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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of:

DUKE POWER COMPANY, ET AL.

(Catawba Nuclear Station,
Units 1 and 2)

Location: Bethesda, Maryland Pages: 12,865-12,921

Date: September 25, 1984

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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DUKE POWER COMPANY, ET AL. :
: Docket Nos. 50-413
(Catawba Nuclear Station, : 50-414
Units 1 and 2) :
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September 25, 1984

4350 East West Highway
Bethesda, Maryland

The Board met pursuant to notice at 11:30 a.m.

BEFORE:

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

DR. PAUL W. PURDOM
Administrative Judge
235 Columbia Drive
Decatur, Georgia 30030

DR. RICHARD F. FOSTER
Administrative Judge
P. O. Box 4263
Sunriver, Oregon 97702

1 APPEARANCES:

2 On Behalf of the Applicants:

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4 Duke Power Company
5 P. O. Box 33189
Charlotte, North Carolina 38242

6 On Behalf of the NRC Regulatory Staff:

7 GEORGE E. JOHNSON, ESQ.
8 Office of the Executive
9 Legal Director
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

10 BRAD JONES

11 Other Participants:

12 ROBERT GUILD

13 BILLIE GARDE

14 J. MICHAEL MCGARRY, III, ESQ.
15 ANN COTTINGHAM
16 Bishop, Liberman, Cook,
17 Purcell and Reynolds
18 1200 Seventeenth Street, N.W.
19 Washington, D. C. 20036
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1 The tentative schedule is acceptable to the applicant.

2 The one problem we're having is the treatment of the
3 confidential statements.

4 Our view would be at this particular point in
5 time that we will be prepared to hand over the discovery
6 to the intervenors on Wednesday, but we would do so under
7 a protective order because the information, the affidavits
8 in particular that were given to the applicant were given
9 under a pledge of confidentiality, so we would require a
10 protective order at this particular point in time.

11 Mr. Guild and I had some brief conversation
12 this morning concerning that matter and the follow-up
13 matter, which would be we would request that the hearing
14 be in camera due to confidentiality.

15 Mr. Guild raised the point that perhaps people
16 would not want confidential treatment. I think the
17 applicant's position in that regard would be if a
18 particular witness does not wish to go in camera, so be
19 it and we can go on the open record.

20 But at this particular point in time we have
21 not been told by anybody that they, that they wish to
22 go public or they do not have any problems with their
23 name being given at discovery without a protective...

24 Now, I don't mean to imply that we have talked
25 to every individual, but at this particular point in

1 time we feel obliged to honor the commitment that we've
2 made the employees, which was one of confidentiality.

3 JUDGE KELLEY: Okay, now, when you say
4 "employees", Mr. McGarry, I'm assuming that you're
5 referring to the some 217 people that were interviewed
6 by your interviewing team.

7 MR. MCGARRY: That is correct.

8 JUDGE KELLEY: And I'm assuming that you're not
9 referring to the people who did the interviewing or the,
10 if you will, the top one or two people that put the report
11 together.

12 MR. MCGARRY: With respect to them testifying,
13 I don't think any of those individuals are desirous of
14 confidentiality or in camera. However, the topics they
15 might be discussing may lead us to the confidentiality
16 in camera question.

17 JUDGE KELLEY: Right. I think what you're
18 suggesting is, I think I'm following you, they might come
19 in and talk about the procedures they followed and how
20 they selected the employees and this and that...

21 MR. MCGARRY: Exactly.

22 JUDGE KELLEY: ...but when it came to saying
23 about what did employee X tell you, then the very dis-
24 closure of the facts may cause problems with the
25 employees' confidentiality?

1 MR. MCGARRY: Yes, sir.

2 JUDGE KELLEY: Okay, I understand what you're
3 saying. Hold on just a second. Okay, I'm sorry.

4 Mr. McGarry, you, I think I understand basically the point
5 you're making about, about employees and the protective
6 order. Was there another point?

7 MR. MCGARRY: That is the major point I would...
8 Since I guess I'm going on first, I've mentioned two
9 other things that do, did present itself, and that is
10 in terms of the, of the testimony.

11 In a very tentative fashion we would contemplate
12 putting on a panel. The Board indicated one panel of
13 applicant's investigators. We would, as of today,
14 contemplate putting on a panel that would include several
15 of the investigators, that would include also the
16 appropriate sponsors of the document, our report, the
17 August 3rd report.

18 These would be engineers. And we think it's
19 probably prudent also to put on at this point in time
20 somebody from management. I just want to alert the Board
21 and parties what I'm thinking is in terms of a panel.

22 It would still be one panel, but it would, in
23 our view, it wouldn't be just limited to the investigators.
24 We need somebody to sponsor that document and the investi-
25 gators can't sponsor that document in toto because the

1 document also has technical resolutions and it also has
2 subsequent employee actions.

3 JUDGE KELLEY: I think I understand what you're
4 saying. Okay.

5 MR. MCGARRY: The last point would be rebuttal,
6 if any. At this particular point in time we wouldn't
7 contemplate any rebuttal, but it may be that rebuttal
8 might be necessary.

9 JUDGE KELLEY: Okay.

10 MR. MCGARRY: I think those are the points,
11 Your Honor, that, that we wish to raise.

12 JUDGE KELLEY: Okay. Why don't we go to Staff
13 next and then Palmetto can come in third, and if we need
14 to come back and go through again, we can do that, but I
15 think the main thing is to get these points just laid out
16 on the table and everyone will have an adequate opportunity
17 to speak to them. Mr. Johnson?

18 MR. JOHNSON: Yes, Judge Kelley. First I'd
19 like to say that Moore, (inaudible) Moore is on the line.

20 JUDGE KELLEY: Fine. Thank you.

21 MR. MCGARRY: Mr. Johnson, could you speak up
22 a little bit? I'm having difficulty.

23 MR. JOHNSON: Okay. The Staff is in general
24 agreement with the schedule. We have focused on the
25 particular issues within it, notably the documents that

1 we are prepared to turn over and under what circumstances.

2 JUDGE KELLEY: Yeah.

3 MR. JOHNSON: We have these documents which are
4 ready to be sent out today to Mr. Guild which were being
5 gathered under an FOIA request in any event.

6 JUDGE KELLEY: Right.

7 MR. JOHNSON: And we are going to send out
8 those to the FOIA response in substance to him with
9 certain information deleted. The deleted information is
10 going to be of NRC confidential sources, identity of
11 other individuals, identity of, identification would
12 constitute an unwarranted invasion.

13 Personal privacy, certain identifying infor-
14 mation that tend to, with other individuals... Is
15 Judge Kelley on?

16 JUDGE KELLEY: Yeah.

17 MR. JOHNSON: Okay. I just heard that buzzer
18 and I didn't...

19 JUDGE KELLEY: You never know.

20 MR. JOHNSON: That's right. The last time we
21 lost you so I thought I'd ask. Excuse me.

22 JUDGE KELLEY: Go ahead.

23 MR. JOHNSON: So that this document is going
24 out today. In addition, we have another group of documents
25 that are related to the April 18th inspection report.

1 Now, the schedule was announced last Friday. It was not
2 clear whether the scope of the item for 9/26, applicant
3 and Staff deliver underlying documentary bases for their
4 reports on foreman override, and to me this encompassed
5 just the most recent August 31st report on that and the
6 April 18th report.

7 Assuming that the April 18th report is covered,
8 then there are interviews that support that report.
9 Judge Kelley?

10 JUDGE KELLEY: I think, I think the plain truth
11 of the matter that we didn't, probably out of ignorance,
12 focus on the discussion, on the distinction that you're
13 making right now.

14 But I think we were thinking of your August 31st
15 report as being sort of the Staff's overall view on the
16 whole matter and covering the waterfront. But if you
17 think the April 18 report usefully supplements what,
18 what you had to say on the subject, does the Staff have
19 any objection to turning over that April material?

20 MR. JOHNSON: Well, we are preparing to do it
21 because we believe there's, it does form the basis of
22 what, part of the basis for the overall conclusion.

23 JUDGE KELLEY: Right.

24 MR. JOHNSON: This was part of the process by
25 which we arrived at our final result.

1 JUDGE KELLEY: Right.

2 MR. JOHNSON: However, there --

3 OPERATOR: Excuse me, excuse me, this is the
4 operator.

5 JUDGE KELLEY: Yes?

6 OPERATOR: Miss Ann Cottingham?

7 MS. COTTINGHAM: Yes, I'm on.

8 OPERATOR: Mr. (inaudible)?

9 UNIDENTIFIED SPEAKER: Yes.

10 OPERATOR: Okay, go ahead, please.

11 JUDGE KELLEY: Okay, welcome back.

12 UNIDENTIFIED SPEAKER: Thank you.

13 MS. COTTINGHAM: Thank you.

14 JUDGE KELLEY: Okay, go ahead, Mr. Johnson.

15 MR. JOHNSON: So that we are in the process of
16 attempting to process that additional information which
17 is interview records. In fact, they have not seen them.
18 They're, they're being assembled in Region 2 and we will
19 want to delete certain identifying information to protect
20 the identity of confidential NRC sources from that and
21 perhaps other similar information that is being deleted
22 from the FOIA materials, the identity of (inaudible)
23 sources, which are being treated as confidential
24 indentification which constituted (inaudible) for some
25 privacy and similar information.

1 Now, we are attempting to send that out today,
2 but there are some mechanical problems doing that. If we
3 can do it today, we'll do it today. Otherwise, we'll
4 have to do it tomorrow.

5 And we will send it out by express mail so
6 in any case, it'll be one-day delivery to Mr. Guild
7 providing we have the right address. I would like to say,
8 though, that we, there's one category of documents we
9 will be asking the Board in our submission of the
10 undeleted copies of all this material to the Board on
11 Wednesday that it not be released at all, and that is
12 the information or the, the information which would lead
13 to the identification of the NRC confidential source or
14 the identity of the confidential source because we are
15 very concerned that even under a protective order that
16 the, it would be difficult to protect those sources in
17 the present set up (inaudible).

18 Therefore, we're going to request that even
19 under protective order that those names not be released.

20 JUDGE KELLEY: So in that regard, at least, you
21 would be invoking the recent statement of policy and the
22 machinery applicable to that?

23 MR. JOHNSON: If necessary.

24 JUDGE KELLEY: Okay.

25 MR. JOHNSON: If necessary. The way I understand

1 it is if you agree with us, then that would be the end of
2 it. If you disagree with us, then it would be certified
3 with the Commission.

4 JUDGE KELLEY: Okay. Let me just get clear in
5 my mind while you're on this, Mr. Johnson. You referred
6 to two sets of documents to be turned over to Palmetto,
7 a set underlying the August 31st report and a separate
8 set underlying the April 18 report.

9 MR. JOHNSON: Yes, sir.

10 JUDGE KELLEY: And your intention to delete
11 some names and identifying material from that, from those
12 documents, but then go ahead and deliver the copies. Now,
13 you cite, though, by contrast, is it one particular
14 individual's name that you think should not be... Well,
15 what's the difference? Let me put it a different way.

16 What's the difference between the deletions in
17 that material you're going to mail out today and tomorrow
18 and the confidential concern you've got on Wednesday?

19 MR. JOHNSON: I was only differentiating that
20 I was going to be supplying to you on Wednesday the
21 unexpurgated (ph) materials which would contain the NRC
22 confidential source.

23 The materials, both sets of materials, the
24 FOIA materials and the other materials both have undeleted
25 versions, the names of NRC confidential sources which

1 we would wish to protect.

2 JUDGE KELLEY: All right, I think I follow you
3 then. I think, I was attributing a distinction that
4 you weren't really making.

5 MR. JOHNSON: No, I'm sorry if that...

6 JUDGE KELLEY: It's all right. I just... I
7 think I understand now.

8 MR. JOHNSON: But...

9 JUDGE KELLEY: The version that the Board gets
10 on Wednesday will be unexpurgated but then you're going
11 to be seeking protection from the Board against any
12 disclosure, even by protective order.

13 MR. JOHNSON: Yes. The implication of that is
14 that we would agree to issuance of a protective order
15 for the other cate, because of the other categories of
16 documentary information.

17 JUDGE KELLEY: Okay, now, help me on that then.
18 What categories of documents would be under protective
19 order in your view?

20 MR. JOHNSON: Well, the information, it's really
21 the information in the documents and it's the Duke source
22 information and the identities of persons who talked to
23 Duke and the confidentiality the NRC seeks to honor.

24 Other individuals who talked to the NRC without
25 a guarantee of confidentiality, these identities the NRC

1 wouldn't ordinarily disclose to protect the personal
2 privacy of the individuals. Those are the two major
3 areas I can...

4 JUDGE KELLEY: Okay, so if I can just restate,
5 you would say, your position or the Staff's position would
6 be not if there's a protective order that will keep the
7 information restricted to the parties and their counsel,
8 let's say, then you would agree to disclosure of certain
9 classes of information, including, for example, cases
10 where Duke has made a promise of confidentiality but you
11 hadn't.

12 MR. JOHNSON: That's correct.

13 JUDGE KELLEY: But in the cases where your
14 people made a pledge of confidentiality, even a protective
15 order would not be sufficient, in your view, and it ought
16 to just be protected entirely.

17 MR. JOHNSON: Yes, sir.

18 JUDGE KELLEY: All right, I think I understand.

19 MR. JOHNSON: Just to block that portion of it
20 out, we did, I did have a conversation with Bob Guild
21 yesterday about the possible effects of a protective
22 order, and we had discussed whether they, the intervenors
23 would agree to a type of protective order that was issued
24 by order of the Appeals Board in the Byron Case on
25 important matters which they did not, the (inaudible)

1 staff would not be subject to the protective order and
2 he did not agree to that, although we talked about other
3 things that, that might be possible to agree upon to the
4 deposition of protected information.

5 As to the position that under the Byron Case
6 that the Appeals Board decision of April 17th, 1984, in
7 which it issued, it granted the NRC Staff motion of
8 protective order, the motion (inaudible) transcript.

9 It should be found in this case. The major
10 ground is that the footnote on the first page of the
11 protective order would say the provisions of this
12 protective order do not apply to Regulatory Commission
13 employees.

14 They are subject to internal NRC Manual
15 Sections 2101 concerning the treatment of protected
16 information. And (inaudible) reference to that manual
17 is Part 4 which covers this information and there are
18 procedures in order to protect distribution of this
19 type of information that's subject to the Freedom of
20 Information Act type exemption, the confidentiality
21 consideration and it would be our position that there's,
22 you should follow the Appeals Board's ruling in Byron
23 which was in a very similar situation with regard to
24 allegers coming to the NRC and being granted confiden-
25 tiality by the Staff (inaudible) proceeding.

1 Providing protection through NRC Manual
2 procedures without the encumbering requirements of
3 requiring the Staff to have (inaudible) disclosure
4 every time somebody touches or receives information.

5 In addition, I would add that there's a
6 distinction between this information that we're talking
7 about, information that's subject to the earlier
8 protective order, and that is that this information
9 already is (inaudible) partially and is being treated
10 under that procedure and that we ought to be able to
11 continue to do that and what we have been doing for
12 several months, don't see any justification for now
13 requiring a new procedure which is (inaudible) doesn't
14 possibly adding duplication procedures.

15 There's one other matter and that is that
16 the documents that are being forward regarding the
17 April inspection report, there's a category of information
18 covered by the in camera proceeding. It's in place
19 already.

20 In other words, which is subject to the
21 November 1st protective, and we will draw your attention
22 to that.

23 JUDGE KELLEY: Mr. Johnson, your voice is
24 fading from time to time, sort of in and out. It's a
25 little bit fuzzy. It may be my machine and not yours,

1 but excuse me just a minute. Let me ask the reporter.

2 What do you think?

3 REPORTER: I'm having trouble with his voice.
4 I don't know if he's speaking too close or if he could
5 try to speak distinctl; and loud.

6 JUDGE KELLEY: Okay, the reporter is asking,
7 if you can, to speak a little louder and maybe try to
8 be a little more distinct. Now, again t: at may not be
9 your fault, but if you could try, okay?

10 MR. JOHNSON: Okay. There's one other category
11 of document that, of information that I want to highlight,
12 and that is materials that are, as to the interviews
13 and supporting the April 18th inspection report.

14 There is material which is subject to the
15 November 1st, 1983, protective order of this Licensing
16 Board and disclosure of that is limited under that,
17 that order, and we will draw attention to that when we
18 submit this to the Licensing Board.

19 JUDGE KELLEY: Okay, let me just ask you a
20 couple things. Your submission to the Board on Wednesday,
21 will it show by brackets or in some fashion the infor-
22 mation that was deleted from the filing on Mr. Guild?

23 MR. JOHNSON: Yes.

24 JUDGE KELLEY: Okay. Secondly, this Byron
25 order that you urge us to use here, could you just give

1 us a copy of the order along with your material?

2 MR. JOHNSON: Yes, sir.

3 JUDGE KELLEY: Apart from that, you know, I
4 don't know if you're contemplating an additional pleading
5 or not. You don't necessarily... As far as I'm concerned,
6 you just had a chance to make an argument here. If you
7 want to give us a written pleading, feel free to do so,
8 but I don't think it's required.

9 MR. JOHNSON: Okay, there's a time...

10 JUDGE KELLEY: There's a time problem there,
11 so it's up to you.

12 MR. JOHNSON: Thank you.

13 JUDGE KELLEY: All right. Now, were there
14 other points that you wanted to raise?

15 MR. JOHNSON: I don't believe so.

16 JUDGE KELLEY: Okay. Mr. Guild, should we
17 first have you respond to the points raised by Mr. McGarry
18 and Mr. Johnson and then raise other points? Is that a
19 logical sequence?

20 MR. GUILD: That sounds fine, Judge.

21 JUDGE KELLEY: Okay, I just, I have some notes
22 here. McGarry's first one was about the need for a
23 protective order with respect to their employees. Do
24 you have any comment on that?

25 MR. GUILD: Yes, sir. We acknowledge that there

1 are potentially individual employees who have an interest
2 in confidentiality. The Commission policy statement
3 acknowledges that one basis for that interest may be
4 fear of retaliation and reprisal.

5 However, we dispute what I hear as Duke's claim
6 of a privilege over this material, and we cite principally
7 to amend the Appeal Board decision of this year that
8 ALAB 764 of March 30th, '84, that rejects the assertion
9 of an informant privilege or a common law privilege to
10 shield from disclosure identifying information of
11 sources that ironically sources who received pledges of
12 confidentiality from the Government Accountability Project
13 and who presented safety-related information which the
14 Appeal Board required be disclosed.

15 Duke, I hear, is making a blanket assertion of
16 a privilege. We think that clearly no such privilege
17 applies to a private party generally, and under the present
18 circumstances specifically no such privilege is possibly
19 attributable to Duke.

20 I mentioned this point to Mike McGarry this
21 morning that that was our general view and that my view
22 is that to the extent that individual employees have a
23 legitimate interest in confidentiality that that interest
24 was for them to claim, not, not an interest that Duke
25 can assert by way of a privilege claim.

1 We, we think principally that Duke solicited
2 this information under circumstances where it is inappro-
3 priate for them to have made any such pledge or assurances
4 of confidentiality.

5 The report was, the investigation and report
6 were clearly produced in contemplation of litigation.
7 They, in fact, relate to issues that this Board directed
8 further inquiry into and in its June decision reserved
9 judgment upon.

10 So it's a, it's essentially a litigation product,
11 and in that capacity Duke was compiling information which
12 it contemplated be offered in support of its position
13 that there is reasonable assurance that the Catawba
14 Station was safely built and that it should prevail on
15 the foreman override issue.

16 Further, if any such privilege or interest on
17 Duke's part does exist, and we don't think it does, such
18 interest or privilege or claim is clearly waived where
19 first Duke offers a product of this investigation as
20 evidence in support of its litigation position.

21 That's the August 3rd report. We think that
22 principle is, that's reflected by the Wirtz Decision
23 that we cited to the Board already. If Duke, a party
24 in litigation, seeks to rely upon that product of this
25 investigation, which is based upon these interviews.

1 The second, it's waived any such claim when it
2 made available this information to the NRC Staff. NRC
3 Staff, we're informed from reading their reports and
4 that's the only basis of our information, is that they
5 had access to this information themselves.

6 I remember a, to paraphrase a reference that
7 said we've reviewed the affidavits of the, presumably
8 the 217 interviewees and ultimately attempted to contact
9 a number of those persons through the telephone pole
10 that they relayed in their August inspection report.

11 So in short, we dispute any claim of, of
12 privilege or interest on Duke's behalf in asserting
13 confidentiality of this information. Fundamentally,
14 we assert, as we did in our, our, our motion that we're
15 entitled to discovery of this underlying information,
16 and the Commission's discovery rules clearly contemplate
17 the scope of discovery, extent of the identification as
18 a means for contacting persons with knowledge. That's
19 certainly what we're talking about here.

20 JUDGE KELLEY: Let me just ask you in this
21 connection so the Board is clear.

22 MR. GUILD: Yes.

23 JUDGE KELLEY: Now, Mr. McGarry raised the
24 point, I may have misunderstood him, but I understood
25 that what he was seeking here was that as these employees'

1 names are released to you, that is to say, for example,
2 you get a copy of an interview with an employee and it
3 starts off with his name, that that would come to you
4 under a protective order barring further disclosure
5 presumably. Mr. McGarry, did I misunderstand or was
6 that, that the extent of your request? I thought you
7 wanted names to go out under protective order, but
8 that they could go out, and that the hearing be held
9 in camera for the same reason.

10 MR. MCGARRY: This is McGarry. That is correct.

11 JUDGE KELLEY: Okay. So it isn't that, it
12 isn't that McGarry is saying I won't give Guild those
13 names. McGarry is saying you can only have those names
14 under protective order. Is that right?

15 MR. MCGARRY: This is McGarry. That is correct.

16 JUDGE KELLEY: Okay, now, so I just want to
17 focus in, you're objecting to the, to the protective
18 order feature, I take it then, Mr. Guild?

19 MR. GUILD: Objecting because the only basis
20 for a protective order is a claim of privilege or of
21 an interest in confidentiality that Duke has, for reasons
22 just stated, we don't believe had claimed.

23 JUDGE KELLEY: Okay, I understand. I just
24 wanted to make sure that was clear. Okay, go ahead.

25 MR. GUILD: Now, you know, what, what I

1 envision and what I tried to communicate to Mike McGarry
2 briefly this morning was that individuals in that class
3 of people may have interest that we, likewise, would,
4 would honor and protect by way of a commitment to honor
5 their, their confidence.

6 However, those individuals, the basis for that
7 protection by way of protective order must be particularized
8 as to that individual. It's not for Duke to claim this
9 confidence.

10 One real problem here is that the only interest
11 that, as a blanket matter, could, can be asserted by, by
12 Duke to shield this information is their desire to
13 protect their own position in litigation, their desire
14 to protect themselves from disclosure of this information.

15 And, for example, there are clearly people
16 within the over-broad assertions of confidentiality who
17 are wrong-doers and not potential victims of reprisal.
18 I'm just using the term in a generally descriptive fashion,
19 but let's take, for example, the, the foremen that were
20 found to have committed improper acts in foreman override.

21 They clearly are not people who gave information
22 only because of their fear of reprisal or other legitimate
23 interest in having their identities protected. Yet,
24 they are covered within the sweep of the assertion of a
25 general claim of confidence.

1 Now, we don't know anything about the circum-
2 stances of which pledges of confidentiality or offers
3 of confidentiality were made by applicants, and where do
4 we go about the circumstances of any of the particular
5 people who gave information to Duke.

6 We think that analogously to the treatment of
7 the in camera witnesses the Board concurred in the fall
8 of some showing, for them to receive the benefit of the
9 in camera process some showing was required of them that
10 they had a basis for wanting that in camera protection.

11 I think that's an appropriate approach here.
12 Well, what that seems to call for and what I understand
13 was done in an analogous circumstance in a recent
14 Comanche Peak operating license proceeding is that
15 essentially the parties were directed to go to their
16 sources and to, to inquire of them who asserts an interest
17 in confidentiality and that a specific showing be required
18 of those.

19 In other words, that a class of people be
20 eliminated who did not seek confidentiality. And as to
21 those who do, a specific showing is advanced for them.
22 We think that's the appropriate process to follow here
23 if, as I hear it, applicants do not intend to... Can
24 you hear me?

25 JUDGE KELLEY: Yeah.

1 Since I hear applicants saying that they do not
2 intend to submit the required documentary material absent
3 such a restriction. Now, the point of this, aside from
4 the general interest that I think is, is present in having
5 the decisions of the Commission be on the record in a
6 public fashion, and I think that's a general interest
7 that argues against restrictions on addressed and
8 information and use of in camera processes and protective
9 orders and that sort of thing, aside from that, the
10 process that the Board sets forth is, I think, concededly
11 a very speedy truncated process designed to fit very
12 unique circumstances and to acknowledge what the Board
13 has viewed as, as a compelling Commission policy to,
14 to resolve these issues in a fashion (inaudible)
15 operational schedule.

16 So, so we're talking about trying to exercise
17 our litigation rights, and those are to reasonable access
18 to discovery, preparation and ability to present rebuttal
19 evidence and to cross examine evidence by the Staff and
20 company in a very, very limited time frame, particularly,
21 specifically here, the time frame between Wednesday and
22 the following Monday, to be able to digest information
23 and formulate a, a identification of persons that we
24 want to seek further discovery from by way of interview
25 and deposition.

1 It's absolutely critical to us to be able to
2 know who the people are and under what, and what the
3 specific circumstances are of their factual experiences
4 that are involved in foreman override or in related
5 safety concerns.

6 We have got to be able to tie in these people
7 with different crews, with different supervisors, with
8 different quality assurance-quality control personnel
9 who were responsible for having identified procedure
10 violations or faulty work, and to be able to understand
11 whether the process, whether the instances of foreman
12 override related to problems extend beyond a particular
13 welding crew, beyond the welding craft.

14 All of that information requires detailed
15 factual disclosure, and all of that information requires
16 that that factual, those factual disclosures, to be useful
17 to Palmetto CENG, be material that we can in turn carry
18 to the field and use in an investigative fashion.

19 Limitations on the use of that information in
20 a practical matter hamstring our ability to be able to
21 carry our burden, which is the burden of demonstrating
22 that contrary to applicant and Staff assertions, these
23 problems are pervasive, they do pose significant,
24 significant questions about the efficacy of the quality
25 assurance program at Catawba.

1 So as to the company in short, we don't believe
2 that they have made any particularized showing of, on,
3 as a basis for claim of privilege or the basis of...

4 JUDGE KELLEY: Let me just make sure I understand
5 that, the practical point that you're making. As a
6 hypothetical, suppose that the applicants turn over to
7 you a copy of an interview with Joe Smith, welder, and
8 he says Sam Brown, my foreman, told me to do it contrary
9 to procedures, and he named some other people who saw it.

10 Then you would want to go out and talk to other
11 people who saw the same thing and knew about it and be
12 able to say whatever that guy's name was I gave him, I've
13 forgotten.

14 MR. GUILD: Smith.

15 JUDGE KELLEY: Smith. The interviewee told him
16 that. Is that the idea?

17 MR. GUILD: Yes, that certainly is an example.

18 JUDGE KELLEY: If you think you've got a better
19 example, so we've got some flesh and blood on it...

20 MR. GUILD: Beyond that, we want to know what,
21 what crew of quality control inspectors was responsible
22 for having signed off that work and be able to put a QC
23 inspector crew together with welding crew and, yes, those
24 kind of things.

25 And those things are, are difficult under the

1 time constraints enough and impossible, an over-broad
2 order restricting use of that information. And that's
3 essentially I understand applicant to contemplate.

4 So the summary is we don't believe they have
5 such a claim of privilege for themselves. We don't
6 believe they can invoke a privilege or interest in con-
7 fidentiality for the people they interviewed as a blanket
8 matter.

9 It's in conflict with their essential position,
10 which is keep this information as tightly held as possible.
11 And we think as to specific individuals who have claims,
12 our position is that applicants have an obligation to,
13 they're asserting those claims, to assert them on the
14 basis of, of specific showings for them and they should
15 have an opportunity to do that.

16 I wouldn't suggest that those people should be
17 compromised without having an opportunity to assert an
18 interest in confidentiality, but that there should be
19 no broad brush used of secrecy in this proceeding, that
20 broad brush use of either protective orders or in camera
21 secret process simply hampers the Board and parties in
22 being able to reach a resolution of this issue.

23 And that is what the significance of foreman
24 override at Catawba. How wide-spread are these problems,
25 what are their implications for the quality assurance at

1 the facility. That's as to applicants.

2 JUDGE KELLEY: Okay.

3 MR. GUILD: As to the NRC Staff...

4 JUDGE KELLEY: Right.

5 MR. GUILD: ...I had read to me the Commission
6 policy statement yesterday evening and I understand that
7 its terms call for, it speaks to the firm disclosure of
8 confidential sources except through a process that...

9 JUDGE KELLEY: Hello? Still there? Mr. Guild?
10 Am I lost?

11 UNIDENTIFIED SPEAKER: Guild.

12 JUDGE KELLEY: That's what I thought.

13 UNIDENTIFIED SPEAKER: Okay, one second.

14 JUDGE KELLEY: Okay.

15 UNIDENTIFIED SPEAKER: George? Just wait a
16 second. Is everybody else on?

17 UNIDENTIFIED SPEAKER: Yeah, I'm still here.

18 UNIDENTIFIED SPEAKER: Yes.

19 UNIDENTIFIED SPEAKER: Is Kelley still talking?

20 JUDGE KELLEY: Why don't we just go off the
21 record for a minute, but I'm still here. Go on and take
22 a minute stretch if you want to.

23 (Off the record.)

24 JUDGE KELLEY: Hello, this is Kelley. Did we
25 get Guild back?

1 UNIDENTIFIED SPEAKER: Not yet.

2 UNIDENTIFIED SPEAKER: I don't believe so.

3 JUDGE KELLEY: Okay. Let's see, I think,
4 this is Kelley. I think, Mr. Guild, you were just
5 starting to speak to the Staff's points and that's when
6 we lost you.

7 MR. GUILD: Yes, sir. As to the Staff, my
8 understanding of the Commission's policy statement is
9 that, as I understand George Johnson to have proposed
10 the matters be submitted to the Board in camera for
11 your determination, and that if you determine that the
12 disclosure of, of confidential sources is required, then
13 ultimately that decision has to be made by the Commission.

14 And that seems to, seems to us to be an
15 inescapable reading of that policy statement. We do
16 believe that, that the NRC Staff is obligated to make
17 a showing of the need for protecting specific information
18 and specific persons under that claim of, I guess, guess
19 we could call generally an informant privilege, although
20 I'm not sure that term is used in the policy statement.

21 And we think that that requirement that they
22 make a showing in order to sustain their position, par-
23 ticularly necessary here. First, we think there's an
24 undisputed litigation need for disclosing this information,
25 and I won't belabor that.

1 I think we make that showing in our pleadings
2 and the Chairman alluded to it by way of example when
3 you did those circumstances. Moreover, a fashion that's
4 very troubling to this party, the Staff has, in our
5 judgment, waived any conceivable claim, blanket claim at
6 least, to, to such a privilege or to protecting such a
7 confidence when they took the step in March or April,
8 reflected in the April inspection report in any event,
9 of essentially disclosing this information to, to
10 applicants.

11 They certainly advised that they disclosed the
12 identity of the foreman in question related to Foreman B,
13 and they acknowledged that they disclosed the subjects,
14 I think there were six in number, that they then charged
15 Duke with conducting a self-investigation about.

16 And we think, for example, any protective order,
17 either the one used in the earlier in camera part of
18 this case or any that I'm familiar with, if applicable
19 to the NRC Staff itself at the time of their disclosure
20 to Duke, would have prohibited such a disclosure of their
21 identities or identifying information.

22 And suffice it only to say that because of the
23 information that's on the public record, that is the
24 appendices to that inspection report, and the subjects
25 described, a witness who is not subject to any protective

1 order or pledge of confidentiality, whether Sam Nunn is
2 able to look at that information and say, "Oh, I know who
3 that is."

4 As reflected in the affidavit we submitted to
5 the Board on this matter, his judgement and one which we
6 think is obvious, is that the identities of many of those
7 people are widely known, therefore, around the sight.

8 They're known to anybody who might be the
9 source of peer retaliation or reprisal. So the effect of
10 the claim of informant privilege or the effort to shield
11 disclosure of, of this information has the effect really
12 of only keeping this information Caballo (ph) and adversary
13 in litigation from the Board and from the public, and we
14 think on its face there's, if there's sufficient reason
15 not to credit the Staff's claim, it certainly requires
16 them to make a showing of more than what they've made.

17 Now, these are knotty problems, Judge, and I
18 just think that it's best that we try to solve them, solve
19 them now because they will otherwise come back to haunt
20 us if we try to go through the rest of this process.

21 It does seem to me, though, that the step that's
22 most appropriate to take next is for parties who I under-
23 stand to be seeking protection and seeking to invoke a
24 privilege, that they make showings that we believe is
25 incumbent upon them, and I understood that the process

1 that the Board set out earlier was that tomorrow is the
2 day for turning over documents, but if claims of privilege
3 are to made those claims are required to be made tomorrow
4 and the materials with the privileged information is to
5 be handed over to the Board.

6 So our position is that having been notified of
7 the intent of both Duke and applicant and the Staff to
8 invoke such protection, that we try to figure out a
9 process for being able to, to resolve those claims.

10 JUDGE KELLEY: Yeah, I think we do have to
11 focus on that. You know, when we put out the tentative
12 schedule, we could see the possibility of privilege
13 claims being invoked.

14 Now, if they have been, or it's pretty clear
15 they're going to be, it's also clear then that the Board
16 is going to have to come to grips with these. Let's just,
17 let's pause on that point here and maybe as to both the
18 applicants and the Staff.

19 Now, the applicants would be, and, the applicants
20 and Staff would be turning over to the Board tomorrow
21 their, if you will, unexpurgated version of the documents
22 that have been called for here, along with specification
23 of claims of privilege for certain pages or parts of pages
24 or names, as I understand it.

25 We've had some argument here in advance, so to

1 speak. We can't very well decide a privilege claim until
2 we see the document to which it pertains. I think we've
3 heard the general parameters of the argument from all
4 three parties, but it'll be another thing to look at the
5 papers themselves.

6 Let me just explore some possibilities. I
7 already indicated, I remember, to Mr. Johnson that he's
8 free to file a pleading along with his, his package of
9 paper that he's disclosing and that which he's not and
10 a copy of the protective order.

11 If he wanted to file an argumentative lawyer
12 pleading, that's fine, too, but he doesn't have to. But
13 I gather that there'll be at least some form of trans-
14 mittal note from the Staff. Would there be something
15 similar from the applicants, Mr. McGarry? I think your
16 position's a little bit simpler in a way.

17 MR. MCGARRY: Yes, we were hopeful of resolving
18 this and not getting in any pleading, but...

19 JUDGE KELLEY: Well, it may be a short trans-
20 mittal letter will do. I mean you're really saying
21 here's all this paper, but put out a protective order
22 with respect to the names. Is that essentially it?

23 MR. MCGARRY: I think in terms of perhaps a
24 compromise if we could have at least a temporary protective
25 order so that we can give this information to the

1 intervenors tomorrow so they can commence their discovery,
2 with the understanding that it's a temporary protective
3 order. Then the Board can examine it.

4 JUDGE KELLEY: Yeah, I was going to come to that,
5 that concept as sort of the preservation of the status
6 quo kind of thing, but you, in any event, would send the
7 Board your, the Board's copies of papers. Can you...

8 MR. MCGARRY: That would be correct. And then
9 I would imagine we'd have perhaps a one-paragraph, one
10 paragraph and a cover letter which would say that these
11 individuals and during the course of the investigation
12 the company promised them that their statements would be
13 held in confidence.

14 JUDGE KELLEY: Right. Okay.

15 MR. MCGARRY: Something of that nature, and
16 they, and they wish such confidence and yet, they're free
17 to come forward if they don't wish it. Then facts may
18 evolve such as the circumstance, but now we have to do
19 everything we can to honor it. Some paragraph to that
20 effect.

21 JUDGE KELLEY: Okay. And then what I'm thinking
22 of, gentlemen, is getting the submissions from the Staff
23 and the applicant tomorrow and a short paragraph or short
24 pleading setting forth their positions and they're express
25 mailing it to Mr. Guild and my fellow judges and our

1 devising some sort of interim relief pending the time
2 that we can decide it, and we have to obviously decide it
3 pretty fast.

4 But if we set up a follow-up phone call
5 conference toward the end of the week, the anticipation
6 being that by that time it'll be in everybody's hands,
7 well, particularly Mr. Guild and my fellow judges and me
8 for at least a day, we could hear any further argument
9 that's necessary and hopefully decide it.

10 MR. MCGARRY: Yes, sir. This is McGarry. We
11 were contemplating it being in Mr. Guild's hands tomorrow,
12 Wednesday.

13 JUDGE KELLEY: Okay, good.

14 MR. MCGARRY: And we could put it in the Board's
15 hands tomorrow, Wednesday.

16 JUDGE KELLEY: Okay, and I think the Staff
17 indicated the same. Isn't that right?

18 MR. JOHNSON: Yes, sir.

19 JUDGE KELLEY: Mr. Guild, if you then got the
20 material on Thursday and so did the majority of the Board,
21 could we go back on the phone for a, any further argument
22 we need on Friday and then hopefully, the Board having
23 already heard some argument and having looked at the pieces
24 of paper, can make a decision?

25 MR. GUILD: Well, I'm certainly happy to talk

1 some more about it, Judge, and I don't, I'm a little
2 reluctant to make assurances based on documents I've yet
3 to see.

4 JUDGE KELLEY: I understand.

5 MR. GUILD: But I think that, you know, obviously
6 some follow-up is required. If I can add two points...

7 JUDGE KELLEY: Go ahead.

8 MR. GUILD: It's, it would be significant, as
9 far as we're concerned, to, to know with some precision
10 the circumstances under which applicants made the offer
11 of confidences to the people it interviewed, who they did
12 and whether they...

13 For example, if you recall, there was a policy
14 statement that the Commission was using on an interim
15 basis, the Staff was using on an interim basis, it was
16 admitted in the record as an exhibit.

17 It said, you know, you don't, you don't volunteer
18 confidentiality. You give it only when asked and then
19 you negotiate terms under which it's given. I understand
20 that's still a viable policy that's being employed by
21 the Staff.

22 Similarly, in this instance I submit that all
23 of the, the circumstances under which Duke makes a, an
24 offer of confidence or a pledge of confidence are critical
25 and we have no information about that at all.

1 We don't know what, what, whether the applicants,
2 for example, told the interviewees we're investigating
3 the issue of foreman override which is a litigation before
4 the Licensing Board, claims have been made of such and
5 such and the Board has said we have to resolve this
6 issue, will you talk to us, will you talk to us if we
7 give you a pledge of confidentiality, do you need
8 confidence.

9 JUDGE KELLEY: Maybe we can get some... I was
10 going to ask Mr. McGarry a similar question. Could you
11 give us some, could you tell us basically the way in
12 which these pledges were made and what did the pledge
13 say?

14 Did the pledge say "I absolutely guarantee you
15 that no one else will know," or did it just say "we'll
16 try to prevent disclosure"?

17 MR. MCGARRY: I will get those facts and they'll
18 be included in our cover letter.

19 MR. GUILD: For example, Judge, and this is
20 Guild again, in speaking with the Staff about this matter,
21 I understood that the Staff pledges very exclusively that
22 they will do their best to honor confidences, but their
23 names and identifying information might be disclosed if
24 directed by the Board, a judge, a court, Congress.

25 And the applicants, they did disclose these

1 people's identities to the NRC Staff. So there must have
2 been some caveat or limitation, or either that or they've
3 already broken their commitment, which I'm sure they
4 didn't do, so...

5 JUDGE KELLEY: Well...

6 MR. GUILD: They're the circumstances we think
7 that bear on the plan that would be important for us to
8 have and the earlier we have them, the more intelligently
9 we can speak on these things.

10 MR. MCGARRY: We will put as much as we have
11 available to us in a letter on Wednesday and be prepared
12 to talk to it at the appropriate time.

13 JUDGE KELLEY: Okay, and could we get the same
14 from the Staff in terms of the, if there's a catch, like
15 a miranda warning, with certain magic words used, whether
16 that was used. Or if not, what was used in promising
17 confidentiality?

18 MR. JOHNSON: I believe there is a text that is
19 used. We could provide that.

20 JUDGE KELLEY: Just a copy.

21 MR. JOHNSON: We will indicate whether, in fact,
22 that was used in these particular circumstances. Is
23 Brad Jones or the line?

24 MR. JONES: Yes, I am.

25 MR. JOHNSON: Brad, could you address that

1 question a little bit better than I?

2 MR. JONES: Well, I don't think the written text
3 was used. That's a proposal for the future and I don't
4 think it's been implemented, but in substance it asks only
5 what Mr. Guild said it... Basically what we tell people
6 is that we'll do our best to protect their name, but that
7 orders of courts and boards and Congress may eventually
8 require that we release their names.

9 MR. JOHNSON: Okay. So we will include it as
10 part of our cover document, whether it's a pleading or a
11 letter, in that explanation or a similar explanation,
12 whatever.

13 JUDGE KELLEY: Okay. Well...

14 MR. GUILD: Judge, if I can ask, the other point
15 that was sort of dangling which you raised or that Mike
16 McGarry raised is a suggestion of a compromise, your
17 question of whether there was some way of preserving the
18 status quo and moving ahead.

19 It, this issue is of importance to us and we
20 wish to preserve our position, and that is that no
21 sufficient showing has been made that would warrant
22 either a protective order or nondisclosure of this
23 information.

24 And we want to not be understood as waiving
25 that position. We're mindful of trying to move ahead

1 and we also want to get about the business of processing
2 this information and getting ready for this hearing. So
3 if, if it can be done in a fashion where it's acknowledged
4 that we preserve our dispute and we don't waive our claim,
5 our objection to, to the nondisclosure of this information.

6 George Johnson and I did talk about the terms
7 of, of a narrow protective order that perhaps doesn't
8 sweep as broadly as the one we've previously used in this
9 case.

10 And from Palmetto, we would be willing to enter
11 into such a protective order, simply as a temporary matter
12 to preserve the status quo while we pursue this, this
13 dispute.

14 JUDGE KELLEY: Yeah, that's a constructive
15 suggestion, I think. What we would be doing is simply
16 saying we're going to freeze everything in place until
17 we resolve it, hopefully by the end of the week, and that
18 would be without prejudice of the merits of your position
19 or anybody else's, but just to recognize that if you go
20 ahead and disclose names in the meantime, the whole purpose
21 of the, of any kind of protective relief could be defeated.

22 But on the question of timing, it does seem to
23 me that with, given the need for our Board to look at
24 these papers and talk about it and for them to be trans-
25 mitted to Mr. Guild sometime Friday for further discussion

1 is about the best we can do. What about sort of early
2 Friday afternoon?

3 MR. JOHNSON: If I might just put in two cents.
4 This is George Johnson. I won't be able to be on that
5 call. The Staff's representative...

6 JUDGE KELLEY: Okay. Mr. Guild, 2:00 okay?

7 MR. GUILD: That'd be fine, Judge.

8 JUDGE KELLEY: And Mr. McGarry? Hello?

9 MR. MCGARRY: Yes, I'm, McGarry's here. We'll
10 have somebody on the call. If it could be a little
11 earlier, that'd be fine, but if not, 2:00.

12 JUDGE KELLEY: What would you prefer?

13 MR. MCGARRY: I'd say 11 or so, but if it
14 can't be done, we'll have somebody at 2.

15 JUDGE KELLEY: How about you, Mr. Guild? Eleven
16 or two?

17 MR. GUILD: Eleven's fine if that helps Mike
18 McGarry.

19 JUDGE KELLEY: Eleven okay with everybody?
20 Everybody, I guess... Okay, let's say 11:00 Friday.
21 The primary purpose will be to, to hear any further
22 arguments we need to hear, having actually seen these
23 papers and seen any further pleadings we're going to get.

24 And I would think then that we might just, after
25 any argument is stated, either call you back or even take

1 a little time off and then just decide it because we
2 will have thought about it already.

3 MR. MCGARRY: This is Mike McGarry. Just to
4 be clear, in the document that we're going to send out
5 tomorrow to Mr. Guild at (inaudible) that will include
6 the names. There will be no cleansing of the document,
7 and then we have the temporary...

8 JUDGE KELLEY: Right, right.

9 MR. MCGARRY: ...temporary order in effect.

10 JUDGE KELLEY: Right, and I have to state that
11 yet. I haven't done it yet. I've just stated my intention
12 to, but I was going to set the time parameters by
13 saying Friday at 11:00 and...

14 JUDGE PURDOM: Purdom. That's the 28th of
15 September?

16 JUDGE KELLEY: Yeah. Okay, well, let me just
17 ask the parties whether a verbal formula along these lines
18 would suffice, and now I'm trying to fashion an interim
19 order between now and this coming Friday, and it would
20 be that the information being discussed today involving
21 primarily interviews concerning foreman override will be
22 turned over, portions of it at least, by the applicants
23 will be turned over to Palmetto tomorrow and the Staff
24 will be filing its unexpurgated paper with the Board at
25 the same time.

1 But the Board contemplates ruling on discovery
2 claims by Friday, rather on Friday, and that in the interim
3 Palmetto will not divulge any of the names said to be
4 held confidential, nor will it divulge facts that might
5 have the effect of divulging such information, and this
6 is without prejudice to the arguments of the parties and
7 the possibility that relief in the nature of a protective
8 order may ultimately be denied. Is that sufficient for
9 our purposes? Mr. Guild?

10 MR. GUILD: Well, if it's sufficient for
11 applicants, and recognizing that it requires exercising
12 judgment on our part which we will exercise to, to use
13 some caution to protect the identities, that being the
14 goal here, it seems clear enough to me.

15 MR. MCGARRY: Your Honor, this is McGarry. I
16 would think we could perhaps modify that to assist the
17 Palmetto. We're concerned about the names.

18 JUDGE KELLEY: Right.

19 MR. MCGARRY: With respect to the circumstances,
20 we think it'd be appropriate for Palmetto to, to if they
21 desire in the next two days to talk to people. They could
22 talk about the factual situation.

23 In other words, rather than saying Joe Smith
24 said that Sam Brown told him to, to improperly weld the
25 weld. One could then go to Sam Brown's crew and say

1 someone in the crew or someone alleged that, that the
2 foreman told, gave that instruction to improperly weld
3 welds. Is that correct?

4 JUDGE KELLEY: Okay, well, that gives you a
5 little more freedom, Mr. Guild. That's agreeable with
6 you, I assume.

7 MR. GUILD: Yes, that's helpful.

8 JUDGE KELLEY: Okay, the McGarry Amendment is
9 hereby adopted and the transcript will be witness of
10 this interim relief. Now...

11 MR. CARR: Judge, if I may interrupt, may I
12 ask, as a matter of course, that this last, the last
13 telephone conference transcript and this one be made
14 available to us? We don't have, otherwise, that access
15 to this.

16 JUDGE KELLEY: Yeah, what address?

17 MR. CARR: 315 Kinsey, K-i-n-s-e-y, Street,
18 Raleigh, North Carolina.

19 JUDGE KELLEY: 315 K-i-n-s-e-y Street?

20 MR. CARR: Yes, sir. And the zip is 27603.
21 And if I could just at the same time say that's the
22 address where applicants and Staff should deliver the
23 materials in question tomorrow.

24 MR. MCGARRY: And on that point, we will deliver
25 that to the intervenors, both CESG and Palmetto Alliance

1 delivered to that address?

2 MR. CARR: Well, if you could, do you have a
3 copy, if you're making two copies, Mike, would you make
4 one available in Washing... Do you have one in Washington?
5 Are you going to have one in Washington?

6 MR. McGARRY: Not probably at the same time.

7 MR. CARR: Okay. What would be helpful to me
8 is that one copy down here would be sufficient. If you
9 would make available the second party copy to Billie Garde
10 at GAP in Washington, that would be preferable.

11 MR. McGARRY: Subject, I assume, to the same
12 agreements, protected in the interim.

13 JUDGE KELLEY: Okay, let me just add the
14 transcript that you're asking for, I think we should
15 provide them because they're full of orders, no, not full
16 of but there are orders in them and everything's moving
17 pretty fast, so we'll do that. I'll send you a copy.

18 But I won't have today's until tomorrow. I'd
19 just as soon send them both at the same time.

20 MR. McGARRY: Fine, Judge.

21 JUDGE KELLEY: So you may not get them until
22 the end of the week. Now, Mr. Guild, other comments,
23 objections or whatever about the schedule and the
24 procedures?

25 MR. GUILD: Judge, only that hopefully speaking,

1 it seems doable. I would just add that, just note that
2 by, by limiting the discussion we're having right now and
3 the limitations at least on the Staff's part on the dis-
4 closure of documents and the restrictions on the use of
5 the documents from the company will have the effect of
6 thoroughly reducing our opportunity to prepare.

7 And we'll do the best we can. I may have to
8 have, may have to raise this point in some more detail
9 on Friday when we actually see the bulk of material that's
10 available.

11 I don't know how much there is of it, so
12 generally speaking, we're concerned about the amount of
13 time that appears to be available to adequately prepare.
14 I think the Board contemplated this would be a, a right
15 efficient and speedy process, and I just want at this
16 point to state that we'll endeavor to meet these time
17 obligations, but every hitch, such as these claims of
18 confidence, do narrow the opportunity that we're going to
19 have.

20 We have not discussed in any detail how to,
21 how to work out the deposition interview format for any
22 of the other procedural matters. Mike McGarry and I
23 sort (inaudible) each other yesterday. I don't envision
24 problems and I just would hope that, that the Board could
25 simply leave those matters open with the expectation that

1 the parties would have a chance to talk a little more
2 about how to work this out.

3 JUDGE KELLEY: Yeah, we, well, I think we
4 anticipate that problems of detail on procedures may
5 well arise and we'll be certain to hear them as and
6 when that happens.

7 On the other hand, we did think that by today
8 we could get a reaction from all parties and, you know,
9 if you have any serious problem that is obvious from
10 this perspective, it ought to be raised now.

11 And I gather I'm not hearing that. I understand
12 your concerns about time, Mr. Guild, and I appreciate
13 your efforts to, to live with the schedule. I did want
14 to ask you one thing, you and the other parties, all
15 parties really.

16 Did you give any thought to the idea of not
17 filing proposed conclusions and having this a week later
18 than the first schedule? Anybody, anybody think there's
19 any merit in that idea? Mr. Guild?

20 MR. GUILD: Sir, it seemed like a wonderful
21 idea for very selfish reasons on my part, not filing
22 findings, having produced libraries worth of late. I,
23 I, we've talked about it and given it some thought.

24 I think the difficulty right now is, is not
25 having sufficient information to be able to take a sound

1 position on it and I really need to see the documents
2 tomorrow to be able to speak to that. It's an attractive
3 idea and it certainly would buy us some more time and
4 yet, I am concerned that, that a decision of this importance
5 based on record evidence ought to be on the basis of,
6 of, you know, proposed findings of the various parties
7 as a general proposition.

8 I really can't say except that we've thought
9 about it a lot.

10 JUDGE KELLEY: Well, I guess I've got a concern
11 that is one I mentioned earlier, but it just relates to
12 me, not the other members of the Board. I have this
13 other case involving Shearon Harris and this case
14 inevitably disrupts the hearing schedule for that case.

15 There just isn't any way I can do both. The
16 way we have this now set it's for the 9, 10, 11 time
17 frame and with findings due the following week. What I
18 asked you to consider was not having findings and doing
19 the hearing in the following week.

20 But my problem is I've already called the
21 Shearon Harris people and I told them, look, I've got
22 schedule problems, we're going to have to change things
23 around and they're all unhappy.

24 But I said I'd call them back this afternoon
25 and at least tell them what the story is. I can't keep

1 changing this around is what I'm, is what I'm... That's
2 my message now. I have to know from that standpoint
3 whether this hearing is on the 9, 10, 11 time frame or
4 the following week because I've got people in other cases
5 changing witnesses and doing all you have to do to change
6 the schedule.

7 So I don't want to talk away from this call
8 feeling that the timing of the hearing is up in the air.
9 I'd like to think that, have some unanticipated and
10 compelling reason it'll happen when we're talking about,
11 namely the 9th, 10th and 11th. Mr. Guild?

12 MR. GUILD: This is Guild again, Judge. I'm
13 just not in a position to buy an extra week, as much as
14 I think it would be useful to our preparation, in exchange
15 for the loss of what may prove to be an important procedural
16 right, and that's the right to file those findings.

17 I just can't do it, Judge, and I appreciate
18 the quandry you're in and...

19 JUDGE KELLEY: Okay, what you should know is
20 I'm going to go ahead and call Shearon Harris and tell
21 them that we're scrubbing the hearing the 8th, the 9th
22 and the 10th and that we're going to have a hearing the
23 following week, and I wouldn't propose to change it.

24 So we've got tensions on both sides, but I
25 want you to know that I don't feel this is open-ended.

1 I can't leave it that way. Mr. McGarry, any thoughts
2 on that?

3 MR. MCGARRY: No, Your Honor. We'd be prepared
4 to go forward the 9th, 10th and 11th.

5 JUDGE KELLEY: Okay, Staff?

6 MR. JOHNSON: Yes, we'll be prepared to go
7 forward. If it's of interest to the parties, we would
8 intend to call a panel of four individuals, the
9 (inaudible) members of the NRC Staff and Felton Brookhaven
10 Laboratories.

11 JUDGE KELLEY: Okay.

12 MR. JOHNSON: The paper's here. I can't seem
13 to find it. His name is Czajkowski.

14 UNIDENTIFIED SPEAKER: Say it again, George?

15 MR. JOHNSON: Czajkowski, I think it's
16 C-z-a-j-k-o-w-s-k-i. I do have it on a piece of paper,
17 but I can't find it. He's from Brookhaven Laboratories.
18 I think his first name's Carl.

19 MR. MCGARRY: I believe it's C. J. Czajkowski,
20 if it's the same guy from Brookhaven Labs that I've run
21 across in this document.

22 MR. JOHNSON: C. J., you say?

23 MR. MCGARRY: Yes.

24 MR. JONES: This is Brad Jones. Excuse me.
25 His first name is Carl.

1 MR. JOHNSON: Okay, thank you.

2 MR. JONES: Let me just interject a question
3 for the Board. We've ascertained that he is available
4 those dates. I don't think we've set up the contract
5 yet to do that, so I guess there's a, there was a
6 question raised by Mr. Johnson last week as to whether
7 we were going to get into the detailed technical issues
8 and that may take place whether there's a need to contract
9 with him or not, but we'll have to do that. But we have
10 ascertained that he's available on those dates.

11 JUDGE KELLEY: Well, Mr. Johnson did suggest
12 in our last call the possibility of talking about
13 scoping the hearing and getting a little more precise
14 than foreman override and I believe we indicated that,
15 you know, might be a good idea.

16 We haven't done that today and I don't sense
17 that the parties have done much in that direction. I
18 guess we don't feel that things are so open-ended that
19 that's an essential thing to do.

20 The foreman override concept is pretty simple
21 and straightforward. I think we all know what it means
22 and we're interested in whether there was, that was a
23 wide-spread phenomenon at Catawba. I think that's the
24 primary thrust. Do I speak correctly for my colleagues
25 in that regard?

1 MR. JOHNSON: I agree.

2 MR. CARR: I think, sir, the only question, I
3 guess, would be if it was, what was the effect as to
4 health and safety.

5 JUDGE KELLEY: Yeah, and that's, that gets you
6 into corrective action. We've listened to a lot of
7 corrective action here. I don't think we necessarily,
8 we're not trying to spell out in detail what we see as
9 scope, but rather the idea that we can go with things as
10 they are.

11 There's going to be a hearing on foreman
12 override and whether if it was wide-spread, you know, what
13 its affect was. If it wasn't wide-spread, then presumably
14 it wasn't, it didn't have much of an effect.

15 But if the parties want to go forward and work
16 out among themselves further refinements of, of scope,
17 then fine, I think that might be helpful, but I don't
18 think it's essential, and I don't think we can do it
19 today.

20 MR. MCGARRY: This is McGarry.

21 JUDGE KELLEY: Yeah.

22 MR. MCGARRY: Our view of the hearing is
23 similar to what Judge Purdom has just indicated, was
24 foreman override wide-spread and duration of the foreman
25 override, what were the effects, was safety compromised,

1 was a defective weld made.

2 JUDGE KELLEY: Okay. Well, is there anything
3 else then at this juncture that we need to deal with?

4 MR. GUILD: Judge, if I could just ask an
5 integral question of Mike McGarry and George Johnson.
6 If they could just tell me what career or delivery services
7 they're going to use (inaudible).

8 MR. MCGARRY: Bob, this is Mike McGarry. We're
9 going to have somebody, I think we're planning to have
10 somebody drive up, a company person drive up to Raleigh
11 tomorrow.

12 MR. GUILD: Do you know a time when I could make
13 sure I'm...

14 MR. MCGARRY: We are trying to get it to you
15 around noontime, Bob, sometime well before 5:00.

16 MR. GUILD: I better give you... Judge, is
17 this okay? Can I pass this information on?

18 JUDGE KELLEY: Yeah, go ahead.

19 MR. GUILD: Okay, if you would pass on this
20 phone number, Mike, to whoever it is so that they can
21 reach me by phone. That number is 519-828-3403.

22 MR. MCGARRY: 3403, and is that the Kinsey...

23 MR. GUILD: That's the Kinsey Street, right.

24 MR. MCGARRY: Okay, and if you're not there,
25 there was another address, a law firm in Raleigh.

1 MR. GUILD: That's it, yeah.

2 MR. MCGARRY: If for some reason you're not at
3 this address, I guess they could just leave it at the
4 front door.

5 MR. GUILD: Fine. That'll be just fine.

6 MR. MCGARRY: Okay, we'll do that. And, George,
7 do you know what service you're going to be using?

8 MR. JOHNSON: Well, I was just asking my
9 secretary. Because of the problem of having two sets of
10 documents involved we're trying to get a little later
11 time frame.

12 Also, I have to be out of the office for a
13 little while, take my son to the doctor. We were going
14 to send the interviews of the April 18th matter by express
15 mail so I could take it to the post office by 5:00.

16 The other service you have to do it by 4:00
17 here at the NRC. So if I, what I may do is, if the
18 express mail is sufficient, I'll send it all, all at once
19 through the U.S. Post Office.

20 MR. GUILD: If it doesn't go express mail, would
21 you call me tomorrow at that number, George, and let me
22 know how it's coming, please?

23 MR. JOHNSON: Oh, sure. You mean the one that
24 you've already given me?

25 MR. GUILD: Yes. You know, the number that I

1 just gave to Mike McGarry. I'll be at that, I'll be at
2 that address waiting on this stuff around noon then. You
3 can just let me know.

4 MR. JOHNSON: Okay. Is that 829, 828...

5 MR. GUILD: 3403.

6 JUDGE KELLEY: Any other?

7 MR. GUILD: I think that's it, Your Honor.

8 MS. GARDE: Mike, this is Billie. One other
9 question. When will there be a set of material available
10 that I can come down and look at it at your office or
11 you get it over to me at GAP?

12 MR. MCGARRY: Wednesday or Thursday.

13 MS. GARDE: Okay, thank you.

14 MR. MCGARRY: And we'll just contact your
15 office.

16 MS. GARDE: Okay.

17 JUDGE KELLEY: Okay. Let's see, anyone else?
18 Mr. Johnson?

19 MR. JOHNSON: No, that's all I have.

20 JUDGE KELLEY: Okay. Did I cover everybody?
21 I don't remember. McGarry? Mr. Guild?

22 MR. GUILD: Yes, sir.

23 MR. MCGARRY: Nothing further.

24 MR. JOHNSON: Nothing from me, Judge.

25 JUDGE KELLEY: All right, so we will give you

1 all a call on Friday at 11 and hopefully we can resolve
2 the privilege questions at that time. And can I just tell
3 my colleagues it's about lunch time and I'll call you back
4 around 1:30. Is that okay?

5 UNIDENTIFIED SPEAKER: That's okay.

6 UNIDENTIFIED SPEAKER: All right.

7 JUDGE KELLEY: Okay.

8 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

9 JUDGE KELLEY: Okay, goodbye, everybody.

10 (Whereupon, the telephone conference was
11 concluded at 1:20 p.m.)

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CERTIFICATE OF PROCEEDINGS

This is to certify that the attached proceedings before the
NRC

In the matter of: Duke Power Company, et al
(Catawba Nuclear Station,
Units 1 and 2)

Date of Proceeding: September 25, 1984

Place of Proceeding: Bethesda, Maryland

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

Georgia Pinkard
Official Reporter - Typed

Georgia Pinkard /SK
Official Reporter - Signature

Lou Sossaran
Transcriber