In that conversation it was suggested that we
3 look for a specific welder's welds and put his welds into
4 the sample in addition to the sample size that we had
5 already arrived at.

6 Q That's what it would be?

7 A No, that's....

8 Q Welder B is who the NRC said you should look at
9 particularly because of his expression to them of a concern
10 that he had violated the interpass temperature controls,
11 correct?

12 A Yes, to the extent that that we knew who
13 Welder B was.

14 Q Excuse me, that was a yes to that question?

15 A The answer was yes but it is qualified to
16 to the extent that we knew who Welder B was.

17 Q All right.

18 A (Witness Llewellyn) Mr. Guild, may I interject
19 a comment along that path.

20 I was the one charged with the responsibility
21 of doing the technical interviews. When I interviewed
22 one individual, he expressed to me concerns that were along
23 a similar nature to that as described to us by Welder B by
24 the NRC.

25 Based upon that, the information that we had

agb/agb20

1 from the individual that we said said these items, the
2 NRC recommended to us to go out and look further at his
3 work. We had no knowledge of whether that individual was
4 Welder B or not. Obviously we may have personal opinions
5 whether he is or not, but we have no knowledge who Welder B
6 is to this day.

7 Q And you knew who that individual was from having
8 interviewed him?

9 A Yes.

10 Q And you got a stencil number from having
11 interviewed him, correct?

12 A Knowing the individual, I can determine anybody's
13 stencil number that is a qualified individual, yes.

14 Q All right.

15 And that individual is reflected on this sheet
16 as stencil number 248, is he not?

17 A This sheet of welds here?

18 Q Yes.

19 A Yes, sir.

20 Q So you sought to add to your sample of 23, welds
21 that were performed by who you believed to be Welder B,
22 correct?

23 A Who expressed some concerns about interpass
24 temperature violations on the magnitude that we felt needed
25 additional inspection through this testing mechanism.

1 Q There is no mystery here, the chain is clear.
2 Mr. Czajkowski and the NRC people said you ought to do a
3 specific sample of Welder B welders -- and they used that
4 word in a public report, they say Welder B's welds.

5 And you set out to determine who Welder B was
6 and did so by lining the affidavits up, you understood
7 who it was, you identified his stencil number and you went
8 and sampled his welds in specific, did you not?

9 MR. MC GARRY: I am going to object to the
10 question, it is is a mischaracterization of what the witness
11 has said.

12 MR. GUILD: I would like the witness to answer
13 the question.

14 MR. MC GARRY: I am objecting to the question and
15 I have a right to state my grounds.

16 The witness has characterized the events as
17 he did not know -- to this day he does not know who Welder
18 B was. What he did, he took an interview that he had
19 conducted which raised concerns and he worked off that
20 particular interview.

21 MR. GUILD: I think it speaks for itself. The
22 point is, Mr. Chairman, that the NRC said you ought to
23 sample Welder B's welds. They tried to figure out who
24 Welder B was and using the information available to them
25 they selected stencil 248.

agb/agb22

1 That is correct, is it not, Mr. Kruse?

2 WITNESS KRUSE: That essentially is true.

3 JUDGE KELLY: Okay.

4 BY MR. GUILD:

5 Q Having done that, did you try to sample for
6 any other, other than in general looking for the Arlon
7 Moore welds that you described?

8 A (Witness Kruse) No.

9 Q Now you found that welds performed by Welder B,
10 by stencil 248 were in fact rejectable or failed to meet
11 the acceptance criteria of the ASTM practice 262 A, is
12 that correct?

13 A That's true.

14 Q And those welds are indicated on Mr. Ferdon's
15 chart as what, would you read those weld numbers for us,
16 Mr. Ferdon or Mr. Kruse, either one?

17 Mr. Ferdon, it is your work, why don't you read
18 it, please?

19 A (Witness Ferdon) Okay.

20 Weld NM5524, my list here shows that that was
21 done in joint with Welder T90 and 248.

22 Q All right, sir.

23 A And that is the only one of 248's that I had any
24 problem with.

25 Q All right.

agb/agb23

1 Well you wound up discovering that you had made
2 some transposition errors in your weld and stencil
3 correlations, correct?

4 A. Correct.

5 Q. Have you made a correction to those correlations?

6 A. Not since then. Mr. Kruse has reviewed his list
7 and I believe he has it correct.

8 Q. Mr. Kruse?

9 A. (Witness Kruse) We provided a corrected list of
10 stencil numbers to our attorneys on Friday when we noticed
11 the discrepancy.

12 MR. GUILD: They haven't provided that to me.
13 Do either you or the attorneys have the corrected list?

14 MR. CALVERT: I believe Mr. Rutledge has it.
15 I gave it to you Friday.

16 BY MR. GUILD:

17 Q. This is from a different schedule, this is
18 not a correction of Mr. Ferdon's work.

19 A. (Witness Kruse) It is a correction of a table
20 that I worked from when I did my evaluation.

21 Q. All right.

22 Based on that corrected table, Mr. Ferdon,
23 can you tell me which welds done by stencil 248 were found
24 to not meet the ASTM practice A acceptance criteria?

25 A. (Witness Ferdon) First off, looking at the

agb/agb24

1 corrected table, the weld number I just read you was
2 shared by T90 and 542.

3 Q T-nine-zero and 542?

4 A Excuse me, T-nine-zero and 542.

5 Q Okay.

6 A And the other two welds -- and that would make
7 1NM56-8 --

8 Q Wait a minute, what are you reading now? These
9 are welds that were 248's?

10 A That were 248's.

11 Q That were rejected.

12 A 1NM56-8 was not acceptable for A 262 practice A.

13 Q We will use your word, not acceptable.

14 What other welds by 248, Welder B, were not
15 acceptable per that ASTM criterion?

16 A That was it.

17 JUDGE KELLEY: Mr. Guild, I think it would be
18 useful to finish this line if we can. On the other hand,
19 if you can give me an idea of how much longer it will
20 take --

21 MR. GUILD: Not much longer, Mr. Chairman.

22 JUDGE KELLEY: What does that mean?

23 MR. GUILD: 15 minutes.

24 JUDGE KELLEY: This panel has been in place for
25 an hour and 20 minutes. I would like to get us all out of

1 here in ten minutes or so.

2 BY MR. GUILD:

3 Q Mr. Kruse, other welds by 248 that did not meet
4 that acceptance criteria?

5 A (Witness Kruse) I don't recall any.

6 Q I am concerned now about transposition of numbers
7 and I want to make sure that we have it absolutely certain
8 which numbers were rejectable and whose welds they were
9 to the extent we can figure it out.

10 A I supplied a corrected list that had two minor
11 corrections on it from a list that I made. I don't have it
12 right at the moment but I am sure it was provided to you.

13 It was important that I do it that evening,
14 supply it, and I did that.

15 Q I am looking at a list -- I would have to share
16 it with you, I only have one copy.

17 MR. MC GARRY: We have one.

18 (Document handed to the witness.)

19 BY MR. GUILD:

20 Q Mr. Kruse, do you have it?

21 A (Witness Kruse) Yes, this is it.

22 Q I see two changes on my copy and only two,
23 1BB130-19 to change from stencil 289 to 239.

24 A Yes.

25 Q All right.

1 And the other change is an addition on 1NV128-7,
2 towards the bottom of the page you added stencil --

3 A. B09.

4 Q. -- B-zero-nine.

5 So you made no changes that affected stencil
6 248, did you?

7 MR. JOHNSON: Could you just back up a second
8 and repeat the weld number, that last one?

9 MR. GUILD: Sure. It is 1NV128-7.

10 MR. JOHNSON: And that was changed from what?

11 MR. GUILD: The additional stencil number of
12 B09 was added.

13 MR. JOHNSON: Thank you.

14 WITNESS FERDON: If you are talking about did
15 I correct this document (displaying document), no, I did
16 not reorder these to match up with Brian's. I can tell
17 by looking up the weld number and going back to his list
18 what the corrected welder stencil number is.

19 MR. GUILD: Let me put it this way:

20 Mr. Chairman, I want to get this as clear as
21 we possible can, it is somewhat detailed and I know it is
22 numbers, but this is a table of Arlon Moore's crews' welds.
23 There were errors in transposition.

24 I would ask that if Applicants could supply an
25 accurate version of this list that accurately assigns the

1 numbers that we would all have something before us that
2 didn't have simple transposition errors in it.

3 MR. MC GARRY: You have got that list. That is
4 the list. The one that Mr. Rutledge handed to you.

5 MR. GUILD: What I am looking for is a correction
6 to Mr. Ferdon's work.

7 MR. MC GARRY: Mr. Ferdon, I understand, adopts
8 that correction.

9 BY MR. GUILD:

10 Q Mr. Ferdon, go through you list and tell me
11 what changes then are necessary from your test results as
12 a result of learning of transposition errors, please.

13 A (Witness Ferdon) From my test results?
14
15
16
17
18
19
20
21
22
23
24
25

e AGB#10
ST#11flws

#11-1-SueT 1

Q I understand, 25 samples actually tested?

2

A (Witness Ferdon) Correct.

3

Q Now, of those that you actually tested, in your first cut, Mr. Ferdon, you found four welds that failed to meet the acceptance standard for sensitization, correct?

5

6

A On a first look-through I found four that I felt were questionable or rather did not look like they met the standard, yes.

7

8

9

Q Well, sir, when I asked you this question in your deposition, you told me that you found four that did not meet the acceptance criteria per ASTM 262 Practice A.

10

11

A That was my first interpretation of the results.

Q And you told me that you then consulted and you found two that you put question marks by, correct?

A Correct.

Q And you characterize the Ns, the rejectables, the no's, if you will, as displaying ditching as that term is employed in the Practice standard, correct?

13

A Correct.

Q That's what you told me, correct?

21

A Correct.

22

Q All right. And you described the questionable welds as reflecting what level of sensitization?

23

24

A A border line between the dual structure and ditched structure.

25

#11-2-SueT 1

Q Border line ditching is what you told me,
2 correct?

3 A It was border line in my mind as to whether or
4 not they did not meet the acceptance criteria.

5 Q All right.

6 A (Witness Kruse) Perhaps I could contribute
7 something here.

8 Q Well, Mr. Kruse, I am going to turn to you in
9 one second right now, and let's look at your results. Okay.

10 MR. MC GARRY: Just a minute. If the witness
thinks he can make a contribution to that answer I believe
he is entitled to make it.

MR. GUILD: Mr. Chairman, I'm asking Mr. Ferdon
about his work, and I'm really not soliciting an answer from
another witness on that point.

JUDGE KELLEY: You may not be soliciting it but
you are dealing with a panel. If this gentleman can add
13 to that answer he can do that.

MR. GUILD: Well --

JUDGE KELLEY: Go ahead and make your contribu-
21 tion, sir.

22 WITNESS KRUSE: You need to scrutinize Practice A
23 and look at the example structures that are in that Practice.
24 They show metallurgical structures that are clearly defined
25 as acceptable and rejectable. Okay.

#11-3-SueT 1

2 We looked at our structures and ours weren't quite
3 as clear. We saw evidence of attack at grain boundaries that
4 resembled the ditched condition that they called unacceptable.
5 However, if you read the Practice, it says a ditched condi-
6 tion shows all grains completely surrounded with this ditching
7 phenomenon.

8 In some of these questionable calls, we found
9 this wide ditching phenomenon that resembled a ditched
10 condition they show in the Practice. We couldn't find the
11 grains completely surrounded. Therefore, you are at a
12 dilemma.

13 You say: Well, do I strictly go by the fact that
14 it is completely surrounded or do I go by the fact that it
15 looks like a ditched structure. That's where the difference
16 came between our two interpretations.

17 BY MR. GUILD: (Continuing)

18 Q All right, sir. Now I want to turn -- does that
19 complete your answer?

20 A That completes my answer.

21 Q All right, sir. Now, looking at your results,
22 Mr. Kruse, you looked at the same field welds, did you
23 not?

24 A That's true. And we provided --

25 Q Did you look at replicas?

A -- photomicrographs of the replicas of the field

#11-4-SueT 1

welds in discovery.

2

Q I understand. Yes, sir. And we finally figured out those, and there were some errors in the reproduction of those and --

4

5

A That has since been corrected.

6

Q Yes, it has been corrected. You did that Friday or Monday or --

7

8

A Yes.

9

Q But you did yourself examine the replicas?

10

A That's true.

Q And the results of your examination are reflected on a table that is entitled "Welds Requiring Metallurgical Evaluation," correct?

A That's true.

Q And that's the table that you added the corrections to correct for erroneous stencil numbers, right?

A Yes.

Q All right. And in the comments column in that, you have in your hand, ACC for acceptable for that practice?

A That's my code in the comment section, yes.

Q And that's what that means, correct?

A That's what that means.

Q All right. You have REJ, and that stands for rejectable?

A That's my code for, it does not meet Practice A.

#11-5-SueT 1

Q And it means rejectable, right?

2

A No. It means that is my code that it does not

3

meet Practice A as a convenience.

4

Q All right. It's a convenience. The letters are

5

REJ or short for reject?

6

A That's basically true, but it's a shortening.

7

Bear in mind that Practice A is merely an acceptance standard

8

and not a basis for rejection of welds in any way, shape

9

or form.

10

Q Okay.

11

A As clearly spelled out in ASTM A-262 Practice A,

that is true.

12

Q All right. Now, you found two welds that failed

to meet that acceptance criteria, correct?

A Yes, I did.

Q And would you identify those welds, please?

A 1 NM-5524 and 1 NM-8522.

13

Q All right. Now, what is the NM system, anybody

on the panel?

A (Witness Mills) Nuclear sampling.

14

Q Okay. And would you describe what that is, Mr.

Mills?

15

A Take samples from the primary coolant system.

16

Q All right. And those lines are high pressure

17

lines?

#11-6-SueT 1

A Yes, sir, in some cases.

2

Q Can you give me -- how high pressure approximately?

3

A In some cases, a design condition to 2500.

4

Q Pounds per square inch?

5

A Yes.

6

Q All right. And the welds we are talking about

7

here in the NM system, what type of pipe are we talking

8

about?

9

Mr. Ferdon or any of the gentlemen who might

10

know?

A (Witness Kruse) Stainless steel.

Q Stainless steel? What size? What diameter?

A The NM lines are almost all one-half inch

schedule 160.

Q All right. That's heavy wall, small diameter

pipe, correct?

A Yes. There may have been -- one of those may have

13

been a thin wall. I don't recall.

Q And in the column on your schedule, Mr. Ferdon,

that is entitled "Carbon" does that indicate the percent

21

weight carbon?

A (Witness Ferdon) Correct.

Q And did you find that the rejectable welds or the

24

welds that failed to meet the ASTM acceptance criterion

25

were generally of higher carbon content?

#11-7-SueT 1

2 A We didn't have any direct evidence, but you
could -- our results indicated that that was so.

3 Q Your results indicated, for example, that the
4 weld 1 NM-5524 has a .075 percent carbon content, correct?

5 A Correct.

6 Q And that's -- a quick scan, it appears to be
7 the highest carbon content on your schedule of sample
8 welds, doesn't it?

9 A Correct.

10 Q And you indicate that 1 NM-568 has .073 percent
carbon content, high carbon content?

Correct?

A Correct.

Q All right. Now, when you found these results,
gentlemen, the welds of Welder B's crew, of Arlon Moore's
crew, that failed to meet the ASTM acceptance criterion,
did you expand your sample to look at other welds that either
19 were done by other members of Mr. Moore's crew or by Mr.
Moore's crew in other parts of the plant, other critical
systems, maybe the rest of your population of 361?

20 Did you conduct any additional field examination
of welds and safety systems at Catawba?

21 A (Witness Kruse) No, we did not.

22 Q All right. Did you tell Mr. Czajkowski from
23 Brookhaven Labs of the results of this work?

#11-8-SueT 1

2 Did you show him, Mr. Ferdon, your table, or
3 Mr. Kruse, your table?

4 A Not in that time frame, no.

5 Q All right. This time frame was about July 11th;
6 is that right, around July 11th?

7 A That would be approximate. Yes. In the summer-
8 time.

9 Q And you had met with Mr. Czajkowski on the 20th of
10 June, had you not? He made a site visit to Catawba, had he
11 not?

12 A Yes. He came down at the very beginning of our
13 evaluation. We had probably evaluated one or two welds prior
14 to his arrival. He came down to audit our technique and
15 make sure it was a viable technique and we would be able to
16 determine what we needed to determine.

17 He had the opportunity to come out in the field
18 and watch us conduct the physical evaluation, including
19 taping the replica which is what we use to do the evaluation.
20 And he made some comments about improvements in our technique,
21 minor comments.

22 And we had an exit interview with Mr. Czajkowski,
23 and that's the last interaction I had with him.

24 Q And that was about June 20th?

25 A That would be approximate, yes.

Q All right, sir. Now, Mr. Czajkowski made the

#11-9-SueT 1

2 observations reflected in his report, reflected in the notes
3 of the meeting that you had with him, that because of the
4 high carbon content at Catawba in some of these systems
5 you ought to perform an in-plant examination of welds in
6 place, did he not? A sample?

7 A I don't recall exactly --

8 Q Words to that effect, sir?

9 A Yeah. I remember the specific recommendations
10 that he made, or some of them. And that's about all.

11 He provided a report later on and I think we
12 got the results via telephone, some preliminary results.
13 And that's about all I remember.

14 Q All right. I'm looking at a July 19, '84 memo
15 to file, and it's Steve Ferdon, Engineer Associate, and at
16 Page 3, the NRC representative from Brookhaven, Mr.
17 Czajkowski, suggested that all of Welder B's welds should be
18 reviewed based on either the ASTM A-262-A test for sensitiza-
19 tion based on carbon content of the associated processed
20 pipe to determine the carbon level below which sensitiza-
21 tion will not occur. He recommended Hardy Solomon's work
22 which studied sensitization as a function of carbon content.

23 All right. That -- does that reflect your
24 recollection of what he had to say, Mr. Ferdon?

25 A (Witness Ferdon) Yes.

Q All right. Mr. Kruse?

#11-10-SueT 1

2 A (Witness Kruse) Yes. I believe what he was
3 driving at was if you go into very low carbon content piping
4 materials there would be no need to apply the test whatso-
5 ever because you wouldn't be able to tell anything.

6 Q All right.

7 A When you get below about .03 carbon you essentially
8 have what is known as an L-grade of stainless steel, L
9 meaning low carbon.

10 It is generally recognized that those L grades do
11 not sensitize due to the heat of welding.

12 Q Okay. Mr. Llewellyn, were you present at that
13 meeting, too?

14 A (Witness Llewellyn) Which meeting, sir?

15 Q The meeting with Mr. Czajkowski and the NRC
16 representatives that we are talking about here?

17 A I was there at the interview when he came on site,
18 yes, that morning.

19 Q That's what I mean. And you heard the conversa-
20 tion about -- you are aware of his suggestions about sampling
21 as we just described welds in the plant?

22 A I didn't take notes at that meeting. I don't
23 remember just exactly what he said.

24 Q You don't remember him saying that in substance?

25 A No, sir.

Q And you --

24

25

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JUDGE KELLEY: Mr. Guild, we really have to stop.

2

You can pursue this after lunch if you wish. We have had

3

this panel on for a long period today.

4

MR. GUILD: All right, sir. I will try to wrap

5

it up very quickly.

6

BY MR. GUILD: (Continuing)

7

Q Gentlemen, did you report the results of this at

8

any time to Mr. Czajkowski, this study?

9

A (Witness Llewellyn) Mr. Czajkowski was not

10

employed by us. Mr. Czajkowski was called, it's my understanding, by the NRC --

Q I'm sorry. I don't mean to cut you off but my

time really is limited. It's not the explanation that is really necessary.

Could you give a yes or no? And I really just

want to know whether you contacted him.

You didn't, did you?

A No. But I feel I need to explain why I said

no.

Q Okay.

A We were in constant touch with the NRC, both

Mr. Economos, Mr. Blake and Mr. Uryc were aware of what we were doing and we kept them informed.

24

We felt if Mr. Czajkowski needed to know any

25

information they would supply that information to him.

#11-12-SueT'

2 Q All right. So you did report the results of this
3 testing to Mr. Uryc and Mr. Blake? Did you say Mr. Economos?
4 I couldn't remember whether you said Mr. Economos.

5 A I said Mr. Economos, but he was not present.

6 Q All right. Did you report the results of these
7 examinations, this test, to Mr. Uryc and Mr. Blake?

8 A I believe Ray Hollins and I had a phone conversa-
9 tion after the test was completed with Mr. Blake relaying
10 our results. Also, we relayed the results to the site NRC
11 representative.

12 Q Who is that now?

13 A Mr. VanDorn. Jim VanDorn.

14 Q All right. Did you show -- did Mr. VanDorn and
15 Mr. Blake know of the results reflected in Mr. Ferdon and
16 Mr. Kruse's schedule here, the rejectable welds, the welds
17 that didn't meet the acceptance criteria?

18 A (Witness Kruse) Yes. Mr. VanDorn came to my
19 office on two or three occasions. I had all the photo-
20 micrographs of all these welds on a sheet of paper on my
21 wall for all to see.

22 Q And you showed them to him?

23 A And I showed them to him.

24 Q Did you tell him -- and you told him what they
25 were? He knew they were Welder B's crew's welds?

A Mr. VanDorn is a metallurgist and he was aware of

#11-13-SueT

what they were.

2

Q I'm sorry. He knew that they were a sample of

3

Arlon Moore's crew's welds, as you have described today?

4

A Yes, he did. To my knowledge, he did.

5

Q All right. You told him?

6

A (There was no reply.)

7

Q How do you believe --

8

A He was aware of the entire investigation and what was going on, to my knowledge. I believe he was on vacation at the time the evaluation was conducted but he was made aware when he came back. He was entire things we were doing.

Q All right. And do you other gentlemen concur in that? As far as you know, did Mr. VanDorn know this, these results, as described today?

A (Witness Llewellyn) Yes, sir, to my knowledge.

Q And Mr. Uryc knew of it?

A (Witness Hollins) I don't remember informing Mr. Uryc. I do remember talking to Mr. Blake.

Q Okay. Mr. Hollins, when you told Mr. Blake, you told him the results we have discussed today, the numbers of welds that had been found --

A I remember my conversation with Mr. Blake in very general terms. I didn't talk weld numbers and I really don't know if I talked numbers of welds.

24

25

#11-14-SueT 1

2 Q Okay. Did you relate to him that you had found --
3 that you had studied welds in Arlon Moore's crew on critical
4 systems and you found a number that had failed to meet the
5 acceptance criteria?

6 A That was the gist of my conversation.

7 MR. GUILD: All right, sir. Mr. Chairman, at
8 that point I recognize we need a lunch hour.

9 JUDGE KELLEY: Now, we are going to take a break
10 here. The Applicants have produced the papers, as I under-
11 stand it, that they were directed to produce this morning.

12 Mr. Guild, are you with me on this? I want you
13 to hear this. Mr. Riley will undoubtedly be interested in
14 this.

15 They have produced some underlying documentation
16 pertaining to technical issues and the suggestion has been
17 made -- and this Board thinks it is a good idea -- that you
18 spend part of this long lunch break -- we are going to take
19 an hour and forty-five minutes -- to go over these papers so
20 that you will be in a position to ask some questions this
21 afternoon of these ladies and gentlemen on these technical
22 issues if you want to, having looked at the papers that have
23 been produced.

24 MR. GUILD: Again, we also have the task of
25 identifying witnesses that are due over the lunch hour. We
are going to be working hard on that, trying to eat, trying

#11-14-SueT 1

to prepare a little bit of cross-examination for what we know
is ahead of us.

2

3

We will do our best.

4

5

6

JUDGE KELLEY: I suggested you begin thinking about
witnesses last evening when we asked you to cut to fifteen
last night.

7

8

9

MR. GUILD: Yes, sir. I've been doing nothing but
thinking about this case every waking hour of the day and
most of the night, sir.

10

JUDGE KELLEY: Fine. Why don't we take an hour
and forty-five minutes -- fifty minutes, until 3 o'clock.

(Whereupon, the hearing is recessed for the
luncheon break at 1:10 p.m., to reconvene at 3:05
p.m., this same day.)

11

12

13

14

15

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(3:05 p.m.)

A F T E R N O O N S E S S I O N

2
3 JUDGE KELLEY: Okay. We are going to go back into
4 session. Before we go back to the panel on cross-examination
5 the Board feels that we need to assess again where we are
6 and where we are going in terms of time available and
7 scheduling of witnesses.

8 Let me just ask first, Mr. Guild, are you prepared
9 to give an estimate of how much longer your cross would be
10 on this particular panel, this present panel?

MR. GUILD: Well, sir, I mean, it's considerable.
And I don't want to be heard to acquiesce in the time
constraints that have been decided upon by the Board. I
have considerable examination on these technical subjects
that has yet to be conducted. And I've just been handed a
stack of further documents over lunch.

So, I really can't give you a firm response about
the amount of time that we need to take to do an adequate
job of examining this panel. I'm going to try to preserve
our position for the record, and that is that based on the
time constraints the Board has established that it's just
simply impossible to do a thorough and adequate job examin-
ing on the scope of this issue.

24 Frankly, if pattern is the issue, if pervasiveness
25 is the issue, I see no other means for approaching such than

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2 by covering a range of different technical subjects that are
3 reflected in concerns.

4 JUDGE KELLEY: I think you answered my question
5 right now. You are not prepared to give an estimate as to
6 this panel.

7 We haven't decided on anything yet except we are
8 willing to spend more time than we initially stated. What I
9 think we ought to do, and propose to do, is then go ahead
10 and put out for discussion some specific time proposals for
11 which counsel can react. That seems to us to be the most
12 expeditious way to proceed.

13 MR. GUILD: Fine.

14 JUDGE KELLEY: We initially stated yesterday
15 about we initially saw as a two to three day hearing. We
16 initially stated that we would be through the first two
17 panels, this panel and the Staff panel, at the end of today.
18 It is now apparent that's not going to happen; it's not
19 realistic.

20 We also think that we have a better perspective
21 on overall time that is reasonable and necessary. And in
22 that light, we are prepared to say now that this Board can
23 sit through Friday and have a four-day hearing on this
24 matter.

25 And we asked ourselves over lunch, how can we
slice that up. And we attempted to make that. What I would

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2 like to do is have counsel react to the proposal that we are
going to put to you. And that would be along these lines.

3 First of all, we would like to finish with this
4 panel today. And that would mean, as we see it, picking up
5 now, a little after 3, and going straight through to about
6 8 o'clock. We indicated earlier we would like to go a
7 little more than a normal day, and we decided that we would
8 rather go straight through than go 6 or so, eat supper and
9 have to come back. I think most people would prefer that.
10 So, that's the approach we would like to take there.

But we would suggest that we do try to finish
this panel today, and the only way we can do that is to set
specific time limits for each segment of questioning which we
propose to do. I won't read those segments off right now.
I've got some here, but all these lawyers have been through
this before and they know what I am referring to.

Roughly I am talking about cross-examination from
now until around 6 and then the remainder of the questioning
from 6 to 8, broken up among these different parties.

We would then, tomorrow morning, reconvene at
8:30 for the purpose of swearing in the Staff panel and
having questioning of that Staff panel from that time until
around 1 o'clock, taking a lunch break of an hour and then
beginning at 2 o'clock with the witnesses that Palmetto
wishes to call. If I may interject and acknowledge that we

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2 have received from Palmetto their witness list of fifteen,
3 as previously requested, plus two names. We don't yet have
4 the six people who we would prefer to call first. I expect
5 to receive that shortly.

6 So, then we would pick up after lunch tomorrow
7 with witnesses and carry them through Thursday afternoon,
8 part of the evening and through Friday to some reasonable
9 hour.

10 And that's in gross terms what seems to us to
11 be one way to go about it. I might just add that we have
12 consistently had an approach here that parties are allocated
13 certain periods of time. If they want to spend their time
14 a little differently, that's something we can consider and
15 normally that practice would be honored.

16 We do have to have a period of time to hear from
17 the Staff, but if Palmetto, just as an example, wanted to
18 spend some more time than we proposed on this panel we
19 would like to have fewer witnesses on the other end. But,
20 that's our proposal for disucssion.

21 Is that clear enough for discussion purposes for
22 everybody? Mr. Guild, any problem?

MR. GUILD: It's clear, Judge. It's okay.

JUDGE KELLEY: Do you want to comment on that?

24 MR. GUILD: Yes, sir. Let me add sort of a minor
25 detail only because it is probably not going to cause

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2 controversy. We had a preference expressed by Dr. Michaelowski,
3 the statistician, whose testimony was distributed, to appear
4 Thursday afternoon. That's when his schedule would permit
5 his appearance. And, so he probably got lost in the shuffle
6 and perhaps likewise Mr. Nunn who we intend to offer as
7 a witness. I just put that on the table, those two
8 gentlemen --

9 JUDGE KELLEY: That's fine. I think I would only
10 say though that they would fit within the time which begins
11 tomorrow after lunch on our schedule.

12 MR. GUILD: Let me go at it this way. Our
13 fundamental position is that in order to shoulder the burden
14 that this Board in effect has imposed upon Palmetto, of
15 course, we don't have the fundamental burden of proof, of
16 reasonable assurance in this case, but in effect the gauntlet
17 is turned down to us to demonstrate pervasive pattern of
18 quality assurance breakdown as opposed to the burden being on
19 Applicants to demonstrate its absence, despite the formula-
20 tion of the burden as it may be seen in more -- you know, in
21 a more technical sense.

22 In order to essentially to be able to offer re-
23 buttal evidence -- and I'm not using rebuttal there either in
24 a term of art sense, but responsive evidence of our own in
25 order to be able to effectively cross-examine where the issue
is one of pervasiveness and scope, we just have a fundamental

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2 disagreement with the Board's view of what the limitations of
3 this hearing process should be to accommodate that burden
4 and that issue.

5 But I just want to be clear that our position is
6 understood as the foundation for my reaction to the Chair's
7 proposals. We frankly believe that the issue of foreman
8 override is one that requires considerable more investment
9 of hearing time than the Board has clearly -- is clearly
10 prepared to spend.

11 Recognizing that position, and not being under-
12 stood as waiving our view that such a scope is necessary for
13 a fair hearing, I am prepared to proceed as the Chair sets
14 out. I had frankly anticipated roughly that allocation of
15 time myself. So, I have no problem doing that if you
16 acknowledge that I object to the general time limitations that
17 are being placed on this phase of the hearing.

18 Given my statement of that position, this seems
19 like a useful way of approaching the allocation of the time
20 the Board is prepared to spend.

JUDGE KELLEY: Thank you. Mr. McGarry?

21 MR. MC GARRY: We are familiar, of course, with
22 the Board's approach based on past practice. I think our
23 reaction is favorable. We don't have any significant comments
24 except for one point, and that is that we had indicated that
25 in all likelihood we would like to call a rebuttal panel.

24
25

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2 But that depends on what transpires over the next
3 several days. But I think we should be left about an hour
4 somewhere along the way. I would tend to think that our
5 rebuttal case, if we put one on, we would endeavor to have
6 prefiled testimony the day before, which would be brief.
7 I think our case in chief would take five minutes or so,
8 maybe up to fifteen minutes.

9 JUDGE KELLEY: Well, certainly a rebuttal case
10 involving an hour or so is no problem.

11 Okay. Mr. Johnson?

12 MR. JOHNSON: The Staff is ready to go forward on
13 the basis that you outlined.

14 JUDGE KELLEY: Okay. Why don't we -- we do have
15 some times here. Let me read them off just for the rest
16 of the day. We haven't worked anything out. Obviously,
17 we are going to have to work out some understanding about
18 individual witnesses. We haven't even come to that. But,
19 just so we have some ground rules for today.

20 We are getting underway here about a quarter past
21 3, so why don't we say, pick up here in a minute on cross.
22 We will go until 4:30, take a ten minute break, pick up
23 again at 4:40, go to 5:50. So, that's two hours, two and
24 a half hours for cross. Break from 5:50 to 6. The Staff
25 questions from 6 to 6:30. The -- I'm not sure, Mr. Wilson,
but you may have to leave before then, right?

#11-22-SueF

MR. WILSON: I believe so, Mr. Chairman.

2

JUDGE KELLEY: Somebody else can take your time.

3

It will be followed in all likelihood after the Staff, then.

4

Then -- we will be a half an hour and then a ten minute

5

break. Then, say 7 or 7:10 we will have a recross opportunity.

6

We will have a -- ten minutes. We will have a redirect

7

opportunity of thirty minutes, from 7:30 to 8.

8

And if there is any further recross we will deal

9

with that when the time comes. But these time allocations

10

I think are similar to the ones we worked out last year and

worked with reasonable success for many weeks.

Any comment, criticism or proposal for change on
what I just read?

(No reply.)

MR. GUILD: I'm sorry, Judge, you asked for
comments. Those are just fine, given our basic position.

JUDGE KELLEY: Anybody else?

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1 MR. GUILD: If I can have just one moment, please.

2 JUDGE KELLEY: I might just ask Mr. McGarry. We --
3 as a matter of mechanics, we are going to get shortly here
4 the six names -- they aren't necessarily six priority, they
5 are six people who would be the first six.

6 Now, I gather they are employees. To the extent
7 that they are not employees, we will just tell Palmetto, and
8 hopefully you can work out an arrangement for contact. If
9 they are employees you will then set in motion your way of
10 contacting them other than through foremen.

11 Do you think you could have, maybe, four here
12 tomorrow afternoon?

13 MR. McGARRY: I would think so. One of the mechanical
14 things, we will use our best efforts to keep it confidential,
15 but if four of them arrive here at the same time and they are
16 wondering why they are here --

17 JUDGE KELLEY: I assume you will tell them why they
18 are coming.

19 MR. McGARRY: They know they are coming to a hearing.
20 We will tell them not to talk with one another.

21 JUDGE KELLEY: Let's go off the record for just
22 a minute.

23 (Off the record discussion ensues)

24 JUDGE KELLEY: Let's go back on the record. The
25 subject is contacting the employees.

1 MR. GUILD: We are trying to juggle a lot of different
2 balls in the air right now, and yes, I wanted a statement.
3 I think it would be useful if the Board published a statement
4 that applicant's and/or intervener could make available to the
5 individuals when they are contacted, with the design of
6 neutralizing, if you will, the influence -- I will juse that
7 term non-judgmentally -- but the affect of either counsel for
8 either side sort of influencing the witnesses approach to the
9 whole question of in-camera, confidentiality, or the substance
10 of their testimony.

11 I don't think there should be any prohibition
12 against the individuals talking to one another. For my part,
13 that is something for them to do, to choose to do or not to
14 choose to do. I don't think that they need be told who the
15 other class of people are that are being called as a witness,
16 that is not my point.

17 My point is simply they shouldn't be under an
18 injunction not to discuss the subject of their testimony. That
19 is their decision. Confidentiality is for their benefit, not
20 for anybody else's that I am aware of.

21 JUDGE KELLEY: As to the statement just on the
22 first four, if you can have something -- Ms. Garde or
23 somebody could write some shortly, that is fine. Maybe at
24 the break we can work on that a little more, and talk about
25 it more. In terms of -- that would be the mode of contact,

1 at least one of the things would be the statement that would
2 be read to them. They would be brought here.

3 Mr. McGarry, any comment on whether these different
4 witnesses see each other or not.

5 MR. MCGARRY: No, I don't think that is a problem.
6 I think, somehow, they should be instructed. I don't have any
7 problem.

8 JUDGE KELLEY: You can only carry this so far.
9 It comes a point where you just march on. Okay. Well, I
10 don't think we need discuss it any further right now. We
11 might off the record later among counsel talk about some more
12 mechanics, but we will look to a statement, and we will try
13 to get something developed. My thought is, you may have to
14 start reaching these people pretty soon.

15 MR. MCGARRY: I will tell you this. I don't mean
16 to belabor it, but I can tell you right now we are going to
17 oppose a couple of these people. Do you have the list in
18 front of you?

19 JUDGE KELLEY: We have a list.

20 MR. MCGARRY: Do you have a smaller list?

21 JUDGE KELLEY: We have the smaller list.

22 MR. MCGARRY: If you look at the first two people,
23 for instance, we see no reason why they should be called. The
24 Board is familiar with these people. Number 2.

25 JUDGE KELLEY: It occurs to me that those gentlemen

1 could be reach on fairly short notice.

2 I would just hate to have this time --

3 MR. McGARRY: We will just take that up later.

4 JUDGE KELLEY: Can't the argue that on the record
5 later on, if necessary, but not now. Otherwise, putting
6 aside those two particular people -- do you feel you have
7 to start reaching these people this afternoon, or can you get
8 them tomorrow morning if they don't have to be here until after
9 lunch.

10 MR. McGARRY: I will say this. The list of six
11 we will alert this afternoon. We can make whatever legal
12 arguments we want to make, but we will alert them if they are
13 in our employe .

14 JUDGE KELLEY: But on the alerting issue, wait
15 until we have some kind of statement, if we are going to
16 have one.

17 JUDGE KELLEY: Can we at this point resume cross?

18 MR. GUILD: Yes, sir.

19 JUDGE KELLEY: Go ahead.

20 FURTHER CROSS EXAMINATION

21 BY MR. GUILD: (Continuing)

22 Q Mr. Ferdon, over the recess I gather that you
23 examined the schedule of welds that have been field tested,
24 corrected for identification problems, welder stencil numbers
25 of those welds?

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1 A (Witness Ferdon) Yes, I did.

2 Q I was provided a copy. Do you have a copy with you?

3 A I can show you mine.

4 Q I just want you to identify these, to the best of
5 your knowledge reflect an accurate schedule of those stencils
6 and weld numbers?

7 A Yes.

8 MR. CARR: That is a new document?

9 MR. GUILD: Yes. This is a corrected version of
10 Mr. Ferdon's tape.

11 BY MR. GUILD: (Continuing)

12 Q Now, sir, Mr. Ferdon, attached to that schedule of
13 the welds from Mr. Moore's crew that you examined in the field,
14 there was a second table, and the left hand column had welders
15 stencil numbers, columns reading left to right, good, bad,
16 carbon greater than .06 percent, and that was performed by
17 you, correct?

18 A Correct.

19 Q And the -- would you explain what the identification
20 of welders --

21 A That is the welder's stencil number.

22 Q Stencil numbers from what source?

23 A From the uncorrected list on that front page.

24 Q From the uncorrected list of Moore's crews welds
25 from the first page?

1 A Correct.

2 Q What does 'good' indicate there. Hash marks by
3 individual stencil numbers?

4 A Good and bad is the code that I use to indicate a
5 more or less degree of carbide precipitation.

6 Q Good may mean less, 'bad' meaning greater?
7 Greater precipitation.

8 A Correct.

9 Q And I think we have established in your deposition
10 that the 'bads' totaled seven in number, and correlated with
11 the seven welds that you tentatively found either not meeting
12 the acceptable criteria or borderline.

13 A I believe there were six, and then there was one
14 other that I put in the bad category.

15 Q Can you identify what those additional welds were
16 that you called, 'bad?' If I show you a schedule, would you
17 know?

18 A Not from that document, no.

19 Q Do you have a document that would help you identify
20 that?

21 A Not without re-doing all the photomicrographs.

22 Q All right. The column that says carbon -- what
23 does the hash mark, 'W' indicate?

24 A I believe that is weight percent carbon.

25 Q Greater than .6 of one percent?

1 A Correct.

2 Q What is the significance of that .6 of one percent
3 figure, Mr. Ferdon?

4 A That is just an upper level figure. High carbon
5 content, in the range of carbon contents that you can get when
6 you are in the field.

7 Q I think I mispoke. It is six-one hundredths.

8 A That is what I took you to mean.

9 Q Is that the range of carbon content where problems
10 with sensitization are expected to occur?

11 A No, not necessarily.

12 Q Well, is that the standard? What is the relationship
13 between that and the standard that Mr. Czajkowski referenced
14 to when he suggested that you look at the work of a gentleman
15 that he identified in his meeting last summer, do you remember?

16 A Are you talking about Harvey Solomon's work?

17 Q Yeah, Mr. Solomon.

18 A I didn't reference that work.

19 Q What is the significance of the .06. Is there any
20 other source of that number than the high carbon?

21 A Just what I said. It is a number that I was using
22 to say anything above that I consider to have a higher carbon
23 content.

24 Q Mr. Kruse, is the .06 percent carbon content by
25 weight reflect on standards?

1 A (Witness Kruse) None that I am aware of.

2 Q Do you know why that was used?

3 A No. I don't recall seeing that document before my
4 deposition on Friday. Bear in mind, Mr. Ferdon worked with
5 me on this. His office is downtown. He may have done that
6 work downtown. I wouldn't have known what he was doing.

7 As far as the significance of the .06 other than
8 it is in the upper end of the range of allowable carbon content
9 for that grade of stainless steel, there is no significance
10 that I know of.

11 Q All right. And of the population of welder
12 stencil numbers, which would be welds worked on by the total
13 number of welders, recognizing that some welds will be worked
14 on by more than one welder. You identified ten instances
15 where that level of carbon content was exceeded, correct?

16 A (Witness Ferdon) If that is the number of hash
17 marks on there.

18 Q What was the purpose of your making this
19 analysis?

20 A I was doing a study on my own just to see what
21 the effects of weight percent carbon were on the interpretation
22 of those results.

23 Q And what did you conclude from that analysis?

24 A I couldn't draw any concrete conclusions from
25 that analysis.

1 Q Would you identify correlation between higher
2 carbon content and sensitization?

3 A I couldn't draw that conclusion from that analysis.

4 Q You didn't draw that conclusion?

5 A No, I did not.

6 Q Now, I think you can agree if you flip through
7 the remaining documents are photomicrographs that are pictures
8 of the replicas that you took of the field welds, is that
9 correct?

10 A That is true.

11 Q Mr. Kruse, can you answer the question?

12 A Yes, sir.

13 Q And I think there were additional several photo-
14 micrographs that were supplied with the supplemental discovery
15 response attached to your correct -- Mr. Kruse -- your
16 corrected welds, metallurgical evaluation?

17 A (Witness Kruse) The ones you are talking about,
18 the ones I have here, the same ones I presume -- yeah, the
19 pages with four on one, and one on the other. Those were ones
20 that were missing out of the original discovery package, and
21 inadvertently omitted. Over the weekend we had duplicates
22 printed from the negatives which I retained, and supplied to
23 you.

24 Q So, taken together with the attachments to Mr.
25 Ferdon's table, which we reviewed during the deposition, those

1 represent the photomicrographs of the replicas for each of the
2 welds that were field tested?

3 A You would have to show me the other document with
4 the photomicrographs to assure you I had a full set.

5 Q Would you do that. I want to make sure you have
6 a full set.

7 (Witness peruses documents)

8 A There is one missing. I am pretty sure --

9 A (Witness Ferdon) Remember the one on the yellow
10 sheet.

11 Q I thought you were making a copy of it. There
12 was an original print mounted on a sheet with writing underneath
13 of it. Was that reproduced in the second set?

14 A (Witness Kruse) That wasn't on the list.

15 MR.GUILD: Mr. Chairman, I apologize for the
16 difficulty. This is a particular, critical piece of
17 information, and to the extent that is something missing from
18 that full set of 12 micrographs, we would like it produced.
19 I thought we had it all.

20 JUDGE KELLEY: I would like to find it. Are you
21 satisfied that you have looked as far as you can look, or
22 do you need a little more time?

23 WITNESS KRUSE: There was another photograph --
24 photomicrograph mounted on a piece of yellow paper for purposes
25 of making a slide for a talk, and it was included in the

1 discovery pack and for some reason it was separated from the
2 pile that went with this.

3 JUDGE KELLEY: Don't we have other files.

4 WITNESS KRUSE: It should be -- it may be in with
5 some of those other pictures.

6 MR. GUILD: I don't think it was xeroxed. We tried
7 to find it during the deposition, Mr. Chairman. I have seen
8 the original.

9 MR. MCGARRY: We will endeavor to get it within the
10 next half hour.

11 WITNESS KRUSE: With the exception of that one,
12 the list is complete.

13 MR. GUILD: Mr. Chairman, I ask that these two
14 documents be marked for identification, please. Pass them
15 up, so they can pass them out.

16 First, the document identified by Mr. Ferdon,
17 consisting of 12 pages, 2 schedules, -- two additional
18 schedules, and eight pages of photomicrographs, xeroxed
19 copies of photomicrographs.

20 JUDGE KELLEY: Did that come out of Stack 2.

21 MR. GUILD: Yes, sir. And the second document,
22 three pages that Mr. Kruse has correctly entitled, Welds
23 Requiring Metallurgical Evaluation and two pages of photo-
24 graphs -- photomicrographs.

25 JUDGE KELLEY: You are marking those two separate

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1 exhibits? Do I have a number?

2 MR. McGARRY: Just one second. Your Honor, I
3 think your 144.

4 JUDGE KELLEY: 144 and 145?

5 MR. GUILD: Yes, sir.

6 JUDGE KELLEY: It is so marked.

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7 (Above referred to documents
8 are marked Intervenor's Exhibit
9 Nos. 144 and 145, for identification)

10 BY MR. GUILD: (Continuing)

11 Q Gentlemen, are those xerox copies sufficient
12 reproductions, sufficient quality reproductions of the photo-
13 micrographs for purposes of performing an examination of the
14 photomicrographs per the ASTM, Practice A, acceptance criteria?

15 A (Witness Kruse) With the exception of one of those
16 that didn't seem to reproduce well.

17 MR. GUILD: I ask that the original of those
18 photomicrographs, if there is a need for clarity, that those
19 originals be received in evidence so that we don't need to have
20 a better copy for purposes of our use and the parties use, but
21 to the extent that the quality of the copies impairs the ability
22 to reach conclusions about the acceptance of those welds, we
23 would like the best available evidence to be in the record.

24 JUDGE KELLEY: You are referring to the photomicro-
25 graphs accompanying each of the exhibits?

1 MR. GUILD: Yes, sir.

2 JUDGE KELLEY: So that is on different sheets.

3 Any comment from the Applicant?

4 MR. McGARRY: I don't know what our policy is in
5 respect to that. We will certainly make him available if
6 there is a need for someone to see them.

7 JUDGE KELLEY: I think the point is, Mr. Guild,
8 that they need to be looked at and at some point could they
9 be seen. I think Mr. McGarry is saying yes, they could.
10 That should be a satisfactory understanding on the record.

11 What you handed us, is that for the Reporter or
12 is that for our use.

13 MR. GUILD: It is the only set I have. And what
14 I propose to do is have those marked, because there was a
15 question of identification and there are a number of documents
16 we have gone through at some point today, and I want to get
17 them all identified and moved into evidence.

18 JUDGE KELLEY: 144 and 145, which one came first?

19 MR. GUILD: 144 is the column of Y's and N's on
20 the front page. That is 144. And 145 is the other one.

21 BY MR. GUILD: (Continuing)

22 Q Gentlemen, when you performed your examination of
23 these sample welds in the field that have been performed by
24 Welder B, in Arlon Moore's crew, you then went and attempted
25 to identify the heat numbers of the stainless that had been

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1 employed in the welds performed by stencil 248 that had failed
2 to meet the acceptance criteria. Is that correct?

3 A (Witness Kruse) That is correct.

4 Q You identified those heats, and determined that
5 all but one had been released to the field, and presumably the
6 piping was already installed in the plant. You identified
7 one heated material for which piping is still available
8 in the warehouse, or wherever you keep that?

9 A That is correct.

10 Q And you took that heated pipe, or a sample of
11 that heated pipe, and performed an experiment on it,
12 correct?

13 A That is correct.

14 Q And that experiment consisted of welding four
15 test socket welds, controlling for interpass temperature,
16 correct?

17 A Yes.

18 Q And one weld you allowed to cool to room temperature,
19 72 degrees?

20 A Yes.

21 Q And the other weld you allowed to cool between
22 passes to 250 degrees?

23 A Yes.

24 Q Or third to 350 degrees?

25 A Yes.

1 Q And a fourth to something in excess of 700 degrees?

2 A Yes.

3 Q And you don't know how hot over seven hundred
4 degrees, because the temp stick at 700 degrees had melted
5 at that point?

6 A Correct.

7 Q And you subjected each of those four coupons to
8 the same analysis for sensitization you employed when you
9 tested the field welds for Arlon Moore's crew?

10 A That is true.

11 Q And you determined that each of the -- three of the
12 four welds welded at 250 degree interpass temperature -- that
13 is a hundred degrees below the procedural requirement employed
14 for that material, correct?

15 A I would say that is true.

16 Q Weld welded at 250, the weld welded at 350, and
17 that is your procedural requirement for interpass temperature
18 control. The weld welded in excess of 700, each of those three
19 welds exhibited unacceptable sensitization when tested per the
20 ASTM 262-A acceptance criteria, correct?

21 A True.

22 MR. CARR: Excuse me. Each of three, or each of
23 the four.

24 MR. GUILD: Each of the three. Three of the four.

25

1 BY MR. GUILD: (Continuing)

2 Q And the only weld that met the acceptance criteria
3 was the weld that was allowed to cool to room temperature
4 between passes, 72 degrees, correct?

5 A Correct.

6 Q All right. Now, how is the result of that test
7 reflected in your August 3rd Report. Mr. Kruse, you are
8 responsible for this, I understand, why don't you tell me
9 about it.

10 A If you turn to page I-6 of the Report, the second
11 paragraph, second sentence, the results is reflected that
12 there was no appreciable difference in the severity of
13 sensitization for these ranges of interpass temperatures,
14 250, 750 degrees F. These results were confirmed by
15 subsequent field tests.

16 Q All right, sir. Now, does anywhere in -- is there
17 anywhere in your report a statement that three of those welds,
18 in fact, failed to meet the ASTM 262 Practice A sensitization
19 acceptance criteria?

20 A Specifically, no.

21 Q Well, in any other way. Generally, specifically?

22 A Generally, that statement that I just read indicates
23 that there was no difference in the severity of sensitization.

24 Q Did -- all of those were rejectable. A fair reader
25 should read that within that range of interpass temperature

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1 control, each of the specimens tested failed to meet the
2 acceptance criteria. Is that your testimony?

3 A That particular acceptance criteria, yes. However,
4 bear in mind that Practice A is only a test for acceptance,
5 not rejection.

6 If it does not meet Practice A, if it is not
7 acceptable through Practice A, other tests are indicated. That
8 is how it reads in the procedure.

9 Now, you have test welds in the field. There was
10 no way we could have performed any of the other tests that
11 were indicated, because they tend to be destructive in nature.
12 We didn't want to disturb the field pipe.

13 We set out to determine if interpass temperature
14 had been violated. We determined, based on our result, the
15 structures that we saw on the specimens in the field, compared
16 to specimens that we developed in the lab, and we concluded
17 that interpass temperature was not violated on that basis.

18 Whether or not it passed or failed Practice A,
19 essentially did not make any difference. We used that test
20 merely as a standard to apply consistently to all the weldings
21 that we tested. All the welds -- it was just a procedure to
22 get to the metallurgical evaluation to determine interpass
23 temperature.

24 Q Does that complete your answer?

25 A Yes.

1 Q And you mean to tell me it is your testimony,
2 Mr. Kruse, that the Duke Power Company report of investigation
3 published August 3rd 1984, submitted to this Board and these
4 parties, and the Nuclear Regulatory Commission, fairly reflects
5 your investigation of this issue in the results of the
6 testing that you have just described?

7 A Yes, it has.

8 Q Do you identify anywhere in your final report that
9 the welds that you tested were from a material of the carbon
10 content which we now know was present in the heat of material
11 that was tested?

12 A It wasn't necessary.

13 Q Do you identify anywhee in the report -- the
14 answer to my question is, no?

15 A No, it wasn't necessary.

16 Q Fine. Do you identify anywhere in your report that
17 the source of the heat that you identified was a weld performed
18 in the field by Stencil 248, Welder B, that failed to meet
19 the ASTM acceptance criteria?

20 A No, it wasn't necessary.

21 Q Did you disclose the information I just asked you
22 about, the source of the heat, how you identified that heat,
23 the carbon content of that heat, did you disclose any of that
24 information to the Nuclear Regulatory Commission?

25 A The test samples that we employed over the range

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1 of interpass temperatures were in my office, and they were
2 shown to various NRC persons that came by.

3 I believe Mr. Van Dorn had seen them, and I believe
4 Mr. Economos had seen them, as I recall, and I had discussed
5 at that time what we had done.

6 Q You told each of those gentlemen --

7 A What those welds were, and what we did with them,
8 yes, as I recall.

9 Q You told them the source of the heat that you used
10 to perform the test welds?

11 A I don't recall that that would be the exact
12 conversation, but I would have indicated what the high carbon
13 heat represented.

14 Q Did you tell them it was a heat that was from a
15 weld of the same heat used in a weld performed by Stencil 248,
16 who you believe to be Welder B, that you had done this lab
17 test on?

18 A I don't recall.

19 Q All right, sir. Did you report this information --
20 the results of this test, the source of material that was
21 employed in this test, the identity of the welder, Welder B,
22 by designation; name, stencil number, or any other way to Mr.
23 Czajkowski, from Brookhaven Lab?

24 A Mr. Czajkowski and I had a phone conversation the
25 other night, and I indicated the results of all our tests.

1 Specifically, I don't recall telling him that we had used the
2 heated material from the pipe that was used in one of the welds
3 welded by Welder 248, no,

4 Q Or Welder B?

5 A Welder 248.

6 Q He suggested that if you had a need to make
7 specific samples of welds performed by Welder B, is it
8 based on his stencil number, or on the carbon content of the
9 pipe, words to that effect. You made that -- he made that
10 statement to you in his June meeting with you. He obviously
11 showed an interest in that subject being the subject of
12 inquiry. He didn't -- you didn't disclose the information
13 to him?

14 A We did not disclose any information to Mr. Czajkowski
15 or others as to who we felt or who we might have felt Welder B
16 was, that I recall.

17 Q That is not my point. My point is the source of
18 the heat, of material that was employed.

19 A He wouldn't know that information.

20 Q Did you tell him?

21 A I jut told you, I had a phone conversation with him
22 the other night, and we discussed all the test results. Now,
23 the source of the heat of the pipe, I don't recall if I told
24 him where it came from exactly.

25 Q And by the other night, you mean within the week?

1 A Within this week, yes.

2 Q Did you talk to him after I took your deposition,
3 Mr. Kruse?

4 A Yes, I did.

5 Q Did you call him?

6 A Yes, I did.

7 Q Why?

8 A I had read his deposition, and I realized that
9 he hadn't been fully informed of all of our test results.

10 Q And you only learned that as a result of reading
11 his deposition?

12 A That is true.

13 A (Witness Llewellyn) Mr. Guild, if I may, keep
14 in mind what I said before we broke for lunch. Mr. Czajkowski
15 was not under our employment. We were keeping NRC informed
16 of our progress all along. We felt comfortable to employ
17 his services, and we keep him informed of what heeded to do.
18 He was doing independent evaluation from ours, and we did not
19 feel obligated to share with him all our information
20 directly. We felt sharing it with the NRC would be a similar
21 nature.

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1 Q All right, sir.

2 Now the information, Mr. Kruse, in your final
3 report reflecting the lab tests of these four coupons from
4 these particular carbon peaks on Page I-6, now is that a --
5 in your judgment, Mr. Kruse, a true, correct and complete
6 statement of your investigation on that particular issue of
7 that test?

8 A (Witness Kruse) Define "that test" please?

9 Q The test that you have just described in your
10 testimony.

11 A es.

12 Q Mr. Grier, are you aware of the informat. n that
13 we have been discussing -- let's start with the latter first
14 and then work backwards. In your capacity as a member of
15 the Review Board, were you aware of the selection of this
16 particular heat based on the general circumstance that was
17 identified with the welds performed by stencil 248,
18 believed to be Welder B, that the test results demonstrated
19 that sensitivity, rejectable sensitivity was indicated in a
20 range of interpass temperatures from 250 on up?

21 Were you aware of that information, sir, when you
22 passed on this portion of the report?

23 A (Witness Grier) I was not specifically aware of the
24 source of the heat number, the source of a piece of pipe used
25 in the testing in the sample tests. I believe that information

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1 available to the Review Board indicated that there was one
2 weld that did not meet the acceptance criteria of the ASTM
3 specification.

4 Q Okay, let's take the first subject first.

5 You weren't aware that -- let's ask this. Were you
6 aware that stencil 248 was the source of identifying the heat
7 that was employed in the test of the four coupons?

8 A No.

9 Q Were you aware that aside from that specific name
10 or stencil number of that person, were you aware that that
11 was from the heat identified with the person that raised the
12 interpass temperature control issue, Welder B or other?

13 A No.

14 Q Mr. Grier, were you aware that the test results of
15 those four welds reflected that welds with interpass
16 temperature control of 250 degrees and up failed to meet
17 the Acceptance Criteria of the ASTM standard?

18 A There was language in one of the draft Investigation/
19 Resolution sheets that I believe indicated that there were
20 some -- that test samples did not meet the Acceptance Criteria
21 of the ASTM specifications.

22 Q All right, sir. But that language doesn't appear
23 in the final report, the August 3rd report, does it?

24 A That specific language is not there, that's right.

25 Q And you approved the specific language in the

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1 final report as reflecting full, complete and true report of
2 the investigation, did you not?

3 A It was not the Review Board's responsibility to
4 approve the report or the specific language in the report.

5 It was our responsibility to oversee the process
6 that was being carried out in doing the investigation, and
7 to determine whether the corrective action was reasonable.

8 Q Well you then had knowledge of the true information
9 regarding the circumstances of the test that was done -- now
10 with the four coupons I am talking about -- and the results of
11 the test, that three of them failed to meet the acceptance
12 standard, and knowing that, you took no further action to make
13 sure that that fact was noted in this report, did you?

14 A The language in the report indicating that there
15 was sensitization, in my opinion, reflected the same type
16 of information.

17 Q All right. All I really want to get at, Mr. Grier,
18 is if you were aware of this language being contained in the
19 report and took no action, with the knowledge of that
20 language.

21 A I'm not so sure I understand the question.

22 Q All right, sir. Did you pass on the final report?
23 Was that available to you? Did you have an opportunity to
24 examine the final report before it was published?

25 A Yes, sir, I did.

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1 Q And it met with your satisfaction? You took no
2 action with regard to that finding, did you?

3 A That's correct.

4 Q Now, as to the second point -- well, let me show
5 you a document here. Well, this is an August 3rd, 1984 memo
6 signed by Mr. Miller, Principal Engineer, and addressed to
7 Mr. Dale. It has an attachment, and the attachment is -- it
8 is comment with regard to, among other things, violation of
9 interpass temperature, the resolution of that concern.

10 Let me show you that, Mr. Grier, and ask you if you
11 can identify that document for us.

12 (Document handed to witness.)

13 Have you seen it before?

14 A Yes. This is the document attached or contained in
15 the Review Board Report.

16 Q Had you seen it before you issued your Review Board
17 Report?

18 A Well, it is a document that we included in our
19 Review Board Report, so I had seen it prior to issuing the
20 Review Board Report.

21 Q All right, pass it back over.

22 (Document returned to counsel)

23 I am going to omit a name. There is a name that
24 appears on the first line.

25 MR. GUILD: Frankly, Mr. Chairman, I am somewhat

1 troubled and a little befuddled, because I think, frankly, the
2 identity of the individual in question has been fully disclosed
3 by the Applicant's actions. But I will omit the name just in
4 an abundance of caution.

5 BY MR. GUILD:

6 Q "Only --" blank, an individual --"provided
7 definite statements that interpass temperature requirements
8 had been violated on safety-related welds. Test specimens
9 welded with and without interpass temperature control showed
10 the same degree of sensitivity. The resolution appeared
11 misleading in saying that no evidence was found to support
12 the contention of violations. The results indicated that
13 the method employed could not tell if violation had or had
14 not occurred."

15 Are you aware of that language, sir?

16 A (Witness Grier) Yes.

17 Q And you approved the Review Board Report with the
18 knowledge of that language?

19 A Yes.

20 Q Why?

21 A If you will go on and read the rest of the
22 statement, the author of that indicates that the testing that
23 was done indicates that the results are satisfactory.

24 I am paraphrasing. I can't recall exactly.

25 Q You are welcome to read the language in full if you

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1 like, but my question to you sir is, regardless of the ultimate
2 conclusion, the comments from that gentleman was that the
3 results were misleading.

4 JUDGE KELLEY: Can we have the exact citation of
5 what is being read, what page?

6 MR. GUILD: Yes. It is the second page of the
7 document.

8 (Document handed to witness)

9 BY MR. GUILD:

10 Q If you could just read the date?

11 A (Witness Grier) This is August 3, 1984, Memorandum
12 from R. E. Miller to L. C. Dale, it is page 109 and 110 of the
13 Review Board Report.

14 JUDGE KELLEY: Let me just catch up with that.
15 What item is that?

16 WITNESS GRIER: It is Item 13, page 109 and 110, if
17 those page numbers are on your copy.

18 JUDGE KELLEY: 13, all right. Thank you.

19 WITNESS GRIER: The language that I was speaking
20 of is the paragraph that says, "However testing, research
21 and experience are convincing that the welds are acceptable
22 regardless of interpass temperature, because the CNS,
23 Catawba Nuclear Station environment, is nonaggressive to all
24 such welds. Based on this we do not feel that further action
25 is appropriate."

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BY MR. GUILD:

Q Did you take any action with regard to the gentleman's view that the test results as reflected in your final report were misleading?

A (Witness Grier) No.

Q Further quoting the same language from the same document, or the same passage from the same document:
"Resolutions state normal practice is to touch the pipe with the hand, but disregard (blank)'s statement which said, the interpass temperature would fry a 350-degree temp stick. Black welds are not addressed."

Did you take any action with regard to those observations by the gentleman?

A No, we did not.

Q Now before the luncheon recess, pursuant to the direction of the Board, I was provided with a copy of further supporting documentation with regard to a number of technical concerns, including the concern number 1, violation of interpass temperature.

This documentation was not previously made available. The documentation includes a document entitled Violation of Interpass Temperature Investigation Results.

Gentlemen, I don't know who is the appropriate one to show this to, but could you tell me whether or not the document that I have reference to, pages 1 through 4 of what

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1 appears to be an attachment, can you identify that, please?

2 (Document handed to witnesses)

3 JUDGE KELLEY: Is this the Review Board Report again?

4 MR. GUILD: No, sir, this is the document given to
5 me just before lunch. This is the document you required them to
6 produce.

7 JUDGE KELLEY: Fine.

8 Supplemental discovery document?

9 MR. GUILD: Yes, sir.

10 WITNESS LLEWELLYN: Pages 1 through 4?

11 BY MR. GUILD:

12 Q Yes, pages 1 through 4.

13 A (Witness Kruse) Pages 1 through 4, is that what you
14 are interested in?

15 Q Is that a draft of the Investigation/Resolution of
16 the report section that deals with the subject of interpass
17 temperature control?

18 A That is an early draft, yes.

19 Q An early draft?

20 A Yes.

21 Q Whose work is that, please?

22 A Mine.

23 Q Pages 1 through 4 is your work, Mr. Kruse?

24 A Essentially, yes.

25 Q Who else's work is involved in it?

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1 A At the point of this draft, it was strictly mine.

2 Q All right, sir, would you pass it back up to me.

3 (Document returned to counsel)

4 MR. GUILD: If counsel have a copy for the witness
5 it might help us from passing it back and forth, if there is
6 one available.

7 (Document handed to witnesses)

8 BY MR. GUILD:

9 Q Do you have the document, Mr. Kruse?

10 A (Witness Kruse) Just a minute. Yes, I do.

11 Q Okay. Let me direct your attention to the bottom
12 of the first -- actually the top of the first page in the
13 background section. The last sentence in that paragraph:
14 "Interpass temperature is employed to minimize the occurrence
15 of weld heat affected zone sensitization and is required per
16 Duke Nuclear Guide 1.31, paragraph 4.0."

17 Is that a true statement?

18 A No, it is not.

19 Q All right. Is that statement or that fact reflected
20 in your August 3rd report?

21 A That statement I don't believe occurs in the August
22 3rd report.

23 Q Bottom of the page?

24 A Yes.

25 Q Bottom of the page under the heading, ASTM A-262

mm10 1 Practice A - Evaluation of Test Weldments.

2 A Are you going on now?

3 Q Yes, sir, I am.

4 A Okay.

5 Q "The degree of sensitization seen in a material is
6 dependent on its carbon content, with higher carbon materials
7 exhibiting more severe sensitization for a given sensitizing
8 exposure."

9 Is that a true statement?

10 A That's a generalized statement that most metallurgists
11 would tend to agree with, yes.

12 Q Is that fact, that statement reflected in Duke's
13 August 3rd report?

14 A I don't think it is. It may be.

15 I will look and see.

16 Q You can do it now, or you can do it at your leisure.
17 But I would be interested in having you reference the language
18 in the final report, if that statement is included, please.

19 We will move to page 3, under the heading, Field
20 Portable Metallography.

21 First paragraph: A number of welders in the same
22 crew had indicated that they had been pressured by their
23 foreman into violating interpass temperature on stainless steel
24 welds. Since the principal consequence of violating interpass
25 temperature is Heat Affected Zone sensitization, Duke

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1 Construction undertook to evaluate a sample of welds made by
2 these welders."

3 That statement is not included in your final report,
4 is it?

5 A No, it is not. The reason it is not is when I wrote
6 this I didn't have as good a feel for all of the allegations
7 that were made. And since my concern was strictly technical,
8 that was the feel that I got for the thing. That is why this
9 is a draft copy and there were changes made for the final
10 report. This is a rough draft, Mr. Guild.

11 Q All right, sir.

12 A And that was my perception of where I was going.

13 Okay? But, I basically disregarded that because I
14 was looking to find out whether or not interpass temperature
15 was or was not met. And a statement like that essentially
16 didn't make any difference to me. This is a first-cut draft,
17 a rough draft, something that is normally changed in the
18 course of writing anything.

19 Q Continuing: "A field portable technique was
20 developed employing A-262 Practice A. All the Class A, B and
21 C welds made by this crew were identified as detailed in
22 Appendix D."

23 You don't have an Appendix D attached to this, do
24 you by chance?

25 A No, we got rid of all that. We got rid of the

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1 attachments.

2 Q What did you do with them?

3 A There is a computer printout about that big, and
4 quite large.

5 Q What did you do with it?

6 A It was supplied to you in discovery.

7 Q It is available?

8 A Yes.

9 Q "All the Class A, B, and C welds made by this
10 crew were identified as detailed in Appendix D. From these
11 welds it was determined that this crew had welded on six
12 critical systems (critical system is defined in Appendix E)."

13 Do you have Appendix E to this document?

14 A It may be attached here.

15 Q How about taking a look so we can establish what
16 that definition was that you were using.

17 A It may have never been written, Mr. Guild.

18 Q How about you telling me whether it is there, and
19 then we can bridge the question of whether --

20 A Being that it was a rough draft that was written
21 quite some time ago, I don't recall.

22 Q When was it written, Mr. Kruse?

23 A Earlier this summer.

24 Q Mr. Ferdon, do you know?

25 A (Witness Ferdon) I can speak to that. Appendix E

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1 was never written.

2 Q Do you know when the draft was written that we
3 were reading from, Mr. Ferdon?

4 A No.

5 Q Okay.

6 "It was found that 360 two-inch and under socket welds
7 were made by this crew. Of these 360, 28 welds were selected
8 for evaluation for ASTM A-262 Practice A. These welds and the
9 chemistry of the piping material is given in Table 2."

10 Does that table exist, Mr. Kruse?

11 A (Witness Kruse) Table 2. Mr. Guild, what you have
12 here is a draft with the numbers on it. It was probably
13 the original draft, where the numbers didn't agree with some
14 of the tables.

15 Mr. Ferdon and I worked together on this. Some of
16 the information he provided, some I provided. Again, this is
17 a rough draft subject to many, many changes.

18 Table 2 here, we probably when we wrote that, set out,
19 said, okay, we will put this information in Table 2 when
20 we get done. Here is the words. We know what Table 2 is
21 going to say. Later on we will put it in.

22 Apparently it never made the trip to that place.

23 Q Mr. Ferdon, do you know whether it made the trip to
24 that place? Is there a Table 2?

25 A (Witness Ferdon) No, there is not.

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1 Q All right.

2 Table 2 would have been from the data contained
3 in the schedule that you previously identified?

4 A Correct.

5 Q "As can be seen in this table, most of the piping
6 material is 0.40 carbon and above, and considered to have a
7 potential for sensitization. Details of the field portable
8 test procedure are given in Appendix F."

9 Does that Appendix exist?

10 A (Witness Kruse) No, not in this report.

11 Q All right.

12 Next paragraph: "26 of the welds exhibited a dual
13 microstructure, a combination of a step structure and 'ditching'
14 at the grain boundaries (ditching is a localized attack of the
15 grain boundary region principally caused by precipitation of
16 chromium carbides at the grain boundary. The precipitation of
17 these carbides creates chromium depleted region; this region
18 is there subject to more aggressive attack by the test solution).
19 This dual structure is considered an acceptable condition and
20 stainless steel piping systems with such conditions would not
21 likely be susceptible to intergranular attack. Three of
22 the weldments exhibited microstructures which would not be
23 acceptable per ASTM A-262 Practice A. The HAZ of these
24 two weldments exhibited in a ditch structure. It should be
25 noted that A-262 Practice A is suitable only as an

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1 acceptance criteria and may not be used for rejection of
2 stainless steel materials. When nonacceptable structures
3 are found per Practice A, other A-262 practices are required
4 before rejection is considered. All other tests are for
5 screening stainless steels for environments far more aggressive
6 than any found in a nuclear power plant. Further, the tests
7 are destructive in nature (unlike Practice A) requiring samples
8 from the material to be evaluated. Such tests would not be
9 practical for field application, since most of the power plant
10 piping systems are in place and cutting into them for
11 samples would invalidate hydrostatic testing."

12 The short and long of that last passage, Mr. Kruse,
13 is that in order to perform the additional ASTM A-262
14 sensitization tests, you would have to cut out the pipe in
15 the plant and you couldn't go critical October 16, 1984,
16 correct?

17 A Criticality wasn't really considered last summer
18 when we did the evaluation.

19 Q Do those findings appear in your August 3rd report,
20 Mr. Kruse?

21 A Not specifically.

22 Q Do they appear in any more specific terms than what
23 you have already identified? Have I missed something,
24 Mr. Kruse?

25 A No, I don't believe you have.

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1 Q Are those true statements that we have read so far?
2 Do they truly reflect what you did and what you
3 found?

4 A There are some errors in that paragraph.

5 Q In reflection, let me get you to identify those
6 errors sir, at this point. What is wrong?

7 A Well, the number 26 is wrong. And up in the first
8 paragraph there were five critical systems examined, not six.

9 Let's see. There were a number of changes that you
10 would have to make in this draft to clarify certain things
11 such as pipe sizes and things like that.

12 To put it in perspective, again it was a draft copy.

13 Q You didn't just clarify these things, you just
14 deep-sixed the whole subject, didn't you, Mr. Kruse? It
15 doesn't appear in the report at all, does it?

16 A Much of this is redundant information and common
17 knowledge, Mr. Guild. I put it in there for explanation
18 purposes. And, in discussion with Mr. Hollins and
19 Mr. Llewellyn as we went on with this, we felt it wasn't needed
20 in the final report, specifically as it is outlined here.

21 Q All right, sir.

22 A When you go from a rough draft to a final report
23 you may add things or you may subtract things.

24 Q All right, sir. Now I believe I asked you this in
25 your deposition. Who drafted this portion of the reports?

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- 1 You did, correct?
- 2 A Yes.
- 3 Q And Mr. Ferdon did?
- 4 A (Witness Ferdon) This specific portion?
- 5 Q I'm looking at not this draft report now, I'm talking
6 about your final report on the subject of interpass
7 temperature control.
- 8 A (Witness Kruse) We worked in concert, yes.
- 9 Q You and Mr. Ferdon?
- 10 A And Mr. Llewellyn.
- 11 Q And Mr. Llewellyn.
- 12 Did counsel assist in drafting this report?
- 13 A Of course they helped with this a little bit.
- 14 Q Did counsel participate in the decision to omit the
15 portions of the draft report that we have just been
16 discussing with regard to the field testing of the welds?
- 17 A You know, I really don't recall.
- 18 Q Mr. Ferdon?
- 19 A (Witness Ferdon) I don't recall.
- 20 Q Mr. Llewellyn?
- 21 A (Witness Llewellyn) I don't believe so.
- 22 Q Mr. Hollins?
- 23 A (Witness Hollins) It was a cooperative effort.
- 24 Q Including counsel?
- 25 A Sure.

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1 Q They were aware this information existed and that
2 it wasn't included in the final report?

3 A They surely were, just like I was.

4 Q All right, sir.

5 Mr. Dick, were you aware of all this?

6 A (Witness Dick) Was I aware of all of this?

7 Q Yes. I could stop to break it all down, but you
8 have been present for the discussion.

9 Were you aware of the existence of the testing that
10 we have just been discussing?

11 A Yes.

12 Q All right, sir. Were you aware of the testing of
13 Arlon Moore's crew's welds?

14 A The details run together some. But Mr. Hollins was
15 very good about reviewing with me what he was going to do and
16 what he did. And I would say probably.

17 Q All right. And you were aware of the weldments that
18 failed to meet the ASTM Acceptance Criteria?

19 A Yes.

20 Q And you were aware of the efforts to identify the
21 heat of material used in the weld performed by stencil 248?

22 A I think so.

23 Q And its carbon content, generally, high carbon steel?

24 A I recall discussion of high carbon content.

25 Q You were aware that three of the four coupons failed

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1 to meet the Acceptance Criteria?

2 A I would not have remembered specifically, but I
3 remember that some of them did.

4 Q Okay. And you were aware of the decision to omit
5 references to the field examination of Arlon Moore's crew's
6 welds from the August 3rd report?

7 A I'm aware that those tests were of little consequence
8 and that they did not affect our conclusion. I am not certain
9 that I did a line-by-line comparison to see what exactly I
10 had seen or heard at one time and what was concluded. But, I
11 had participated in these conclusions and was satisfied that
12 the plant was all right. And that these conclusions were
13 accurate.

14 Q And it is your testimony -- I think I asked you
15 this question along with everybody else -- it is your testimony
16 that that August 3rd report fully and completely and
17 truthfully reflects the investigation that Duke Power Company
18 conducted?

19 A In the sense that I understood the question and the
20 way I answered it, yes.

21 Q In the sense that I am now focusing the question,
22 and that is with regard to the testing that was in fact
23 performed that is not reported in the report to the parties,
24 the Board and the NRC, is your testimony still that the
25 August 3rd report fully and completely and truthfully

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1 reflects the testing you did?

2 A Mr. Guild, I am aware that much of the information
3 that was developed did not end up in the report verbatim. I
4 still maintain that the conclusions are accurate and truthfully
5 represent it.

6 Q All right. Well, Mr. Dick, you know it seems to me
7 there just might be a difference between agreeing that the
8 ends all work out to be okay, particularly when we are talking
9 about science, engineering technology and building a nuclear
10 power plant, and laying forth on the record the actual data,
11 the laboratory results, so that anybody could review those
12 results, employ a similar methodology and reach the same
13 conclusion. And you don't represent that you fully, fairly
14 and truthfully disclosed what you knew and what you did so
15 that someone like me or this Board could reach that same
16 conclusion, or perhaps arrive at a different conclusion on
17 this subject?

18 A Mr. Guild, I guess I never thought about whether
19 the report was being written for you or not. I was thinking
20 in terms, is the plant safe to operate and have I carried out
21 my responsibility to conduct an investigation that demonstrates
22 that it is.

23 Q All right, sir.

24 A I went to Atlanta and showed some of the samples to
25 the NRC myself. So, yes, I was aware that there was ditching

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1 on some of them. I don't remember the specifics that were
2 available at that time, but there was full and open
3 discussion and disclosure going on. And I am not aware of any
4 attempt to suppress, hide or cover up anything.

5 Q Well, that is an interesting observation, Mr. Dick,
6 because this particular document is what was presented to
7 this Licensing Board and these parties as reflective of the
8 results of Duke's investigation. And somehow, all of this
9 full disclosure didn't make it this way.

10 MR. MC GARRY: Your Honor, I am going to object to
11 that characterization. We have been through this, seven,
12 eight, nine times, the position of the company, the position
13 of these witnesses. This particular area of inquiry Mr. Guild
14 has been on for two hours was not significant in terms of
15 what they were looking for. And they have explained that.

16 MR. GUILD: Mr. Chairman, I am frankly astounded
17 that it is not simply a question of engineers who made this
18 decision, but a question of the Vice President of Duke Power
19 Company. And, sir, when I got this report and read it as
20 counsel for a party and tried to reach a determination as to
21 whether or not it represented a true, complete and fair
22 representation of what they did, I did it with the mind of
23 dealing with it as complete, as standing by itself, as being
24 an honest effort.

25 And I think it is an appropriate question to ask

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1 Mr. Dick whether he viewed it in the same light when he
2 approved or acquiesced or knew of its submission to this
3 Board and to these parties.

4 I am troubled, Mr. Chairman by what I see here.

5 JUDGE KELLEY: I think he has already answered the
6 question once or twice.

7 MR. GUILD: If that is sufficient, I will pass from
8 the subject.

9 JUDGE KELLEY: All right.

10 It is about 4:30. Why don't we take ten minutes.

11 (Recess)

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JUDGE KELLEY: We will go back on the record.

Mr. Wilson, go ahead.

MR. WILSON: Thank you, Mr. Chairman.

I appreciate the courtesy, Mr. Guild.

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CROSS-EXAMINATION

BY MR. WILSON:

Q Folks, I just have a couple of areas that I have inquires about and I am not quite sure who is responsible for what particular areas in your task force effort, so if you had a responsibility and I address somebody else, go ahead and let me know so we can get the answers out from the people who really know.

Mr. Kruse, I believe earlier when Mr. Guild was questioning you at one point, you stated that it wasn't stated in the report that you tested the actual work that Mr. Moore had overseen but I think elsewhere you did come around and say that that had been done, is that correct?

A. (Witness Kruse) Yes, I believe so.

Q So you did, in fact, test I believe some of his welds -- or those that his men were responsible for.

Am I correct that you consulted a statistician about getting a representative -- a statistically valid representative test of the welds that had been done, is that right?

A. We probably didn't give him enough information for

1 him to give us a decent statistical number, but we quite
2 frankly didn't have a feel for a good number of welds to
3 sample and the task, the time it took to do each weld was
4 quite large. It involved -- the actual field work itself
5 involved probably six man-hours and there was probably that
6 much time getting the paperwork arranged so that we could
7 go in and do the work. It was very time-consuming.

8 So we had some small constraints there, but
9 we still wanted to -- if someday we could use a statistical
10 number maybe this one would be possible but on that basis
11 we did not have a firm statistical basis for the number
12 that we sampled.

13 Q The 23, is that the number that you finally
14 came out testing? It seemed like I heard that --

15 A We tested 25 all told.

16 Q So the 25 was more a result of engineering
17 concerns rather than a statistical indication that that was
18 a valid representation?

19 A That's true, yes.

20 Q I guess maybe that answers some of my question,
21 but let me go on to the next step in this thing.

22 You found, I think -- I listened attentively
23 to all of the testimony that went on, the dialogue. Out
24 of problems that you did find, you finally resolved all
25 but one. I think you found one unacceptable weld out of

1 the 23 -- the 25, excuse me, that you tested, is that
2 correct, gentlemen?

3 A In terms of acceptability and unacceptability,
4 we were using a standard procedure to etch the surface and
5 then evaluate it. And in terms of that specific test --
6 and it is documented in ASTM standards -- we found I
7 believe it was about three welds that did not meet its
8 acceptance criterion.

9 But that test in itself is merely an acceptance
10 criterion to guide you into other tests -- by the way,
11 the tests were inappropriate, but we used that tool to
12 develop the metallurgical structure so that we could make
13 metallurgical determinations on the structure itself.
14 And in that light, we only used the test method just to
15 develop the metallurgical structure.

16 Q Well what I guess I am asking is that you found
17 -- I mean there seems to be a gray area between acceptability
18 and then there is a gray area and then there is unacceptability.

19 A But not in terms of use in the plant though,
20 okay. In other words, it is just acceptable or
21 unacceptable per the test but as far as quality is
22 concerned and how it fits there are three things that are
23 needed to cause intergranular and stress corrosion cracking:
24 there is stress, susceptible microstructure and environ-
25 ment, okay. Take away any one of those three items and

1 you won't have the problem, okay.

2 In the Catawba instance, we have taken care of
3 the aggressive environment, we don't have the aggressive
4 environment, the aggressive corrosive environment does not
5 exist. Therefore we have taken one of the three elements
6 away. So irregardless of whether there is a stress or a
7 susceptible microstructure there, it does not make a
8 difference in terms of the quality of those welds.

9 Q That's on the three --

10 A Even those three, yes.

11 Q I'm not sure where that one came from but was
12 there a one that was wholly unacceptable, is that what I
13 was hearing when it --

14 A Okay. The only unique single one that you may
15 be thinking of is that we did four test welds and one of
16 them was done at 72 degrees Fahrenheit --

17 Q These were the test coupons?

18 A Yes, test coupons.

19 Q That, I don't think, is what I was hearing
20 before. It was that there had been -- it was on a Welder B
21 weld.

22 A I know what it is -- Of course, we don't know
23 who Welder B is to begin with, okay? That has not been
24 established.

25 Q That's right. There was a number 248.

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1 A. Number 248 happened to make one of the welds
2 that exhibit unacceptable conditions per practice A. We
3 were able to obtain that same heated material that that
4 weld was made with -- or that piping material -- in the
5 warehouse.

6 And that and that one alone was available. See
7 most of the piping material, a large bulk of it has already
8 been issued and also the piping is completed in the plant
9 and there is not much left in the warehouse. It just
10 so happened that that one particular heat happened to be
11 in the warehouse and we were able to obtain it to run
12 through the test to clear up some of our confusion as
13 to the structures that we saw.

14 We go out there, we test 25 welds, we see a
15 whole range of microstructures on these things even though
16 the initial conditions, the etching conditions were the
17 same.

18 Q. All right.

19 So even on that one, it was unacceptable but
20 it was still okay?

21 A. It was still okay, yes, sir.

22 Q. I guess that really leads me to where I have
23 got my biggest problem and this is where I need some
24 help, folks.

25 If you have got a system where you are going out

1 and you are trying to find out whether or not there have
2 been acceptable standards -- or rather has been acceptable
3 compliance with standards, construction standards and
4 the design and engineering criteria, I have a problem with
5 the way this thing went and let me give this to you:

6 Design engineering set up the criteria that
7 are expected to be incorporated in each weld that goes into the
8 Catawba Nuclear Station, isn't that right?

9 A. Yes, sir.

10 Q. And then construction takes care of making sure
11 that that plan is actually executed?

12 A. Yes, sir.

13 Q. And then QA, in a nutshell, comes in and then
14 verifies whether that was done.

15 If, after all was said and done, your tests --
16 if I again heard you correctly -- have convinced you that
17 these interpass temperatures are unnecessary requirements
18 for all the piping that is incorporated into the Catawba
19 Nuclear Station, why were they required in the first place?

20 A. Okay. I can answer that in this way:

21 We used the practice to see if we could
22 determine if interpass temperature was violated being
23 that the interpass temperature itself is a procedural
24 requirement. And it is set out in our, I believe it is a
25 topical report that we are going to adhere to certain

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1 things like that and so forth. We didn't use --

2 Q What is the basis for the requirement, I guess,
3 is a good place to start on that?

4 A You know, that is kind of an interesting question.
5 That was raised to me last week, where the 350 degrees F
6 came from, and I called several acquaintances of mine in the
7 welding metallurgy field and I posed that question to them,
8 where did the 350 degree F requirement come from and is
9 it documented anywhere.

10 The answers I got were Gee I have heard it for
11 years and years and years and I really don't know where it
12 came from.

13 And that is my experience. I have been in the
14 welding business about 12 years and I can remember it as
15 long as I have been in the welding business: 350 interpass
16 for stainless steel. I never really knew where it came from.

17 One gentleman down at Combustion Engineering who
18 I have met a couple of times, I have talked to, his name is
19 Ted Ward, suggested that it is an old Navy requirement
20 out of the U.S. Navy welding program. He said that is the
21 only place he could remember that it came from.

22 Outside of that, it has just been a sort of an
23 industry standard for years and I really don't know the
24 basis of it.

25 Q Let me turn to Mr. Dick:

1 You have been responsible in some way or another
2 for all of the nuclear stations Duke have constructed, isn't
3 that right?

4 A. (Witness Dick) Yes.

5 Q. Do you or any of the other gentlemen here know
6 whether or not the same interpass temperature requirements
7 were imposed on the other plants as well? I mean, has
8 that been a standard Duke requirement throughout?

9 A. Mr. Hollins was a welding engineer on Oconee
10 and can better answer that question specifically.

11 A. (Witness Hollins) When I walked in the door
12 at Oconee, a 350 degree F interpass temperature was the
13 requirement on all stainless steel welding.

14 Q. And as far as you-all know that has been observed?

15 A. That is correct, that is a requirement.

16 Q. Where we are at this point: the interpass
17 temperatures apparently were not questioned throughout,
18 I mean, up until this particular investigation, until it
19 came about here.

20 I have become convinced in my relationship with
21 Duke Power that you guys don't do much of anything without
22 some justification to both your company, your stockholders
23 and also to the public that you serve, and I wonder what
24 the basis for an interpass requirement -- I mean what
25 justification there was other than this old Navy requirement

1 for slowing down your construction work waiting on interpass
2 temperatures to become favorable and I guess as a result
3 you had some delays in construction related to that, also
4 in the follow-up on the QA inspections when now I am
5 hearing you didn't have to do it in the first place.

6 A. (Witness Kruse) I think I can speak to that.

7 It is not just for sensitization that interpass
8 temperature controls are imposed. What happens is that
9 stainless steel has a very high thermal co-efficient of
10 expansion, which means when you heat it up it expands quite
11 a bit, okay. Conversely, when it cools down it contracts
12 quite a bit.

13 If you allow the interpass temperature to go
14 very high, you will get quite a bit of thermal contraction
15 and quite a bit of distortion of the weldments, particularly
16 with a socket weld you will get a ring on the inside,
17 a constriction on the inside of the socket weld at the
18 location of the weld, so it will reduce the diameter of
19 the piping. That is one reason we control interpass
20 temperature.

21 Another reason is in the absence of ferrite
22 control in the weld metal -- and ferrite is the second
23 phase that we modify the chemistry of the weld metal to
24 maintain.

25 And after that control, with higher interpass

1 temperature you tend to get hot cracking of weld metal. Okay?

2 So we would like to keep the interpass temperature
3 down for those reasons, and that is in addition to
4 sensitization.

5 I might point out about sensitization another
6 fact is that when sensitization occurs, no matter how
7 severe it is, it does not alter the mechanical properties
8 of the material; in other words, the tensile strength is
9 the same, the ductility is the same, the only change is
10 in its corrosion behavior.

11 Does that help?

12 Q Somewhat. Still I guess maybe if you people
13 who have been involved with QA problems -- perhaps
14 Mr. Grier may know something about this -- but if you are
15 insisting that the craft abide by strict requirements and
16 you have got an investigation going in to check about
17 foremen who have been saying Oh don't worry about that,
18 in the first place and after all is said and done and
19 the dust settles, the conclusion essentially comes back
20 that the foreman was right, you didn't have to worry
21 about all that stuff, what does it do to the QA program,
22 the confidence that the workers and the rest of us can
23 have in the QA program? Is that constructive or is it
24 destructive?

25 A. (Witness Grier) I'm not sure I follow your

1 Q To have a meaningless requirement, does that help
2 a program or not?

3 A (Witness Dick) Could I try?

4 Q That's fine.

5 A Let me try.

6 The 350 degree interpass temperature, don't
7 let any of us mislead you that that has some precise
8 scientific value because if it did that would be a require-
9 ment in the ASME code and we would be required to do
10 something to measure that temperature to demonstrate
11 without any question that it was not exceeded.

12 It might help if you would think in terms of
13 350 degrees maximum interpass temperature being a workman-
14 ship type standard that is something you strive to
15 accomplish. And we don't require anyone to measure with
16 any precision --

17 George, I don't believe we require you to
18 inspect it.

19 A (Witness Grier) There is not a requirement
20 to do 100 percent inspection on interpass temperature,
21 that is correct.

22 Q But even on a craft-level thing, a requirement
23 where it is just for good quality work -- I mean if
24 the effect is when you don't observe it or don't go by
25 those qualifications it doesn't mean anything, so what,

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1 it seems to undermine the confidence that you have in the
2 program as well as your requirements to the craftsmen; I
3 guess that is really where I am looking for some guidance,
4 if you have got some explanation.

5 A (Witness Van Malssen) I might be able to offer
6 something on sensitization.

7 Q I guess I am really more interested though in
8 the overall concept of the confidence factor in the program
9 rather than the specifics in the engineering, but we may
10 get to that in a minute.

11 A (Witness Grier) I am still not totally clear
12 on your question. Is your question if there is a
13 meaningless requirement in the program, what does that
14 mean in regards to the program?

15 Q Yes, does that help it or hurt it if you have
16 got a requirement and apparently it is meaningless, I mean
17 -- I don't guess I am really interpreting your --

18 A I really don't think it is a meaningless
19 requirement.

20 Q Yes, sir, and I understand that is probably
21 taken out of the meaningless realm. But in effect I
22 think if I am hearing at all correctly it is downgraded
23 to a nice thing for us to observe but if we don't it is
24 not critical.

25 Is that right? I mean is that a fair

1 characterization?

2 A. (Witness Kruse) That might boil it down to its
3 essence.

4 A. (Witness Grier) I am not sure whether I agree
5 on whether it is a nice thing or not, but I would be glad
6 to describe maybe the difference in how interpass temperature
7 is treated in the program as opposed to the final quality
8 of the surface of the weld.

9 The final quality of the surface of the weld,
10 that is 100 percent inspected by certified welding inspectors.
11 For interpass temperature, that is checked on a random
12 basis. That is one of the attributes of welding -- that a
13 welding inspector will observe occasionally while a welder
14 is doing his work.

15 Q. That's working process then?

16 A. That is correct.

17 And so from that standpoint -- I don't know if
18 that answers your question, but that is the different way
19 we treat that requirement in our program as opposed to
20 a requirement such as the final surface quality of the weld.

21 MR. WILSON: I didn't mean to take quite as
22 much of Mr. Guild's and my time. At this point I think I
23 am reasonably satisfied with what I have heard, at least
24 to the point where I am willing to yield it back to
25 Mr. Guild with many thanks for the opportunity to cross at

1 point.

2 JUDGE KELLEY: I appreciate your questions,
3 Mr. Wilson. Fine. Hope to see you back.

4 MR. WILSON: Thank you, Mr. Chairman.

5 JUDGE KELLEY: I would just mention that the
6 Board will certainly take into account the time that
7 Mr. Wilson took and just to give you and others, Mr. Guild,
8 a specific notion, it is shortly after 5:00 so you are
9 getting underway at five after 5:00 instead of 4:40.

10 6:15 or thereabouts, Mr. Guild, if you take up
11 now?

12 MR. GUILD: All right, sir.

13 JUDGE KELLEY: Fine.

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14 CROSS-EXAMINATION (Resumed)

15 BY MR. GUILD:

16 Q Now your sample of the Arlon Moore welds,
17 gentlemen, when you excluded the two inaccessible, was 23.
18 And then you went out and got two additional welds to
19 look at to constitute your sample of 25, correct?

20 A (Witness Kruse) Correct.

21 Q Why did you go for the other two?

22 A It was a recommendation by Mr. Czajkowski
23 that came down that outside of our original sample we
24 ought to sample the person who we thought may be Welder B.
25 Okay? So we added his welds to the extent possible into

1 the list.

2 Q He didn't know you were doing the sample in the
3 first place, though. He recommended that such a sample
4 be done but he wasn't aware that you actually had done it,
5 was he?

6 A Mr. Czajkowski, you mean?

7 Q Yes.

8 A He was aware that we intended to do it.

9 Q And so having Mr. Czajkowski's counsel as
10 reflected in the minutes from the meeting -- the notes
11 from the meeting, he says you ought to go out and do some
12 sampling and you ought to particularly treat Welder B's
13 welds as a separate population, words to that effect,
14 correct?

15 A Words to that effect.

16 Q So you went out after you got your 23 and you
17 found a couple -- after you got your 23 and you went out
18 and specifically then looked for welds that you believed
19 were done by Welder B, correct?

20 A By the person we felt was Welder B, yes.

21 Q Right.

22 And you did that by looking at the affidavits
23 and lining it up and figuring out, you know, who had the
24 clearest -- well you tell me what you did.

25 A That was done by Mr. Llewellyn, he can --

1 A. (Witness Llewellyn) I don't quite understand what
2 your question is, Mr. Guild.

3 Q. You got Mr. Czajkowski to the point that he
4 recommended that you treat Welder B's welds as a separate
5 population and that ultimately resulted in two new welds
6 being added to the sample that was finally examined and
7 the buck is in front of you about how you did that. How
8 did you do it?

9 A. When I took a technical interview on a gentleman
10 that had concerns similar to Welder B, it became apparent
11 that his discussion of his -- quote -- violation of
12 interpass temperature were to a much greater degree than
13 any of the other ones we talked to in the technical
14 interviews.

15 Q. Let me stop you there for a second, excuse me.
16 Greater degree in terms of number, in terms of
17 severity of violations --

18 A. He described a situation that sounded as if
19 he would have violated it to a much greater degree than
20 any of the other individuals.

21 Q. Again in terms of number of times violated or --

22 A. No, in the degree of how much he violated 350
23 degrees.

24 Q. Fine. Thank you.

25 A. What we did was have him come to the test shop

1 and try to recreate for us the actual condition that he
2 had done in the field, have him try as close as he could to
3 recreate that worst violation of interpass temperature.

4 Q And that was the source of the eight coupons
5 that went half to Brookhaven and half you studied?

6 A (Witness Hollins nodding negatively.)

7 Q Mr. Hollins, you are shaking your head --

8 A (Witness Hollins) That was the source of one of
9 those coupons.

10 Q Oh, okay, only one of the coupons.

11 A (Witness Llewellyn) Now the other set of
12 coupons was one we ran at a controlled 350 degrees to use
13 to measure against how much violation had occurred in the
14 other ones.

15 Q That makes two.

16 Where did the other six come from?

17 A (Witness Kruse) It was decided for completeness
18 that since -- I believe it was throughout the investigation
19 that people had identified other sizes and we felt that
20 we maybe ought to look at all sizes in this third grouping
21 of test samples.

22 So now you are looking at three spheres: you
23 are looking at a group of test coupons, field samples and
24 then another set of samples that were treated -- they
25 were test coupons but treated like the field samples compared

1 directly.

2 This group of test coupons were done in our fab
3 shop to go along with the one that this individual welded up.

4 Q How many of those did you do?

5 A We did eight all together. Seven we did, one
6 this individual did.

7 Q And those were the eight that went to Brookhaven?

8 A Yes. And to J.A. Jones.

9 Q And to J.A. Jones.

10 Now what was the one that was done by the
11 individual believed to be Welder B with the allegation of
12 severe interpass temperature violation, what size pipe
13 was that?

14 A (Witness Llewellyn) Two inch schedule 160 socket
15 weld.

16 Q What was the carbon content?

17 A (Witness Kruse) .07 percent.

18 Q Now this is back to where I have tried to get
19 you to when I started this line of questioning.

20 Mr. Llewellyn, you then wanted to go -- How did
21 you get to the point where you added two of Welder B's
22 welds to the sample of 25 that you examined metallographically?

23 A (Witness Llewellyn) I don't remember making
24 that actual determination. I remember getting us to the
25 point of knowing the population of the tests --

1 Q Did you identify the stencil number?

2 And then, Mr. Kruse, you did the --

3 A. (Witness Kruse) Yes, I think we had all the
4 welds on cards with stencil numbers and I think he pulled
5 out of his hat welder 248 and separated those from the
6 pile.

7 Q And then how did you pick the pile that you
8 wound up looking at that you added to the sample?

9 A. It really escapes me.

10 Q Mr. Hollins, can you help?

11 A. (Witness Hollins) I recollect that they were
12 the only two that were accessible. They were the only two
13 that we could get to.

14 A. (Witness Kruse) There were four of them but two
15 of the welds, when you looked at the process control, he
16 had only done the tacking process, he hadn't welded it out.

17 But those welds were still in the sample. I mean,
18 I don't recall which of those they were exactly, but I
19 believe -- if I remember correctly, they were in that file,
20 too. So within that 25 there were I think four that he
21 had some participating in welding, Mr. 248.

22 Q Mr. Kruse, you don't know the precise relation-
23 ship among the contributing causes of intergranular stress
24 corrosion cracking, do you?

25 A. One of them is suggested as the carbon content and

1 any process that brings it into a sensitizing region for
2 carbon precipitation is the other thing.

3 I don't know of any other element or any other
4 factor -- possibly the starting metallurgical condition,
5 whether it is cold-worked or annealed; grain size may
6 participate to a small extent, but it is generally agreed
7 that carbon is the biggest factor.

8 Q What I was focusing on is I see identified in
9 the literature that has been made available to us the
10 sensitization, the stress and the corrodant environment
11 as being the identified three contributing determinants of
12 intergranular stress corrosion cracking.

13 A The three factors required to promote the
14 condition.

15 Q I may have asked this in deposition -- I certainly
16 asked Mr. Czajkowski and don't recollect that either of
17 you gentlemen said that you have a precise handle on how
18 much of one and how little of the other produced a given
19 level of susceptibility to intergranular stress corrosion
20 cracking.

21 You don't know, do you?

22 A Not precisely.

23 Q No one knows. I mean it is a problem -- that is
24 being studied.

25 A No, that is not true. To the extent of the medium

1 that is being contained by the pipe, the chemistry of the
2 concentration of the corrodant species, that is pretty well
3 defined by corrosion testing.

4 Q But in terms of the levels of -- the relationship
5 among those variables --

6 A Outside of the concentration of the corrodant
7 species, there is not a relationship that I know of directly.
8 There are some elegant tests that can be run to start to
9 begin to look at that but I think that particular field of
10 science is just an emerging field and not a well-defined
11 science.

12 Q All right.

13 And I think you agreed that time is a function,
14 is it not?

15 Someone said -- I think Mr. Riley said it is
16 a rate process, cracking occurs over time, it doesn't
17 happen like that.

18 (Mr. Guild gesturing.)

19 It doesn't happen -- you throw the three causes
20 together, it happens when you throw them together and add
21 time.

22 A That is basically true, yes. It would be fair
23 to say that the time -- the stress level and the time would
24 be interrelated, not necessarily the structure.

25 Q All right.

1 And is it fair also to say that all three
2 contributing forces act in a positive direction in
3 increasing the levels of stress corrosion cracking; I mean,
4 more stress, more sensitization, more corrodants equals
5 more susceptibility to stress corrosion cracking?

6 A. I am not sure you can make that conclusion.
7 Possibly on stress, not necessarily on sensitization.

8 Q. How about on corrodant environment?

9 A. Corrodant environment, as I said, as the
10 concentration goes up, yes.

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2 Q Just for purposes of identification, Mr. Ferdon,
3 you have a July 16, '84 memo to file contained in the
4 supplemental package of discovery.

5 Would you simply identify that as your work?

6 A (Witness Ferdon) That is a preliminary draft.
7 Yes.

8 JUDGE KELLEY: Gentlemen, has that list made
9 its way down the table?

10 MR. MC GARRY: Yes, it has. I was listening to
11 cross-examination. We have read it. It is just one area.

12 JUDGE KELLEY: Okay. But we are not doing any
13 notifying until we close on that, okay?

14 MR. MC GARRY: Right.

15 BY MR. GUILD: (Continuing)

16 Q Let me show two other documents to you,
17 gentlemen. The first is entitled "Generation of Computer
18 Weld List" and the second a handwritten document, it says,
19 "Critical Welds Identified by Construction Iso's."

20 Would the appropriate panel members identify
21 those, please?

22 A (Witness Llewellyn) The computer weld list is
23 my document, Mr. Guild.

24 Q Okay.

25 A The two-page document that starts out with NI
system on the first page and goes to NM system, ND system,

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2 on the second page, is a telecopy sent to me from Design
3 Engineering.

4 Q And is that pursuant to your request that they
5 identify critical systems as part of the sampling of these
6 welds?

7 A Yes, sir.

8 Q Just a couple of more documents heading your way.
9 July 19th, 1984 memo to file, Mr. Ferdon, could you identify
10 that, please?

11 A (The witness, Mr. Ferdon, is looking at the
12 document.)

13 Q Does that reflect your meeting with Mr.
14 Czajkowski and the other NRC representatives we have talked
15 about?

16 A (Witness Ferdon) It does.

17 Q Regulatory Guide, Regulatory Guide 1.44, Control
18 of the Use of Sensitized Stainless Steel, whoever the
19 appropriate witness is, would you identify that, please?

20 A (The witness, Mr. Llewellyn, is looking at the
21 document.)

22 Q Is that -- I'm sorry, did you have something to
23 say?

24 A (Witness Llewellyn) That does appear to be
25 U. S. Nuclear Regulatory Guide, yes, 1.44.

Q And that's the regulatory guide that's the basis

#15-3-SueT

1 for the --

2 A We need a minute to explain to you. Mr. Grier
3 may be able to help out on this. We worked with Duke
4 Nuclear Regulatory Guides which are written based on those.
5 Perhaps somebody else on the panel can --

6 Q Could somebody --

7 A (Witness Kruse) I will be glad to contribute.

8 Q Sure.

9 A We adopted Duke Nuclear Guide in lieu of NUREG
10 Guide 1.44. And I believe it's contained in our --

11 Q That represents quality assurance, commitment of
12 Duke Power Company?

13 A (Witness Grier) That's right.

14 Q It's a condition of your getting a construction
15 permit and an operating license that you comply with that
16 commitment; is it not?

17 A That's correct.

18 Q Gentlemen, ANSI-ASTM 8262-77A, Standard Recom-
19 mended Practices for Detecting Susceptibility to Inter-
20 granular Attack in Stainless Steel, if someone would identify
21 that document, please?

22 A (The witness, Mr. Kruse, is looking at the
23 document.)

24 Q Mr. Kruse --

25 A (Witness Kruse) Yes.

#15-4-SueT 1

2 Q -- does that appear to be the standard that we
3 have been discussing?

4 A That appears to be the standard that we have
5 been discussing.

6 Q All right. Mr. Mills, you were assigned the
7 responsibility for investigating and resolving Concern Number
8 9 on the 1 through 26 listing of concerns, and that on the
9 subject of cold spring.

10 A (Witness Mills) Yes, that's correct.

11 MR. MC GARRY: Mr. Guild, do you intend to pursue
12 questioning on cold spring?

13 MR. GUILD: Yes, I do.

14 MR. MC GARRY: I would just raise an objection.
15 We believe this to be beyond the scope of the hearing. Cold
16 spring is found in Attachment B, Roman Number III. It is
17 our view that this does not involve foreman override at all
18 and therefor is beyond the scope of this hearing.

19 As the report reflects the situation here,
20 Your Honors, is that an individual, one welder, alleged a
21 particular incident wherein a welder foreman, I guess it
22 was a pipe fitting foreman, a QA inspector, supervisor, and
23 the ANI inspector were all there at the site determining
24 whether or not it was proper to cold spring this pipe. And
25 they made a determination that it was and they went ahead
and did it.

#15-5-SueT

2 Now, that clearly is not a foreman override cir-
3 cumstance. And, therefore, we think it's a technical issue
4 that we have addressed in the report as a technical issue
and does not involve the foreman override issue.

5 JUDGE KELLEY: When you say they did it, did they,
6 the supervisors, proceed to cold spring the pipe? Or, did
7 various employees then proceed to cold spring the pipe?

8 MR. MC GARRY: I imagine the employees. Everybody
9 was there. It was not the situation that comes within the
10 definition of foreman override.

11 And what had happened is, they thought they were
12 doing it in the course of procedure, and all these experts --

13 JUDGE KELLEY: Under certain circumstances, cold
14 springing is okay?

15 MR. MC GARRY: Yes, sir.

16 JUDGE KELLEY: We have covered some cold springing,
17 I know, in the past.

18 Mr. Guild, how do you bring this --

19 MR. GUILD: That's a very interesting version of
20 what happened. I suppose Mr. McGarry wasn't there and
21 neither was I, but the fact of the matter is, we have a
22 whole sheaf of affidavits that talk about cold springing and
23 I only see one instance reflected in the report. And I
24 submit to you that Applicants are in error in classifying
25 this as a non-foreman override issue.

#15-6--SueT1

2 And I can't speak to the specifics of the incident
3 Mr. McGarry is talking about but I tell you that it's our
4 position that cold spring is a violation of procedure. It
5 reflects adversely on the quality of the workmanship in-
6 volved, and that it's the result in instances from pressure
7 by foremen to get the work done in derogation of quality to
8 meet schedule.

8 JUDGE KELLEY: Is it your intention to ask
9 questions about particular instances where there was some
10 link between the foreman and the employee?

11 MR. GUILD: Yes, sir.

12 JUDGE KELLEY: Well, you know, if you want to
13 pursue it on an incident basis, I think we will just have
14 to hear objections as the incidents come up. But cold
15 springing might or might not be foreman override. We don't
16 know in advance.

17 The one incident that Mr. McGarry referred to, at
18 least the foremen were participating. Now, it may be as you
19 say, that they just thought they were following procedures.

20 But without hearing more about it, it's kind of
21 hard to rule it out, it seems to me anyway. Just a moment.

22 (The Board members are conferring.)

23 We think we have to take it on a one-by-one
24 basis. You are free to object to particular incidents,
25 Mr. McGarry, if you choose to do so.

#15-7-SueT¹

BY MR. GUILD: (Continuing)

2 Q Mr. Mills, you were assigned the task of investi-
3 gating and resolving the allegations under the heading
4 cold spring?

5 A (Witness Mills) Yes, sir, that's correct.

6 Q And I see an investigation resolution form,
7 Concern Number 9, with your name on it indicating that it
8 was performed on the 10th of August, 1984.

9 Can you identify that?

10 A (Witness Mills) Yes, sir, that's correct.

11 MR. CARR: What was that number again, that
12 concern?

13 MR. GUILD: Number 9.

14 JUDGE KELLEY: What page is that?

15 MR. GUILD: I lost the page number, Judge.
16 It looks like Item 27 is the partial identification at the
17 top right hand corner.

BY MR. GUILD: (Continuing)

19 Q Is that right, Mr. Grier?

20 A (Witness Grier) Could I see the document?

21 Q Sure.

22 A This is Item 27. The page numbers aren't there
23 but it would be toward the end of the main body of the
24 report before the attachments, but fairly close to the end
25 of the main body of the review board's report.

#15-8-SueT¹

JUDGE KELLEY: Yes, thank you. Okay. We've got
it.

BY MR. GUILD: (Continuing)

Q Now, Mr. Mills, it says here one welder alleged
during the initial interviews that a power house mechanic
foreman and several inspectors had allowed a cold spring to
occur on a piping reducer in the nuclear service water RN
system, at weld 2RN-114-4, in September 1981.

And you investigated that concern?

A (Witness Mills) Yes, sir.

Q Did you investigate any other concerns about
cold springing?

A I confronted Mr. Hollins as far as whether any
other interviews or affidavits that were instituted that
cold springing was brought out. And we found none.

Q You found none? He found none? Or, together you
found none?

A Together we found none. We also interviewed the
members of this particular crew to see if they could recall
any other incidents.

And also inspector personnel were interviewed
also.

Q All right. Now, I see folks who have been sitting
silent for most of the day, the interviewers. And, it's
Mr. Bolin, Ms. Fowler, Ms. Lewis and Mr. Sutton, correct?

#15-9-SueT1

2 And did ya'll identify concerns expressed about
3 cold springing in your interviews?

4 A (Witness Lewis) I did.

5 Q You did, Ms. Lewis? And, Ms. Fowler?

6 A (Witness Fowler) I did not have it brought up
7 in any of mine.

8 Q Mr. Bolin?

9 A (Witness Bolin) Yes.

10 Q That's two unless ya'll just talked to the same
11 person. Now, Mr. Sutton, did you identify any?

12 A (Witness Sutton) No.

13 Q How many did you identify, Ms. Lewis?

14 A (Witness Lewis) One, and that person named another
15 person who Mr. Bolin talked to.

16 Q Okay. Mr. Bolin, you identified that person?

17 A (Witness Bolin) One, yes.

18 Q So, that's two?

19 A Yes, sir.

20 Q How about -- here is an affidavit. It's Number
21 163.

22 A (Witness Mills) Yes, sir. I talked to that
23 individual.

24 Q Okay. I'm reading the third paragraph: On
25 several occasions I have seen and I have been instructed
by my supervisor, Jimmy Johnson, to cold spring the pipe.

#15-10-Suef

And he goes on.

2 A I recall that. Let me point out, first of all,
3 that cold springing is allowed. We have a procedure for
4 determining allowable cold spring load, CP-483.

5 Q That wasn't my question. My question was, did
6 you interview anybody else that had cold spring concerns,
7 and you said no.

8 But you did, and that's this gentleman, Number
9 163.

10 A I said that I had also interviewed -- that we had
11 interviewed members of the crew, and he was a member of this
12 crew.

13 Q Okay. Tell me who else you interviewed that had
14 cold spring concerns. Your final report only says that you
15 did one, that you identified one welder that alleged --

16 A We identified one incident that had not been
17 properly documented. And interviews that we had conducted,
18 there were only two instances that could be recalled. Both
19 of those had been properly documented.

20 Q That wasn't my question. My question was,
21 individuals who identified concerns about cold springing,
22 and I would like for the panel as a collective body to
23 please identify by numbers the other individuals, if there
24 were any, that you identified who raised concerns about
25 cold springing?

#15-11-Sue

Because your report says one welder.

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2

A I had no other individuals to raise concerns for cold springing that had not been properly documented.

3

4

Q That wasn't my question. Concerns about cold springing.

5

6

A (Witness Hollins) Let me help here. I think what Mr. Mills is trying to say is that during the initial round of interviewing we found one person who had a concern about cold spring. When we pursued that we found other people who had knowledge of that same situation.

7

8

9

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11

And in addition we found people that had knowledge of previous situations. But they were appropriately documented.

12

13

14

Q Well, that's maybe the conclusion. And maybe like your conclusion in other parts of your report, it is justified and maybe it isn't.

15

16

17

What I'm trying to ask you, sir, is to tell me how many people expressed concerns about cold springing, because your report suggests that only one did?

18

19

20

A The report says that one welder alleged during the initial interview a concern about cold spring.

21

22

Q Yes, sir. I don't --

23

A And from there we pursued that and found additional people that could talk about that same situation.

24

25

Q How many did you find, Mr. Hollins?

#15-12-SueT

1 A I don't know that I have the number on that.
2 Do you?

3 (Witness Mills) No, sir, I don't. I don't
4 either.

5 Q And your position is that the others were not
6 expressing concerns about the facts of cold spring?

7 A (Witness Hollins) We went to them, and we were
8 asking specific questions about cold spring.

9 Q All right, sir. Is there anyplace else in your
10 report where you describe the investigation resolution of
11 the other concerns about cold springing other than the one
12 welder that is reflected in the investigation resolution
13 document, Mr. Mills, that I showed to you?

14 MR. MC GARRY: I would just like the record to
15 reflect, Mr. Guild, that you mentioned one welder. But on
16 that same page, Roman Numeral III-1 of Attachment B to the
17 August 3rd report, the third paragraph of Section D
18 mentions two other individuals.

19 MR. GUILD: All right. Thanks, Mr. McGarry,
20 that helps.

21 BY MR. GUILD: (Continuing)

22 Q Anyplace else in the report where you talk about
23 others who raised the cold spring issue or describe your
24 investigation and resolution of that concern?

25 A (Witness Mills) I'm not sure I was responsible

#15-13-SueT¹

2 for Section 3. I'm not sure this is mentioned up front or
3 not.

4 Q I'm sorry, Mr. Mills, you are speaking of what
5 now, Section 3?

6 A Yes. Cold spring --

7 Q Attachment B. Roman III?

8 A Right.

9 Q Okay. Fine. I'm lost here. Are you looking,
10 or did you answer the question?

11 A I'm not aware of any other place.

12 Q Okay. Mr. Hollins, are you?

13 A (Witness Hollins) Under the look-out section,
14 there is a person that talks about pipe pulling which we
15 do not consider cold springing.

16 Q What is pipe pulling?

17 A Pipe pulling is pulling pipe in position.

18 Q That's okay and cold spring is not? Does that
19 distinguish the two?

20 You use a chain fall or a come-along but in one
21 instance you are not force-fitting it, you are simply hold-
22 ing it up off the floor there to fit it?

23 A (Witness Mills) And I say again, cold springing
24 is allowed. We have a procedure for determining allowable
25 cold spring load.

Q Sure. I'm sure lots of things are allowed. My

#15-14-SueT

question really is not going to whether you resolved it to your satisfaction, determined it was proper or improper. It goes to the concern being expressed.

And, Mr. Hollins, I'm trying to really focus on the definition of the term you used.

A (Witness Hollins) Pipe pulling is the operation of snaking a pipe through the plant in order to get it into place.

Q And that involves using chain jacks and come-alongs?

A That's correct.

Q And using mechanical means to pull the pipe?

A True.

Q Okay.

A I mean, we have pipe that weighs thousands of pounds.

Q That's fine. But how do you distinguish that from cold springing?

A Pipe pulling is the pipe is free to move.

Q Right. And?

A And cold springing, it's fixed on one end.

(Witness Mills) And into the closure joint. Cold springing is used at closure joints. You have piping erected and you have a final joint you have got to bring together.

Q You are going to force-fit it, right? Use more

#15-15-SueT1

than modern hand pressure to fit up that pipe?

2 A That's cold springing, yes, if you do that.

3 Q Now, tell me about the -- let me ask you, it's
4 not your testimony, Mr. Hollins, that all of the concerns
5 expressed about cold spring relate to that single incident,
6 is it?

7 A (Witness Hollins) No, sir, it's not.

8 Q Okay. There are others out there, and there is
9 no particular way they are addressed in the report or --

10 A I know of no cold springing concern raised in
11 the affidavits that is not addressed in the report.

12 Q Okay. Now, what's the number of the welder that
13 raised the concern about the cold spring that you identify
14 in the first paragraph of your documentation there, Mr.
15 Mills?

16 A (Witness Mills) 33.

17 Q All right. How about the numbers, plural, of
18 the other members of the crew who were interviewed with
19 regard to that concern?

20 A It would be 127, 131 and 163.

21 Q And who were the two other individuals identified
22 in Paragraph 3 under investigation, the first page of your
23 resolution sheet there, who remembered other specific
24 instances of cold springing?

25 A Okay. That was Individual 62. And the other

#15-16-SueTl

incident was actually recalled by three individuals, 198, 68 and 131.

Q 198, 68 and 131?

A Yes, sir.

Q So, you say, it's incorrect where you have it only two other individuals remembered?

A Mr. Hollins made that correction in testimony he filed yesterday. I believe his corrections are in there.

Q Okay. So, it should read -- what's the change?

A It should read: Significantly of all the individuals interviewed only two other specific instances of cold springing that could possibly be in violation of procedures were remembered.

Actually two instances remembered by four people in total.

Q Okay. Two instances, four people? Two specific instances --

A Yes.

Q -- four people.

A Yes.

Q How many other people raised concerns about cold springing that you don't characterize as specific instances or that you otherwise don't include in that list?

A I don't know of any.

Q Like saying, it happens all the time, or happens

#15-17-Sub
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1 commonly, or I'm concerned about cold spring and a lot of
2 it goes on. It used to go on a lot around here.

3 I'm just paraphrasing, but those kind of
4 things?

5 A I don't have any indication of that.

6 Q You don't recall any affidavits that expressed
7 concerns about cold springing?

8 A Yes. Some of these individuals here did.

9 Q All of those that you are talking about?

10 A Yes, in this report, Section 3.

11 Q All the ones you identified by number now?

12 A Yes.

13 Q And that's everybody that you know of that
14 expressed a concern about cold springing?

15 A As far as expressing concern or had knowledge
16 of this incident?

17 Q No, sir, expressing concern?

18 A I don't know of any others that expressed a
19 concern.

20 Q Okay. All right. Now, I'm looking at an
21 affidavit, Number 191. Mr. Hollins, is that what you are
22 talking about?

23 "When I first came to work at Catawba I saw pipe
24 fitters pulling pipe with come-alongs but that practice was
25 stopped?"

#15-18-SueT 1

A (Witness Hollins) Yes, sir, that's the one I'm speaking of.

2
3 Q And how do you know that was a legitimate proper
4 pulling of pipe and not a cold spring that he is talking
5 about there?

6 A The individual was unable, as I remember, to give
7 us any additional information. He was talking about some-
8 thing that happened five and a half years ago.

9 Q That's a different case from what I heard you say
10 a few minutes ago. He has a general concern. He is con-
11 cerned about improper use of force in fitting pipe.

12 A That's not what his concern says.

13 Q Okay. That's what I want to know now. What is
14 your testimony about what his concern is?

15 Is it that he is just concerned that he doesn't
16 think it's efficient to pull pipe, he doesn't think it's
17 good for the job for some other reason? Or, is he concerned
18 about the safety implications of practice that he observed
19 and characterizes -- it's characterized in his affidavit as
20 pulling the pipe with come-alongs.

21 A That's correct. And that's a common practice.

22 Q What about where he says that practice was
23 stopped? Was it?

24 A Not that I'm aware of.

25 Q Okay. Did you ask him whether he was concerned

#15-19-Suet

2 about cold spring? Did you ask him whether this was a cold
3 spring concern and where it happened and that sort of
4 thing?

5 A It seems like we followed up on that. I would
6 have to see his follow-up affidavits, but in any case we
7 were unable to get any additional information. We have
8 some follow-up affidavits I believe.

9 Q Did you do those follow-up interviews?

10 A Not personally, no.

11 Q Who did? Did somebody on the panel do those
12 follow-up interviews?

13 A (Witness Llewellyn) I believe I did, Mr. Guild.

14 Q Mr. Llewellyn, did you ask the individual about
15 his concern? Was he concerned about cold spring?

16 A I don't believe I did. I interpreted this state-
17 ment to mean that he was talking about moving pipe and not
18 springing pipe so I didn't follow up that area.

19 Q You didn't ask him whether or not he knew of
20 the particular foreman involved or whether it was, in
21 his opinior. an incident representing -- representing
22 instances of foreman override or foreman pressure to do
23 something that was not proper by procedure?

24 To the best of your recollection?

25 A I had asked him about some specific instances. I
believe when we got toward the end of that, we asked a

#15-20-SueT

question along the lines, if he had any other concerns coming back to that.

I was trying to remember who helped me with that interview.

(Witness Sutton) What is the number?

Q It's 191.

A (Witness Llewellyn) Individual 191. I interpreted it, Mr. Guild, when we went through the interview that particular individual had some concerns in other areas.

Q Fine.

A Such as back rings and some other areas. When we got done I asked him if he had any other concerns regarding quality and he said he did not. I took that to mean in that case that the issue of pole pulling was something he raised, not necessarily concerned it's something violating QA procedures.

Q All right. Now, I noticed that out of nine on the tabulations the concerns from screening interviews was assigned to you, Mr. Mills, correct?

A (Witness Mills) Is that cold spring you are speaking of?

Q Yes, sir. A concern over cold spring of pipes. His name is on there.

Q Mr. Llewellyn, you were assigned to do the follow-up because the individual was not identified as having a cold

#15-21-SueT

springing concern, right?

2 A (Witness Llewellyn) If you look back to the
3 matrix that you showed Mr. Hollins, I believe it was yester-
4 day afternoon, that individual had concerns in some other
5 areas. The bulk of those concerns were in areas regarding
6 concerns I was going to resolve so that was given to me for
7 a technical interview.

8 Q Okay. And not to Mr. Mills who was responsible
9 for the cold springing, correct, Mr. Hollins?

10 A (Witness Hollins) That's correct.

11 Q Now, Mr. Mills, with regard to the incident that
12 is reflected in your resolution, you determined that this
13 particular pipe was, in fact, cold sprung into fit,
14 correct?

15 A (Witness Mills) That's correct. The amount of
16 spring that was in the pipe exceeded what was allowed in
17 our procedure.

18 Q And the way you determined the amount of spring
19 is you put a dynamometer --

20 A A dynamometer.

21 Q You put a dynamometer on it to see how much force
22 you have to put on the pipe to make it fit, correct?

23 A And what we did actually was unbolted a flange
24 connection that did spring apart. We connected the dyna-
25 mometer to see how much force it took to pull it back

#15-22-SueT1

together.

2 Q Right. And it took more force than would have
3 been permitted by the procedure?

4 A That's correct.

5 Q All right. And so it was non-conformed?

6 A That's correct.

7 Q All right. And what did you do, cut the pipe
8 out, right?

9 A Yes, we did.

10 Q Well, in order to cold fit a pipe per procedure,
11 you would have had to use the dynamometer in the first
12 instance, wouldn't you?

13 MR. MC GARRY: I object. I object to the line
14 of questioning, not to the precise questioning. I initially
15 objected to cold springing, the fact that the incident
16 that I maintain was not the subject of foreman override.

17 I believe there has to be some threshold showing
18 that there is a foreman override situation here. And I
19 don't think the questions are eliciting that.

20 And, obviously I'm not to direct counsel how to
21 ask his questions but it encumbers us in how we can object
22 to further inquiries when we maintained all along there was
23 no foreman override.

24 JUDGE KELLEY: This is the case though where there
25 were foremen present when this was done? You are arguing,

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I gather, it was within procedure?

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MR. MC GARRY: Well, it was foremen and QA and ANI. And we maintain with all those folks there it's not some foreman who is going ahead and telling his craft to go do this and violate procedures. It was a collegiate effort by presumably some people with some knowledge, and they went ahead and said this could be done.

It may have been a mistake, but it wasn't foreman override.

JUDGE KELLEY: I understand that the witness was just saying that when they went and checked it and went through their checking procedure the dynamometer indicated that the amount of force used was excessive.

MR. MC GARRY: It could be a mistake. That could have happened.

JUDGE KELLEY: It could still be a mistake no matter how many people were there.

MR. MC GARRY: Exactly. But that doesn't make it foreman override. We have 19,000 NCIs but that's not foreman override.

JUDGE KELLEY: Mr. Guild?

MR. GUILD: Our position is that we have to establish the facts and whether that's characterized as foreman override is for argument. And I don't intend to pursue instances beyond this point. So, it's really a fairly

#15-24-Su&T

1 simple matter of establishing the facts discovered in this
2 resolution. But I submit we would maintain this is an
3 example of foreman override.

4 I don't think it's necessary to argue the point
5 at this point unless you want to hear it. I think the facts
6 are that there is a foreman involved and the foreman violated
7 procedure in order to get the work done out of production
8 pressure. And regardless of whether the ANI man is there,
9 QA is there -- in fact, probably more significantly because
10 they are there and are responsible for seeing that the
11 procedure wasn't violated yet allowed it to happen in the
12 first instance.

13 It should be in as foundation evidence that we
14 can argue in our findings represents foreman override.

15 end #15-
16 Joe flws

1 JUDGE KELLEY: Insofar as one element, one evil
2 to be concerned about foreman override, something being done
3 to rush something through, and they get it past the QA
4 people and the QC people, and the QC people standing there
5 looking, that is not --

6 MR. GUILD: It is an element that is missing.
7 Put it this way. There is evidence in this record that
8 procedures were violated, with people posted to be lookouts
9 to make sure that the quality control inspector didn't see
10 it happen. That is one class of foreman override. It seems
11 to me it is certainly within the purview of proof on this
12 issue that there are cases where there are QC inspectors
13 who fully know what is going on, but acquiesce or permit the
14 conduct to occur in violation of procedure, and it is still
15 foreman override.

16 The issue at some point you are going to have to
17 wrestle with is whether or not the quality assurance system
18 at Catawba was functioning properly given these instances
19 of foreman pressure. And I don't think it is despositive
20 that there was a QA person witnessing. Mr. McGarry and I
21 are not in a position -- neither of us have the capacity to
22 resolve what the facts were here.

23 JUDGE KELLEY: I think we understand the
24 different points. Let's just have a moment.

(Board confers)

1 JUDGE KELLEY: It has been argued whether this is
2 or is not foreman override, and the Board is not disposed at
3 this point to take a Board position.

4 It does strike us -- we are short on time here.
5 Mr. Guild wants to use a little time to follow up to the
6 extent he indicated we are going to allow it, recognizing
7 that it is his judgment on using his time.

8 BY MR. GUILD: (Continuing)

9 Q All right. To be brief, Mr. Mills, the procedure
10 would have required use of a dynameter at the time the pipe
11 was force fit to determine how much force was used to fit the
12 pipe, correct?

13 A (Witness Mills) That is correct.

14 Q And the dynameter measurement would have been required
15 and documented at the time of the fit?

16 A That is correct.

17 Q And that would have become part of the quality
18 -- the permanent quality records, would it not?

19 A That is true.

20 Q In this instance, those things did not happen, did
21 it?

22 A That is correct.

23 Q They force fit the pipe. People may watch. I may
24 have seen it, QA may have seen it, but the pipe was force fit
25 without a dynameter and without proper documentation of the force

1 that was used to fit the pipe, right?

2 A That is correct. But QC and ANI were consulted,
3 and it was openly discussed. Talking to the foreman, he said
4 he made a bad judgment. He felt like he did, but he later
5 admitted when I talked with him that he made a bad judgment
6 call.

7 Q Okay, and you resolved this one after you went
8 back -- he knew that there hadn't been documentation of the
9 fit, correct?

10 A That is correct.

11 Q When you unbolted the flange, and the pipe sprung,
12 that was evidence right there that the pipe had been force fit,
13 correct?

14 A True.

15 Q And you knew there wasn't any documentation of that
16 force fit reflected in the Dynamometer measurement at the time
17 of the fit, right?

18 A We were going on the basis that the welder allegation
19 was true. We went down to investigate it, and broke the pipe
20 apart to see if it was there.

21 Q But following my question now, my point is you got
22 to the point where you unbolted the pipe and it sprung, and
23 you knew that there was nothing in the process of control that
24 reflected a dynamometer measurement, or the authorization for
25 a cold spring fit up, correct?

16-4-Wal

6:00 p.m.
EVENING SESSION

- 1 A That is correct.
- 2 Q At that point, you knew it was a non-conformance.
- 3 A That is correct.
- 4 Q So, your use of the dynameter to measure how much
5 force was used in fitting it up was unnecessary to determine
6 that non-conformance existed, right?
- 7 A Well, it was to determine the degree.
- 8 Q But non-conformance existed because they didn't
9 document it in the first instance, correct?
- 10 A Yes, but like I said the first step that we took
11 was to determine if it was a cold spring. When we determined
12 it was, we went ahead and wrote the non-conformance. That
13 was our first step.
- 14 Q You wrote the NCI first, and then did a dynameter
15 reading second?
- 16 A No.
- 17 Q Oh.
- 18 A We use the dynameter to determine how much spring
19 was there, and then we wrote the non-conformance and we found
20 -- see what the procedure allowed.
- 21 Q But even if it didn't exceed what the procedure
22 allowed, it would have been a non-conformance because it
23 wasn't properly documented in the first instance, right?
- 24 A That is correct.
- 25 Q And you cut the pipe out and remade it to fit?

1 A Yes.

2 Q And that was Q1A, number 18,304?

3 A That is correct.

4 Q Now, I thought I recalled in the report here that
5 you said that there was no re-work required as a result of your
6 investigation. Mr. Hollins, isn't that right?

7 A (Witness Hollins) That is correct.

8 Q You had to do this re-work, didn't you?

9 A We did; it was not required.

10 Q Oh, I see. I should interpret required as being
11 something real special, a term of art. What do you mean by,
12 'required,' as using that term in your report?

13 A Our design engineering department evaluated this
14 situation and determined it would meet the intended service,
15 and would function as it is installed.

16 Q They did?

17 A Yes, sir.

18 Q When did they do that?

19 A (Witness Mills) They did it after they cut it out.

20 We made a decision to cut it out based on the common sense
21 approach. At least a couple of flange valves from a maintenance
22 standpoint. You would not want the pipe to spring apart and
23 have to pull it back together if you ever had to change a
24 gasket or whatever.

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25

You did it from strictly a maintenance and common

1 sense standpoint.

2 Q But it was non-conformed, and you cut it out, then
3 you went back and did a design evaluation?

4 A Design, evaluate --

5 Q To determine you didn't need to have to cut it
6 out?

7 A (Witness Hollins) That is correct.

8 Q And that design evaluation, the amount of -- the
9 amount of stress put on the pipe wouldn't have adversely
10 affected the system, or something like that.

11 A (Witness Mills) Said it was non-safety significant,
12 and it would not have affected the safe operation of the
13 plant.

14 Q Okay. Well, there is cold springing that has safety
15 significance, isn't there, Mr. Mills?

16 A I don't believe I am getting the question.

17 MR. CARR: Objection, objection. The question is
18 irrelevant. Whether or not cold springing has an effect on
19 safety of the plant is irrelevant to this instance. He has
20 already testified that this particular incident did not have
21 an impact on the safety of the plant, and the cold spring
22 as an issue to this Board has been dealt with, and rendered
23 a decision already. And it is beyond the scope of this
24 particular line of inquiry.

25 MR. GUILD: Mr. Chairman, I don't think that makes

1 any sense at all. The fact of the matter is I submit to you
2 that the record, as it stands, on the face of the report, the
3 implication is that cold spring has no safety significance,
4 and the Board should not be concerned about instances of foreman
5 override, where cold springing is a result. That isn't the
6 case, and it seems to me I should at least be able to establish
7 with this panel that we shouldn't disregard cold springing
8 because whether in this instance it was safety significant
9 after design engineering evaluation or not, cold springing
10 in fact, does have safety significance, and must be evaluated.

11 JUDGE KELLEY: Do you have some incident in mind
12 you want to get into here; where that may be the case?

13 MR. GUILD: More or less a hypothetical, Judge.
14 It is really not the question of taking it now to another
15 step. I just wanted to establish from Mr. Mills if he is
16 familiar with the subject and does analysis of cold springs,
17 and there are circumstances where cold spring sprung pipe
18 can have a significant adverse effect on safety of the facility.

19 JUDGE KELLEY: I will just allow that single
20 abstract question, and then we will move on.

21 BY MR. GUILD: (Continuing)

22 Q What about your fit up of cold spring pipe to a
23 piece of equipment, Mr. Mills. For example, let's say a top
24 flange, or something like that?

25 A (Witness Mills) Our procedure requires to monitor

1 the alignment, to determine what effect that has on the
2 equipment.

3 Q But you wouldn't want a cold spring pipe to a piece
4 of equipment where the effect might be to cause a misalignment.

5 A No, no. You wouldn't do it from a maintenance
6 standpoint either. That is just not a good practice to do
7 that.

8 Q Well, how about answering my general question.
9 If that happened, that would be a concern from
10 a safety standpoint, would it not?

11 A It is according to what degree it happened.

12 Q Is cold spring of safety concern otherwise?

13 A It is not within the bounds of our procedure.

14 Q How about addressing the general question. Is
15 that a safety concern --

16 A I am not sure I understand your question.

17 JUDGE KELLEY: If you bend it like a pretzel,
18 isn't that dangerous. Isn't there a point where you bend
19 it too far.

20 WITNESS MILLS: That would have to be considered
21 in the design. In other words, we have a basis in the
22 design spec that we are working within. Outside of that,
23 it would have to be a design consideration.

24 JUDGE KELLEY: If I sound impatient, and I am sure
25 I do, can't we just get an answer to the question. Can't you

16-9-Wal

1 conceivably have a cold sprung pipe that has safety significance?

2 WITNESS MILLS: Yes.

3 JUDGE KELLEY: All right.

4 BY MR. GUILD: (Continuing)

5 Q What craft is responsible for the work involved in
6 the typical fitting of a pipe involving use of mechanical means
7 to fit a pipe, cold spring?

8 A Powerhouse mechanic.

9 Q They are fitters, pipefitters?

10 A Yes.

11 Q Other disciplines under the powerhouse mechanic?

12 A Really fitters of pipe.

13 Q And there are a lot of fitters, there are a lot
14 of powerhouse mechanics at Catawba, and the record reflects
15 it. Nine hundred?

16 A I don't recall the total number. Nine hundred do
17 not work on pipe.

18 Q Mr. Hollins, how many people did you interview and
19 inquire about the subject of cold spring?

20 A (Witness Hollins) I don't know that I can give
21 you a precise number. We did interview all the craftsmen that
22 were on that crew at the time.

23 Q A dozen or less?

24 A Less than a dozen.

25 Q Less than a dozen. So, that would be the target

1 -- the general target of your inquiries on the subject of
2 cold spring is that crew? Are there others that I should
3 know about in terms of who you interviewed on the subject of
4 cold springs?

5 A Well, we interviewed other powerhouse mechanics
6 other than that crew, but we interviewed that crew in
7 particular asking specific questions about cold pulling
8 pipe.

9 Q Cold pulling pipe?

10 A Or cold springing pipe. Excuse me.

11 Q That is the term you use, cold springing.

12 A Cold springing, yes.

13 Q And so that crew was asked about cold spring. Anybody
14 else who raised the cold springing issue would have volunteered
15 the information in response to a general question.

16 A A general question such as: Tell me about any time
17 you have violated a -- or you know of anybody that has
18 violated a QA procedure.

19 Q Okay. So, in your structured questionnaire, where
20 you seek information on a particular subject, such as your
21 essential question that you started with with welders, for
22 example, asking about arc strikes, they asked about interpass
23 temperature.

24 It would be less than a dozen. This particular
25 crew you asked structured questions on the subject of cold

1 springs.

2 A That is correct.

3 Q All right. Now, Mr. Llewellyn, you are responsible
4 for resolving the concern regarding arc strikes, is that
5 correct, sir?

6 A (Witness Llewellyn) Yes, sir. I have the lead
7 responsibility. Mr. Kruse assisted me in that write-up.

8 Q Mr. who?

9 A Mr. Kruse.

10 MR. MCGARRY: Again, for the record Your Honor ,
11 we object to the questioning in the area of arc strikes, because
12 of Attachment B, and we appreciate the hour and the time. We
13 just want to preserve our position.

14 MR. GUILD: We maintain it is within the perview
15 of foreman override.

16 JUDGE KELLEY: Is there --

17 MR. GUILD: We are looking.

18 JUDGE KELLEY: In the case of at least cold spring,
19 the lead off incident, despite the fact that there eas QC and
20 other inspectors standing around, at least there were foremen
21 around when this was done, is there anything you want to refer
22 to what we have immediately before us, what you intend to get
23 to that involves nexus of the foreman?

24 MR. GUILD: Yes, sir.

25 JUDGE KELLEY:

1 MR. GUILD: They violated the procedure.

2 JUDGE KELLEY: Where, on what page?

3 MR. GUILD: Concern No. 2, rule of arc strikes.

4 I am looking at the form, Judge.

5 MR. McGARRY: For the report, it is in Roman --
6 it is in B, Roman I.

7 JUDGE KELLEY: B-1. Just a minute.

8 WITNESS LLEWELLYN: A particular quote Judge --

9 JUDGE KELLEY: If there is at least some nexus --
10 -- let's go ahead, Mr. Guild. You may look ahead.

11 MR. GUILD: I am looking at the language at that
12 page: The foreman filed the arc strikes off of a valve, and
13 allegedly instructed the welder to do likewise, if the arc
14 strikes were, 'not too bad.'

15 Now, that language I was just reading from is
16 Appendix Roman I; page 1.

17 JUDGE KELLEY: And what is that?

18 MR. GUILD: Of the August 3 report.

19 JUDGE KELLEY: I got you. Fine.

20 MR. GUILD: Now, this particular incident was raised
21 by the NRC specifically. Communicated by the NRC. It involved
22 the same foreman, and there is a referenced individual B-2
23 as being -- that is the NRC's identification of their source,
24 their confidential source, correct?

25 A (Witness Hollins) Correct.

1 BY MR. GUILD: (Continuing)

2 Q And you conducted interviews of Mr. Moore's crew
3 members, past and present, and as part of your structured
4 questions you asked about the subject of arc strikes, correct?

5 A Yes, we did.

6 Q And you did the interviews, Mr. Llewellyn?

7 A I did the technical interview with some of the
8 individuals that expressed concern to us about arc strikes.

9 Q I am looking at the investigation/resolution of
10 concern document, and that document indicates that Mr. Kruse,
11 you performed the resolution of August 9, 1984?

12 A (Witness Kruse) You will find that document
13 on that date.

14 Q And reviewed by you, Mr. Llewellyn, on the next
15 day, August 10th?

16 A (Witness Llewellyn) Yes, sir.

17 Q All right. Now, --

18 MR. JOHNSON: Just to assist us, where in the
19 report is it? We are looking at the Review Board Report, right?
20 Tell us where.

21 MR. GUILD: It says Item 5 in the top right hand
22 corner of the document I am looking at. So, that may be it.

23 MR. JOHNSON: Can you give me a page reference?

24 MR. GUILD: My page numbers have all been obliterated.
25 None of my documents have page numbers.

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1 MR. JOHNSON: Toward the beginning or back?

2 MR. GUILD: Item 5 goes in order sequentially.

3 MR. GRIER: It should be fairly close.

4 BY MR. GUILD: (Continuing)

5 Q Mr. Kruse, Mr. Llewellyn, is it in the stack in
6 front of you?

7 A (Witness Llewellyn) I do not have.

8 Q Investigation/resolution.

9 A No, sir, I do not.

10 Q Should it be identical to the portion in the report
11 as Attachment B, Item 1?

12 A Yes, sir.

13 Q Let's work from that. Now, who did you interview
14 that identified concerns about removal of arc strikes?

15 A You want to know all individuals?

16 Q Yes.

17 A Individual 109, individual 5, individual 186,
18 individual 176, Individual 102, Individual 168.

19 Q 168?

20 A Yes, sir. Individual 131. Individual 191,
21 Individual 37, Individual 194, Individual 208. I believe
22 that was all of them.

23 Q And all those numbers reflected at that part of
24 the August 3rd report under the title Removal of Arc Strikes?

25 A Yes, sir.

1 Q Now, are all those people by numbers, present or
2 former members of Arlon Moore's crew?

3 A No, sir. I do not believe they have all worked
4 for Arlon Moore.

5 Q What other foremen did they work for, if you
6 know.

7 A I believe Individual 131 is a powerhouse mechanic.
8 I am not sure who his foreman is.

9 Q Okay.

10 A We have a listing in discovery of the individuals
11 who work for Arlon Moore. I would really need that list to
12 be able to determine exactly who worked for Arlon Moore.

13 Q All right. What about individual 148, Mr. Llewellyn?
14 Did you investigate his concern about removal of arc strikes?

15 A I don't believe I did at the technical interview.

16 Q Looking at a document, August 15, 1984, Memo to
17 file, over your signature, it appears to be Mr. Llewellyn.
18 Will you look at that. It is only a paragraph. How about
19 just reading it for the record, please.

20 A Memo to File. Reference Individual 148 Concern.
21 Welder B report does not contain explanation of Individual
22 148's statement about removing arc strikes for making of welds
23 without proper approval. Arc strikes caused during welding
24 are almost always in the weld zone, which does not require
25 proper approval to remove. This removal of arc strikes is

1 expected by the welder during the course of making his welds.

2 I signed that memo for file.

3 Q You didn't reach the conclusion that that was a
4 proper arc strike repair on the basis of any investigation
5 of that individual's concern, did you?

6 A I would need a moment to look at that gentleman's
7 affidavit to make that conclusion. I believe I drew that
8 conclusion based upon reading his affidavit.

9 JUDGE KELLEY: While they are looking through
10 the papers, I would just note that your time has expired.
11 Do you want another five minutes to finish up?

12 MR. GUILD: Thank you, sir.

13 WITNESS LLEWELLYN: In referencing Individual 148's
14 original affidavit, quote: When I am making a weld that has
15 an arc strike, I would normally use a file and remove the
16 strike without any approvals. If I happen to see an arc
17 strike already made by someone else, I will get approval before
18 removing it. This is our normal practice.

19 I interpreted that not to be a violation of any
20 procedure, and that is why it is not included in the report.

21 BY MR. GUILD: (Continuing)

22 Q That was just based on your interpretation of the
23 affidavit; not on an independent investigation, was it?

24 A (Witness Llewellyn) From my reading of the
25 affidavit there, he said he would -- when he was making a

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1 weld, arc strikes normally occurred during the process of
2 making a weld.

3 Q Sure. They can occur on the pipe above you,
4 or three feet down the pipe where you are making the weld,
5 or they can occur right adjacent to the weld you are making.
6 They are only proper to repair without process control if
7 they occur in the weld zone, right?

8 A In the area that is going to be inspected, yea.

9 Q In the weld zone. What is it, an inch on either
10 side of the weld. Half inch, -- what is the area, Mr.
11 Llewellyn?

12 A I don't know the exact. You would have to see
13 the requirements.

14 Q Mr. Grier, do you know?

15 A (Witness Grier) I am not certain. It is within
16 an inch or so.

17 Q It is not a foot. If you make an accidental arc
18 strike in the process of trying to weld in a difficult place,
19 if you make an accidental arc strike in burning or falling
20 on a scaffold that is bumped, you make an accidental arc strike
21 and it is not in the weld zone, you are supposed to get process
22 control before you grind or add weld material, repair the
23 arc strike, correct?

24 A That would be covered under a procedure written
25 up 4--- part of the M-4 procedures. It is called an M-4-I

1 Form.

2 Q And you would have to document that repair, would
3 you not?

4 A Yes, it would be.

5 Q What is the issue that you are concerned about when
6 you want to require proper process control, proper documentation
7 for repair of arc space.

8 Mr. Llewellyn, Mr. Kruse, what is the concern that
9 you are trying to address? It is not just a question of
10 cosmetics, is it?

11 A (Witness Van Malssen) The concern is if there is
12 a possibility of small crack in the piping.

13 Or possibility of deposition of some other material
14 other than what you want in the pipe.

15 Q And to remove an arc strike if it is severe you
16 have to grind it out to the point where you could either add
17 further weld metal to it, or grind it out to the point where
18 the surface was unblemished. That is how an arc strike is
19 repaired, isn't it Mr. Kruse?

20 A (Witness Llewellyn) Yes, it is.

21 Q When you grind on a pipe, you also have a concern
22 that you maintain minimum wall thickness for that pipe.

23 A Yes, sir.

24 Q And that is the reason why you want to get proper
25 documentation and authorization for the repair to ensure that

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1 you maintain minimum wall.

2 A Yes, sir.

3 Q If you add weld metal, you want to make sure
4 that the addition of the weld metal is documented to ensure
5 that it has proper process control and is signed off by a
6 QC inspector after the weld is finally complete, correct?

7 A If it is welded there, yes, sir. It would be
8 a documentation on a M-4 Form to document that weld.

9 Q And it would be inspected by quality control
10 inspector?

11 A Yes, sir. And undergo a number of inspections.

12 Q And so if arc strikes were repaired without that
13 documentation, those would be non-conformances, correct?

14 A Yes, sir.

15 Q And last point, Mr. Chairman, this has an
16 individual's name in it -- another document, Mr. Llewellyn.
17 Does that reflect an individual on Mr. Moore's crew -- disagreeing
18 if you will, with your resolution of the concern regarding
19 the repair of the -- the alleged repair of the arc strike
20 on the Kerotest valve body that is the subject that is
21 discussed in your portion of the August 3rd report?

22 A (Witness Kruse) Would you repeat the question?

23 Q It reflects an individual's concern about your
24 resolution of that item.

25 A No. This memo is to document a conversation that

1 Mr. Llewellyn and I had with this individual to try to define
2 the concern that he had further.

3 The interviews didn't give us enough information
4 to go out and do a technical evaluation, so we did this
5 interview so we could gain some further information so that
6 we could go out and adequately evaluate it.

7 Q And that individual -- 109, right?

8 A 109.

9 Q Are you saying that Mr. 109 didn't express the
10 concern that he in fact had seen Arlon Moore improperly
11 repairing an arc strike on this valve body, and that he
12 disagreed with your resolution of the concern which essentially
13 said that the marks on the valve body were not put there by
14 Arlon Moore despite this individual's observation.

15 They in fact occurred in the forging process or
16 of the --

17 A (Witness Kruse) I think I can probably clear that
18 up.

19 Q Would you, Mr. Kruse, please?

20 A I inspected those valves personally, both the
21 valves that Individual B-2 identified, and the valves that
22 Individual 109 provided -- described, and I looked at those
23 valves carefully. Took documentary photographs and tried
24 to identify any regions on the valve's body that had been
25 filed. I saw none. We went back to this individual to make

1 sure that we were looking at the right valve the second time.
2 And he verified that we had, indeed, been looking at the
3 right valve.

4 Q Okay. One last question.

5 JUDGE KELLEY: One last question.

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Q One last question.

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JUDGE KELLEY: One last question.

3

BY MR. GUILD:

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Q Mr. Dick, as to your deposition, you have had close to --I'd say, I'm estimating now -- 100 people expressed concern, wideranging concern that has been the subject of this investigation, and expressed concerns about foremen going back four years.

9

Why didn't your quality assurance system at Catawba identify these concerns, identify the problems reflected in these concerns in a timely fashion when they occurred?

10

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Instead, they had to be identified by Mr. Uryc with the NRC.

13

14

A (Witness Dick) The individuals with the concerns did not come forward on their own, nor did they use any of the devices that we had in place, which would have allowed them to do this in a confidential, anonymous fashion if necessary.

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I do not know what the circumstances were that caused them to not express these concerns until they were asked.

20

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MR. GUILD: Mr. Chairman, thank you.

23

24

JUDGE KELLEY: We are going to take a break at this point. We would like to see the counsel -- Ms. Garde, all counsel, could you come up for a few minutes.

25

1 MR. GUILD: Just one point before you dismiss the
2 panel, please.

3 I have a number of documents, I have identified
4 them and in order to try to expedite things, haven't gone
5 through the rather cumbersome process of having them all
6 marked and put in.

7 I want to offer these documents in evidence, and I
8 can do it now and go back through the whole thing. Or, if
9 counsel would agree as sort of a stipulation by way of
10 making of ease, and not dispute authenticity. All the documents
11 come from Applicants.

12 MR. CARR: Did they come on discovery?

13 MR. GUILD: Yes, they are all discovery documents.

14 I am not asking to waive objections about relevance,
15 I just want to be able to offer them at a later point after
16 the panel has been dismissed.

17 JUDGE PURDOM: The panel is not dismissed.

18 MR. GUILD: Yes, I know, but I am done.

19 MR. CARR: Mr. Guild has been dismissed.

20 (Laughter)

21 JUDGE KELLEY: I think we can work things out.

22 MR. MC GARRY: We have no objection as to
23 authenticity.

24 (Bench conference)

25 JUDGE KELLEY: Please take this for the record.

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1 We will call it Statement to Witnesses:

2 You have been subpoenaed to testify as a witness
3 in the Atomic Safety and Licensing Board hearings about the
4 Catawba Nuclear Power Plant. Your testimony will be
5 considered by the three Judges in making their determination
6 on the licensing of the plant.

7 By law, the hearings are open to the public. However,
8 there is the option to close the hearing to the public if you
9 prefer to testify in a closed session, and, if you have a
10 reason acceptable to the Board for testifying in closed
11 session.

12 You should also be aware that your involvement in
13 this proceeding is considered "protected activity" under
14 Federal law. If you believe that any reprisal or intimidation
15 has resulted from your participation in this hearing, you have
16 the right to file a complaint with the Department of Labor
17 within 30 days of such action.

18 Your testimony will be under oath.

19 That is the end of the statement. We will put that
20 in the record. Let me put in the record just where we are.
21 That is the statement that we intend to use when the witnesses
22 are contacted and told about coming tomorrow or the next day.
23 It will be used either by the Duke people in the case of
24 employees, or it may be used by the Intervenors in the case
25 of ex-employees. And you can ask other questions, obviously,

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1 if they have got them, and so on. But the statement should be
2 in sort of a framework so they know what the score is on
3 this confidentiality point.

4 One other thought -- let's go off again.

5 (Discussion off the record.)

6 (Recess)

7 JUDGE KELLEY: Welcome back. We are back on the
8 record.

9 Mr. Riley of the Carolina Environmental Study
10 Group during the break requested five minutes with the
11 panel to ask the panel some questions. I am granting that
12 request.

13 I will just note we are running behind schedule as
14 is, Mr. Riley, so I have to hold you to five minutes. So,
15 with that, go ahead.

16 BY MR. RILEY:

17 Q I'm looking at a document that has already been discussed
18 and identified by Mr. Kruse and Mr. Ferdon, and I am looking
19 at Concern 1, Page 1. I will read one sentence.

20 "The degree of sensitization seen in a material
21 is dependent on its carbon content, with higher
22 carbon materials exhibiting more severe sensitization
23 for a given sensitizing exposure."

24 Is that a correct reading?

25 MR. MC GARRY: Mr. Riley, is this the document the

XXXX

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1 discovery you got today?

2 MR. RILEY: That is right. It is the last paragraph
3 one page 1 of concern 1, starting with "Degree of sensitization."

4 WITNESS KRUSE: I think that --

5 BY MR. RILEY:

6 Q I just asked if that was a correct reading, yes or
7 no.

8 MR. MC GARRY: Would the witness answer yes or no,
9 and then explain.

10 WITNESS KRUSE: Yes, I think that is a correct
11 reading.

12 BY MR. RILEY:

13 Q All right. Let's move to concern 1, page 2. This
14 is in the last sentence before the heading, EPR Evaluation of
15 Test Socket Welds.

16 "Test results indicate that an interpass temperature
17 requirement of 350° Fahrenheit is conservative and exceeding
18 it does not necessarily result in an unacceptably sensitized
19 material, provided the nominal carbon content of the material
20 is less than 0.0X percent, the highest carbon content of the
21 test material."

22 Is that a correct reading?

23 A (Witness Kruse) As you read it, it is correct.

24 Q And what is the value of X that you would assign?

25 A In that particular case we did not have the carbon

5 1 content of the piping material that we were testing.

2 Q What would be a reasonable value for X in your
3 professional judgment?

4 Now the clock is running, Mr. Kruse.

5 A As our tests indicate, that would be somewhere on
6 the order of 0.073 percent.

7 Q Thank you. Page 3, same document, last paragraph,
8 second sentence, last paragraph.

9 "Higher carbon content stainless steels (generally
10 greater than .04 or .05 percent) have a potential for exhibiting
11 welding induced sensitization even if interpass control is
12 imposed."

13 Is that a correct reading?

14 A Yes, it is.

15 Q All right. There is a Table 1 attached to that.
16 It gives the description of the eight weldments for the coupons
17 that we referred to that were shared between Brookhaven and
18 Duke.

19 What was the carbon content of the pipes used for
20 those eight weldments? Do you have that information?

21 A It was supplied in discovery. The only one I know
22 for sure are for coupons seven and eight, and the content
23 was 0.07 percent.

24 Q All right. Is that the analysis that is headed
25 with headings like SS2, SS4, SS6?

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1 A Yes.

2 Q Thank you. All right, now, this particular memo
3 to file that follows this in discovery is, I believe yours,
4 Mr. Ferdon. Have you seen it?

5 A (Witness Ferdon) Yes, I have.

6 Q On page 2 there is a sentence, "There are various
7 degrees of sensitization which are a function of the material's
8 carbon content and thermal history."

9 Is that a correct reading?

10 A Yes, it is.

11 Q And, on page 3 there is a quotation from NUREG 0679.

12 "All the cracks occurred at locations of stagnant
13 or intermittently stagnant, low-pressure, low-temperature
14 water containing approximately 13,000 ppm boric acid and 8 ppm
15 oxygen. In addition, all the cracks occurred in the HAZ of
16 welds in Type 304 stainless steel piping with relatively
17 high carbon level."

18 Is that a part of your letter on page 3?

19 A Yes, it is.

20 Q And, Mr. Hollins, I will turn to you for a moment.

21 You consulted with a statistically knowledgeable
22 person, and it was his judgment that 25 samples would give
23 you a 99 confidence level of 1 percent. Is that correct?

24 A (Witness Hollins) That is what I remember, yes, sir.

25 Q Did you discuss with the statistician whether the

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1 information you were concerned with was more likely to be
2 a Gaussian distributed sort of material, or a Poissant
3 distribution type of material?

4 A No, sir, I did not.

5 Q Do you know what standard deviation could contribute
6 to the phenomenon that you were concerned about, namely what
7 sensitization is?

8 A I did not.

9 Q Are you statistician to know whether or not you
10 could make a judgment about confidence level, lacking that
11 information?

12 A I personally could not, no, sir.

13 Q All right. Now in the conclusions that you reach,
14 you refer to three factors as being involved in intergranular
15 stress corrosion cracking. One of these is the level of
16 sensitization; another is the stress level; another is the
17 aggressiveness of the aqueous environment. Is that correct?

18 A (Witness Ferdon) Correct.

19 Q In other words, potentially there are three lines
20 of defense against a crack forming by this particular
21 mechanism which I have just named.

22 Now, is it not true that stress is essentially
23 unavoidable in much of the construction that is involved here?

24 A Correct.

25 Q So that there is one line of defense that we can

mm8

1 not rely on.

2 The second line of defense, is that of avoiding
3 sensitization, is it not?

4 A Correct.

5 Q And insofar as we have accepted welds where there
6 is evidence of sensitization, we have reduced ourselves to
7 one line of defense, that is avoiding the aggressive
8 environment.

9 A Not exactly true. The degree of sensitization is
10 going to interact synergistically with the aggressiveness of
11 the environment, and to that extent, correct, we are back
12 to aggressive environment.

13 Q All right.

14 Are you familiar with NRC studies which show that
15 something like nine or ten cases, that aggressive environments
16 have developed in PWRs, though they were not anticipated and
17 certainly would not be part of the basic specifications?

18 A I am familiar with many of the PWRs; stress
19 corrosion, cracking incidents.

20 Q And you reference those to your letter, is that
21 correct?

22 A Correct.

23 JUDGE KELLEY: I want to point out, Mr. Riley that
24 I want you to be able to make your point. But the five
25 minutes you requested have expired, so I hope you can wrap

mm9

q 1 it up.

2 MR. RILEY: I was precisely finished.

3 JUDGE KELLEY: Fine. Thank you.

4 We will now have an opportunity for questions from
5 Mr. Johnson of the NRC Staff, representing the NRC Staff.

6 MR. JOHNSON: Thank you.

xxx

7 BY MR. JOHNSON:

8 Q Mr. Kruse and Mr. Ferdon, since we are on the
9 subject of the technical issues involving intergranular
10 stress corrosion corroding and cracking, I would like to ask
11 you first, Mr. Ferdon, whether you would stand by the
12 content of your July 16th, 1984 memo to the file which has
13 just been discussed.

14 Is there anything in there which is not, to your
15 knowledge, correct?

16 A (Witness Ferdon) There are a few details that I
17 would change if I were going to issue a final draft. However,
18 I stand by the conclusions of that.

19 Q What isn't something that you would agree with at
20 the present time?

21 A What is it that I would agree with it?

22 Q What is it that is not correct?

23 A Well, for instance, I put forward a chloride
24 content of 35 parts per million as being a lower limit. I
25 think I might want to change that to reflect more a

mm10

1 discussion of the synergistic effects of the various anions
2 that could be found in coolant water. If I were to pull an
3 absolute lowest number of chlorides, I would say one part per
4 million. But still significantly, that is well above the
5 chloride content of any of the Catawba primary coolant
6 systems.

7 Q Anything else in this document that is not correct?

8 A I believe at one point I referred to the boric acid
9 concentration or content of the Catawba coolant as being
10 7,700 parts per million. That is not exactly true. That is
11 the boron content.

12 But again, that has no effect on the final
13 conclusion.

14 Q Is the following language then from page 6 of the
15 report correct, where it says:

16 "However, the third condition, aggressive environment,
17 does not exist. Process fluid chemistry and impurity controls
18 at Catawba create an aqueous environment which, based on
19 current research and experience will not result in IGSCC.
20 This includes both the critical systems and those where
21 IGSCC has occurred at other PWR stations. Only in the case of
22 a contaminant intrusion would stress corrosion cracking occur
23 at Catawba.

24 "Depending on the concentration of the contaminant
25 and the location, the cracking may be inter- or transgranular.

mm11 1 Even in this event, a major LOCA is not expected. Any form of
2 stress corrosion cracking in ductile austenitic stainless
3 steel is a leak before break event. With the sensitive leak
4 detecting capabilities designed in the Catawba Station, the leak
5 would be detected before any critical loss of coolant or
6 process fluid occurred.

7 "Duke's position is that because the designed normal
8 operating environment is not aggressive in terms of IGSCC; the
9 possibility of sensitized welds doesn't significantly increase
10 the probability of either acute or chronic stress corrosion
11 cracking at Catawba."

12 This is -- is this statement consistent with
13 conclusions that you reached in the report that was submitted
14 on August 3rd?

15 A Yes, sir.

16 Q Is it virtually the same in substance?

17 A That is correct.

18 Q And you have looked at the various NRC documents
19 relating to intergranular stress corrosion cracking in
20 pressurized water reactors?

21 A Yes.

22 Q And that includes the NUREG 0679 pipe cracking
23 experience in light water reactors?

24 A Yes.

25 Q Have you also looked at two recent inspection --

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1 information notices from the IE? You refer to one here on
2 page 3. It is notice 84-18. And I believe there is another
3 one that was included in your discovery response. I don't
4 know if it is mentioned.

5 There is one of March 7, '84, which is 84-18. It is
6 entitled, Stress Corrosion Cracking in Pressurized Water
7 Reactor Systems. Are you familiar with that document?

8 A I believe so.

9 Q May I show it to you?

10 A Yes, please.

11 (Document handed to witness)

12 Yes, I am familiar with that document.

13 Q Mr. Kruse, are you also familiar with that document?

14 A (Witness Kruse) Yes. That came out of my files,
15 as a matter of fact.

16 Q There is another notice. This one is a slightly
17 more recent one, it is June 18, 1984. This is also an IE
18 information notice, 84-49, Intergranular Stress Corrosion
19 Cracking Leading to Steam Generator Tube Failure.

20 A (Witness Ferdon) I am aware of it.

21 Q Now, in reaching your conclusions that intergranular
22 stress corrosion cracking would not be a problem at Catawba
23 due to the nonaggressive environment inducing corrosive
24 cracking, did you consider these two notices?

25 A Yes, I did.

mm13

1 Q Is it your position that the statements in these
2 notices support your conclusion, or are consistent with your
3 conclusion?

4 A Yes, it is.

5 Q Could you explain the reasons?

6 A Okay.

7 In the document that you have right here, IE
8 Information Notice 84-49, it is dealing specifically with
9 Inconel 602 in the steam generator, I believe. And we are
10 looking at Type 304 stainless steel. So -- also, we are not
11 considering steam generator tube cracking in this instance.

12 Q Let me just point you to the second paragraph, the
13 discussion where it talks about the two -- I'll read it for
14 the record:

15 'However, there are two conditions where significant
16 potential exists for inadvertent introduction of contaminants
17 into PWR fluid systems. The first opportunity is unacceptable
18 levels of contaminants in the boric acid purchased. The second
19 is the free surface of the spent fuel pool which can be
20 a natural collector of airborne contaminants."

21 Those are the two areas that are discussed, I
22 believe, in this report.

23 A In the first instance, Duke Power has a spec for
24 boric acid purchase to strictly control the level of all
25 contaminants that are suspected of causing stress corrosion

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1 cracking.

2 In the second instance, in the spent fuel pool which
3 was not considered a critical system, a leak there would
4 be a maintenance problem and not a safety concern.

5 And further, the levels of chloride in those systems,
6 .15 parts per million chloride -- you know that is evidence
7 that the Nuclear Production Chemistry Department is going
8 to keep that system clear and free of contamination which
9 could cause stress corrosion cracking.

10 Q Does that complete your answer?

11 A Yes, it does.

12 Q On the second page, or the third page of that
13 notice, 84-18, it says "PWR accident mitigation systems are
14 normally in a standby condition and hence provide a fertile
15 environment for stress corrosion cracking. In addition to
16 technical specifications, surveillance requirements to
17 exercise pumps and valves on a regular schedule, some
18 licensees have initiated measures to recirculate and test
19 system fluids for potential contaminants to facilitate
20 proper removal of any identified contaminants."

21 Is there an opportunity -- my reading of these
22 documents, the question of intergranular stress corrosion
23 cracking seems to be partially determined by whether
24 contaminants can enter from the standby systems, mitigations
25 in systems or secondary systems into the primary pressure

mm15

1 systems. And I would like you to address what mechanisms
2 are available to prevent the entering of those contaminants.

3 A These systems -- again, in these systems the Nuclear
4 Production Chemistry Department controls the levels of
5 dissolved oxygen, the levels of chloride to keep the coolant
6 out of range where stress corrosion cracking occurs, or the
7 makeup water in these systems.

8 Further, these systems -- for instance one
9 accident mitigation system that they are talking about that
10 I am familiar with is containment spray system. And specifi-
11 cally, there have been some additions of sulfide ions which
12 have been attributed to stress corrosion cracking.

13 At Catawba, we don't use those additions. These
14 are closed loop systems. The makeup water that goes into
15 those systems and all the makeup additions are controlled by
16 Nuclear Production Chemistry to keep contaminant limits below
17 that at which stress corrosion cracking will occur.

18 Q Thank you.

19 MR. JOHNSON: At the appropriate time, your Honor,
20 I would like to offer these three documents that I have
21 referred to as Staff Exhibits. I haven't had the opportunity
22 to make copies of them. But these two information notices could
23 be both denominated Staff Exhibits. I believe it would be 28
24 and 29.

25 The March 7th would be 28, and --

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1

MR. GUILD: Mr. Johnson, could you identify those

2

more specifically?

3

MR. JOHNSON: IE Information Notice 84-18 dated

4

March 7, 1984, that would be 28.

5

(Staff Exhibit No. 28 was marked

xxx

6

for identification.)

7

MR. JOHNSON: The June 18, 1984 Information Notice

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84-49, would be number 29.

9

(Staff Exhibit No. 29 was marked

xxx

10

for identification.)

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MR. JOHNSON: I would like to offer them subject

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to being supplied later, as those exhibits.

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1 JUDGE KELLEY: Have counsel seen these
2 documents, the other documents?

3 MR. JOHNSON: Yes, these have been supplied by
4 Duke Power as part of the discovery. I would like to
5 offer this for admission -- these two documents for
6 admission.

7 JUDGE KELLEY: They are offered now for
8 admission.

9 MR. GUILD: I am just trying to make sure we
10 have seen them, Judge.

11 (Counsel conferring.)

12 MR. GUILD: I guess I am concerned about offering
13 them for the purposes of proving the substance of what is
14 contained in them. They go towards documents that reflect
15 the position of the agency on information that has been
16 brought to the agency's attention. It is clear that
17 Mr. Johnson wants to use them as a aid in cross-examination
18 and to have them identified as such.

19 Simply because they are authored by the agency,
20 I don't have any problem with that but I do think it is
21 inappropriate for the Staff to be able to offer them
22 to prove the substance of either the technical positions
23 contained in them or the extrinsic facts that they reflect
24 about experience at some other reactor to prove the
25 substance of those facts. So we would object on hearsay

1 grounds.

2 MR. JOHNSON: Maybe we could solve that problem
3 with just marking them for identification so that they would
4 be in the record for reference in connection with cross-
5 examination.

6 JUDGE KELLEY: So they are being offered for
7 that limited purpose, at least at this point?

8 MR. JOHNSON: Yes.

9 JUDGE KELLEY: Then for that limited purpose,
10 Mr. Guild, I believe you indicated that that was acceptable
11 to you?

12 MR. GUILD: Yes, sir.

13 JUDGE KELLEY: Right.

14 On that understanding then they are admitted
15 for the limited purpose described.

16 INDEXXXX

17 (Whereupon, the documents previously
18 marked for identification as Staff
19 Exhibits 28 and 29 were received
20 in evidence for limited purposes.)

21 MR. JOHNSON: In addition, the other memo to
22 the file that is in the supplementary discovery documents
23 that was discussed, July 16th, 1984, I would like to have
24 that marked as Staff Exhibit 30 and offer it into evidence
25 at this time.

JUDGE KELLEY: Number 30 is being offered as

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1 evidence.

2 MR. GUILD: And we would object to that,
3 Mr. Chairman.

4 JUDGE KELLEY: All right.

5 Do you want to speak to it -- I'm sorry,
6 Mr. Johnson, Number 30 briefly again?

7 MR. JOHNSON: July 16th, 1984 memo to file by
8 Mr. Ferdon.

9 JUDGE KELLEY: And there is objection to that,
10 Mr. Guild?

11 MR. GUILD: Yes, sir, there is.

12 JUDGE KELLEY: I think we are going to have to
13 look at that. Can you tell me what stack it is in?

14 MR. JOHNSON: It was in the supplementary
15 discovery that was delivered today.

16 I haven't heard any basis for the objection and
17 I would like to --

18 JUDGE KELLEY: We are expecting to get that.
19 Where in there --

20 MR. JOHNSON: It is the second document.

21 MR. MC GARRY: That document -- no, it is the
22 second document of that.

23 MR. JOHNSON: It is seven pages in or so.

24 JUDGE KELLEY: It is stamped "preliminary" at
25 the top?

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1 MR. JOHNSON: Mine doesn't have any stamp on it.

2 MR. MC GARRY: I'm sorry, two pages beyond that.

3 (Mr. Johnson displaying document.)

4 JUDGE KELLEY: Dated July 16, '84, memo to
5 the file. It is six pages long, I understand.

6 Mr. Guild, do you want to speak to this?

7 MR. GUILD: Yes, sir.

8 Mr. Chairman, this is obviously a document that
9 has been referenced in cross-examination in part to impeach
10 the testimony of the witness as that testimony was offered
11 in chief by the company and, as such, it has evidentiary
12 value.

13 But I hear Mr. Johnson offering it for the Staff
14 for substantive evidence and I don't think Mr. Johnson has
15 the standing to offer a document, if you will, that he
16 represents as substantive evidence on behalf of the NRC
17 Staff for a witness who didn't offer the document himself.

18 The problem here is that the company offers a
19 report that purports to be a full, complete and true reflection
20 of their investigation resolution of this concern and
21 they very calculatedly did not offer this document in
22 evidence. They offered what they offered and they stood
23 cross-examination on what they offered.

24 To allow Mr. Johnson to try to fill the holes in
25 the Staff's case by getting a document that the company

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1 did not offer in evidence for tactical reasons or otherwise
2 would defeat giving us an opportunity to effectively confront
3 and cross-examine evidence adverse to our position.

4 If Mr. Ferdon wanted to sponsor this document,
5 the process should have been Applicants saying Here is
6 something we want to offer in evidence. We want to tackle
7 these issues and put them on the table for parties to be
8 able to seek to rebut or confront.

9 That wasn't done and it seems to me that it
10 wcul. deny us an opportunity to fairly confront this
11 evidence to simply have Mr. Johnson come through the back
12 door and say Now I offer this as substantive evidence
13 during my bite of the apple, my cross-examination.

14 JUDGE KELLEY: I understand your objection.
15 Let me ask you, you refreshed my recollection among the
16 exhibits that you offered and put into evidence today
17 were papers that you got in discovery that were not
18 offered by Duke Power but which you chose to offer.

19 MR. GUILD: Yes, that's true and I think the
20 distinction -- that is an appropriate observation. The
21 distinction is that the NRC Staff is not an adverse party
22 to the Applicants. Staff comes in on this issue with the
23 position -- a substantive position that is the same as
24 Applicants, they support Applicants on this point.

25 The right to be heard and confront --

1 cross-examine adverse evidence requires one to recognize
2 that parties that are adverse to offer evidence that one's
3 adversary should have an opportunity to rejoin.

4 That is not what is happening here. What is
5 happening here is that when we have access to discovery
6 documentation it seems to me we can employ that evidence
7 to use in impeaching the conclusions, the validity of
8 evidence given by, in this case, Applicants. That is the
9 process -- that is the purpose of allowing discovery.

10 JUDGE KELLEY: Let me ask you this. I understand
11 that point, I think. You, as I recall, did ask some
12 questions about this particular document of the witness,
13 did you not?

14 MR. GUILD: Yes, sir. And I think that the
15 usefulness of cross-examination is that because in
16 cross-examination one's adversary recognizes the adverse
17 interest involved, one is allowed to limit the scope of
18 one's questions, one is allowed to direct the witness, one
19 is allowed to ask leading questions --

20 JUDGE KELLEY: How about the fact that if
21 Mr. Johnson goes into different areas of this particular
22 exhibit and raises genuinely new points that weren't
23 covered, the fact that you get yet another bit on
24 recross?

25 MR. GUILD: Well that certainly is the kind of

1 thing that you would have to do to remedy the issue of
2 confrontation opportunity where it is a new subject.

3 But here it is not simply a new subject, it is
4 in the context of Applicants tactically choosing not to
5 offer this study in evidence -- this document in evidence
6 and then their ally --

7 JUDGE KELLEY: The fact is you do get another
8 bite in that sense, another recross --

9 MR. GUILD: We get another bite but that doesn't
10 cure the problem that is offered by having an ally of
11 Applicants come in and offer a document that Applicants
12 themselves did not choose to put up on the table in the
13 first instance.

14 JUDGE KELLEY: I understand your objection.

15 Mr. Johnson?

16 MR. JOHNSON: There are a number of items.

17 One is I believe -- certainly Mr. Riley, who
18 is no longer here -- used it as a basis for his cross-
19 examination and cited various portions of it to make
20 certain substantive points about the truth of those
21 matters in there.

22 I can't recall, but I think Mr. Guild also
23 referred to it in his cross-examination.

24 I wasn't a party to the preparation of the
25 Applicant's report, I don't know for sure what reasons they

1 had for wanting to put less detail into their final report
2 apart from the reasons given to us today.

3 But to my mind this document is a fuller
4 treatment of their examination of the question of
5 intergranular stress corrosion cracking and its relation-
6 ship to violation of interpass temperatures and I believe
7 that it provides a basis for their conclusions.

8 It is a form of documentation which completes the
9 record. The substance of the information -- it is
10 summarized in a different form in their final report and
11 it seems to me that the information has been authenticated
12 and supported by its author and that there is no valid
13 reason for denying its admission.

14 I think it will contribute to the Board's
15 consideration of the technical significance of the interpass
16 temperature issue and I think you ought to accept it --
17 not on the basis of an argument it is basically gamesman-
18 ship that Mr. Guild has presented -- and consider this
19 along with the other evidence that has been presented.

20 MR. GUILD: Mr. Chairman, Mr. Johnson seems to
21 insist on coloring his argument with the question of
22 motives or characterization. The fact of the matter is
23 fairness is really the basis for the objection that we
24 raised. We got this document before lunch --

25 JUDGE KELLEY: I really think the Board has

1 heard enough on both sides of this issue to make a ruling
2 on the question. It seems to me both of you have addressed
3 it and time moves along.

4 Let us consult for a moment.

5 (The Board conferring.)

6 JUDGE KELLEY: We are going to admit this
7 document.

8 MR. JOHNSON: Thank you, your Honor.

9 JUDGE KELLEY: We would just note that although
10 the Staff may be supporting the result that the Applicants
11 support doesn't mean the Staff's interests are identical
12 with those of the Applicant.

13 It is a document that has been discussed,
14 questions have been asked on it, and we think in the
15 interest of completing the record and getting this before
16 the house that it is desirable.

17 It is not a hearsay kind of a thing, the author
18 is here to respond to questions. Mr. Guild will get a
19 further opportunity to ask some additional questions when
20 the opportunity for recross comes along, so it is
21 admitted.

22 (Whereupon, the 7/16/84 memo to file
23 was marked as Staff Exhibit 30 for
24 identification and was received
25 in evidence.)

1 JUDGE KELLEY: Go ahead, Mr. Johnson.

2 MR. GUILD: Mr. Chairman, may I just note for
3 the record that Mr. Riley has left and Mr. Riley has
4 assisted me in preparing to examine on this subject.
5 Mr. Riley is a physical chemist and I explicitly did not
6 enter into the fray of chemistry issues that were before
7 the house here and I would seek an opportunity to cross
8 on this subject with the author -- I assume it is
9 Mr. Ferdon here -- at a time when I can have Mr. Riley's
10 assistance to be able to deal with it.

11 It is just a serious issue and if the Board
12 intends to rely on this study or this document fairness --
13 particularly in light of the fact that the document came
14 to our attention only at the lunch recess, you should allow
15 me to prepare to confront it.

16 JUDGE KELLEY: Bearing in mind that we have
17 decided that we will this case through Friday and bearing
18 in mind that further questioning of Mr. Ferdon may mean
19 less questioning of some other witness, if you want to
20 reach Mr. Riley and ask some further questions at a later
21 time, we will allow that on the understanding I have just
22 stated. But for this evening it is in.

23 You may go ahead, Mr. Johnson.

24 BY MR. JOHNSON:

25 Q I would like now to turn to Mr. Wilson's

1 questions.

2 I think he was addressing Mr. Kruse --

3 JUDGE KELLEY: I would just note, Mr. Johnson,
4 you are entitled to some more time because a lot of your
5 time got chewed up in argument but the initial allotment
6 has expired. Do you think you can do it in ten minutes or
7 so?

8 MR. JOHNSON: I always say yes and it is
9 invariably no...

10 JUDGE KELLEY: Mr. Wilson did it.

11 MR. JOHNSON: But I will make every effort to
12 make it in ten minutes.

13 JUDGE KELLEY: Thank you. Go ahead.

14 BY MR. JOHNSON:

15 Q Mr. Kruse, in earlier testimony I believe and
16 in your deposition you mention that in selecting the welds
17 that would be tested you went through a series of steps
18 to determine that a universe of 360 to 36] welds were at
19 issue and they were in critical systems involving Foreman
20 Moore's crew and that you consulted a statistician to
21 make a selection of those -- among those welds.

22 That is correct, isn't it?

23 A. (Witness Kruse) Yes.

24 Q And you said that he told you to choose 23,
25 is that correct?

1 A. That is correct.

2 Q. Now when Mr. Wilson was asking you questions
3 concerning that you told him that the statistician, Mr. Hurst
4 I believe it was, didn't give you enough -- you didn't
5 give him enough information for him to determine whether
6 it was in fact a valid sample statistically.

7 You said that, didn't you?

8 A. I may have said it that way, I intended to say
9 that I didn't recall giving him any more information. I
10 remember a conversation with him but I don't remember the
11 details.

12 Q. Do you recall the reasons -- Did he give you
13 the reasons for the number 23?

14 A. Not that I recall. I am not an expert on
15 statistics by any means and I don't recall the nature of
16 that.

17 I believe Mr. Hollins addressed that appropriately
18 in his testimony though when he specified -- he had a
19 better recollection of it than I did.

20 A. (Witness Hollins) I remember meeting with
21 Mr. Hurst discussing our situation. We discussed confidence
22 levels and we discussed error rates and Mr. Hurst came
23 back to us with that 20-plus or -minus number.

24 Q. Did he indicate to you that that would give you
25 valid results?

agb/agb13

1 A My understanding of the number that he gave us
2 was that if we took that sample that would yield a 99 percent
3 confidence level assuming a 1 percent reject rate.

4 Q Okay.

5 A Now this is, I think, Mr. Kruse when you were
6 being questioned again by Mr. Wilson concerning the other
7 impacts or other consequences of violating interpass
8 temperature and you mentioned -- or maybe it was Mr. Ferdon --

9 A (Witness Kruse) Those were my comments.

10 Q Mr. Kruse, okay.

11 A One of the points in addition to the sensitiza-
12 tion result was control of contraction of the pipe metal
13 or the weld metal?

14 A The pipe itself, sir.

15 Q Could you explain what that involves and what
16 the consequences of that are from the safety point of
17 view?

18 A No real consequences I know of. It involves
19 just a shrinkage of the pipe and such things as that that
20 would be detected in the final inspection of the pipe --
21 of the weld. It would be noticeable on the outside, some
22 sort of shrinkage.

23 Q And there are standards against which the
24 inspectors would determine whether the thickness of the
25 pipe is adequate, is that the issue?

1 A. It is not a thickness change, no, it is just the
2 shape of the weldment when it is completed.

3 Q. So what would the inspector be looking for and
4 what standard or procedural requirement would he be
5 looking to verify that it was met?

6 Maybe you are not the best --

7 A. (Witness Llewellyn) Let me interject a point
8 on that, Mr. Johnson.

9 If the pipe had shrunk during an operation,
10 the inspector, in doing his final visual inspection,
11 would see a low area adjacent to the weld. He would assume
12 that area would be due to overgrinding in preparing the
13 weld for inspection and invariably would call for ultra-
14 sonic examination to check the thickness.

15 If it was due to shrinkage, as Mr. Kruse said,
16 there would not be a change in the thickness of the
17 material, it would only move to the inside of the pipe
18 and that would be noted when they did the ultrasonic
19 examination and it would give them the nominal wall reading
20 in that area.

21 Q. And that would be inspected for acceptability
22 under construction standards?

23 A. It would be under one of the QA procedures for
24 final visual inspection of the weld.

25 Q. So if sensitization -- excuse me.

agb/agb15

1 So if there were a violation of interpass
2 temperature and there was contraction of the metal, it
3 wouldn't have any safety significance assuming that
4 inspections were done?

5 A. (Witness Kruse) That is correct.

6 Q. Now the other thing that was mentioned by
7 Mr. Wilson -- excuse me, by you in response to Mr. Wilson
8 was the possibility of hot cracking of weld metal as a
9 result of exceeding interpass temperatures.

10 Does that mean that the weld that was being
11 performed would, upon drying, crack?

12 A. That was a phenomenon I was referring to and
13 we do a number of things to prevent that.

14 First of all, we have controller ferrite in
15 our filler material which eliminates that problem
16 regardless of the interpass temperature.

17 Secondly, that sort of thing is also inspected
18 for final inspection. Most Class A and B welds get a final
19 NDE inspection, other welds get a final visual inspection
20 for those sorts of things.

21 Q. Okay.

22 Does anyone else want to add anything to that
23 answer in terms of the safety significance of this issue?

24 A. (Witness Van Malssen) All of the Class A, B
25 or C welds would receive an inspection, either final

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1 visual or surface NDE or volumetric NDE. These types of
2 cracks we are referring to would be visible.

3 Q So it is your position that this cracking would
4 be detected and, if necessary, corrected?

5 A Yes, sir.

6 A (Witness Kruse nodding affirmatively.)

7 Q And Mr. Kruse is nodding?

8 A (Witness Kruse) That is correct.

9 Q Mr. Mills, in the discussion of cold springing
10 and the incident that was primarily discussed in which
11 there was a QC inspector present and an A&I inspector present,
12 was there any evidence in that situation of foreman
13 pressure to deviate from the procedure?

14 A (Witness Mills) No, sir.

15 I might note that this incident occurred in
16 1981, it was in Unit 2 and certainly during that period
17 of time there was no emphasis as far as schedule goes on
18 Unit 2.

19 Q Could you answer the question more directly,
20 please? Was there any evidence of foreman pressure in
21 that situation?

22 A No, sir.

23 Q I don't recall who was answering this question,
24 it has to do with intergranular stress corrosion cracking
25 again -- I think it may have been Mr. Kruse or Mr. Ferdon --

1 where it was stated that the determinants of susceptibility
2 to intergranular stress corrosion cracking are not precisely
3 known.

4 Do you recall who....

5 Mr. Kruse --

6 A. (Witness Ferdon) I think I spoke on that. I
7 think we both spoke to that to some extent.

8 Q In order to determine whether you will have
9 intergranular stress corrosion cracking, do these
10 determinants have to be precisely known or do you have
11 enough information to make your analysis?

12 A We have enough information here regarding the
13 aggressiveness of the environment to make the determination
14 that stress corrosion cracking will not be a chronic
15 problem at Catawba.

16 MR. GUILD: Excuse me?

17 WITNESS FERDON: -- will not be a chronic
18 problem at Catawba. And that evaluation is based on
19 looking at years of FWR operating experience and the
20 laboratory development work that has been done on
21 aggressive environments with stress corrosion cracking.

22 I think what I was alluding to there is that
23 the three interact and there is no empirical formula
24 that says, you know, given two you know how much you have
25 to have with one. We know that as far as aggressive

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1 environment goes, we don't have one so we know it is a
2 null set.

3 BY MR. JOHNSON:

4 Q And you know you have to have that.

5 A Correct.

6 Q Thank you.

7 MR. JOHNSON: That is all the questions I have.

8 JUDGE KELLEY: Thank you.

9 The Board has some questions.

10 EXAMINATION BY THE BOARD

11 BY JUDGE FOSTER:

12 Q I will start out.

13 We have hit the sensitivity test fairly hard
14 but I, too, have a couple of questions for the gentlemen
15 on this.

16 As I understand it, this A 262 procedure is a
17 part of the Duke testing, is that correct?

18 Did we earlier have a document which was
19 passed to you for identification which showed that this
20 was in fact a part of the Duke family of approved
21 procedures?

22 A (Witness Llewellyn) That document is contained
23 in ASTM specifications of which Duke applied the necessary
24 specifications as required.

25 A (Witness Kruse) Excuse me. This particular

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1 specification was used uniquely for this evaluation.

2 Q That is a part of my next question and that is:

3 Is it a part of a regular QA procedure that is

4 used routinely at --

5 A (Witness Llewellyn) No, it is not.

6 Q -- at the Catawba plant.

7 So it was used uniquely in this particular

8 case then.

9 (Witnesses Kruse and Llewellyn nodding affirmatively.)

10 A (Witness Van Malssen) We had used the procedure

11 before for other testing.

12 Q Why did you use it in this particular case? What

13 did you expect to learn from it?

14 A (Witness Ferdon) We wanted to use essentially

15 the etching method in A 262 practice A to evaluate the

16 amount of chrome carbide precipitation associated with

17 the welding with and without interpass temperature.

18 Q Did you use it to determine whether some of

19 these welds had been subjected to excessive interpass

20 temperatures, was that the reason?

21 A That was the intent, yes.

22 Q Was that also the intent here to determine

23 whether the grain structure had been damaged to an extent

24 that you might get failure?

25 A (Witness Kruse) That came out as part of the

1 evaluation. That is why we examined the chemistry that
2 would be present at Catawba.

3 Q Would it be fair to say that if the grain structure
4 had not shown an aberration that you would have felt these
5 welds were proper and you were home free, but if you did
6 get some indication of irregularities that then you have
7 to look further?

8 A Am I tracking your thought process or not?

9 A When wet set out in the field to look at the
10 welds and we found the range of conditions of the
11 metallurgical structure, we needed an explanation for what
12 we had so we employed testing of that material for a direct
13 comparison technique of structures between the two to see
14 what structures we developed to determine whether or not
15 interpass temperatures were exceeded.

16 Q Let me ask it in a different way:

17 When you started out to use this test did you
18 have in mind that you might see things which would make
19 the welds unacceptable?

20 A We didn't have that in mind when we started out,
21 no.

22 end#B#18

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2 Q My impression is that once you found this, why
3 then you decided that for other reasons stress corrosion
4 cracking would still not occur so you did not have to go
back and rework; is that true?

5 A (Witness Kruse) That's correct.

6 Q To switch to an entirely different area here,
7 we heard earlier that there was an impression, perception,
8 if you will, by members of Foreman Moore's crew that when
9 the general foreman, Billy Smith, was over Moore that Moore
10 was, I will use the term, up-tight and that they -- he was
11 not as good a foreman as when he was working for other
12 people.

13 Is my perception of that correct?

14 A (Witness Hollins) After reviewing all of the
15 affidavits, I would have to agree with that, yes, sir.

16 Q Now, I also understood from your testimony that
17 other welders on other crews also felt that Billy Smith was,
18 to use the expression, a bird-dog.

19 Out of the investigation, did you get the feeling
20 that other welding crews felt that their foremen were also
21 more up-tight when they were working for Billy Smith? Can
22 we draw that inference?

23 A No, sir, I cannot draw that conclusion. I did
24 not see any substantial evidence to support that.

25 Q So the evidence would seem to be that the only

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1 welding foreman that became up-tight when he was working for
2 Billy Smith was Arlon Moore?

3 A That's my impression, yes, sir.

4 Q Do you feel that there was something peculiar
5 here between Moore and Smith which led to that uncomfortable
6 feeling on Moore's part?

7 A (Witness Dick) Judge Foster, I would like to try
8 to answer that question.

9 Arlon Moore, through the years, strived for high
10 achievement both as a welder and as a supervisor. He was
11 a perfect attender, more than one year he did not miss.
12 His crew received citations for not having accidents, lost
13 time accidents.

14 He wanted so much to do a good job, that my
15 impression is that when Billy Smith, who also very much
16 wanted to do such a good job, was supervising Arlon Moore,
17 that Arlon Moore stretched himself to meet those -- what he
18 considered to be -- expectations and that he was under more
19 tension at that time.

20 Q And one of those places would be production or
21 productivity?

22 A It was perceived that way by some in the crew.
23 And I'm at something of a loss to explain why a few people
24 felt the way they did, what the other mechanism was that
25 caused them to feel that way. I accepted that they felt

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1 that way.

2 Q But there was something peculiar here about Moore
3 and his reaction to Billy Smith that did not seem to spill
4 over into the other foremen; is that correct?

5 A That's correct, from the reading of the affidavits,
6 yes, sir.

7 Q All right. One third area here. Did designing --
8 the interviewing process people that you talked to, did you
9 set out to get a representative feeling of as many welders
10 as you could of, say, the welding population?

11 Or, did you set out as a purpose to find out the
12 problems which existed associated with Welder B? Can you
13 answer?

14 Do you follow my question?

15 A (Witness Hollins) Yes, sir. And what we set out
16 to do was find out the problems associated with Welder B
17 and make some determination if it were in other crews.

18 Q So, your sampling procedure here was not to try to
19 find out generally a problem of welder/foreman relationship
20 and work pressure but really to follow-up on the leads
21 which were associated with a specific welder/foreman crew
22 like Arlon Moore's crew and concentrate on where that led
23 you?

24 A That's correct. We concentrated on that crew
25 because that was identified to us as a problem area. But

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1 we were not concentrating just on those issues raised by
2 NRC. If we had concentrated on those issues, our questions
3 would have been very narrow and very specific.

4 But instead we asked very broad questions.

5 JUDGE FOSTER: That's all I have.

6 BOARD EXAMINATION

7 BY JUDGE PURDOM:

8 Q Mr. Dick, you are the senior policy man for the
9 Company amongst this panel here?

10 A (Witness Dick) Yes, sir.

11 Q And you are responsible -- if the Company decides
12 to go to nuclear a nuclear plant, you are responsible to
13 see that it gets built and built in a timely fashion?

14 A Yes, sir.

15 Q What about the quality aspects of it? Are you
16 also responsible for seeing it built properly?

17 A I have quality requirements. Yes, sir.

18 Q You have requirements, but are you responsible
19 for seeing that they are met?

20 A Within the work that I'm responsible for. I'm
21 responsible for the quality of it, yes, sir.

22 Q And you set up the management system to see that
23 it's built expeditiously and proper; is that right?

24 A Yes, sir. My only hesitation is that we also
25 set up an assuring function which is independent of me but

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which I --

2 Q I realize that. That doesn't detract from your
3 responsibility, does it?

4 A No, not one bit.

5 Q That doesn't relieve you of any responsibility?

6 A No, sir.

7 Q As I look around this room and think about how
8 we spent the last two days and how much effort went into
9 getting ready for these last two days, I can't help but
10 think of the cost and anguish and so forth that is involved
11 in that.

12 I was just wondering, have you ever had any
13 thoughts that, gee, you wished you had had something in
14 your system that could have kept this from happening?

15 A We have, you know, many things in the system that
16 are designed to enhance communication, to bring people
17 forward, to turn these things up. If I had thought of
18 something else, I think I would have installed it. Yes, sir.

19 Q Your expansiveness -- I don't hear anything that
20 suggests that there is anything wrong with the system that
21 somehow these kind of problems don't surface.

22 A We have decided that we will put in one additional
23 thing and it relates to quality concerns. And I am not
24 responsible for development of that; that's -- that
25 development, I guess you would say, is reporting directly to

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Mr. Owen, my superior. It's getting into final review now.
And I believe either Mr. Abernethy or Mr. Grier could give
you the details of that, which came out of our recommendation,
was our recommendation coming out of our investigation of
this incident.

Q But isn't it a little bit your responsibility that
a climate developed where one of your foremen would create
the climate where employees would think that they had to do
certain things that were improper?

A Judge, some employees had that perception. I
have no proof, nor have I attempted to prove, that what they
say caused it, actually caused it.

Q Well, this is a puzzlement to me. There were
some affidavits that said that they had heard some of the
men were out to get Billy Smith; is that right?

A Yes.

Q And there were some affidavits that said because
of the foreman they did certain things that they knew were
improper.

It would look like somebody in a responsible
position would want to determine which of those things were
right. If the ones that made the allegations of improper
action were right, then something drastic needed to be
done. If they were wrong, then nothing needed to be done
with the person that the allegations were made against. And

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2 yet I seem to hear testimony -- and I throw this out to
3 provoke you to answer me, I seem to hear testimony that
4 says: Well, we did not really decide this but it creates
5 such a furor we decided these fellows better go.

6 A We wrestled much with this, and we would have
7 liked very much to have resolved it as to who was right and
8 who was wrong within an absolute sense. We did not know
9 how.

10 And so we took the course of accepting the
11 perceptions and saying it did not really matter what the
12 person did. If it caused that perception, then that perception
13 was real to that individual.

14 Q You don't think that is being unfair to the person
15 that you took action against, then, just because somebody's
16 perception was wrong?

17 I mean, we can read a sentence here and inadvertently
18 put a "not" or leave out a "not" and that would change the
19 perception. Are you going to fire somebody for perceptions?

20 A Judge Purdom, we had the other information that I
21 think I discussed relative to Billy Smith and his inter-
22 personal skills. What we did not have was as specific informa-
23 tion as to what the exercise of those skills might have
24 caused employees.

25 That was the piece of information that was
developed out of this that led to the decision that we made.

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2 I'm convinced that Billy Smith wanted to do
3 nothing except build the highest quality product that his
4 people were capable of turning out. I'm convinced of that.

5 Q Well, if one way of judging management effectiveness
6 is by results. And if the result is that some of the
7 employees violated procedures, then apparently somewhere
8 along the line the management's affirmation of adherence to
9 quality must not have gotten through. Apparently they did
10 not perceive that to be the high priority.

11 They perceived something else to be the high
12 priority. Why do you think that occurred?

13 A I don't believe that Billy Smith had that lack of
14 understanding of what his objectives were. I don't think he
15 had any idea that he was creating this kind of perception.

16 Q You see, the thing that I'm left with is if we
17 diagnose that something happens because of certain things,
18 if it's in a design thing and somebody slipped a decimal
19 it can change that and make that different.

20 I am at a loss here as to what could be changed
21 or has been changed to make this different in the future.
22 We have heard a lot about the past but what about the future?

23 A Judge, if you put everything into perspective,
24 the proper perspective of the thousands, tens of thousands,
25 perhaps hundreds of thousands, of activities that have
transpired at Catawba, and if you look at the consequences of

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2 even the allegations they are, in my judgment, virtually
3 insignificant. And the plant is designed in a way that
4 piles conservatism upon conservatism upon conservatism,
5 because people are human and because we can't with absolute
6 and total assurance guarantee that some employee may not
7 have the wrong perception of something that they are told
8 to do and go out and do something that is not physically
9 inspected.

10 But the things that are not physically inspected
11 are not critical work operations.

12 Q Some questions of Mr. Grier. Mr. Grier, if
13 the craft is keeping look-outs to see when your inspectors
14 are coming around for quality assurance, how can you carry
15 on an effective program with that kind of practice amongst
16 craft?

17 A (Witness Grier) Well, our primary inspections
18 are not of individual actions but rather the product of
19 those actions and regardless of whether look-outs are
20 posted for inspectors or not, the primary inspections are
21 of the finished product.

22 And we will go and inspect the finished product.
23 We have record systems in place to determine whether or not
24 each of those finished products has been inspected and
25 accepted. So, posting a look-out is of no consequence
for those final inspections.

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Q Well, as I look at this situation, what we have been discussing the last two days, it comes about because this Board decided to invite some people to come forward In-Camera. One of them made some allegations. NRC Staff pursued that and found there was one person that made some other allegations and that led to what we have here.

Nowhere do I see that the Company's quality assurance program turned up these deficiencies by current inspection or post inspection or testing or anything else.

It's only after this thing comes out that this comes forward.

A Well, I believe in some number of the affidavits there are statements where some concern is raised but it was caught by QC inspector and corrected, or the weld was cut out. There are a number of statements that demonstrate that many of the concerns, that concerns that were raised in the affidavits were caught by the quality assurance program.

Q What do you see for the future? Do you think your system is such that these kind of things would be encouraged to incur in the future?

A As far as the quality assurance program, I see no change for the quality assurance program. As Mr. Dick mentioned, there have been some things that have already taken place to emphasize that the Construction Department

#19-11-SueT1
2 will not tolerate some of the types of activities that were
brought out in the affidavits.

3 We also are going to institute another technique
4 of encouraging employees to use our recourse procedure to
5 address concerns that they have.

6 (Witness Dick) Judge Purdom, you asked me
7 something that I could give you maybe a little more informa-
8 tion on. Mr. Abernethy did not recommend termination of
9 Billy Smith. And you would have to ask him, I guess, why
10 he didn't.

11 But the reason I accepted that recommendation
12 was just what you alluded to. We were dealing with unproven
13 allegations. And so in the sense of fairness we felt that
14 he should be removed from supervision because we felt that
15 there was enough indication of lack of interpersonal skills
16 that he should be removed from supervision, but not that his
17 employment should be terminated.

18 And so we transferred him to another department
19 to preserve his employment.

20 BOARD EXAMINATION

21 BY JUDGE KELLEY:

22 Q I just have a few questions. Mr. Hollins, I am
23 really not clear on one point. It has to do with the sample
24 that you had of the people you interviewed as being repre-
25 sentative of the work force at large. And I believe your

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sample was two hundred and some people that were interviewed.

2 And you indicated I believe that you did not set out to
3 create a, if you will, statistically valid representative
4 cross section in the manner of Dr. Gallup and other people
5 who make samples, but rather I understood you to say that
6 this was sort of a common sense size group, including some
7 people NRC wanted you to look at, but not a scientific need
8 to arrive group.

9 By contrast, you had a group of welds, two hundred
10 some welds, too many to look at, and you did talk to the
11 statistician who told you if you looked at 23 or 27 that
12 that would give you a representative cut.

13 Why did you take the scientific approach to the
14 welds with this sub-group of welds and a sort of judgmental
15 approach to the people, if I'm correct in what you did?

16 A (Witness Hollins) I guess the difference there
17 is we went in with the known crew and just took such a
18 massive sample that I decided right up front that I was going
19 to interview these large groups of people there.

20 But I did not have that feel for the welds.

21 Q You mean, when you got up to two hundred plus
22 your feeling was whatever scientifically this has got to
23 be enough for a fair look at this problem?

24 A No. I'm saying I just didn't have the same feel.
25 I felt comfortable going into the investigation, talking to

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sixty-five people out of a hundred and ten, you know. I
2 felt comfortable with that.

3 Q But I thought that at least to some extent you
4 were looking for the incidents, possible incidents, of
5 foreman override of the entire craft work force.

6 A And I did. And I implemented a sampling program
7 not based on a statistical sample but I identified areas
8 and broke it down by crews and picked individuals off of
9 those crews.

10 Q Okay. And that's described I think in your
11 report?

12 A Yes.

13 Q At least to some extent. But didn't you feel that
14 by that approach you had something just as good or better
15 than what a statistician might have given you?

16 A I felt I had something as good. I felt comfortable
17 with it in my judgment.

18 Q Okay.

19 A (Witness Dick) Judge Kelley, I approved that.
20 May I tell you why?

21 Q Sure.

22 A We are very accustomed to using samples on hardware
23 when we pick up something that we want to know. If there is
24 anymore out there we go to Mr. Hirst, and I would represent
25 him as an industrial engineer who has been trained in

#19-14-SueT¹

2 statistical methods, not a statistician I believe. And we
3 have little charts that we use that say the population is
4 a certain size, look at this many for this confidence level,
5 and so we are very comfortable with that approach on hard-
6 ware.

7 I believe that I approved this approach because
8 we weren't dealing with hardware which is inanimate. We
9 were dealing with people, and people talk and communicate.
10 And in the final analysis, to use your words, common sense
11 and good judgment based on what we found.

12 Q Thank you. That's helpful.

13 In a report of the kind that you prepared here,
14 you looked into this at the NRC's request, prepared the
15 report. There was some discussion, some back and forth
16 between I think you, Mr. Dick, and Mr. Guild about whether
17 the report was sufficiently comprehensive -- well, whether
18 or not it was, if you will, a self-contained document,
19 whether somebody could sit down and read it and literally
20 replicate what you did.

21 Now, from my reading of it, that's not what you
22 delivered to the NRC. And then if somebody reading it
23 wanted to find out more about how you did this, they would
24 have to come and ask you. If I'm correct in that under-
25 standing of what was done, in a report that was in many
ways a summary, is that the customary way of doing a report

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of this kind for NRC, to your knowledge?

2 A Judge Kelley, I've described this to Mr. Guild in
3 my deposition. All along my thinking was that we were going
4 to do this like we do everything else that comes up relative
5 to the NRC, that we would investigate it, we would make
6 determinations, we would write a report, and that report and
7 the other information would be available onsite.

8 We would tell the NRC we are ready, knowing that
9 they had looked at everything we had done as they went along.
10 And they would come up and probably make a final review of
11 everything.

12 I was not aware that the parties had communicated
13 and that this was going to be a report to the Board. And it
14 was very late in the game that I learned that that is what
15 they were working on. In fact, I called Atlanta to be sure
16 that I was satisfying the commitment that I thought I had
17 to them by letting a copy be sent to Atlanta of a transmittal
18 to the Board and the parties.

19 And so it was -- I was in communication as to what
20 was going into the report. I saw the final document on
21 Monday after it was mailed on Friday. I was not in Charlotte
22 that day. But I knew what was in it. And I knew that it
23 was reporting the summary of our --

24 Q So you are saying that in your dealings with the
25 NRC over the years, in a matter of this kind, if I understand

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1 you correctly, you will generally write a more or
2 summary document, and then if the NRC wants to know more
3 they can come look in the file or ask questions?

4 A Yes, sir, that's correct.

5 MR. CARR: Your Honor, just one point. If you
6 recall the conference call we had on, I believe, July 16th
7 I think that sort of got us started thinking of preparing
8 the report, because I believe the Board indicated that you
9 expected a report and wanted us to serve it on everybody.

10 And that's what kind of got this --

11 JUDGE KELLEY: I would have to look back. I
12 have my own recollection and it's just recollection, and I
13 could certainly be wrong, that we expected the report to
14 be forthcoming from both the Applicant and the Staff. I
15 would just have to go back through the papers.

16 We are where we are. And I understand what you
17 are saying and what Mr. Dick is saying. Okay.

18 BY JUDGE KELLEY: (Continuing)

19 Q All right. Just a quick hardware question on
20 the arc strike. This is a question obviously to a non-
21 technical person.

22 But why do you remove these arc strikes at all?
23 Why don't you just leave them?

24 A (Witness Dick) I would like to direct that to
25 Mr. Var. Mallsen.

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Q All right.

2

A (Witness Van Mallen) We have done extensive studies of the effect of arc strikes and we found that unless an arc strike violates the minimum wall of a piece of structural steel that it can remain, it causes no problems.

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As far as piping material, we've done -- the examinations we've done for structural steel are valid, they are also, except for one test that we have not performed and that is the fatigue test. If we perform the fatigue test and found that there was no effect on arc strike we would leave arc strikes if they didn't violate the wall thickness of the material.

14

15

JUDGE KELLEY: Thank you. Mr. Guild, do you have recross?

16

17

18

MR. GUILD: I don't, Judge. If I can reserve the opportunity to address the chemistry issue of Mr. Ferdon's paper under the terms we discussed earlier.

19

20

I would ask -- I understand the Applicants may have some position with regard to the witnesses

21

22

23

24

JUDGE KELLEY: Yes. I wanted to get to that if you didn't have recross now. I think we have an understanding on your desire to reach Mr. Riley and you may have further questions of Mr. Ferdon.

25

Do Applicants have redirect?

#19-18-Sue†

MR. MC GARRY: Yes, Your Honor.

2 MR. GUILD: I just want to flag this point. Ms.
3 Garde is here and she has helped me with the identification
4 of witnesses, and I've asked her to assist me on that. She
5 has to catch a plane, and I wanted to ask her to help ad-
6 dress this question.

7 If after we dismiss the panel we could turn to
8 the subject of the witness issue and try to clear that up
9 before she has to catch her flight, that would help.

10 JUDGE KELLEY: Do you mean to dismiss the panel
11 for a break or just dismiss the panel?

12 MR. MC GARRY: What time is your plane?

13 MS. GARDE: 9:30.

14 JUDGE KELLEY: Well, what we were thinking of
15 was break now for ten minutes, redirect and then letting the
16 panel go home and talking about witnesses.

17 MR. MC GARRY: I would suggest that we take the
18 break and then come back and do this for about five or ten
19 minutes.

20 JUDGE KELLEY: We want to accommodate you if we
21 can. Why don't we do that? Let's take a break now.

22 MR. MC GARRY: All right.

23 JUDGE KELLEY: So, we will take a break now and
24 then come back with the witness issue.

25 MS. GARDE: Thank you.

(Recess)

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1 JUDGE KELLEY: We are going to take a few minutes
2 to discuss with counsel some questions about witnesses to be
3 called, and then we will be getting back to the panel.

4 We have in front of us a witness list and also
5 a priority list, which is shorter. Bearing in mind that
6 some of these names are confidential and have to be refereed
7 to in a numbered fashion.

8 Let me ask. I guess the Applicants indicated
9 earlier -- Mr. McGarry, you indicated an objection, at least,
10 to Mr. Davidson and Baldwin, I think.

11 MR. MCGARRY: Yes, sir.

12 JUDGE KELLEY: Actually, this is as good a place
13 as any to start. Do you want to speak to that?

14 MR. MCGARRY: I also say -- you have the list
15 in front of you?

16 JUDGE KELLEY: Yes.

17 MR. MCGARRY: Number 5. Let me go 1 and 2, in
18 respect to those gentlemen --

19 JUDGE KELLEY: You are talking now about the
20 priority list?

21 MR. MCGARRY: Yes. Well, we can hopefully --

22 MS. GARDE: Can you say that name? It is one
23 of the people that gave the affidavits.

24 MR. MCGARRY: I will give you the number. This
25 is the list you gave me.

1 MS. GARDE: You are talking about the short list?
2 I really would rather talk about the fifteen list instead of
3 the short list.

4 JUDGE KELLEY: Maybe we can first put on the table
5 what it is we are talking about. I understand you to say
6 that you have objections to 1 and 2 on the short list.

7 MR. McGARRY: That is right. Figuring those are
8 the people that will come tomorrow.

9 JUDGE KELLEY: And we will get to that, if we
10 can get through first what we need to hear from Ms. Garde,
11 and then you can leave, I guess.

12 What are the differences -- when you say you
13 want to talk about the long list.

14 MS. GARDE: I would rather hear his objections
15 to the whole list instead of a piecemeal objection.

16 JUDGE KELLEY: Well, okay.

17 MR. McGARRY: I don't know if I am prepared to do
18 that or not, but I will try my best.

19 JUDGE KELLEY: Can you tell us first, 1, 2, and 5,
20 you are objecting to them, right. On the short list.

21 Now, turning to the long list, can
22 you tell us by number?

23 MR. GUILD: Gain, who is five?

24 JUDGE KELLEY: Don't you have a list.

25 MR. GUILD: It is handwritten, and it may not be

1 in the same order.

2 JUDGE KELLEY: Okay. Are we talking -- we are
3 talking about the same numbers now, so we are going to refer
4 to the numbers on this list, which I gather we will just
5 transpose 1, 2, and 5 will be objected to. Beyond that, can
6 we turn to the longer list.

7 Now, who on that list that hasn't yet been
8 referred to do you have a problem with?

9 MR. MCGARRY: Clearly No. 11. It is awfully
10 difficult. 15 and 16 are the same as 1 and 2 on the priority
11 list.

12 Your Honor, what we planned to do tonight, quite
13 frankly, is go over the affidavits with these people and be
14 able to make arguments -- if we had objections, it would be
15 on the grounds that they are raising simply non-safety
16 concerns, or they are raising concerns that may be technical
17 concerns, but they are not foreman override concerns.

18 That would be the nature of the objection that we would
19 make for the majority of that list, for the employees.

20 With respect to the supervision, the objection would
21 be -- it appears to us that 1 and 2 in the smaller list is
22 purely harassment. You spent a lot of time with these two
23 gentlemen. They were subjected to quite a bit, and clearly
24 No. 2's name isn't mentioned by anybody at all, in any of the
25 affidavits.

1 And it just smacks us that there is some ulterior
2 motive here that just ain't right. And we are -- we object
3 strongly with respect to Number 1 on the smaller list
4 priority witness. He was mentioned in one incident, and
5 that clearly was not a foreman override incident.

6 It had to do, I believe, with a QC inspector
7 doing welding. That is not foreman override. Maybe he
8 shouldn't have done that, but that is not foreman override,
9 but I really think it is an extremely tenuous link to bring
10 him in.

11 Now, there is another QC individual on the longer
12 list, that is No. 11 --

13 JUDGE KELLEY: Just a minute. It strikes me,
14 gentlemen, that we are procrastinating. If you give all your
15 points on all your people, before you hear anything from
16 anybody else, we are going to get awfully confused. 1 and 2,
17 we know who they are. Mr. Guild, you have heard Mr. McGarry's
18 objections to No. 1 and 2 -- I don't even know why we are
19 using numbers in this case. Anything confidential or in-camera
20 about this?

21 MR. GUILD: There is nothing?

22 JUDGE KELLEY: Anybody think those names are
23 in-camera.

24 MR. MCGARRY: No. I just as soon call them 1 and 2
25 for very practical reasons. I think they have taken a lot of

1 shots in the press already, and I don't like to see them take
2 any more shots, which I think are totally unnecessary at this
3 point in time.

4 JUDGE KELLEY: We don't have to use the names,
5 so let's use the numbers. Okay.

6 So we have heard Mr. McGarry's objection. Mr. Guild
7 and/or Ms. Garde. Do you want to speak to the point.

8 MR. GUILD: I will ask Ms. Garde to respond.

9 MS. GARDE: Yes, sir. I think the numbers 1 and
10 2 on the short list, and I believe Nos 11 through the end of
11 the list on the second list, are all QC inspectors who are
12 either QC inspectors or QA supervisors.

13 I think the reason can be very succinctly spelled
14 out if you will bear with me just a minute, by restating
15 what we believe the question that is left unanswered in this
16 hearing is.

17 This hearing came as a result of your Order, Point 2,
18 which says that demonstration of this Board of a reasonable
19 assurance that the Welder B and related concerns described in
20 the paragraph do not represent a significant breakdown of
21 quality assurance at Catawba.

22 You retained jurisdiction over that issue. We have
23 since defined foreman override for the purposes of this hearing,
24 and I will repeat the definition as it is worded: Implicit
25 or explicit attempts by foreman override their crews, and the

1 resultant crews doing work in violation of procedure.

2 Now, we understand that you are interested during
3 these two, three, or four days in determining whether or not
4 that practice, if it existed at all, was significant enough
5 to erode your confidence in the reasonable assurance that
6 this plant can operate without endangering the public health
7 and safety, and we see that that is basically divided into
8 three elements left before you.

9 First, is what so far has been covered in this
10 hearing. That is, that we submit the raw data that supports
11 the internal investigation upon which they want you to rule
12 that there is no problems. It simply doesn't support the
13 conclusions that Applicant wishes the Board to make.

14 In fact, we think the raw data supports exactly
15 the opposite conclusion, and that is what we have been covering
16 so far.

17 Second, that the hundreds of interviews taken from
18 the work force, even with all the failings that have to be
19 considered with the fact that they are largely an adversary
20 work product, support our thesis, and the answer to your
21 questions about pattern of foreman and supervisors who pushed
22 their crews to meet a deadline to the point that procedures were
23 violated and work was accomplished, which is just now being
24 discovered. I think the position of the question that Judge
25 Purdom raised. These affidavits are now accepted into the

20-7-Wal .

1 record. And frankly, we think that we can make that argument
2 on patters and pervasiveness based on the affidavits themselves.
3 You can track crews. You can track time periods. You can
4 track problems that go from '77 to the current time. Just
5 based on the affidavits. We don't have to put up a single
6 witness to make our case. It is all right there on the record.

7 But what question is not yet answered, and the
8 question that only can be answered by the QA and QC people
9 on that site, is why these problems were not found. If we
10 had all 217 workers take the stand, we could ask them what
11 happened when the QC inspector came by, or didn't come by,
12 or why didn't they come by, and why weren't these problems
13 found until now.

14 And that is the only question that is going to be
15 able to answer for this Board whether or not there had been
16 a pervasive breakdown. So, we have done our interviews. We
17 talked to the workers, and we were able to contact them
18 in the time period that we had. And that is the question that
19 we asked them: Where were the QC inspectors? Where was the
20 QA Manager? Why didn't somebody get this problem under
21 control, and they have answers. Some of their answers come out
22 in these affidavits, but not near the amount that this Board
23 needs to hear to determine whether or not there is a QA/QC
24 breakdown.

25 We think we know the answer. We think you have

1 already addressed in the partial initial decision that there
2 was harassment and intimidation of QC inspectors; that there
3 were QC inspectors who were trying to identify problems, and
4 that they were not able to write them up. And we think the
5 record in this case, the NCI's that were given to us in
6 discovery, and the testimony of the workers is that there were
7 QC inspectors trying to tell this problem to their management,
8 and they wouldn't listen.

9 And Mr. -- The supervisors have to answer to that.
10 Because we think there is evidence on this record that they
11 knew, that they signed off, and they dispositioned these
12 problems, and they never looked at the root cause. In
13 discovery there is a stack of affidavits signed off and
14 dispositioned by No. 1, and in some cases by No. 2 on that
15 list that are clearly, exactly the problems that this hearing
16 is all about, and that nobody has asked them why they didn't
17 figure out what was going on.

18 And if that isn't addressed here and now, then half
19 of your issue No. 2 that you raised in your partial decision
20 is never going to be tried.

21 JUDGE KELLEY: Okay. I think I understand your
22 argument. That speaks to No. 1 and No. 2.

23 MS. GARDE: Judge, it also speaks to Nos. 11 through
24 17 on the long one.

25 JUDGE KELLEY: The initial objection from this

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1 side of the house was 1 and 2. Your comments swept somewhat
2 more broadly. You spoke to 1 and 2 and others, too, as I
3 understand it.

4 MS. GARDE: One more point that Mr. Guild has made.
5 There is a memo in which this problem was discussed by No. 1,
6 a memo signed by No. 1, addressing the issue of where was the
7 QC inspectors on the second shift, and I do think that he should
8 be asked these questions.

9 JUDGE KELLEY: You said there is a memo. You mean
10 a affidavit?

11 MS. GARDE: No. There is a memo which is a resolution
12 to an issue that was raised by one of the workers about where
13 was the QC inspector.

14 JUDGE KELLEY: Tell us where it is.

15 MR. GUILD: Individual No. 1 on our list is identified
16 and associated with one of the 26 concerns. We sought his
17 deposition testimony, applicant's objected, and we didn't
18 press the point by way of discovery. That is a reflection of
19 his resolution of one of the concerns.

20 JUDGE KELLEY: I am still not real clear what I am
21 looking at.

22 MS. GARDE: It is a resolution to one of the issues.

23 JUDGE KELLEY: Is it a discovery document?

24 MR. GUILD: It is a discovery document.

25 JUDGE KELLEY: Which stack?

20-10-Wal

1 MR. GUILD: I think it is a supplementary stack.
2 If you look at the front page, there is a correction from
3 Mr. Grier. Mr. Grier submitted a list of changes, post-report,
4 to his review board.

5 JUDGE KELLEY: All right.

6 MR. JOHNSON: I would like to go over this point,
7 if I may.

8 JUDGE KELLEY: Okay. Mr. Johnson?

9 MR. JOHNSON: My impression from Ms. Garde is that
10 the desire here is to deal with the harassment, trepeditation,
11 pressure, placed by QA and QC supervision on the first line
12 inspectors, and there are two things.

13 First, questions that relate to that have already
14 been heard, and decided. Secondly, those matters are not
15 within the definition of foreman override, and for those reasons
16 I don't think it is a proper examination of these individuals,
17 and would not be within the proper scope of the proceeding
18 as it is now postured, and we would strenuously object to
19 their testimony on those subjects.

20 JUDGE KELLEY: Okay. Now, looking at the priority
21 list No. 5, do you have an objection to No. 5?

22 MR. McGARRY: Yes, sir. No five raises concerns.
23 They are all non-safety concerns. They are class G pipe, turbine
24 building.

25 JUDGE KELLEY: And --

1 MR. MCGARRY: No. 3 on the priority list, I think
2 we have already discussed because that is one of the QC
3 inspectors that Ms. Garde has already addressed, and we
4 advance the same issue, the same reason we advance for 1 and
5 2, we advance for No. 3. QC inspector, he has previously
6 testified in this case.

7 No, 4, and the 2 and 6, I don't think we object
8 to -- if I could just consult with, perhaps, Mr. Hollins for
9 a moment. I am not sure whether we object to No. 4 or the
10 2 people listed in 6.

11 JUDGE KELLEY: Go ahead.

12 (Mr. McGarry and Mr. Hollins confer)

13 JUDGE KELLEY: Let's go back on the record.

14 We will now hear about those three witnesses.

15 MR. MCGARRY: Yes, sir. Looking at No. 4, 5, and 6,

16 JUDGE KELLEY: 4 and two in No. 6, I thought.

17 MR. MCGARRY: With respect to 4, we advance the
18 same reasons that we have on 5. Basically, working the turbine
19 building, non-safety work.

20 JUDGE KELLEY: Okay. What about the two in 6?

21 MR. MCGARRY: I think we don't oppose them.

22 JUDGE KELLEY: Okay. So there is no opposition
23 from the Applicant's to the two individuals named under 6.

24 Mr. Johnson?

25 MR. JOHNSON: We are talking about the rest of the

1 people?

2 JUDGE KELLEY: No, no, no. I am only -- so we don't
3 lose track of everything. I am just asking you right now
4 do you object to the two names listed in No. 6 on the short
5 list?

6 MR. JOHNSON: Could I have one second. Well, I
7 won't object to the two in No. 6.

8 Mr. McGarry's objection might be right, but on the
9 basis that the Board has allowed cross examination to determine
10 whether something is foreman override seems to me --

11 JUDGE KELLEY: I don't think we are communicating.
12 Mr. McGarry's objection to No. 4 and No. 5, on the ground
13 that according to Mr. McGarry they are not involved in foreman
14 override, and we are going to hear in a minute from the other
15 side on those two. Haven't heard from them yet.

16 MR. JOHNSON: Okay. I misunderstood. I have
17 no objection.

18 JUDGE KELLEY: You have no objection to the two
19 names next to No. 6 on the short list?

20 MR. JOHNSON: No.

21 JUDGE KELLEY: No objection. Okay, can we go over
22 to the Interveners as to No. 4 and 5. You heard Mr. McGarry's
23 objection. Can you speak to that?

24 MS. GARDE: I think the only thing we can do, sir,
25 is tell you that we have contacted these people, conducted

1 interviews with these people, factored in your definition
2 of foreman override, and have a good faith basis that we are
3 not putting them up here to talk about non-safety related
4 incidents, and where there is non-safety related, unless it
5 goes to an answer to the question of why this happened that
6 we think it is relevant for the Board to hear, we won't ask
7 them any questions on those issues.

8 JUDGE KELLEY: Okay, thank you. Now, if we can
9 go over to the long list.

10 MR. JOHNSON: I am sorry. You only allowed me to
11 address No. 6.

12 JUDGE KELLEY: Yes, I did. How about the staff
13 on 4 and 5?

14 MR. JOHNSON: As well as 3. I didn't address that.
15 My position on 3 would be the same as 1 and 2, to the extent
16 the rationale on 1 and 2 applies.

17 JUDGE KELLEY: How about 4 and 5?

18 MR. JOHNSON: I would have no objection to 4 and
19 5.

20 JUDGE KELLEY: Okay, thank you. I understand that.
21 We are just going to go down the long list. We have already
22 covered some of these people, having been through the short
23 list.

24 No. 1, we have got -- how about No. 2 and No. 3.
25 Mr. McGarry, any objection?

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MR. McGARRY: No, sir.

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JUDGE KELLEY: Mr. Johnson?

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MR. JOHNSON: None.

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JUDGE KELLEY: 4 and 5, we have covered it. No objection to them. We have talked about No. 6; No. 7. Any objection, Mr. McGarry?

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MR. McGARRY: I am trying to determine.

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End 20.
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1 MR. MC GARRY: I guess we would object to number 7
2 on the basis that he states in his affidavit that welding
3 question was potentially corrected and is presently a solid
4 weld.

5 There is no reason for calling him.

6 JUDGE KELLEY: No nexus to form an override. It is
7 really affidavit, right?

8 MR. MC GARRY: Yes, sir.

9 JUDGE KELLEY: All right.

10 Mr. Johnson.

11 MR. JOHNSON: I would agree with the Applicants,
12 there is no nexus.

13 JUDGE KELLEY: Okay.

14 Ms. Garde?

15 MS. GARDE: I don't have number 7 in front of me,
16 his affidavit. All I can tell you is the people on this
17 list, except for one or two have been contacted and we based
18 our assessment on a good faith belief that they had something
19 to add to this hearing.

20 JUDGE KELLEY: I think maybe --

21 MS. GARDE: The argument of no nexus -- this
22 Applicant interviewed them on foreman override and this is
23 what he gave an example of. I don't have it in front of me,
24 so I will have to take them in --

25 JUDGE KELLEY: I think we can shortcut the argument

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1 a little bit. Mr. McGarry is saying essentially the affidavit
2 doesn't say foreman override has been defined. You are saying
3 you have talked to the person and you think based on that,
4 knowing our definition of foreman override, that the person
5 does have something to say.

6 And we are going to have to slice that somehow.

7 Okay, I understand that.

8 The next one, number 8, we haven't spoken to.

9 Mr. McGarry?

10 MR. MC GARRY: Can I just pass on that and say
11 we don't oppose number 9.

12 JUDGE KELLEY: Do you want to come back?

13 MR. MC GARRY: We are reading as quickly as we can.

14 We do not oppose number 9.

15 JUDGE KELLEY: Mr. Johnson, do you oppose number 9.

16 MR. JOHNSON: That is a curve, because I was looking
17 at number 8.

18 (Laughter)

19 No objection.

20 JUDGE KELLEY: No objection to 9.

21 Number 10.

22 MR. CARR: Number 10 we would oppose on two grounds,
23 your Honor. One is -- the first is it doesn't involve the
24 foreman override. There are two different instances, neither
25 of which involve foreman override.

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JUDGE KELLEY: Based on the affidavit?

MR. CARR: Based on that, yes, sir.

JUDGE KELLEY: All right. But the others, the two grounds?

MR. CARR: I misspoke when I said two grounds. I am sorry, I meant two instances, one ground.

JUDGE KELLEY: All right. Thank you.

Mr. Johnson?

MR. JOHNSON: No objection.

JUDGE KELLEY: No objection from the Staff to number 10.

Number 11?

MR. MC GARRY: Numbers 11 through 17 we have covered. That is all the QA/QC folks. But I will go back -- can I go back to 8 so we can keep going?

JUDGE KELLEY: Mr. McGarry, let's make sure I understand. I don't want to confuse this too much. But, number 3 on the short list, you made an objection. Was that just the fact that the man is in QC, or was it the fact that we have already heard from him in this case?

MR. MC GARRY: If you read his affidavit you can clearly see, he says there is no foreman override.

JUDGE KELLEY: So you are relying on that?

MR. MC GARRY: Absolutely.

JUDGE KELLEY: I just want to simplify.

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1 MR. MC GARRY: Then with respect to number 11 on the
2 long list, there is no affidavit from him. He is QA/QC and
3 there is no relevancy except the only argument advanced is
4 the argument that Ms. Garde has made. We don't think that
5 is applicable in this proceeding. There is no affidavit from
6 Mr. Norris. I shouldn't have said that, but I did. Hopefully
7 there are a lot of people with that name. That is number 13.

8 JUDGE KELLEY: Yes.

9 MR. MC GARRY: I don't believe there is affidavits
10 for any of the last people, 14, 15, 16, 17.

11 JUDGE KELLEY: Have we heard from Ms. Garde, if you
12 will, the generic argument about 11 through 17?

13 MS. GARDE: The only thing I would add to that would
14 be the fact that number 1 on the short list and number 2 on
15 the short list were also numbered on the long list; do have
16 specific resolution information which I stated.

17 Number 3 on the short list does give an affidavit,
18 among the 217. I think it is number 11 on your list. His
19 initials are BC?

20 JUDGE KELLEY: Yes.

21 MS. GARDE: All right. Gives an explanation which
22 in his OI interview in the OI report which we think bears
23 on this, makes us believe that he has information from his
24 sworn statement given to OI that bears on this issue.

25 JUDGE KELLEY: All right. Let's get back to number 8.

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1 MR. MC GARRY: 8 we would object that there is
2 no relevancy to the foreman override issue by reading his
3 affidavit.

4 And then there is one generic argument I think we
5 made, but I want to make sure I have made. I made it Tuesday.
6 And that is, several of these people, number 5 on the short
7 list, and number 1 on the long list, they are clearly non-
8 safety Class G type.

9 JUDGE KELLEY: You made the argument.

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

11 JUDGE KELLEY: And as to number 8, we understand your
12 argument to the contrary. You did talk to the person yourself,
13 but someone was with you. So, outside the affidavit you have
14 a basis for saying that the person can speak to foreman
15 override.

16 MS. GARDE: Let me make sure that the record is
17 clear that there are about two people on this list that
18 someone did not talk to, and I am not exactly sure which
19 those two are. So what I am saying is that all but two people
20 on this list were contacted.

21 MR. MC GARRY: Is that the long list, Ms. Garde?

22 MS. GARDE: Yes.

23 JUDGE KELLEY: All right, I think we can live with
24 that.

25 JUDGE FOSTER: Do I understand that on the long list,

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1 number 11 through 17 are all QA/QC people?

2 JUDGE KELLEY: Yes.

3 MR. JOHNSON: Staff's position on 8 is that it has
4 no objection.

5 JUDGE KELLEY: Thank you, Mr. Johnson.

6 MS. GARDE: I would like to make one final statement
7 in rebuttal to Mr. McGarry's comment.

8 JUDGE KELLEY: Go ahead.

9 MS. GARDE: That is to point out to this Board, as
10 they know we didn't object to any of these witnesses, and we
11 haven't objected to any of these witnesses. And I think it is
12 almost a question of fairness in terms of those witnesses that
13 we are getting to put up in terms of nitpicking about who we
14 can put up. So we are getting down to a very limited amount
15 of people and time to present our case.

16 JUDGE KELLY: All right. Well, the Board is going
17 to take this home tonight. We are simply going to have to
18 tell you at least first thing in the morning, some of the
19 answers so we can do business. And hopefully, we can get
20 everything in sometime tomorrow. Maybe sometime tomorrow we
21 will have a chance to go back into the transcript for some
22 of the arguments. It would be useful.

23 We then move to redirect by the Applicants.

24 MR. JOHNSON: Judge Kelley, to the extent that I
25 wasn't heard on the longer list of individuals starting with

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1 11, I would subscribe to the provision that I stated with
2 respect to the other three.

3 JUDGE KELLEY: I apologize for not getting back to
4 you on that particular point. I appreciate your statement.

5 MR. CARR: May I go ahead, sir?

6 JUDGE KELLEY: Yes, please do.

7 REDIRECT EXAMINATION

8 BY MR. CARR:

9 Q I have a few questions, I believe primarily for
10 Mr. Dick, which I will go through just as quickly as I can.

11 Mr. Dick, yesterday I believe you were discussing
12 Mr. Smith, and you mentioned supervisory practice as, what
13 you referred to as "bird-dogging."

14 I just wanted to check, there is nothing wrong with
15 bird-dogging per se, is there.

16 A (Witness Dick) No. It is just not a good
17 supervisory practice.

18 Q With respect to the disciplinary action taken
19 against Mr. Moore, it is my understanding that the
20 disciplinary action which you determined was appropriate,
21 was removing him from his supervisory position. Is that
22 correct?

23 A Yes.

24 Q Now Mr. Moore, I believe you testified, because of
25 reductions in force, the workforce at Catawba, had been

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1 demoted from his foreman position to a lead man position when
2 the disciplinary action was taken, is that correct?

3 A Yes.

4 Q Had Mr. Moore still been a foreman, would your
5 action have been to demote him from foreman to welder?

6 A Yes.

7 Q And the demotion from foreman to lead man was not
8 connected with this investigation or its outcome, was it?

9 A No.

10 Q I believe Mr. Abernethy can better answer this
11 question. In the memorandum, Mr. Abernethy of the supervisors
12 who had been counseled, I believe Jack Hollins' name was on
13 that list?

14 A (Witness Abernethy) That's correct.

15 Q Was that name on that list through a mistake?

16 A Yes, it was.

17 Q Thank you.

18 Mr. Dick, returning to you for a second, you
19 mentioned yesterday, when describing the duties of a lead man,
20 you described them as a "pusher." And I put that term in
21 quotes.

22 Does that terminology have any pejorative connotation
23 with respect to quality or safety of work?

24 A (Witness Dick) No, sir. That is just a generic
25 construction industry term.

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1 Q Mr. Dick, you were, I believe, talking today about
2 a situation in which you had discussed with Mr. Aycok, who at
3 the time was, I believe, construction superintendent at
4 Catawba, that though Mr. Rogers and his people in the welding
5 craft wanted to make a first-class outfit, they weren't
6 availing themselves of employee relations as much as you
7 thought they should be.

8 By that counseling was there any indication to you,
9 or did you mean to convey that you saw a safety problem or
10 quality problem in the welding craft?

11 A No, sir, I did not.

12 Q It was an employee relations --

13 A Strictly employee relations.

14 Q Mr. Grier, just a couple of questions for you, sir.

15 So far as the Review Board function was concerned,
16 sir, was it the purpose of the Review Board in reviewing the
17 report, not to redo the technical analyses but rather to see
18 that the persons -- assure yourself that the persons that
19 conducted those analyses were competent, and their investiga-
20 tion was thorough?

21 A (Witness Grier) That is correct.

22 Q Now, with respect to the memorandum referred to in
23 the interpass temperatures, I believe a memorandum from
24 Mr. Miller to L. C. Dale, in your view does the language in
25 the final report adequately reflect the results of the test

mm10 1 made, taking into account the Miller memorandum?

2 A Yes, it does.

3 Q Mr. Dick, in your colloquy with Dr. Purdom, you
4 had mentioned, I believe, some of the things that we have
5 in place to bring problems forward. And you also mentioned
6 that remedial action was being taken, to try again or try
7 further to reinforce commitment to quality and message to
8 craft.

9 Could you just briefly outline those remedial
10 actions for us? Discuss the meetings that have been held at
11 the craft.

12 A (Witness Dick) Yes, Mr. Carr.

13 I met with all construction craft superintendents
14 and went down the list of specifics about some of the things
15 that had been alleged in this investigation, and stated in
16 as uncertain terms as I know how --

17 Q Excuse me, you mean "as certain terms"?

18 A Certain terms as I know how -- it's late.

19 (Laughter)

20 -- the unacceptability of some of the specific action,
21 and specifically what I expected with quality being first.
22 And I then went immediately from that meeting and met with
23 every welding general foreman and every foreman, and did the
24 same thing.

25 Q Have there been a series of meetings held by

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1 supervision with craft? Is this something that
2 would have been also brought out in the meeting?

3 A Yes, sir, that is part of the corrective action,
4 too, that each supervisor on the job would meet with their
5 crew and communicate this same message.

6 Q And I believe you mentioned that some other action
7 was being taken to try to reinforce the message that people
8 had concerns, they want them to bring them forward?

9 A Yes, sir, that is correct. The procedure is being
10 developed that enables employees and encourages employees
11 to bring them forth in complete confidence -- in confidentiality
12 on quality concerns.

13 Q All right, sir. I think just one last question
14 which arose out of your discussion with Judge Kelley.

15 I just want to make clear my understanding, address
16 this to both you and Mr. Hollins. Was the NRC involved in the
17 sense of being kept informed of the course of our investiga-
18 tion as we progressed through it?

19 A Mr. Carr, I reported to the NRC by telephone on
20 essentially a weekly basis, communicating with Mr. Brownlee
21 if he was in, as a rule.

22 During the first month or two where the investigation
23 was most intent, I told them everything that we had done and
24 everything that we had found. And at some point in time when
25 we were getting into some of the testing of materials, I went

mm12 1 to Atlanta and met with a large group of NRC and gave them a
2 complete report on the tests, the kinds of tests, what we
3 were finding, the progress that we were making on a fairly
4 regular basis.

5 There were one or more NRC People on site discussing
6 with either me or Mr. Hollins, or I would assume others at
7 their will, the investigation, what we were doing, how we were
8 doing it and what we were finding.

9 There was complete open, total communication and
10 disclosure.

11 Q You mentioned you spoke with Mr. Brownlee when you
12 could contact him or if he was in.

13 If he wasn't in, did you have someone else you could
14 talk to?

15 A I had a list of names. I believe Mr. Dans, Hugh
16 Dans was an alternate, and Mr. Olshinsky was an alternate. If
17 I didn't get one, I went to the next and then the next.

18 Q Mr. Hollins, does that generally comport with the
19 contacts that you had with the NRC during this investigation?

20 A (Witness Hollins) Yes, it does. We had a completely
21 open atmosphere with them. They made several site visits,
22 we had numerous telephone contacts and we shared all
23 information.

24 Q Who were your contacts with?

25 A My contacts were predominantly with Mr. Uryc and

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1 Mr. Blake, and to a lesser extent, Mr. Economos.

2 BY MR. MC GARRY:

3 Q Mr. Hollins, am I correct in my assumption that
4 the report assumed each of the allegations raised in the
5 affidavits to be true?

6 A (Witness Hollins) That's correct.

7 Q There is a question concerning Billy Smith and the
8 sample size, number of foremen. The number of foremen working
9 for Billy Smith.

10 Do you feel confident that you have interviewed
11 people so as to give you an adequate sample size for the
12 number of foremen who worked for Billy Smith?

13 A Yes, sir, I do.

14 Q There is some question, Mr. Hollins, concerning the
15 sample size of the total report, 217, and how you went about
16 it.

17 You indicated you discussed this matter with
18 industrial engineer to some extent. You also just indicated
19 you discussed it with the NRC.

20 Are you aware of the investigative skills of the
21 NRC people that you spoke with?

22 A It is my understanding, they are in some cases
23 professional investigators, those who do it on a routine basis.

24 Q Did they provide any comment as to the adequacy of
25 the approach you were taking?

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1 A They had no negative comment.

2 Q Mr. Grier, on your Review Board, are you or any
3 of your members -- are any members of the Review Board
4 skilled in any investigative techniques? Do they possess
5 any investigative skills, to the best of your knowledge?

6 A (Witness Grier) Mr. Wayne Cobol is the manage of
7 our internal audit department, and has served in that capacity
8 for some years, and has some skill in audits.

9 Q And he reviewed the methodology utilized by
10 Mr. Hollins, is that correct?

11 A That is correct.

12 Q Did he make any adverse comment on that methodology?

13 A No, he did not.

14 Q Mr. Llewellyn, there was some discussion yesterday,
15 I believe, concerning how you went about your business when
16 you received first-hand information. I think the record
17 reflects that you then went out and pursued the matter.

18 How about in situations where you didn't have
19 first-hand knowledge, you had second-hand knowledge, hearsay?
20 Did you stop your investigation in that circumstance?

21 A (Witness Llewellyn) Did I stop my investigation?

22 Q Yes, sir.

23 A I tried to take that into account as best I could.
24 But sometimes it was impossible to follow up.

25 Q Did you follow up on some occasions?

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A Yes.

Q On most of the occasions?

A I don't know what percent.

end 21
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1 Q Mr. Llewellyn, my memory is dull on this point,
2 I'm sorry, but yesterday Palmetto read to you three instances,
3 three affidavits, and you said that based on that information
4 it wasn't foreman override.

5 Do you recollect that?

6 Maybe that was Mr. Hollins. Do you recall that?

7 A (Witness Hollins) Yes, I do.

8 Q And you indicated that based on the information,
9 the paragraph or so that was read from each affidavit,
10 that that was not foreman override.

11 Would that then have brought your investigation
12 of those concerns to a halt?

13 A No, sir, it would not have.

14 Q Would you have directed one of the people
15 working on the resolutions to continue to pursue the
16 matter?

17 A I would have pursued it.

18 Q Mr. Llewellyn, there was some mention of you
19 doing a lot of work over the Memorial Day weekend.

20 Should the Board have the impression that
21 because you worked over the Memorial Day weekend that
22 you didn't put in the full time or effort into the
23 resolution of matters that you were assigned?

24 A (Witness Llewellyn) No, they should not.

25 Q Do you feel that, as a professional, that you

1 have given the matter sufficient attention?

2 A. Yes, sir.

3 Q. Mr. Ferdon, referring to your list wherein you
4 reviewed the 25 field welds to the ASTM practice A --
5 you are familiar, of course, with that document?

6 A. (Witness Ferdon) I am.

7 Q. In your writings, if you will, there were some
8 questionmarks, do you recall that?

9 A. I do.

10 Q. And I believe there was "y" to the right of
11 that questionmark, is that correct?

12 A. There was.

13 Q. And in some instances there was an "n."
14 Am I correct in assuming that means no?

15 A. Correct.

16 Q. And beside some of those "n's," there was a "y,"
17 is that correct?

18 A. Correct.

19 Q. What do the second "y's" mean in most instances
20 with respect to the questionmarks on the "n?"

21 A. That was reflecting my final evaluation of
22 the weld.

23 Q. And the "y" was to be read as acceptable?

24 A. Acceptable.

25 Q. Mr. Llewellyn, there was some discussion concerning

1 the investigation resolution document you signed and
2 Mr. Abernethy was involved in.

3 Do you recall that?

4 A. (Witness Llewellyn) Yes, sir.

5 Q. Are you familiar with that report?

6 A. Yes, sir, I am.

7 Q. Did you work on that issue?

8 A. Yes, sir, I did.

9 Q. Does your signature attest to the fact that you
10 subscribe to that document?

11 A. Yes, sir.

12 Q. Mr. Kruse, how many of stencil number 248 welds did
13 not meet the ASTM practice A criteria?

14 A. (Witness Kruse) I believe the number was one.

15 Q. Is it significant that that criteria was not
16 met?

17 A. No, it is not.

18 Q. Was it therefore necessary to disclose that
19 information in the report?

20 A. No, it isn't.

21 Q. There was some discussion, Mr. Kruse, concerning
22 Mr. Czajkowski's suggested improvements.

23 Do you recall those?

24 A. Yes, I do.

25 Q. Did you implement those suggested improvements?

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1 A Yes, we did.

2 Q The discussion, Mr. Kruse, of the shrinkage and
3 the hot cracking, and I believe the Staff followed up on
4 this regard.

5 My question to you is in the test welds that
6 you examined and the field welds that you examined, did
7 you see any evidence of such shrinkage?

8 A No, I did not.

9 Q Mr. Fredon -- perhaps Mr. Kruse -- the State
10 was examining earlier this evening and wondering if the 350
11 degree interpass temperature wasn't necessary based on some
12 of your analysis.

13 The State was wondering then doesn't that undercut
14 the program.

15 And I ask you, despite your investigation and
16 despite your conclusion -- and perhaps this is better
17 addressed to Mr. Hollins -- does Duke Power Company seek to
18 have the 350 degree interpass temperature on stainless steel
19 observed?

20 A (Witness Hollins) Yes, we do.

21 Q How many of stencil number 248's welds were
22 examined?

23 A (Witness Kruse) The number was four.

24 Q And how many of stencil number 248's welds were
25 determined to be in the critical area?

1 A The number was six, I believe.

2 Q Mr. Mills, concerning the cold springing, it was
3 my understanding of the incident in question there were a
4 lot of people around and the question I have is did they
5 use a dynamometer?

6 A (Witness Mills) No, sir, they did not.

7 Q Should they have?

8 A Yes, sir, they should have.

9 Q Do you have any explanation of why they
10 didn't?

11 A Both the foreman and the involved inspector felt
12 that they were working within the guidelines of QA procedure
13 M-4. That was an erroneous procedure.

14 Q And if they were working within the procedure
15 then they would not have had to use that device?

16 A They were overlooking the fact that there are
17 some words in QA procedure M-4 that says the joint must
18 be fit in accordance with design engineering instructions.
19 This allows the use of jigs, fixtures, jacks and clamps.

20 They were overlooking the fact of CP483, the
21 design engineering instructions.

22 Q Mr. Hollins, on the average, how many foremen
23 did the interviewed employees work for on the average?

24 A (Witness Hollins) I would say around four.

25 Q Mr. Van Malssen, I believe you used the word

1 "crack." Did you mean to use the word "crack" in your
2 testimony?

3 A (Witness Van Malssen) I meant -- when I was
4 describing the arc strike I meant to use "indication."

5 Q Mr. Llewellyn, there was some discussion of a
6 particular affidavit and it had to do, I believe, with
7 arc strike. And the question was raised why wasn't
8 number 148 included in the numbers that you read out that
9 were encompassed in your report.

10 Do you recall that?

11 A (Witness Llewellyn) Yes, sir.

12 Q And I don't believe that you answered that
13 question and I would like you to answer that question now.

14 Would you like to see the affidavit?

15 A Yes, please, if I could.

16 (Document handed to the witness.)

17 A The reason that wasn't included in the report,
18 there was an additional statement at the bottom that said
19 he had no concerns regarding the quality of work at Catawba
20 and has given all information regarding that. That was
21 in addition to the statement I made in that affidavit.

22 Q On the same topic of including items in your
23 report, with respect to interpass temperature, if one were
24 to read the affidavit and then compare the affidavits to
25 the report, were all the people who raised interpass

1 temperature included in the report or were there people
2 who raised interpass temperature concerns in affidavits
3 not included in the report?

4 A. No, sir. There are three individuals who are
5 not referenced in the report.

6 Q. Who are they? Numbers.

7 A. The first one is individual 33. The reason he
8 is not in the report is he relates to the same concern as
9 another individual, individual 106

10 The second individual is individual 114. To
11 paraphrase what he said, he felt pressured to violate
12 interpass temperature but never gave in to that pressure.

13 The third individual was individual 207 and,
14 as evident from his affidavit, he had a misconception of
15 what interpass temperature was.

16 Q. All right.

17 Mr. Ferdon, Mr. Kruse, there was some
18 discussion of one of your background documents concerning
19 violation of interpass temperature and there was some
20 discussion of a particular sentence that Mr. Guild read
21 you concerning the degree of sensitization seen in the
22 material as dependent on its carbon content. And he asked
23 you if this statement was in the report.

24 Do you recollect if you addressed carbon content
25 in the report?

1 A. (Witness Kruse) I don't recall it was
2 specifically stated like that in the report.

3 Q If you did not, was it necessary that you
4 should have addressed it?

5 A. It wouldn't have been necessary.

6 Q Why not?

7 A. We basically set out to find out if interpass
8 temperature had been violated and to that extent all the
9 carbon contents of all of the piping were within
10 specifications.

11 Q Mr. Ferdon, you mentioned "chronic" problems.
12 Do you recall that comment? I believe it was
13 made about an hour ago.

14 A. (Witness Ferdon) I do.

15 Q You said you wouldn't expect any chronic
16 problems.

17 Do you expect any problems with the welds at
18 Catawba?

19 A. No, I do not expect any chronic or acute
20 intergranular stress corrosion cracking problems.

21 Q Mr. Hollins, one of the Board members asked you
22 some questions concerning the scope of your interview
23 process and whether or not it was directed to strictly
24 Welder B or was it -- did it also have an element that
25 permitted it to branch out and ask the interviewee if

1 their opinion is not in any way constrained by Welder B,
2 do you recall that line of inquiry?

3 A. (Witness Hollins) Yes, sir.

4 Q. I ask you, in the interview process did you
5 give people an opportunity to raise any concern they might
6 have exclusive of Welder B concerns?

7 A. Yes, sir, we did.

8 Q. There was some question, Mr. Hollins, concerning
9 the effectiveness of the quality assurance program that
10 one of the Board members addressed, I believe, to Mr. Grier.

11 As a result of your report, did you find any
12 unsafe work at Catawba?

13 A. No, sir, we did not.

14 Q. Lastly, Mr. Hollins, picking up on a point that
15 Mr. Carr was discussing with you concerning the NRC, and
16 you indicated that you had informed the NRC of what was
17 going on and Judge Kelley had asked you a question concerning
18 how difficult this report was that didn't have all of
19 the documentary background in it -- that one would have
20 to come and read the documentary background.

21 Was the Staff familiar with the documentary
22 background, in addition to telephone calls and meetings
23 you might have had --

24 A. Yes, sir, it was.

25 Q. Did they come to the site to look at the

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1 affidavits, for example?

2 A No, sir.

3 Q Did they examine the tests, for example?

4 A What, sir?

5 Q The tests, the results of the tests taken.

6 A Yes, sir.

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

8 JUDGE KELLEY: Thank you.

9 Anything further?

10 MR. GUILD: Yes, sir.

11 MR. CARR: Your Honor, we agreed yesterday at

12 the bench conference -- I don't know if it was on the

13 record -- that when we finished with redirect it was

14 finished and Mr. Guild agreed to that. They are our

15 witnesses and our case and we should finish it.

16 MR. GUILD: I made no such a commitment. I said

17 that they should have the right to close, Mr.

18 Chairman, because they have the burden of proof. And that

19 certainly is true but several new matters have been raised

20 on redirect and I will be brief in trying to address them

21 and I have assumed that if there is something that has to

22 be taken care of that Mr. Carr will rise and ask to

23 raise the point.

24 I appreciate that the hour is late but to

25 the extent that there have been some new matters raised,

1 I think we should have an opportunity --

2 JUDGE KELLEY: I frankly don't recall this as
3 an off the record -- I don't recall our really focusing on
4 it. Our practice has been to allow for recross following
5 redirect on a new matter. We think that having put time
6 limits on things and having said earlier that the recross
7 following our questions would be limited to ten minutes,
8 we think some time limit may be necessary here if it
9 is going to take pretty long.

10 How long do you think it would take?

11 MR. GUILD: Five minutes at the most.

12 JUDGE KELLEY: Proceed.

13 RE-CROSS-EXAMINATION

14 BY MR. GUILD:

15 Q Mr. Dick, you related informing the NRC in
16 detail of what you were doing with regard to particularly
17 the technical review of the intergranular stress corrosion
18 cracking interpass temperature issue, correct?

19 A (Witness Dick) Yes, sir.

20 Q You said you went to Atlanta and met with NRC
21 and fully disclosed to them the work that you were doing
22 on that subject?

23 A Everything we knew to that point.

24 Q You knew to that point.

25 A Yes, sir.

1 Q Well you told them then that you were doing
2 work to review field studies of Mr. Moore's crew's welds,
3 did you?

4 A I don't recall that detail.

5 Q You don't recall whether you even told them that
6 you were going to go out into the plant and look at actual
7 welds in place to determine whether or not there was a
8 rejectable sensitization --

9 MR. CARR: All right, your Honor, I am going
10 to object. The record reflects that that was done as a
11 result of the NRC going to the site and suggesting that
12 it be done, if I am not mistaken.

13 Isn't that --

14 MR. GUILD: Mr. Chairman --

15 MR. CARR: So why, if the NRC came to the site
16 and suggested we do it, should Mr. Dick be cross-examined
17 about whether he told the NRC about it when he went to
18 Atlanta?

19 MR. GUILD: There really is no need for
20 Mr. Carr to get exercised about the point, Mr. Chairman --

21 JUDGE KELLEY: Let's just keep this on an
22 even keel, gentlemen.

23 The trouble with this whole redirect-recross
24 exercise is that it can go on forever because you spend more
25 time arguing about whether it is new or not than you do

1 answering the question.

2 Now if we are going to hold this to five minutes
3 why don't we just answer the question and be done with it
4 and then at 9:21 we will be done.

5 So I will overrule the objection on that simple
6 basis. Other objections may still be made.

7 BY MR. GUILD:

8 Q You don't recall telling them anything in Atlanta
9 when you went and fully disclosed what you were doing that
10 would have included actually going into the plant and
11 examining the quality of welds performed by Mr. Moore's
12 crew, is that your testimony?

13 A (Witness Dick) Mr. Guild, I could answer in
14 this way:

15 When I went to Atlanta, as I recall we had run
16 the test of trying to duplicate the hottest interpass
17 temperature that could be achieved, had polished the
18 samples and etched them and compared them to the ASTM
19 practice and we discussed where we were going from there
20 and, as I recall, at that time there was not a methodology
21 for doing this in the field.

22 And I told them that we were going to be working
23 on trying to determine -- or trying to perfect or trying
24 to come up with some way to do this, but at that point
25 in time the scope in the methodology was vague or

1 non-existent. But we did discuss testing welds in the
2 field.

3 Q All right, sir.

4 I want to show you a document that -- by cover of
5 May 14, 1984 to the Board and parties from Mr. Johnson,
6 Counsel for the NRC Staff. It encloses a meeting summary,
7 all right, and it is a meeting summary which also has a
8 cover May 1, 1984 reflecting an April 18, 1984 meeting in
9 Atlanta.

10 That was the meeting you had reference to?

11 A I don't recall the date, Mr. Guild.

12 Q All right.

13 And the cover letter, it says "Dear Mr. Tucker,"
14 and it has you copied, "R.L. Dick, Vice-President."

15 A I receive copies of all of those, yes.

16 Q All right, sir.

17 I have searched through the meeting summary
18 to try to figure out whether the NRC was describing what
19 you had related you told them and the only reference I
20 find is the third paragraph.

21 But take your time and tell me if there is anything
22 otherwise in that document that relates to the technical
23 evaluation of welds. And, if not, how about reading that
24 paragraph for the record, please?

25 (Document handed to the witness.)

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1 A "The Licensee also advised that an
2 individual who alleged violating interpass
3 temperature during the welding of stainless
4 steel agreed to fabricate several demonstration
5 welds using the worst-case weld he performed.
6 The sockets were cut and several sections were
7 removed for examination to determine the effects
8 of overheating on the sockets. The Licensee
9 stated that evaluation of this material is
10 currently underway."

11 Q Now is there any indication there or in any other
12 part of the meeting summary of your fully disclosing to
13 the NRC that you intended to either perform field testing
14 of welds of Mr. Moore's crew or of Welder B's welds or
15 develop a methodology to perform such a field test?

16 And, if so, Mr. Dick, would you point it out to
17 us, please?

18 A There is a sentence in here that says:

19 "In addition, the Licensee requested
20 and subsequently committed to keeping the
21 Regional Staff informed of the progress of
22 the Duke Power inquiry into the matters
23 identified above."

24 Q All right.

25 Anything responsive to the question I asked?

1
2 MR. JOHNSON: There was a meeting of April 8th,
3 1984. This was sent to all of the parties prior to the
4 PID and I think it is in the record as a result of the PID.

5 WITNESS DICK: Mr. Guild, I didn't have the
6 slightest idea of the scope of which we were talking so
7 I don't know what they could have written down. I only
8 made a commitment that we were considering it and looking
9 at it and looking at how this could be extended.

10 BY MR. GUILD:

11 Q This meeting summary doesn't reflect any of
12 this stuff, does it?

13 A (Witness Dick) I have not carefully read every
14 word but I did not see it.

15 Q Please take --

16 MR. GUILD: I hate to take the Board's time but
17 the point really here is that is the only vehicle I have
18 for learning what was going on and I followed with very
19 close care what the investigation was -- at least I tried
20 to read in the documents that were made available to me....

21 JUDGE KELLEY: I think you should wrap up
22 this point with Mr. Dick and then we are going to call it
23 a night.

24 MR. GUILD: Yes.

25 MR. CARR: I'm sorry, what was the question pending?

MR. GUILD: I asked him if that meeting summary

1 reflects any information communicated by Mr. Dick about
2 the efforts to develop a field metallographic examination
3 technique to examine welds in the field.

4 BY MR. GUILD:

5 Q You don't see anything in there, do you, Mr. Dick?

6 A (Witness Dick) I don't see anything yet.

7 (Pause.)

8 I don't see a reference.

9 Q You were copied with that meeting summary,
10 weren't you?

11 A Yes, sir.

12 Q Did you review it when you got it and see
13 whether it was a complete and fair reflection of your
14 meeting in which you talked to them about --

15 A I read it.

16 Q Do you have any problems with it as representing
17 what you talked about?

18 A I didn't read it in the sense of trying to
19 check off to see that they had accurately and completely
20 represented everything that we talked about, Mr. Guild.

21 Q Did they?

22 A To my recollection we discussed the future
23 program, not in detail.

24 MR. GUILD: Thank you, Mr. Chairman, that is all
25 I have.

1 JUDGE KELLEY: Ladies and gentlemen of the panel,
2 this brings us to the conclusion of our not completely
3 scientific process. We appreciate your attendance here
4 and your responsiveness -- Do we have a problem on the
5 right side of the house?

6 MR. MC GARRY: We have one question we want
7 to ask on the basis of that and that was on interpass
8 temperatures.

9 FURTHER REDIRECT EXAMINATION

10 BY MR. CARR:

11 Q Mr. Hollins, when was it we determined to go
12 to the field testing of the welds?

13 A (Witness Hollins) I don't know that I can
14 put a date on that.

15 Q Do you have that, Mr. Kruse?

16 A (Witness Kruse) As I recall it wasn't even
17 until May that we began to start deciding how we were
18 going to do it.

19 Q And when you did it, did you call the NRC Staff
20 and tell them what you were doing and what you had found,
21 Mr. Hollins --

22 A I don't recall that we called Atlanta, but I
23 know that --

24 Q Didn't you have a conversation with Mr. Blake,
25 Mr. Hollins, to pass on the results?

1 A. (Witness Hollins) The Staff was aware that we
2 were doing field testing because they brought in their
3 representative from Brookhaven Lab to observe it.

4 MR. CARR: Thank you.

5 JUDGE KELLEY: Okay.

6 As I was saying, I think we now are through.
7 Thank you very much for coming, for your patience, for
8 your responsiveness to questions.

9 Mr. Ferdon, we may need you back probably
10 Friday, if you are going to be called back on the the
11 point that was refered to earlier. The rest of you,
12 I think, are free to go. Thank you very much.

13 We have got a point or two for counsel.

14 (The witness panel excused.)

endAGB#22
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EVENING SESS,
9:25 p.m.

3-1-SueT

2 JUDGE KELLEY: We would all like to leave, so let's
3 just turn our attention up here for a moment to one or two
4 points.

5 We have got on the priority list two people to
6 whom there is no objection. We have to rule on the remainder,
7 but as to those two, if there is no objection, wouldn't it
8 make sense for those people to be told to be here after lunch
9 tomorrow and then we will see, depending on the rulings, what
10 comes after that?

11 MR. GUILD: To be here when, Judge?

12 JUDGE KELLEY: Right after lunch, the two people
13 could be told right off the bat to come after lunch tomorrow,
14 because we are going to hear from the Staff from the begin-
15 ning of tomorrow until lunch time.

16 MR. JOHNSON: Could I also ask what is intended
17 with respect to Mr. Nunn and Mr. Michaelowski?

18 Is tomorrow Thursday?

19 JUDGE KELLEY: Yes. Can we ask tomorrow? Do you
20 have to know tonight?

21 MR. JOHNSON: No.

22 JUDGE KELLEY: A fair enough point, but let's do
23 it tomorrow morning. Now, we said earlier I think that we
24 intend to crank up again at 8:30. It is sometimes said
25 that justice should be tempered with mercy. Would you
prefer 9 o'clock, participants? Mr. Guild?

#23-2-SueT 1

MR. GUILD: Yes, sir.

2

JUDGE KELLEY: Mr. McGarry?

3

MR. MC GARRY: I'm not sure.

4

JUDGE KELLEY: 9'clock.

5

MR. GUILD: Judge, before you do that can I ask
6 Dr. Michaelowski to be with us tomorrow afternoon and try
7 to fit him in?

8

JUDGE KELLEY: That seems reasonable. Yes.

9

Off the record, adjourned.

10

(Whereupon, the hearing is adjourned at 9:26 p.m.,

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Wednesday, October 10, 1984, to reconvene at 9:00 a.m.,

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Thursday, October 11, 1984.)

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END.

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