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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)

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY & LICENSING BOARD

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 In the matter of: :
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 DUKE POWER COMPANY, ET AL. : Docket Nos.
 : 50-413
 : 50-414
 :
 (Catawba Nuclear Station, :
 Units 1 and 2) :
 :
 -----X

September 28, 1984
4350 East West Hwy.
Bethesda, Maryland

The Board met pursuant to notice at 11:00 a.m.

BEFORE:

JUDGE JAMES L. KELLY, 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:

3 ALBERT V. CARR, JR. ESQ.
4 Duke Power Company
5 P. O. Box 33189
6 Charlotte, North Carolina 38242

7 On behalf of the Regulatory Staff:

8 BRAD JONES
9 Office of the Executive Legal Director
10 U. S. Nuclear Regulatory Commission
11 Region 2
12 Atlanta, Georgia

13 On behalf of the Intervenor:

14 ROBERT GUILD
15 Palmetto Alliance
16 Columbia, South Carolina

17 Other Participants:

18 JESSE RILER
19 Carolina Environmental Study Group
20 Charlotte, North Carolina21 J. MICHAEL MCGARRY, III, ESQ.
22 ANN COTTINGHAM
23 Bishop, Liberman, Cook,
24 Purcell and Reynolds
25 1200 Seventeenth Street, N.W.
Washington, D. C. 20036

P R O C E E D I N G S

1
2 JUDGE KELLEY: This is Kelley. I just stepped
3 out to have my secretary again call the operator to
4 determine whether she is still trying to wire in Judge
5 Purdom and Brad Jones from Atlanta. I think it might be
6 reasonable for the group now on the phone...we have got
7 a quorum of the board. By the way, are we on the record
8 now?

9 Okay, so we are on the record. We do have a
10 quorum of the board, and we are missing the staff; but
11 the staff could check transcript on this. What occurs
12 to me is we could begin to talk about Duke's filing,
13 and Duke's privelege claims and whatever objections
14 Palmetto may have to the Duke ascertions of privelege,
15 and then save the staff until hopefully later we have
16 got them wired in. Does that seem like a reasonable way
17 to proceed?

18 MR. GUILD: Judge this is Bob Guild. One
19 problem is that is, unfortunately, I just received a
20 phone call that the staff's submission to the board had
21 arrived in Raleigh about five minutes ago, and someone
22 read real quickly the cover letter to me. I have got
23 rough notes from that, but I understand essentially
24 that the base their claim of privelege in part of sort
25 of a... well, interlocking claim that the information

1 is available from the Applicants which we dispute. But,
2 I am afraid that it may just overly complicate matters.
3 There is a clear inter-relationship of privilege or
4 confidentiality between applicants and staff. Frankly,
5 we have some factual questions about the extent to
6 which staff has disclosed identifying information to
7 Applicants, and Brad Jones is probably the person most
8 directly knowledgeable about that, so, I hate to --

9 JUDGE KELLEY: No. No. Let me ask my secretary
10 what the word is here, just a minute. Her note says
11 Purdom and Jones are on an Atlanta line. The operator
12 is still having trouble getting through. Is she going
13 to continue to work that, I assume she will?

14 Well, maybe we could get a few things spoken
15 for, bearing in mind your points Mr. Guild. I still
16 think there are some things in here we could speak to.
17 They are probably entirely, or virtually entirely
18 outside the interest and pervuew of the staff. Let's
19 try that, and then if you feel that we are not going to
20 get a full picture on something because of Brad Jones's
21 absence, then we can consider waiting for him. Is that
22 okay with the Applicants?

23 MR. CARR: Yes sir.

24 JUDGE KELLEY: What I had, for example, the
25 first thing we can speak to, I think clearly, is just

1 Duke's concern that they filed with the board some
2 documents with respect to which they claim the
3 attorneys were product priveleged, and it is an in
4 camera filing in that the actual documents were
5 submitted to the board but not to the parties. Do you
6 know what I am referring to, Mr. Guild. This is
7 referred to in the letter.

8 MR. GUILD: I know that they reference it in
9 it.

10 JUDGE KELLEY: Right, sure. I think I can say
11 without betryaying anything in there that what these
12 documents are, they are essentially a couple of
13 matrix's, matrixes if that is the proper plural form.
14 Essentially, listing a lot of names of employees, and
15 then listing a lot of areas of concern the employee
16 grazed. It is a little bit like, the parties might
17 remember Neil Alexander had a matrix of non-technical
18 concerns with names on one margin and concerns listed
19 out and x's and checks put in. It is that kind of a
20 thing. The privelege is claimed under the document
21 against Taylor document work product. We think it sits
22 within that area. We are going to sustain the claim.
23 The thing I would like to stress is there is absolutely
24 no information in these documents. All of the
25 information in these matrixes is already contained in

1 the papers that have been turned over to Palmetto. It
2 is a matter of arranging that information. It is also a
3 matter to some extent that council of judgement had to,
4 what fits in what box. But, we think that's what the
5 Hechman Taylor doctrine is really about, so we are
6 going to sustain that claim of work product privelege.

7 MR. GUILD: Judge, if we may restate our
8 position for the record for a minute.

9 JUDGE KELLEY: Go ahead.

10 MR. GUILD: I would like an opportunity to do
11 that. It would surmise that that was the nature of
12 information from the pretty brief description given the
13 Applicant's cover letter. It is our view that it does
14 represent basic facts which are not subject to the
15 attorney client privelege or the work products of it,
16 not the fact that they are necessary to be produced and
17 discovered. They clearly do not reflect the
18 confidentiality of attorney product judgement that
19 represents, a counsel that represents the kind of
20 advice that is a matter of policy the Supreme Court
21 exempts from exposure in litigation. In the interest of
22 encouraging confidential communication among attorney
23 and client, here the root issue in this case is if you
24 will complete the Applicant's investigation of these
25 concerns upon which it founds its conclusions that

1 there are no significant problems. I mean, to the
2 extent that there are factual matters contained in an
3 analysis that purports to, reflects such a review of
4 completment, even if prepared by a lawyer, and clearly
5 it is prepared by someone else and used by the lawyer,
6 even if at the lawyer's request that is by an expert
7 witness or technical assistant. We do not believe that
8 such information should be shielded from disclosure.
9 The fact that the substance of information may be
10 available in a desparate and ona collated and analyzed
11 form does not make it not discoverable in our view, and
12 we think frankly that such an analytical tool would be
13 useful not only for the board but to the parties in
14 trying to come to grips with the issues that are before
15 us. Finally, we would ask that this information be
16 disclosed, and finally the recognition to the Board's
17 decision to the contrary at least in our decision, we
18 would ask that the information not be considered as
19 information of record for use in the decision, not
20 subject to scrutiny by the party.

21 JUDGE KELLEY: Well, let me just comment on
22 two or three things. One, it won't be information of
23 record. It is being held from the record, as we
24 understand it. If it were introduced, that would be a
25 different matter. Now, we didn't call for argument,

1 because it was submitted in-camera, and we didn't
2 frankly see what argument would produce, since you
3 can't see what these papers are beyond the very general
4 description.* We have given, we certainly note your
5 objection to the lodging of this claim of privilege and
6 it is duly noted. Beyond that, I would say again that
7 there are elements of judgement in this as we see it,
8 and we think it is within the Hickman, the Taylor
9 doctrine. We also think that that doctrine can extend
10 as it does here with respect to one of these sets of
11 papers to work done under the direction of a lawyer is
12 not crucial, that the work itself be done by the lawyer
13 personally as we understand it. Okay.

14 MR. GUILD: Can I just ask sir. I don't know
15 how you preserve this to the extent that I gather
16 security matters assisted you in camera, and as such
17 there at least in the record for later review, although
18 subject to the in-camera received. To that extent, I
19 would ask that you consider matters of record that the
20 Appeal Board or somebody else later on could take a
21 look at.

22 JUDGE KELLEY: They, sure. They have been
23 submitted to the board. They are in the record in that
24 sense. They are not in the evidentiary record, and they
25 won't be in the evidentiary record. Beyond that

1 though, should there come a day when you are appealing
2 the adverse ruling that you just got on this, the
3 papers themselves would be before the appeal board for
4 appealant review.

5 MR. JONES: This is Brad Jones. I am in on the
6 call now. I came in on the middle of Mr. Guild's
7 conversation. Maybe you can tell me if I am way behind
8 or just a little.

9 JUDGE KELLEY: Well, my point was when we went
10 into that was we thought we could cover this without
11 your being on. I am happy to have you, but it had to do
12 with the Duke claim of attorney work products and
13 documents and didn't seem to us that you would have
14 much interest in that.

15 MR. JONES: That's fine.

16 JUDGE KELLEY: Now, with you on, is Judge
17 Purdom on? I guess they must still be working on Judge
18 Purdom. Well, let's at least get a few more things
19 done, and hopefully he will be wired on very soon.
20 Sticking with the Applicants's papers, since that is
21 where we started, you do have those papers, do you not
22 Mr. Guild?

23 MR. GUILD: Yes sir, all of those I gather,
24 except for the work product document.

25 JUDGE KELLEY: Right, but you got the big box,

1 and I will describe what it is that I have here, and I
2 think you can tell whether you have the same thing. I
3 assume that you do. What I was going to refer to now,
4 just so that we know what we are talking about. There
5 is a package, oh, two or three inches thick of
6 affidavits, most of them signed I believe. The package
7 begins with a hand printed list of names, several
8 pages, beginning with number one, J. G. Abernathy, and
9 going over to number 222, Phil Edwards. Right after
10 that list, you come to the first affidavit, which is
11 the J. G. Abernathy affidavit. So that's, do you know
12 what I am talking about? Does everybody know what I am
13 referring to?

14 MR. MCGARRY: Yes sir, this is McGarry.

15 JUDGE KELLEY: Okay.

16 MR. GUILD: Yes sir. This is Guild. Judge,
17 maybe I can make a suggestion. Since the issue of
18 whether this should be treated in-camera is going to be
19 argued later, in order to identify what you are talking
20 about, I don't see any need for identifying names or
21 numbers. I certainly know what you are speaking of, and
22 perhaps we could simply remove your identification of
23 those two people from the transcript we wouldn't have
24 any need to secure it at this point. I don't envision
25 discussing matters that, camera protection from my

1 part.

2 JUDGE KELLEY: Alright. I was just for
3 identification using that name. When we get through
4 this entire discussion, can we reconsider whether we
5 have to go back and erase the two names that I just
6 mentioned from the transcript. We can do that if that
7 seems to be called for. I have a note saying that they
8 are having trouble getting Judge Purdom. They are still
9 trying.

10 So, we can call that the affidavit package.
11 We will know what we mean by that. Now, there are two
12 other packages that we are dealing with. One is the
13 first page is called review board report, welder B
14 concerns dated September 24, 1984, and inch and a half.
15 Do you know know what I mean by that? Applicants?

16 MR. MCGARRY: Yes sir.

17 JUDGE KELLEY: Mr. Guild?

18 MR. GUILD: Yes sir, I have one that has that
19 cover on it.

20 JUDGE KELLEY: Have you got these documents
21 Mr. Jones?

22 MR. JONES: I haven't got them in my office
23 yet. No, they may have come in, but I haven't got them
24 up here.

25 JUDGE KELLEY: Alright. Now, the last and

1 largest stack, four or five inches maybe is called
2 stack two, and there is a note that says this goes
3 behind stack one. Now, I won't break that down any
4 further for the moment. We all know what that is, the
5 so called stack two?

6 MR. MCGARRY: Yes sir.

7 JUDGE KELLEY: Mr. Guild, are you with me?

8 MR. GUILD: Let me hang on one second, Mr.
9 Chairman, and see if I got that one. I have got another
10 stack, but I don't see any identification on it. One
11 second. I think we're finding that.

12 JUDGE KELLEY: Well, it will make it easier
13 for purposes for discussion if we can break these out,
14 I think initially as I just suggested there may be
15 other places that one needs to break it, but just so we
16 can be understood. I will be referring, as we talk
17 about the Applicant's filing to the affidavit stack to
18 the review board report stack in stack two. That is
19 all, I understand, to have been submitted. Am I leaving
20 anything out, Mr. McGarry?

21 MR. MCGARRY: No sir.

22 JUDGE KELLEY: Okay. Now, we break it out that
23 way because we want to ask this question to move the
24 discussion along. In the affidavit stack, Mr. McGarry,
25 you heard the other day, and Mr. Carr urged you again

1 in his letter that a formal protective order be entered
2 to protect further dissemination of the names of these
3 people, correct?

4 MR. MCGARRY: That's correct.

5 JUDGE KELLEY: Okay. Now, and that is in,
6 that's the affidavit stack, the 222.

7 MR. MCGARRY: Yes sir.

8 JUDGE KELLEY: Okay, are you seeking
9 priveleged treatment or protective order with respect
10 to anything in the review board report stack or stack
11 two?

12 MR. MCGARRY: Yes sir. In each one of those
13 latter two documents there were review package, and in
14 fact two packages.

15 JUDGE KELLEY: Yeag.

16 MR. MCGARRY: There were names mentioned
17 therein.

18 JUDGE KELLEY: Now, are these, I know that.
19 Fine, let's follow that up a minute. Okay, there are
20 names in those two stacks. Are those names different
21 from the names in the affidavit stack?

22 MR. MCGARRY: No sir.

23 JUDGE KELLEY: Same people?

24 MR. MCGARRY: Correct.

25 JUDGE KELLEY: Yes?

1 MR. MCGARRY: Yes sir.

2 JUDGE KELLEY: So, you are, I don't mean to
3 belabor the obvious, but there is an affidavit signed
4 by Joe Smith, someplace in either or one of those other
5 two stacks. If I look long enough, I might find Joe
6 Smith once more?

7 MR. MCGARRY: That's correct.

8 JUDGE KELLEY: Same guy?

9 MR. MCGARRY: Yes sir.

10 JUDGE KELLEY: Are there any in the review
11 board report, or in stack two, that are not in the
12 affidavit stack?

13 MR. MCGARRY: No sir.

14 JUDGE KELLEY: So, for purposes of the claim
15 of privilege for identities, we need only focus on the
16 affidavit stack?

17 MR. MCGARRY: That is correct.

18 JUDGE KELLEY: Okay, with the understanding,
19 if I understand you correctly, that when you find, if
20 and when you find one of the affiant's names either in
21 the review report or stack two, his name is still
22 protected?

23 MR. MCGARRY: Yes sir.

24 JUDGE KELLEY: If you get the relief that you
25 want?

1 MR. MCGARRY: That's correct.

2 JUDGE KELLEY: Okay, now, Mr. Guild did that
3 all fall into place for you?

4 MR. GUILD: I'm trying Judge.

5 JUDGE KELLEY: Okay, so I think...maybe I am
6 repeating myself again. The only claim or privelege now
7 that we have to address from the applicants is the
8 further disclosure of those names, correct?

9 MR. MCGARRY: That is correct.

10 JUDGE KELLEY: So there is nothing to talk
11 about in the review report or stack two, today anyway,
12 as far as privileged claims are concerns?

13 MR. MCGARRY: That's right. If we focus on the
14 affidavit package, whatever ruling comes out of that
15 package will pertain to the other two.

16 JUDGE KELLEY: Thank you, I think we have got
17 that now pretty well narrowed down. Now, from your
18 discussion the other day, Mr. McGarry, I heard you, I
19 understood you to say you were only seeking protection
20 of further disclosure of names. Mr. Guild has those
21 names now, right?

22 MR. MCGARRY: Under the NR protective order.

23 JUDGE KELLEY: Right, but you didn't ink out
24 anything or x it out. You just sent it as it was.

25 MR. MCGARRY: Absolutely, that is correct.

1 JUDGE KELLEY: Okay, now, and just to clarify
2 this, or make it clear to one further step. When you
3 say you want to protect names, I understand that that
4 is really all you mean, and that you are not seeking
5 protection of facts in the affidavit that might tend to
6 disclose identity, is that right?

7 MR. MCGARRY: That is correct.

8 JUDGE KELLEY: Okay. So that if you got the
9 order that you seek, Mr. Guild could take an affidavit
10 along with the persons addressed, contact the person,
11 and talk to him about anything. But, let me put it to
12 you differently. He could take an affidavit in which
13 somebody else's name, and he could go to that other
14 person and ask the person if he knew about a certain
15 incident and relate to facts as long as he referred to
16 using the name of the first person.

17 MR. MCGARRY: That's correct. There is two
18 points that I would like to make. First, that in a
19 situation where there was... one comment, that is
20 precisely how we conducted our investigation. If Joe,
21 John Doe came to us in confidence, made a statement,
22 gave us an affidavit, and in that affidavit he said
23 that Billy Jones had done an improper weld, that would
24 be a ... what we did was we went out and we may have
25 talked to Billy Jones, and we may have talked to

1 somebody that Billy Jones worked with and it would be
2 said that it has been alleged that you did an improper
3 weld so we would ask one of his crew members. It has
4 been alleged that Billy Jones did an improper weld. Do
5 you know anything about that, but we would have never
6 mentioned John Doe's name.

7 JUDGE KELLEY: Okay, thank you. Now, Mr.
8 Guild, we heard really from Mr. McGarry and to extent
9 from you also the other day in this general area. As I
10 understood your position the other day, you object to
11 the relief that Mr. McGarry seeks as further disclosure
12 of names that he has just described is that right?

13 MR. GUILD: Yes sir.

14 JUDGE KELLEY: Okay. Could you say again how
15 in your view you are injured by that kind of relief?

16 MR. GUILD: We me see if I can focus in on
17 that point. It is precisely for the reason that Duke
18 did not use names when it inquired to this matter among
19 others. If we believe that the result of their
20 investigations do not fairly and fully reflect a true
21 statement to the extent of a foreman override
22 practices at Catawba. To put it simply, our view is
23 that as a litigant, the Applicants had every interest
24 in minimizing the extent of this problem, and every
25 interest in producing affidavits as they ultimately

1 extract it, saying that either concerns were limited or
2 individuals were satisfied to the extent of whatever,
3 or that they had no knowledge of problems at the plant.
4 Simply asking the open ended question are you aware of
5 foremen pressuring you to violate, or anyone on your
6 crew to violate a quality procedure or in performing
7 proper work is calculated to the list that the
8 appropriate answer, and that is no. It did so, in many
9 many cases which we would submit that on the fact, are
10 not credible given the fact that they are asked a
11 foreman, with overwhelming evidence indicates was
12 guilty of the foreman override practice. If the foreman
13 in question, here, many foreman in question. These
14 foreman, of course, denied any wrongdoing. He said no,
15 he had never done that. The people on his crew said no
16 he had never done that, and despite overwhelming
17 evidence from others, the witness presumably the same
18 incident that said they had seen it. Further, the
19 device the litigation posture of the party determines
20 the, if you will, usefulness of the tool of the
21 identities of witnesses in performing investigations, and
22 utilizing that tool of the disclosure of identities to
23 the maximum extent possible in order to conduct the
24 investigation. The second point...

25 JUDGE KELLEY: Could you, now just before you

1 go to the second point.

2 MR. GUILD: Yeah.

3 JUDGE KELLEY: Could you give us maybe an
4 example. We all keep talking about Joe Smith and Harry
5 Jones. If you could disclose names, investigating in
6 the field so to speak, what do you think you could get
7 that you can't get without disclosing it?

8 MR. GUILD: Well, I think that a reflection
9 on good investigation practices, and I am not an expert
10 in this. I am trying to learn about it as best that I
11 can. If you take for example what you would think of as
12 an investigation interview conducted by law enforcement
13 people might consist of. It is going to ask the
14 question in general, as Mr. McGarry claimed that are
15 you aware of these things happening, and the individual
16 is going to say, perhaps no. They are going to be
17 reluctant to implicate themselves in wrongdoing, to get
18 themselves in hot water, to open themselves to
19 reprisal, for a variety of reasons they are going to be
20 reluctant to acknowledge their information regarding
21 wrongdoing. Okay, so you get the initial denial, and
22 then you turn to that individual and you say I have, if
23 I showed you a sworn statement by your fellow
24 crewmember X stated that you were present, and that in
25 addition to he, he observed pressure by Foreman Y to

1 violate interpass temperature requirements. Don't you
2 acknowledge that that happened, or does that refresh
3 your recollection? I submit to you it is that commonly
4 used device in conducting investigations of his sort of
5 wrongdoing of things that are unpleasant to admit to,
6 produces that kind of results, and that why it is
7 employed on a regular basis that it is a fundamental
8 handicap to not be able to take what is cooberating
9 evidence to the extent that it exists, and to be able
10 to freely employ that cooberating evidence in the
11 course of conducting investigation.

12 JUDGE KELLEY: Well, but why can't you do that
13 as long as you don't use the name?

14 MR. GUILD: Because it is of considerably
15 limited value to be able to make the ascertainment that I
16 think you pose as a hypothetical, it might be your
17 posed as a hypothetical. That is, you know, someone
18 alleges that this happened. That certainly is a
19 question, and that is a statement that you would make
20 in a series of investigative questions, but the bottom
21 line is an individual who has knowledge of facts that
22 may be damning either to themselves or may expose them
23 to fear or retaliation is only going to fess up to the
24 knowledge of those facts when they are confronted with
25 evidence that essentially, pins them down to having to

1 either lie or having to acknowledge the truthfulness of
2 facts that are otherwise cooberated. Judge, that can
3 only be done in some circumstances, at least, by being
4 able to use the device that I am suggesting. Taking an
5 affidavit, if you will, or information so to identify
6 as another source of evidence with the same wrongdoing
7 and confronting the person who is being questioned or
8 interviewed, or you're talking with that evidence. That
9 is employed, I would submit, regularly in the course of
10 investigating circumstances of this sort. It would be
11 employed by the...by law enforcement people. If you had
12 a statement from a co-defendant, or a co-conspirator or
13 witness. It should not be something that is unavailable
14 to us.

15 JUDGE KELLEY: Well, I am still trying to nail
16 down just how much is unavailable. You now have all of
17 these affidavits, right?

18 MR. GUILD: I have what they sent us, Judge.

19 JUDGE KELLEY: Okay. So, what is to prevent
20 you under the relief that has been requested from going
21 out and interviewing somebody, and then saying to them
22 I've got a sworn statement from X, leave it blank, I
23 don't care what you say there exactly, but just don't
24 give the name. I've got a sworn statement from another
25 Duke employee that such and such happened. Here is what

1 he said, and quote the affidavit. You can do that,
2 can't you? Under the relief that is being sought?

3 MR. GUILD: Well, Judge, if I may raise
4 another point. I don't think that is effective, but if
5 it is effective...to be effective for the second best
6 thing, shall we say, you have to use sufficient facts
7 that make it absolutely clear who that individual is.

8 JUDGE KELLEY: Well, but that's what I tried
9 to make clear with Mr McGarry. I said to him, you're
10 not asking for protection of facts which would tend to
11 disclose identity. I thought the answer was no I am
12 not.

13 MR. GUILD: I heard him say the same thing
14 Judge.

15 JUDGE KELLEY: Okay, well then that is what he
16 said.

17 MR. GUILD: In which case I submit that the
18 exercise we are going through is to no end, no
19 substance then, because if you are disclosing
20 identifying facts, then you are only hampered
21 artificially to know the purpose in disclosing the
22 actual identify.

23 JUDGE KELLEY: But, why should that be your
24 concern, if by disclosing of identifying facts you can
25 get your message across, as long as you don't disclose

1 the name. Then, supposing your view is a waste of time,
2 it is kind of a silly exercise. But, even so, you are
3 not, if you are not hampered very much, what is the
4 problem?

5 MR. GUILD: The oposition it was our hand...we
6 are hampered. We are hampered unduly, and that is only
7 one...that is one point I think needs to be considered.
8 I appreciate your effort to try to figure out a way
9 around what is obviously a problem, a naughty problem
10 in the way that it does it, it sort of minizes the harm
11 done to all concerned. But, I submit to you Judge that
12 there is an overriding interest here, and that
13 overriding interest is in finding out what is going in
14 here in a very limited amount of time. This overriding
15 interest also in this proceeding regulating a nuclear
16 power plant, it makes the decision about a matter of
17 some public moment in a public form with information on
18 the public record. I think that interest in having this
19 information public serves the interests of those of the
20 private party being able to effectively litigate these
21 issues. I think it also serves as much a part of public
22 interest.

23 I submit that there are ways out of this and
24 the way out of this is not to, if you will, make the
25 limitation either so artificial that they don't

1 accomplish the asserted purpose, and that is protecting
2 these confidential sources, which is what the company
3 is really asserting here. Or, hampering us in doing the
4 job that we are trying to do. I submit that the
5 Applicants allude to them. They be . . . the process, if
6 you will. The Midland decision, the co-board decision
7 that we cited earlier, and that Applicants talk about
8 in their cover letter, in fact lacks the circumstance
9 where individuals who were the subject of the
10 discussion had already gone back to by the parties that
11 had been asked, do you have a need for confidentiality.
12 Individuals who were in question, asserted on an
13 individual particularized basis that need. It was only
14 upon that assertion that the board and the appeal board
15 required the disclosure, which is what we are talking
16 about. The above made it subject to in-camera
17 protection, or protective order because of the
18 specified demonstrated need for confidentiality.

19 Now, in the Applicants' cover letter, they
20 suggest that among the affidavits, there are those who
21 make a showing of that need. I think that is absolutely
22 the point here. I have just looked briefly at the two
23 examples that they cite, and I think at least one of
24 them appears on the face of it to reflect, you know, a
25 classic example where we would seek to honor that

1 confidentiality.

2 JUDGE KELLEY: I think you are coming at an
3 important point. I just wonder...just let me ask you
4 this. Looking ahead at the procedures that are to be
5 followed here, let's suppose that you next week want to
6 depose or interview a group of employees. Why can't you
7 just say right up front that you are investigating
8 this, and you want to pursue it in litigation. Do you
9 have any objection to our using your name in that
10 connection publicly, or to other people. If the guy
11 says you bet I do, they promised me to be confidential.
12 I don't want you to do that. That's one thing, he says
13 I don't care. You can tell anybody you want. That would
14 be another. Can't we just get a reconfirmation of
15 whether the person wants confidentiality or not when
16 you talk to them?

17 MR. WILD: Yes sir. That's what I think,
18 that's what I would propose, except I think it should
19 be under different circumstances. I think first, the
20 principle should not be that this is a blanket order of
21 nondisclosure for this information. I think that to the
22 extent, and I have tried to do that beyond that too,
23 that Applicants like to, but to the extent that the
24 affidavits themselves make a self-identification of the
25 circumstances that the particularized needs of

1 for confidentiality then fine, the job is in part done.
2 I think what really is called for here though, is
3 instead of palmetto being in a position where we are
4 the ones that have to ask people to go public, if you
5 will. And that's a burden that shouldn't be placed on
6 us in my judgement, because frankly, I think that while
7 we've demonstrated a basis for individuals with
8 information about safety concerns to put their trust in
9 our advocacy, if you will. The fact of the matter is
10 this is hardball and this is a case where there is some
11 controversy and a degree of acromony on the site and
12 between the parties and I submit that Palmetto Alliance
13 is probably not a particularly popular party among some
14 quarters on the Catawba site. We, and in fact, all the
15 people we are talking about are employees of the power
16 company, so to ask us to be in a position where people
17 have to agree at our request to go public is simply
18 asking the impossible, in a lot of instances. We can't
19 protect them if they really need protection, and yet
20 those that may have information that they would make
21 public, the least likely among all the parties to get
22 it is Palmetto. Here's our suggestion, I believe that
23 the quick and simple approach here is that the board
24 should make a simple and concise communication to the
25 people we are talking about and should simply state in

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1 effect as you did last fall in the notice that was
2 posted to the work force generally that you're prepared
3 to consider claims of confidentiality. Explain the
4 circumstances and state that you are prepared to honor
5 those if there is a demonstrated need. Simply state
6 that you wish to receive some concise indication of a
7 need for confidentiality.

8 JUDGE KELLY: I might just interject here that
9 while we said in our notice that people should be
10 prepared to give us some need basis for
11 confidentiality, we did not, in fact, enforce that and
12 in most cases, I recall, no such basis was ever given.
13 As a practical matter, the four people who came in and
14 said they wanted to be treated confidentially were
15 treated confidentially without their need being probed
16 by the board.

17 MR. GUILD: Well that may be, and I'm sure in
18 fact those circumstances reflect the give and take the
19 need for confidentiality. The other side of that coin
20 is that for example with Sam Nunn. So long as he felt
21 he needed confidentiality, we sought to protect it. All
22 the parties respected it, the board honored it and when
23 he was prepared to go public, we promptly communicated
24 that on his behalf to the board and we stopped needing
25 and requiring the in camera protection with all the

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1 administrative problems and difficulties that that
2 imposed. I think we're all talking about trying to use
3 devices sparingly here that only require sparing use.

4 Our point here is that we don't believe that
5 applicants are entitled to the protection that they
6 see. We think that there are individuals there who may
7 have a particularized need for protection of their
8 confidence and we would honor that. We think, however
9 that the applicants, in reviewing the documents in the
10 quick fashion that we have, Judge we found, for
11 example, that apparently, according to the NRC staff's
12 recitation of the interview process, conducted by Duke,
13 it was the welding superintendant himself, Bill Rodgers
14 who made the introduction to the interviewee of the
15 need for the interview and the description of the
16 terms of their efforts to protect confidence. I think
17 that is substantially the expectation of the individual
18 that their confidences meant anything. Of course, I
19 think, limited the usefulness of the interview product
20 itself.

21 Mr. Uryc's trip report suggests that
22 individuals were called to the superintendant's office
23 and the welding superintendant explained to them
24 individually the terms of the interview, and the
25 confidentiality. In any event, these individuals

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1 identities were all disclosed to the NRC staff.

2 Immediatly there was some disclosure of the
3 confidentiality, there is no basis described in any of
4 the documents for stated that that was an understood
5 expressed limitation on the scope of the confidence of
6 pledge of confidence extended.

7 They were also disclosed apparently among
8 the Duke investigative...

9 JUDGE KELLY: Now, I think we are going to
10 get, excuse me but we are getting over now into the
11 staff's claims, right?

12 MR. GUILD: No sir, I am talking about the
13 company. I am talking about documents that this is Mr.
14 Uryc's trip report. It simply reflects his discussions
15 with a Duke investigative team, and reflects his
16 understanding of the circumstances under which Duke
17 conducted the interviews. I was trying to describe...

18 JUDGE KELLY: Alright, I'm sorry.

19 MR. GUILD: ...how the Duke interviews were
20 conducted, and it goes to the question of whether or
21 not in fact there are justifiable expectations of
22 confidence that on a blanket basis that should justify
23 blanket withholding of names. We believe otherwise. We
24 believe that that claim, that the privelege does exist,
25 and we argued that the other day. We believe that the

1 pledge was conditional, or not conditional, and has
2 already been violated in the sense that the names have
3 been clearly disclosed among those investigative
4 concerns among the applicants management, and technical
5 staff, and also disclosed to the NRC staff. So, again,
6 we come back to what I think is the...is the remedial
7 mechanism for honoring justifiable needs for
8 confidence. That, I submit is an individual
9 identification of those that have the need with the
10 presumption of this information as information
11 generally in discovery in a proceeding of this sort
12 should be treated as public information.

13 Perhaps, even just a review of all of the
14 affidavits by applicants. They picked two out, I don't
15 know how many others, if any, reflect some identified
16 need for confidentiality. Between the two that they
17 have identified in their cover letter, one is a
18 foreman, I would submit, and aside from expressing some
19 concerns about the personality of his superior, it
20 doesn't disclose any wrongdoing or information other
21 than, the kind of candid that one would express about
22 someone who has... of what you have from person
23 animosity that would warrant the extreme remedy of
24 confidence. By contrast, the other affidavit that they
25 identified as a welder who has very serious factual

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1 testimony regarding foreman override and procedural
2 and safety violations. But, one is in a category on the
3 face of that, to argue very strongly for comment, and
4 one is very very weakly for comment. I would assume
5 that same analysis would apply for others. That
6 particular analysis has not been offered by applicants,
7 except by that example is very limited. We submit that
8 it should. We think that the vehicle of a board
9 communication to these individuals is the preferable
10 way of approaching this matter, because it is the most
11 neutral party in all of this. We think that you can
12 honor this, since this is your decision. Ultimately,
13 the terms of disclosure of this information, we think
14 it is most appropriate that the communication about
15 this claim of confidence comes from the board, and be
16 received by the board. It strikes us that that's the
17 soundest way of accommodating of competing.

18 JUDGE KELLY: Okay, let me ask now. We have
19 heard a brief lead off from Mr. McGarry, and Mr. Guild
20 has argued his points on the Duke Material. Mr.
21 McGarry, do you have any response that you want to make
22 on Mr. Guild's arguments, and then we can pass on to
23 the staff after that?

24 MR. MCGARRY: Yes sir. I think that one of
25 the touchdowns of Mr. Guild's argument was that the

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1 affidavits on their face don't reflect the desire for
2 confidentiality for the most part. Indeed, that was
3 correct, but as the board recognized that as set forth
4 in our letter, there was a promise of confidentiality
5 made before the statements were taken. Therefore,
6 there is no need to reflect confidentiality or desire
7 to confidentiality when it had already been extended.

8 Secondly, we agreed with a suggestion made by
9 the board. What seems to be reasonable to us is that
10 Palmetto, that we continue the protective order.

11 Palmetto can conduct his investigation on a factual
12 basis as opposed to asking names, or revealing names.
13 Then, when the twelve people are selected by Palmetto
14 on Monday, during an interview or deposition taht might
15 be conducted of those twelve, Palmetto can ask if any
16 of those two motions for confidentiality apply to them.
17 If they do, then we submit that that should be
18 extended. If they do not wish confidentiality, then we
19 would submit that it should not be confidential. We
20 think that is a very reasonable way of approaching it.

21 JUDGE KELLY: Just to interject a related
22 point. We referred from time to time, I think to the
23 device of the in camera hearing, and I know the
24 Applicants the other day expressed their desire, not
25 merely for this relief we are talking about now, but

1 for in camera treatment later. Let me just note that
2 we are not crossing that bridge this morning in any
3 particulars. We are aware of the device. We might use
4 it, but we are really trying to clarify matters as to
5 how these materials can be used in discovery in the
6 next week or so, and we are not trying to cross the
7 hearing bridge at this point. Did I interrupt you, Mr.
8 McGarry, or ...

9 MR. MCGARRY: No sir, I think that completed
10 our comment.

11 JUDGE KELLY: Alright.

12 MR. JONES: Judge Kelly, this is Brad Jones.

13 JUDGE KELLY: Yeah.

14 MR. JONES: I just wanted to know if the staff
15 does have a position on this. We are sensitive to the
16 fact that confidentiality is a useful technique in
17 conducting investigation, and we call for the
18 licensee's to conduct investigations in our enforcement
19 action all the time. For that reason, we are sensitive
20 that it is a technique that is valid in doing an
21 investigation. It is not the type of thing that you
22 promise confidentiality, and then after you hear what
23 the individual has got to say you say, gee you don't
24 have a basis wrapped in confidentiality, so we are
25 going to release your name. That ruins the device,

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1 that's the whole point. When you conduct it in that
2 way, then the next time you promise confidentiality to
3 someone else, it is rather a hollow promise, and
4 doesn't help you in the investigation.

5 So, we are sensitive to that. I also, just
6 one comment with respect to Mr. Guild's discussion of
7 the need to use a name in investigation. I would note
8 that the professionals that operate both in OI and in
9 the technical staff conduct investigations all the time
10 without using names. In fact, any time we have an
11 allegor who requests confidentiality, we will conduct
12 an entire investigation as we did with the in-camera
13 issues without using the individual's name to conduct
14 the investigation. So, I do think you can conduct an
15 investigation without having the names of particular
16 individuals. I just want to note that.

17 JUDGE KELLY: Thank you. Why don't we take
18 about a three or four minute stretch, and then we can
19 turn to the staff's filing, okay. Come back at about
20 ten after twelve.

21 JUDGE FOSTER: I'm wondering if Judge Purdom
22 has joined us yet.

23 JUDGE KELLY: Is Judge Purdom with us yet?

24 MR. JONES: Mr. Kelly, do you have his phone
25 number. I might be able to call him here in Atlanta and

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1 get him here on my line.

2 JUDGE KELLY: Yeah. He is on, are you on code
3 404?

4 MR. JONES: Yeah.

5 JUDGE KELLY: 377-0379.

6 MR. JONES: I will try and get him on my line
7 during the break.

8 JUDGE KELLY: Fine.

9 MR. GUILD: Do you want us to stay on the line
10 Judge?

11 JUDGE KELLY: Yeah. Take till ten after
12 twelve.

13 (Brief recess.)

14 JUDGE KELLY: Okay, this is Kelly again. Mr.
15 Guild, are you there? McGarry and Carr are there right?

16 MR. MCGARRY: Yes sir.

17 JUDGE KELLY: Foster and Purdom, and Brad
18 Jones?

19 MR. JONES: Yes.

20 MR. MCGARRY: Mr. Guild got off the phone
21 right at the end of the break, just before the break. I
22 heard some clicks, he was cut off the phone then?

23 JUDGE KELLY: Yes, I heard that. It is about
24 twelve minutes after by my clock.

25 The growing ominous feeling is that we have

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1 lost Mr. Guild somehow.

2 MR. GUILD: Judge, you just found me. I am
3 back.

4 JUDGE KELLY: Alright, good. Well, first of
5 all, Mr. Guild, did you receive the materials, I guess
6 you got material from two directions. The George
7 Johnson letter dated the 25th, did you get that?

8 MR. GUILD: I don't, yes sir, I have got it.

9 JUDGE KELLY: Okay, so you got his material
10 then. You got some separate material from Atlanta, is
11 that right?

12 MR. GUILD: Yes sir.

13 JUDGE KELLY: And that got there too?

14 MR. GUILD: Yes.

15 JUDGE KELLY: You have got that, okay fine. I
16 think again, for purposes of talking about these
17 priveleged claims that the staff advances, it's useful
18 to write them into categories, and just talk about one
19 category at a time. So, under category one, on the
20 confidential sources of which there are totally five
21 people. The papers that were sent to you, Mr. Guild,
22 were in the form of summaries of NRC interviews with
23 the names blanked out, and when I got up here to show,
24 I got the NRC extragated version, which shows these
25 names marked in red as Mr. Johnson's coverletter of the

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1 26th shows.

2 So, let's talk about that category one that
3 just shows five people and their identities, and facts
4 that might tend to reveal their identities. Mr. Jones, if
5 I understand the staff, they are asserting privilege
6 with regard to the identities of these people, and are
7 opposed to their disclosure even under a protective
8 order, is that correct?

9 MR. JONES: Well, that was the position of the
10 staff in the prior conference call. I think it was the
11 last letter that Mr. Johnson wrote indicates, I
12 believe, a protective order that could be designed that
13 would adequately recite sources potentially. But, any
14 such thing they would have to go to the Commission in
15 any event because of the new policy.

16 JUDGE KELLY: Could I just be looking at
17 Johnson's letter again on page two. In the fourth line,
18 the staff is hereby advising the board that
19 unrestricted disclosure of the enclosed documents would
20 reveal the identity of NRC confidential sources, and
21 the information designated should be disclosed only if
22 the board determines it is necessary to a proper
23 decision in this case, and not reasonably available,
24 and so on. So that, well let me ask you this, Mr.
25 Jones. Do you have a position on whether their

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1 disclosure is necessary to the case or not, or do we
2 have to leave it as something for the board to decide?

3 MR. JONES: I'm sorry, could you repeat the
4 last statement that you made, the last part of it? .

5 JUDGE KELLY: Well, Mr. Johnson says that the
6 information should be disclosed "only if the board
7 determines it to be necessary to a proper decision in
8 this case." Do you have a position on whether or not it
9 is necessary for a proper decision in this case,
10 disclosure that is?

11 MR. JONES: Yes sir, I think we do. I haven't
12 specifically discussed this with Mr. Johnson, but as I
13 expressed a moment ago, the staff does not believe that
14 you need conduct an investigation because we have done
15 it all the time without the names. So, in that sense we
16 believe that Mr. Guild should be able to conduct
17 adequate discovery, it is discovery if not a whole sale
18 investigation, without having to disclose those names.

19 JUDGE KELLY: Okay. I think I understand. Does
20 the Applicant feel that they have a stake in this, or
21 should we go right to Mr. Guild on this point? Mr.
22 McGarry?

23 MR. MCGARRY: Yes. It would seem to us that
24 the state that we have is relevant, but disclosure of
25 names of Applicant's employees that are on the

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1 documents of the staff, if they are not held in
2 confidence, then they could affect the confidentiality
3 of the employees that we have identified. That's the
4 role. I think we would be in a position of adopting the
5 staff's argument.

6 JUDGE KELLY: Mr. Guild, do you want to
7 address that particular category of the five
8 confidential NRC sources?

9 MR. GUILD: Yes sir. Our view is that as a
10 threshold matter, the identities of these individuals,
11 at least in part, have been disclosed. There is no
12 confidence to be protected, except the protection of
13 this information from effective release to the public
14 and Palmetto Alliance. We are very disturbed by what we
15 see as first, a failure to honor the confidences of
16 individuals who proposit to have sought it.

17 Second, the effort by the NRC staff in
18 particular to then hide behind the skirts, or trousers
19 if you will, of the people that they claimed, so
20 assiduously interested in protecting. In particular, it
21 is our view that the meeting summary of the March 13
22 meeting between the Applicants and the NRC staff
23 reflects that the NRC staff clearly disclosed
24 information which, by the terms if were identified
25 would disclose the identities, reveal the identities of

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1 the claim's confidential sources.

2 Two, for the very people from whose these
3 sources purportedly feared retaliation. The meeting
4 summary of March 26, 1984 reflects that the staff,
5 after investigating the specific welding crew and
6 foreman in question determined that there was six
7 issues, and they specified the issues and submission
8 detailed to reflect enough circumstances to be able to
9 identify that a lead man was involved. There was
10 particular workmanship involved that is identifiable,
11 and we think traceable to individuals on a fairly small
12 group or crew intend. Then...

13 JUDGE KELLY: I want to make sure I am with
14 you. I want to just...Alright, you have referred to two
15 documents so far, right?

16 MR. GUILD: I'm talking about...there is a
17 meeting summary Judge, that describes in the NRC's own
18 term the March 13 meeting between a Region 2 staff, and
19 representatives of Duke Power Company. At that
20 meeting, according to the meeting summary, they
21 disclosed the identity of a foreman in question to
22 Duke. The identity of the crew, through the description
23 of the specific issues, which it identified as having
24 safety concerns expressed by the purported confidential
25 sources, that it followed that meeting summary with an

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1 inspection report in April, which included documents. I
2 will compare it to the summaries and interviews they
3 may have had another title on them. Interview, results
4 of interviews...In any event, a position which is
5 clearly sufficient to identify with precision of one or
6 more of the confidential sources. This is evident from
7 the fact that we now can confirm, without disclosing
8 anything that Sam Dunn was absolutely right in his
9 belief about who the individuals involved were here, as
10 disclosed in his affidavit. In part, from there, he
11 only identifies the foreman and general foreman in
12 question.

13 But, I submit he was correct in his
14 identification of Welder B. If it is available to him,
15 it became available at the same time, at this meeting
16 to the Applicant. Therefore, the foreman therefore to
17 the general foreman, the welding superintendant who
18 participated in the introduction of the interviewees to
19 the Duke Investigative team according to Mr. Urek's
20 trip report. In fact, therefore, the region 2 staff
21 disclosed the very confidences that it is now seeking
22 to protect only from Palmetto, or not from Palmetto, as
23 from Palmetto right now, and from the public.

24 So, we think as a threshold matter, they are
25 unable to ascertain the protection, the applicability of

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1 the exemption under 2.7907 from before. That is, that
2 the records were compiled for investigatory, for law
3 enforcement purposes they are investigatory records,
4 and that they would disclose the identity of a
5 confidential source. The disclosure has already been
6 accomplished we submit.

7 Now, we think that such disclosure, beyond
8 simply the inapplicability, therefore the exemption
9 because such information has been disclosed. The staff
10 has waived any informant privilege, if an informant
11 privilege is what we are really talking about here. It
12 did so in the same meeting we spoke of. It also did so
13 thereafter. I want to make two more specific
14 references.

15 In what has been identified as Appendix C of
16 Mr. Johnson's letter. This is a freedom of information
17 act response that those documents, portions of which
18 are withheld. All of what I have is in the public
19 record. That's OI84-722.

20 JUDGE KELLY: Right.

21 MR. GUILD: Now. Included in that document are
22 several memos filed by Mr. Uryc of the regency staff.
23 First, I would reference is a March 12, 1984 memo that
24 participant welder being Uryc, a confidentiality
25 request is indicated in the form and it says, simple

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1 for subject I believe. Called to advise that he was
2 better able to go through blank. New paragraph. Subject
3 was also advised that EPC was going to be briefed on
4 the general nature of our findings and that he could
5 expect to be briefed by an interview by the EPC in the
6 matter. He said he would tell EPC the same thing he
7 told the NRC when questioned by them and subsequent to
8 that there is a memo dated 8/23 also entitled or had a
9 participant's alledged put in welder B and Uryc's
10 confidentiality request. The first half or the top half
11 of the memo is simply blanked out, I don't know what it
12 says. The remainder of it says, I called Holland. I
13 submit that's Mr. Holland who is Applicant
14 investigation director or coordinator, and advise him
15 of info from a ledger and Welder B.

16 Holland said he would check and find out why
17 a ledger blanked and got back to me. Holland said that
18 it appeared that such a blank would not be such a good
19 idea at this time. Now, in addition to the meeting
20 summary, then we have two memos to file which reflect
21 at least to the effect that I can interpret that given
22 the deletion. I don't know if the board has the
23 undeleted version or not. I just don't know.

24 JUDGE KELLY: We do. Yeah, just for the record
25 yes we do have a... I'm following you, and I have

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1 both...I have what Mr. Johnson sent you, so I know
2 exactly what you are looking at. I also have an
3 undeleted version.

4 MR. GUILD: Okay. I submit that it reflects a
5 couple of things of my interpretation given the
6 deletion that it suggests very strongly that either in
7 the course of those conversations, there was a
8 transmittal of identifying information facts that would
9 tend to reveal the confidential source, or that it
10 reflects that the identity of the confidential source
11 is already known, which is probably at least as likely,
12 that between Mr. Uryc and Mr. Holland, there was a
13 shared knowledge of who they were speaking about. So,
14 the confidence was a matter that inhibits the fact was
15 disclosed by the region 2 staff. I submit that without
16 stating a name on this record that we go to the
17 affidavits that the individual who Mr. Dunn surmised
18 would be Welder B in fact submits an affidavit to the
19 applicant that had so many factual similarities to the
20 NRC staff interviews with their confidential authority.
21 It is absolutely clear that the Applicants understood
22 who the identity of at least that confidential source
23 was.

24 Now, we submit that that at least removes
25 this information from the control of a position of the

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1 NRC rules, but 2790, just has been disclosed. Now, I
2 think that doesn't necessarily have to be inquired,
3 because frankly I think that to the extent that there
4 is an interest in honoring confidences on a continuing
5 basis, that again the mechanism that we suggested
6 should apply. That is, that those individuals should
7 have an opportunity to seek the protection that they
8 needed, but that the NRC staff certainly has not
9 honored that protection in substance, and that the
10 people that they most had to fear, and the only really
11 legitimate basis for protecting confidentiality, and
12 that would be a reprisal from their employer or their
13 supervisor, or the people who are identified as
14 wrongdoers by their evidence.

15 But, that is already largely, on the face of
16 all of the documents that we have available to us, has
17 been reached. Therefore, no useful purpose is served in
18 granting the staff, in granting the staff's ascertainment
19 of a privilege from disclosure and provided them to do
20 it. We think this information is necessary for an
21 effective resolution of these issues. We think it is
22 necessary...

23 JUDGE KELLY: Excuse me, I don't mean to
24 barfercate (phonetic) the points too much, but you have
25 got a fairly long discussion of whether the NRC had in

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1 effect, told them who these people were. Maybe it would
2 be easier for us to handle that, and easier for the
3 staff to respond. If they could just respond to that
4 point, then you could pick up again. Is that okay, Mr.
5 Guild?

6 MR. GUILD: Yes sir.

7 JUDGE KELLY: Thank you. Mr. Jones, do you
8 want to respond to the...to whether or not in your view
9 you disclose these sources to the power company?

10 MR. JONES: In short, Mr. Guild's
11 characterization of the set of circumstances is not
12 correct in several aspects. The staff has not, never
13 has, and are hoping with the agreement of the board,
14 will not in the future give the name of any
15 confidential source to any non-controlled individual
16 without a protective order. We have not in the past
17 given any names to Duke of a confidential source. Duke
18 has not received any information that Mr. Guild could
19 not have received. As a matter of fact, with respect to
20 the foreman's name, Mr. Guild called me about when the
21 summary of that meeting was going to come out back when
22 we were waiting for it, and I specifically told him we
23 were not including the name of the foreman in the
24 summary, because we didn't think it was appropriate to
25 be putting the foreman's name in the public record when

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1 there had been no investigation or confirmation that he
2 had done anything wrong from a personal standpoint, but
3 if Mr. Guild wanted I did not personally know, but I
4 would find out the name of the foreman if they felt, if
5 they wanted it, because they were entitled to have any
6 information that we gave Duke.

7 I was never contacted again that there was
8 any interest in having that foreman's name. As for the
9 general statement as to information being released
10 which would tend to identify an individual. In the
11 absolute sense, that is always true by calling it
12 Welder B instead of Employee B, we have limited the
13 individuals to a certain group of people. I have no
14 doubt that with all of the activity that took place on
15 the site, there is a lot of guessing going on as to who
16 Welder B is. The NRC position is that we have to go out
17 and do these investigations, and you have to look at a
18 certain area if that is where the problem is. If there
19 is a limited number of people that have worked on that
20 area, then the very fact you are looking at, it may
21 further limit the group from which people may guess.

22 That does not mean that we have revealed the
23 source, and we will not confirm nor deny the guesses
24 that anyone makes. That is, in the final analysis the
25 way we can both investigate and require corrective

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1 actions by the licensee for any kind of safety problem
2 and yet protect confidentiality to the extent that we
3 can.

4 JUDGE KELLY: Let me ask you a question, Mr.
5 Jones. There were some memos in Mr. Johnson's
6 submission, FOI submission in Appendix C of that
7 submission. In reading through these myself there were
8 some, including some that Mr. Guild referred to that
9 when I first read it, raised in my mind the question
10 whether the NRC had told Duke who the confidential
11 sources were. Let me just ask you about one, and maybe
12 you could comment on it. I'm looking at a memo to, memo
13 to case file dated July 13, 1984. It is about 2/3 of
14 the way through Appendix C.

15 MR. JONES: Okay, hang on just a second. I am
16 going to... I have what we have got from the region,
17 and I do not have a copy of what George Johnson sent
18 out, but Mr. Uryc is just two offices down, so let me
19 try.

20 JUDGE KELLY: Okay, it is item 10 in Appendix
21 C specifically, if anybody wants to look at it.

22 MR. MCGARRY: Judge Kelly, after Mr. Jones is
23 back, if the applicants could be heard for thirty
24 seconds.

25 JUDGE KELLY: Okay.

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1 MR. JONES: Judge Kelly, I'm sorry, Bruno Uryc
2 is not in his office, and it is locked up so I can't
3 get at those documents.

4 JUDGE KELLY: Well, maybe if I just read this
5 to you, let me just try that anyway. I am talking about
6 item ten in Appendix C of Mr. Johnson's submission of
7 the 25th to Mr. Guild. It is a memorandum to case file
8 dated July 13, 1984, and it is just two or three
9 sentences and I will read the last few sentences.

10 The letter inquired as to status of work
11 being done, and I told them things were progressing and
12 that we expected a report from DPC in early August of
13 1984. He said he still, he said he has still not heard
14 anything from DPC, and I assured him they would be in
15 touch with him, and he thanked me for the call. I read
16 that, and I wondered how Uryc could be sure Duke would
17 be in touch with Welder B, unless Duke knew who he was.

18 MR. JONES: I do know the answer to that
19 question

20 JUDGE KELLY: Thank you, go ahead.

21 MR. JONES: That was because in the theme of
22 the 217 people that Duke had interviewed, we knew
23 Welder B was included in that group, and they had
24 assured us that they were going to go back to everyone
25 of them while they had raised any kind of concern and

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1 talk to them.

2 JUDGE KELLY: I see, thank you.

3 MR. JONES: That was how we, we knew that,
4 because Mr. Urcy was talking about that.

5 JUDGE KELLY: Okay. Now, I guess the
6 Applicants, you want to be heard on this disclosure
7 question, Mr. McGarry?

8 MR. MCGARRY: Just two points so that the
9 record is clear. The Applicants position is that the
10 NRC as never revealed to us the names of any of the
11 confidential witnesses that come to them. Second of
12 all, that Mr. Holland does not know the name of Welder
13 B. But that this board recognizes in the pursuit of
14 facts, the pursuit of investigation, many facts are
15 indeed disclosed. One can make, surmises, but Duke does
16 not know as a fact any of the names that were revealed
17 to the NRC.

18 JUDGE KELLY: Okay, thank you. Mr. Guild, I
19 interrupted you. Do you want to pick up on the next
20 point?

21 MR. GUILD: Yes sir. Just to be clear, I have
22 no basis for stating that names were disclosed, and
23 that was never our position.

24 JUDGE KELLY: No, I thought you were saying
25 that so many facts were disclosed, that it amounted to

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1 disclosure, is that?

2 MR. GUILD: That's correct, Judge.

3 JUDGE KELLY: Okay, I understand.

4 MR. GUILD: Beyond that, it is our position
5 that the release of this information is necessary in
6 order to resolve the issues of the case. The staff not
7 only declines so far to disclose names and practices
8 that would reveal names to Palmetto. It also made a
9 non-specific assertion of an exemption under 2790, the
10 freedom of information provision, or information that
11 would, the disclosure that would constitute another
12 warranted invasion of personal privacy. I don't know
13 what would come under that rubric, but it seems to sweep
14 as broad as can be here. Presumably, anything else that
15 even fails to meet the test that we have talked about
16 thus far is all under that category. I can surmise and
17 tell you that on the surface our problem is that we,
18 although we asked in our pleading, for as the discovery
19 rules provide the identities of persons with knowledge
20 of the facts, and although clearly the NRC has had not
21 only the identities of the people it has talked to, but
22 their addresses and telephone numbers.

23 Of course, Duke has their identities, their
24 addresses and telephone numbers. We have yet to receive
25 any of those, and the NRC staff continues to assert

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1 some privelege claim after that. They have all been
2 deleted from the documents that were transmitted. On
3 the top of the documents, I think they were called
4 summaries of interviews is a box of names.

5 JUDGE KELLY: We needed to get to that, and
6 that was going to be category 2. Did you have anything
7 else on the confidential sources that you wanted to
8 make?

9 MR. GUILD: The point only is that we believe
10 that the...that if you assume that there has not been
11 disclosure, and that therefore 2790 is the exemption
12 from the disclosure is applicable, then turn to a
13 question of whether or not it should be disclosed. That
14 disclosure, I'm talking about puppet disclosure now.
15 Unless they qualify under that, they...it is public
16 information. The opposition is that it is public
17 information subject to an individual particularized
18 claim from these people under the terms we suggested
19 earlier. That is, a board notification of forward
20 contact asking people to make a request which we would
21 honor.

22 Absent that, it is our view that this
23 information is necessary in order to resolve the issues
24 in dispute for the reason we said earlier. We can't
25 conduct meaningful discovery. We are now on Friday,

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1 before the Monday when McGarry suggest we are obligated
2 to have included, by the process of investigation...

3 JUDGE KELLY: No. No. No. On Monday, you are
4 supposed to tell him who you want to depose and
5 interview. You don't have to stop investigating.

6 MR. GUILD: Well, I'm using the term that I
7 understood Mike McGarry to use. That was, we do our
8 investigation between now and then, then we tell him
9 the twelve people we want to talk to. Then, we can ask
10 them if they want to go public, if you will. That's
11 what I mean. I mean I appreciate the fact that there is
12 a process of interview and deposition next week. All we
13 have right now are Applicants' version of the facts. We
14 have their investigative affidavit. We have no
15 practical means whatsoever to be able to go outside
16 those investigative affidavits except to the extent
17 where it is within the personal knowledge of one of the
18 people who is working with Palmetto. For example, Mr.
19 Dunn may be able to read an affidavit and say, oh, that
20 helps me. I can tell you this, this, and this. I don't
21 know if Mr. Dunn has agreed to a protective order in
22 this case.

23 But, beyond that Judge, we are unable to
24 proceed, and we have been unable to proceed. Therefore,
25 I would submit that not only is the disclosure of this

1 information needed in order for us to resolve these
2 issues, and to have discovery to investigate these
3 matters. But, the... including Saturday and Sunday,
4 without the opportunity to meaningfully go beyond the
5 documents that were given to us, which are also
6 (inaudible). We are faced with a severe difficulty
7 being able to meaningfully exercise the right of
8 designating twelve people. Essentially, all we can do
9 is designate them from among the affidavits that we
10 have seen, and we submit that what should be available
11 to us as an opportunity, pursuant to the discovery
12 rule, but for the NRC staff and the company to get the
13 identities and locations of the persons acknowledged.

14 JUDGE KELLY: You have got the identities from
15 the Applicants, right?

16 MR. GUILD: I have got the identities from the
17 Applicants, although no location. I was left with no
18 means for contact, no phone numbers or addresses
19 contained in the Applicants information. As for the
20 staff, we have no identities, nor do we have locations.
21 So, in short, I am trying to make a showing under the,
22 under the provision cited by Mr. Johnson in 2.740
23 that...the provision that talks about the section of
24 documents from the staff. I apologize for not having
25 the citation. But, essentially, the showing that the

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1 disclosure of this information be used for the
2 resolution of these issues. We believe that we have
3 made that shown.

4 JUDGE KELLY: Well, let me ask you a couple of
5 things. Again, focusing back now on the confidential
6 source, and their identity, and putting aside for one
7 moment the addresses of people. I can inform you of one
8 thing, which you may or may not consider to be helpful,
9 but it seems to me it might be helpful to know. I
10 assume you have asked yourself whether the people who
11 are the five confidential sources are also among the
12 affidants that the Applicants have sent to you?

13 MR. GUILD: Yes sir.

14 JUDGE KELLY: The answer is three of the five
15 are. I will just tell you that. So, that included in
16 that pile of 217 or 222 affidavits is an affidavit from
17 three of the five confidential sources.

18 MR. GUILD: Judge, it is a puzzle and every
19 little piece helps.

20 JUDGE KELLY: It is a piece.

21 MR. GUILD: It is a piece.

22 JUDGE KELLY: Beyond that, I think we have
23 covered that confidential source part of it. If we
24 could move to what I have made a second category.
25 That's that staff's summaries of interviews other than

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1 the five confidential sources. Excuse me a minute, I
2 will find that stack.

3 MR. GUILD: Brad Jones?

4 MR. JONES: Yes.

5 MR. GUILD: Do you know what Judge Kelly is
6 speaking of there?

7 MR. JONES: The stack? I think...

8 JUDGE KELLY: Let me give you a little more
9 description here. The summary of interviews were all
10 together, and the five confidential source interviews
11 were sort of mixed in among them. I just pulled them
12 out so we could talk about them as one category. What I
13 am calling the rest of the summary of interviews, and
14 this name is not confidential. It starts with Earnest
15 L. Anderson, and they are in alphabetical order. I go
16 through to Danny Wallace.

17 MR. GUILD: Judge, is this the Region 2 stack?

18 JUDGE KELLY: I think it is. Is that a Region
19 2 stack, Mr. Jones?

20 MR. JONES: Yes, I believe so.

21 JUDGE KELLY: Okay, about 3/8" thick, and it
22 may have twenty or thirty summaries in there. I have
23 put them all together, simply because they have one
24 thing in common. The address and phone number has been
25 taken out. It is blank on yours, right Mr. Guild?

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1 MR. GUILD: Yes sir.

2 JUDGE KELLY: On mine, I can see it here, but
3 is marked in yellow. So, as I understand the staff
4 then, they sent this information to you with the
5 addresses and phone numbers marked out because they got
6 the information from Duke Power, and it is being
7 withheld. Am I correct, Mr. Jones, is this a privacy
8 claim?

9 MR. JONES: That's correct. This is
10 information gathered during the course of this
11 investigation which the if public released may violate
12 someone's personal privacy.

13 JUDGE KELLY: Could you expand on that a
14 little bit?

15 MR. JONES: Yeah. This is a situation where I
16 believe some of these, I don't know how public the
17 addresses are, but I do know some of the phone numbers
18 of the individuals were unlisted, and of course, on
19 those circumstances when you have an unlisted number,
20 your address isn't in the phone book, and so people do
21 have some privacy interest not having published their
22 location and phone number. That was the reason they
23 were, they are taken out then. Then, generally what the
24 region does at any Ethyl IA documents under that same
25 concern for privacy, we take any phone numbers and

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1 addresses out.

2 JUDGE KELLY: Would you have any objection to
3 that information being disclosed to Palmetto under a
4 protective order which said it is not to be redisclosed
5 to anyone else, and used only in the course of pursuing
6 their case.

7 MR. JONES: We would not object to that.

8 JUDGE KELLY: You would not object to that.
9 So, it is really to prevent general public
10 dissemination, is that right?

11 MR. JONES: That's correct, for general. It is
12 not a complicated confidentiality question, it doesn't
13 have to go to the commission, and a simple affidavit
14 that it will not be disclosed outside of, you know, the
15 use that they have in the hearing, but it will not be
16 publicly disclosed. I think it has been adequately
17 protected. The only concern we have are those
18 individuals' addresses and phone numbers.

19 JUDGE KELLY: Mr. Guild, would that take care
20 of your need with respect to those particular people?

21 MR. GUILD: No sir, it just wouldn't. We all
22 are troubled by getting unwanted, unsolicited phone
23 calls and knocks on the door. My name is in the phone
24 book. On my pleadings, your name is publicly available.
25 There is a call for me, on occasion at home.

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1 JUDGE KELLY: No, but it is only a protective
2 order.

3 MR. GUILD: There is no call for a protective
4 order here. There is just frankly no call for it. We
5 are now at the point where they didn't even make a
6 specific showing of why this stuff was not transmitted
7 in the first place. This information...the
8 information we are talking about here is phone numbers
9 and addresses for people who didn't even seek
10 confidence. Those little boxes say no on
11 confidentiality requests.

12 JUDGE KELLY: Assuming all of that, and maybe
13 you are right. I am just trying to get an answer to
14 this question. If you want to call Ernest L. Anderson
15 or go and visit him, and you have got this address here
16 and this phone number for your purposes, why do you
17 care whether it is under a protective order or not?

18 MR. GUILD: Because the principle should be
19 that this information is public. I don't have any
20 interest in publicizing the guy's phone number, but let
21 me just state this. We would oppose there being any
22 restriction on the dissemination of this information.
23 There is clearly no restriction on the dissemination of
24 this information. There is clearly no showing made of
25 need to keep in confidence, by him or anyone else. Our

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1 position is preserved Judge. We have an interest in
2 moving forward on this, and we would agree to such a
3 protective order so long that it is clear that our
4 position is preserved that it is inappropriate to
5 conceal this information, or not otherwise have it
6 public. I think long ago the board observed
7 appropriately that it is just is a fact of life that if
8 you are going to be employed in building a Nuclear
9 Power Plant, that your name may be identified publicly.
10 Your phone number may be identified publicly. Where you
11 live might be identified publicly, and your workplace
12 might be identified publicly because it is necessary in
13 public interest.

14 I just think that observation applies with
15 full force here. It is a very small matter, but I
16 really think it is matter of principle. The staff
17 claims that they are vastly overbroad with respect to
18 trying to secure information, if you will, that serves
19 no useful purpose whatsoever. It is not entitled to any
20 legal protection. We would like our position preserved
21 with that regard, but if we can...if it is the board's
22 will that that protection be identified, we would like
23 it reflected over our objection. We would be willing to
24 sign and honor it in order to afford that we want our
25 position preserved.

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1 JUDGE KELLY: I understand, and I think you
2 are correct as a matter of precedent in this case in
3 terms of addresses. We have ordered disclosure of
4 addresses in the past and rejected privacy claims. I am
5 not sure if we have ever done that with regard to
6 unlisted phone numbers. But, this is not...I think we
7 would all agree, the largest issue that is before us
8 today, and I think maybe we have...at least, let me ask
9 the Applicants a related question. It raises much the
10 same points. Your affidavits, the large stack of
11 affidavits did not include addresses and phone numbers,
12 is that right?

13 MR. MCGARRY: Yes sir.

14 JUDGE KELLY: Do you have any objection in
15 principle to disclosing that information to Palmetto?

16 MR. MCGARRY: No sir, subject to the
17 projective order, no problem.

18 JUDGE KELLY: If they wanted to just get this
19 information for some limited number for particular
20 people, even today or tomorrow, would there be some way
21 that they could get it if they wanted to talk to
22 somebody?

23 MR. MCGARRY: We're trying to get it right
24 now.

25 JUDGE KELLY: Okay. I think that covers that

1 pretty well. I've got two categories of information
2 left in the staff's submission. We have referred
3 earlier a time or two to Appendix C of Mr. Johnson's
4 letter to Mr. Guild, and the version you got Mr. Guild
5 has some blanks interspersed. They come out black in
6 the xerox copy, and what got sent to the board, so we
7 could see what it was was red and yellow marking pencil
8 instead of a black so that we can read what is there,
9 and tell at the same time what kind of a claim is
10 ascertained.

11 Now, the reds and the... the red markouts...
12 everybody with me so far, do you know what I am talking
13 about, Appendix C. They are red markouts, and you
14 couldn't tell that, Mr. Guild from what you have got,
15 or from what the Duke Power people got. That's the five
16 confidential sources. In fact, I think Mr. Johnson's
17 cover letter may spell that out, but that's what that
18 is. It would seem to me that the same arguments that we
19 have already heard on whether those names should be
20 disclosed or not were applied to these markouts. We
21 talked earlier about, we were talking about the
22 summaries of interviews of those five people, but this
23 is just other documents which refer to the same people
24 by name or in such a particular way that it would give
25 away a person's identity.

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1 The yellow markouts are, again on the copy
2 that I have got anyway, are largely different pieces of
3 information that the NRC got from Duke. Let me just
4 look at my set a minute.

5 (Brief pause.)

6 JUDGE KELLY: Maybe it would help to explain
7 this. Do you have your copy, Mr. Guild?

8 MR. GUILD: Yes sir.

9 JUDGE KELLY: In Appendix C, like just for
10 example the first one is a memorandum to case dated
11 1/20/84? All those markouts are red. Those are
12 confidential sources throughout that three-page
13 document. The...

14 MR. GUILD: Was that a three page document?

15 JUDGE KELLY: I'm sorry, that's one page, and
16 the next one is two pages. Alright, items 1 and items
17 2, all of these markouts are red. Now, in item 3, dated
18 January 24, 1984, that's a mix. There are five markouts
19 there, correct?

20 MR. GUILD: There is like four, but the first
21 one along the line it might involve two items.

22 JUDGE KELLY: We've got two, yeah. The top
23 line is where... that's two. Well, two of the markouts
24 are red, and three of them are yellow. Mr. Jones, do
25 you follow me on this?

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1 MR. JONES: This is the stuff that is locked
2 into an office that I can't get into right now.

3 JUDGE KELLY: Well, we'll ask...

4 MR. JONES: I know, generally, what you are
5 talking about so go ahead.

6 JUDGE KELLY: Well, I guess one question to
7 you, Mr. Jones would be to the extent that these things
8 that have been marked out in yellow, and which
9 represent information that you got from Duke Power...

10 MR. JONES: Yeah.

11 JUDGE KELLY: To the extent that that very
12 information has now been disclosed by Duke in what they
13 have turned over, what is your interest in continuing
14 this secret?

15 MR. JONES: Okay, those items that fall into
16 the category of information Duke gave us, I believe one
17 of the things that is in there is the list... a list of
18 people that they talked to. We are protecting that
19 information based on what was then the current claim of
20 Duke to the confidentiality for those.

21 JUDGE KELLY: Wait a minute, you say a list of
22 the people that Duke talked to.

23 MR. JONES: I don't know if that is one of the
24 things that you have got in front of you right at the
25 moment or not. As I recall, one of the things in the

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1 package that was put under the yellow item was Duke
2 confidential sources, and I have the names of people
3 they talk to.

4 JUDGE KELLY: Well...

5 MR. JONES: Is that the nature of the
6 information?

7 JUDGE KELLY: Well, that's an example. If you
8 go over to, this is clumsy, and I don't know if you
9 gentlemen can even follow me. But, if you flip over to
10 the August 31st memo to the case file from Bruno Uryc,
11 that's number 12. Have you got number 12 Mr. Guild?

12 MR. GUILD: Yes sir.

13 JUDGE KELLY: Do you know what I mean? The
14 violation of interpass temperature. Now, you've got in
15 the left column at the bottom a whole bunch of names
16 blocked out, right?

17 MR. GUILD: Correct.

18 JUDGE KELLY: These are people who raised
19 concerns in the course of the investigation, but I
20 thought these names had been turned over to Palmetto by
21 now, and I'm trying to understand what interest there
22 would be in the staff's continuing.

23 MR. JONES: I'm pretty sure I know what those
24 items are. Those are items where, I guess Duke has an
25 interim protective order under which they released that

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1 information to Mr. Guild.

2 JUDGE KELLY: But Guild has the information.

3 MR. JONES: Right, he now has it. No, we
4 wouldn't have any objection to him having that
5 information.

6 JUDGE KELLY: If the protective order is
7 retained so long as he keeps it under that protective
8 order is that right?

9 MR. JONES: That's correct.

10 JUDGE KELLY: If there isn't any protective
11 order, then it is moved.

12 MR. JONES: Yeah, that is nothing that is an
13 independent claim on our part. That was just related to
14 what Duke was claiming.

15 JUDGE KELLY: That's what I thought, so my
16 question is whatever happens to the Duke claim, the
17 same thing can happen to these items, correct?

18 MR. JONES: Rules that issue.

19 JUDGE KELLY: Right. So, would it be possible
20 then at a later date... well, let's suppose for example
21 that, let's say we do have a protective order. Well,
22 either way, we either have a protective order or we
23 just overrule the claim. In either case, what I am
24 worried about Mr. Jones is distinguishing in this
25 Appendix C between what is red and what is yellow?

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1 MR. JONES: Yeah.

2 JUDGE KELLY: Can you call up Mr. Guild and
3 tell him what is yellow and fill in the name?

4 MR. JONES: Sure.

5 JUDGE KELLY: If that is called for. We don't
6 have to do it now, one by one. We can't get anywhere
7 with that anyway.

8 MR. JONES: Oh yeah, absolutely. If that is
9 the ruling, we can give him the information.

10 JUDGE KELLY: Alright, so that would handle.
11 There is nothing separate to talk about with regard to
12 Appendix C, I don't believe.

13 MR. JONES: I don't think there is. I think
14 the only three categories was confidential sources,
15 privacy information, and then the stuff that I will
16 call Duke claims of confidentiality, and that was it.

17 MR. MCGARRY: Your honor, this is McGarry. As
18 I understand it, the Duke claims are in yellow, is that
19 correct?

20 JUDGE KELLY: Right.

21 MR. MCGARRY: The theory being that if we have
22 turned that information over to the intervenors under
23 this general protective order, then why shouldn't the
24 staff.

25 JUDGE KELLY: Right.

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1 MR. MCGARRY: That seems logical to us.

2 JUDGE KELLY: Okay.

3 MR. GUILD: Judge, I guess I am lost here. I
4 noticed you were mentioning there were three claims. I
5 thought there were two. Confidentiality on a warranted
6 base of personal privacy, and then Duke. I thought the
7 only basis for the Duke claim was second, the privacy
8 exemption.

9 MR. JONES: I think that's correct, but I
10 think Duke was claiming on an entirely, on a separate
11 basis than the staff. I mean, we have a statutory
12 provision, and Duke was claiming it based on a course
13 of conduct, if you will. I guess my only point Judge in
14 raising it is if you think you are eliminating one
15 class of these by describing them as falling or rising
16 under the Duke claim does that only one of three or
17

18 JUDGE KELLY: I don't think I mean it in that
19 sense. I don't think what I was suggesting prejudices
20 your positions.

21 MR. GUILD: I'm just, I see red and I see
22 yellow. Rather, I hear red and I hear yellow, and I
23 guess I don't hear a third color that seems to cover
24 what I understood as another basis for some of these
25 things, there are are two colors.

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1 JUDGE KELLY: Well, there's only two colors in
2 Appendix C.

3 MR. GUILD: Right.

4 JUDGE KELLY: There is a third color
5 applicable to something else, right, Mr. Jones?

6 MR. GUILD: I'm being fasicious. I mean, I
7 heard Mr. Jones say...

8 MR. JONES: I am really at a loss. I don't
9 know what color of pens George Johnson...

10 MR. GUILD: Okay. My question is this Judge.
11 I think your approach was sound in trying to identify
12 which of the claims by the NRC staff were really
13 dependent on Duke.

14 JUDGE KELLY: That was really all I was after.

15 MR. GUILD: But, I hear that if you are even
16 identify what claims are simply efforts to honor Duke's
17 claims of privilege, I still hear Mr. Jones saying that
18 there are independent claims of a confidential source,
19 and for the privacy.

20 JUDGE KELLY: Not with respect to the
21 information that they got from Duke, I don't believe
22 so.

23 MR. GUILD: Let me focus on (inaudible). What
24 privacy claims do they still assert aside from the Duke
25 effort to protect it's interviewee, do you follow me?

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1 MR. JONES: Oh yeah, I'm sorry. I think know
2 what your problem, where you are mixing up. There is a
3 set of people that we interviewed that you have summary
4 of interviews.

5 MR. GUILD: Right.

6 MR. JONES: And in which we blank out the
7 addresses, and we got that information from Duke. There
8 is also a set of information from Duke that identifies
9 the people that they talk to, and they promised them
10 confidentiality about the fact that they talked to the
11 Duke investigators. That is still not clear is it?

12 MR. GUILD: That's clear, but then...

13 MR. JONES: Do you understand the distinction
14 that I am making?

15 MR. GUILD: Yes, but would all of that then be
16 released if the Duke claim failed, or if there is a
17 protective order that...

18 MR. JONES: Well, as I understand it, the
19 protective order we have would cover the addresses that
20 we have also. So, I guess one protective order would
21 cover it all. Yeah, I can't see any sense in signing
22 ...

23 JUDGE KELLY: Do you think there would be one
24 protective order?

25 MR. JONES: Yeah, one protective order should

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1 cover it.

2 MR. GUILD: I guess I'm just not complete. I
3 just want to know if there is some residual class of
4 information that is protected by agency claim of
5 unwarranted invasion of personal privacy, that it is
6 not simply the Duke supplied information.

7 MR. JONES: That's the red. The yellow is the
8 Duke supplied information.

9 JUDGE KELLY: Well, that still confuses it. I
10 think the answer to that, to your question is no,
11 because the separate agency claim is not a privacy
12 claim. That's a claim based on privelge to enhance
13 their ability to enhance wrongdoing.

14 MR. GUILD: That's what I thought Judge, but
15 then I thought that there were two independent claims.
16 I understand... it may be apparent in the decision how
17 it all comes out. I just don't want to miss an
18 opportunity to focus on a residual privacy claim if
19 there is still one there that we have identified as
20 being separate from what...

21 JUDGE KELLY: The board is not aware of one.

22 MR. GUILD: Alright.

23 JUDGE PURDOM: This is Purdom. Just to be
24 clear, as I understnad it the staff is asking for the
25 five individuals that they interviewed not to be

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1 identified.

2 JUDGE KELLY: Right.

3 JUDGE PURDOM: They are asking some other
4 people that they interviewed not to have their
5 telephone numbers be released to the public, but they
6 would agree to have them released to Palmetto under a
7 protective order. Third, they have got some information
8 that they obtained from Duke, and Duke is asking for
9 protection, and they were asking for it only to the
10 extent that Duke was.

11 MR. JONES: That's exactly what the three
12 categories are.

13 MR. GUILD: It takes an engineer to figure
14 this out, Judge Purdom, thank you.

15 JUDGE KELLY: Okay, I hope this won't muddy
16 the water. I just want to make one observation, because
17 the variance was something that Mr. Jones said a few
18 minutes ago in characterizing the Duke argument. I will
19 be happy to stand corrected if I am wrong. The Duke
20 argument for a protective order of the names of the
21 people that they talked to. I do not conceive of in my
22 own mind as a privacy argument. I hear them say that
23 they need that kind of protection in order that they
24 can conduct an effective investigation, that they can
25 get people to talk about their supervisors and their

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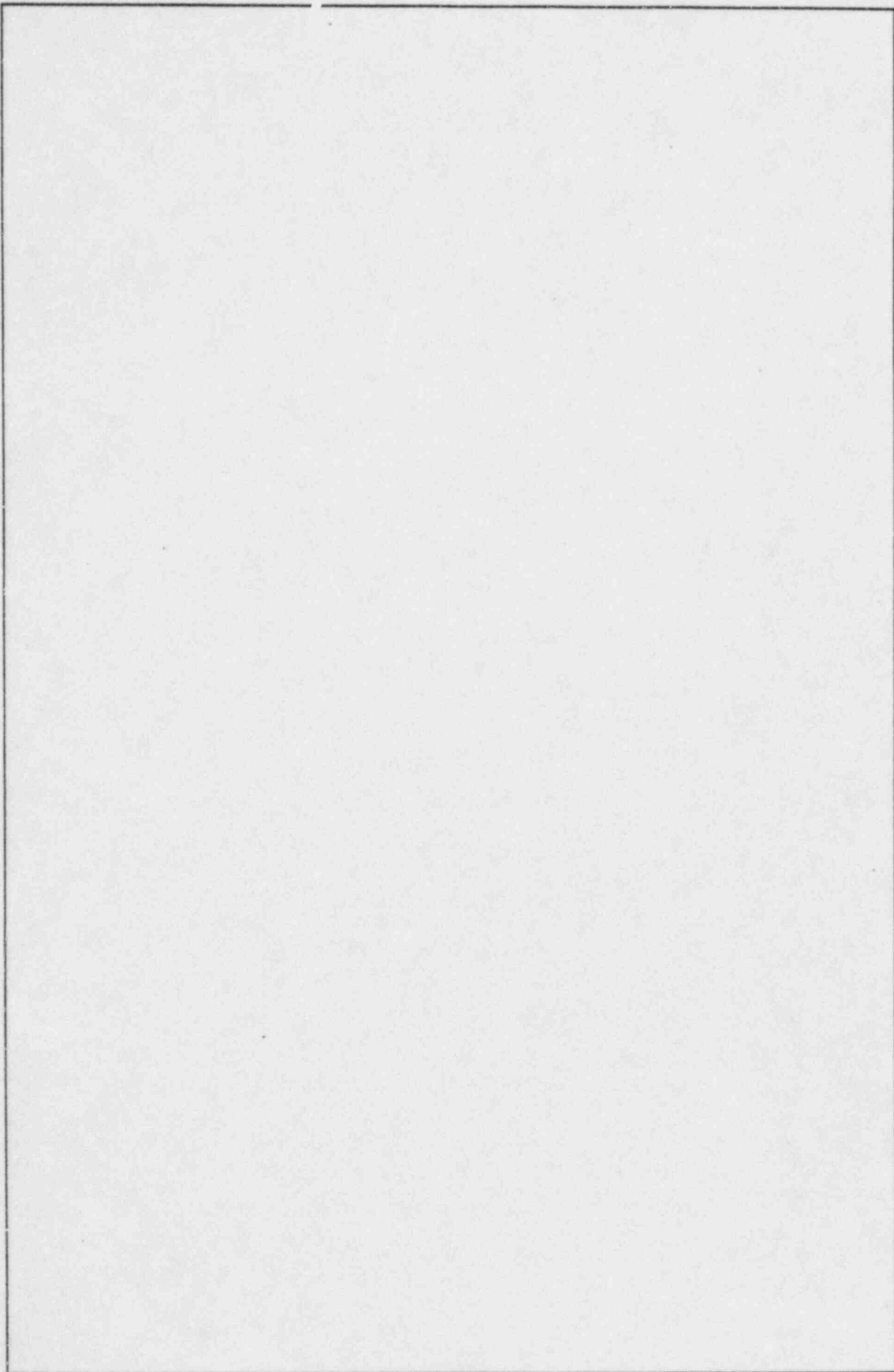
1 foreman and the like. It isn't to keep Welder Smith
2 from being bothered at 3:00 a.m., or finding his
3 unlisted phone number someplace in public or things
4 like that. It is so that Duke can go out there and find
5 out what happened. I see that as more of an
6 investigatory privelege, somewhat analogous to the NRC
7 staff's and not a privacy matter.

8 That, at least, is how I tend to think of it.
9 Well, I think that leaves one thing on my list. The
10 staff Exhibit No. 27. You will all recall was offered
11 at the January 31 in-camera hearing. It was included
12 in our packages, starting with page 3, I belive. Just a
13 minute.

14 (End of tape.)
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1 JUDGE KELLEY: I'm a little unclear since that
2 exhibit was accepted on a confidential basis under the old
3 protective order, if I can call it that, is there any new
4 privilege being considered or are we supposed to change
5 its status and, if so, why.

6 MR. JONES: This is Brad Jones.

7 JUDGE KELLEY: Right.

8 MR. JONES: Absolutely no new privilege. We just
9 wanted everyone to be aware that those are documents that
10 are covered by the prior order, and, you know, they have
11 their own set of protection.

12 JUDGE KELLEY: And they were, in fact, part of
13 the basis for your report?

14 MR. JONES: Well, what this involves is really
15 the fact that the question was broader and said what's
16 the basis for your conclusions on foreman override, not
17 just the narrow Welder B issue.

18 JUDGE KELLEY: Okay.

19 MR. JONES: And, of course, all the interviews
20 have raised the issue of foreman override and, you know,
21 we presented testimony at the hearing as to our initial
22 conclusions and this was part of that background.

23 JUDGE KELLEY: Okay.

24 MR. GUILD: May I ask, Judge Kelley, were those
25 identified as part of your Freedom of Information Act

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1 response and that they have therefore been...

2 MR. JONES: I don't think they were because the
3 Freedom of Information Act specifically asked about the
4 follow up on the Welder B issue, and this was part of
5 going back really to the Welder B issue being an issue and
6 talking about, in essence, Sam Nunn's issue of foreman
7 override in the broad sense.

8 And we didn't, you know, we did an initial
9 investigation and presented our conclusions to the Board
10 that there was not an overriding problem and we said
11 we're following up on a separate issue that has been
12 raised by Welder B with respect to one individual, and
13 that...

14 So I think the Freedom of Information Act got
15 the Welder B file. I mean, you know, they're kept in a
16 separate file. And then looking at what the Board had
17 dictated over the phone last week, the individuals involved
18 said well, if they're talking about the basis for the
19 conclusion we reached back in February as well as the
20 conclusion we've reached in the Welder B Report issue,
21 we have to include some of the other interviews we did.

22 MR. GUILD: I guess my point for asking is
23 George Johnson and I had a conversation about this, at
24 least Brad's Freedom of Information Act response, and he
25 identified this issue to me and said that the Region 2

1 staff who were passing on FOIA requests conclude,
2 interpreted the language of the request to not include
3 the whole stack of information that has now just come
4 from your office, Brad, and including the blue papers
5 that are attached.

6 And I found that somewhat troubling at the time
7 because the blue papers include Welder B. That would be
8 in those documents. But is that how the, is that how
9 the two stacks differ, Brad?

10 It would help me, it'd help me try to understand
11 what I got.

12 MR. JONES: That one, one was specifically on
13 the follow up to the Welder B issue, the socket welds,
14 and that narrow area and that foremen. And then the
15 other stack was the broader question we dealt with in
16 the in camera proceeding.

17 And we didn't want to delay the proceeding, so
18 when we got this discovery request, we weren't even sure
19 if this was meant to be included, but we wanted to not
20 delay anything, so we said let's put it in and make sure
21 we have given all the basis for both the conclusion we
22 reached in February as well as the one we reached recently
23 in the report.

24 MR. GUILD: Thank you.

25 JUDGE KELLEY: Okay. Well, that goes over the

1 categories of papers that we wanted to talk about so that
2 we could address them and decide the disputes between you
3 and among you. Can I just explore with you for a minute
4 how this might work?

5 JUDGE PURDOM: Judge Kelley?

6 JUDGE KELLEY: Yeah?

7 JUDGE PURDOM: Before you leave what we've been
8 talking about, just for the record, I believe you indicated
9 that the Board has received a marked copy, red teller (ph),
10 I think that possibly would be you, but not the copy
11 received by me.

12 JUDGE KELLEY: Okay. Well, the Board's going
13 to have to go on the phone and talk this over, but I
14 think there's every reason to try to get these rulings
15 done this afternoon and get them communicated to you.

16 I'm just looking at my clock. It' says 10
17 after 1. Could you, could the parties be reached in
18 call about 3:00?

19 MR. MCGARRY: Yes, sir.

20 JUDGE KELLEY: Guild?

21 MR. GUILD: Yes, sir. I need to give you
22 another number, but...

23 JUDGE KELLEY: You can do it, okay. Mr. Jones?

24 MR. JONES: Yes, sir.

25 JUDGE KELLEY: Let me ask my Board members.

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1 We've got to work in a little lunch somewhere and we've
2 got to talk a while. Does 3:00 sound realistic?

3 JUDGE PURDOM: It's all right with me.

4 MR. GUILD: Mr. Carr and I will be available,
5 Judge.

6 JUDGE KELLEY: I might have to just have my
7 secretary quickly check with the operators here and see
8 if we can get on a conference call at that time. We have
9 to reserve these slots. So if you'd just be patient for
10 a minute while I try to find that out?

11 MR. JONES: Mr. Guild, are you there, Bob?

12 MR. GUILD: Yes.

13 MR. JONES: Let me ask you a question. This is
14 Brad. You're still trying to decide the applicant's,
15 Duke's people, who you might want to depose next week,
16 but the Staff a more limited number, have you determined
17 who you want and when yet?

18 MR. GUILD: Not at all. I'd certainly be happy
19 to try to work around people's schedules and that sort of
20 thought, so maybe we should talk some.

21 MR. JONES: I'm pretty clear if we can find out
22 later today, but they've got to go through our travel and
23 get tickets and, you know, get up to Charlotte, and that...
24 you know, I think there's really only a very few people
25 that were involved in the investigation here, McConomos (ph)

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1 York and Blake and then the Brookhaven people that we'll
2 put on the stand are really four people that were involved
3 in the vestigation.

4 And if you know which two you want and when you
5 want them, I'll make, they are all available right now
6 any of those dates.

7 MR. GUILD: How about the Brookhaven people?

8 MR. JONES: I didn't, I don't know about the
9 Brookhaven people, what their availability is next week,
10 but we can find out if that's who you want to talk to.

11 MR. GUILD: Perhaps we can talk a little later
12 this afternoon, Brad.

13 MR. JONES: Okay, that's fine. I just wanted,
14 if you could let me know this afternoon that would be
15 great. You can let me know in the next call if you want.

16 (Off the record.)

17 JUDGE KELLEY: Hello, this is Kelley back again.
18 Everybody still on?

19 ALL: Yes.

20 JUDGE KELLEY: Okay, I just checked it out. We
21 can replace the call at 3:00, so Mr. Guild has a different
22 number?

23 MR. GUILD: Yes, sir, 919-828-3403.

24 JUDGE KELLEY: Okay. And then the idea'll be
25 that we'll get back to you then and give you rulings on

1 these various points. And could the Board hold on just
2 for a minute and I'll just say goodbye to the rest of the
3 people. Okay, goodbye.

4 MR. JONES: I'm going to lose you for the
5 (inaudible) if I sign off.

6 JUDGE KELLEY: Huh?

7 MR. JONES: Brad. If I hang up, you're going to
8 lose Judge Purdom.

9 JUDGE KELLEY: Oh, well, stay on a second then.
10 Are Purdom and Foster still there?

11 JUDGE FOSTER: Foster's here.

12 JUDGE KELLEY: Can I call you two back between
13 quarter of 2 and 2? About ready for lunch as far as I'm
14 concerned.

15 JUDGE FOSTER: Okay, but that, that would be...

16 JUDGE KELLEY: Half hour to 45 minutes.

17 JUDGE FOSTER: Forty-five minutes? Yeah, that's
18 fine.

19 JUDGE KELLEY: That okay, Walt? Hello? Dick?

20 JUDGE FOSTER: Dick's here, yeah.

21 JUDGE KELLEY: You're still there. Did we lose
22 Walt?

23 JUDGE PURDOM? No, I'm still here.

24 JUDGE KELLEY: Is it okay if I call back in a
25 half hour to 45 minutes?

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JUDGE PURDOM? Yeah.

JUDGE KELLEY: Let's have lunch and I'll do that.

Okay, I'll do that. See you later.

UNIDENTIFIED SPEAKER: All right, bye.

JUDGE KELLEY: Bye.

END OF MORNING CALL

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This is to certify that the attached proceedings before the
NRC

In the matter of: DUKE POWER COMPANY, Catawba Nuclear
Station, Units 1 and 2

Date of Proceeding: September 28, 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
Official Reporter - Signature

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