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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of:

DUKE POWER COMPANY, ET. AL.
(Catawba Nuclear Station,
Units 1 and 2)

Location: Bethesda, Maryland
Date: September 28, 1984

Pages: 13,003 -
13,039

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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: :
: : :
DUKE POWER COMPANY, ET AL. : Docket Nos.
: 50-413
: 50-414
: (Catawba Nuclear Station,
: Units 1 and 2) :
: : :
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September 28, 1984
4350 East West Hwy.
Bethesda, Maryland

The Board met pursuant to notice at 4 p.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

1
2 JUDGE KELLY: Okay, we're on the record now.

3 Let the record show that we were unable to reach Mr. Jones
4 for the Staff and the Chairman'll make an effort later,
5 but we're going to go ahead with the applicants and the
6 intervenors on the line with the Board just to give the
7 rulings on the matters we've talked about earlier.

8 And we do have rulings on each point. I'll state
9 the ruling and state briefly what our primary reasons were.
10 We had rather lengthy argument, both yesterday, not
11 yesterday, both Tuesday and today and we won't be
12 addressing every point that was made, I'm sure, but we
13 did hear all the arguments and take them into account in
14 our decisions, and I'm just trying to get to a bottom line
15 here with an indication of the main reasons.

16 Going in roughly the same sequence we did this
17 morning, we'll look first at... Well, let me just state
18 again that the claim of attorney work product is sustained.
19 The Palmetto objected to that, but we've sustained it and
20 the reasons were set forth earlier.

21 We'll just reaffirm here that that was the ruling
22 on that point. Secondly, and the thing that aroused the
23 most discussion in the applicant's submission is the set
24 of papers that consists, first, of a list of names
25 handwritten, 220 names.

1 And following that is an affidavit from these
2 people who were listed in the list and the dispute there
3 between the applicants and Palmetto primarily was whether
4 those names should be used by Palmetto only under protec-
5 tive order or whether they should be given to Palmetto
6 for such use as Palmetto wishes, without any restrictions.

7 Oh, hi. Okay, then we're all on. I had just
8 begun to say that... Just a minute. I had just begun
9 to say that we'd been unable to reach you earlier. I was
10 going to go ahead and deliver our rulings and, if necessary,
11 call you later or give you a transcript later.

12 But since you're on now, all parties are
13 represented. And I'm just at the beginning fo the rulings
14 really. I began to talk about the affidavits from the
15 various people that the applicants had spoken with in
16 connection with their investigation.

17 And, of course, the dispute ~~there was~~ whether
18 Palmetto should have unrestricted use of the names or
19 whether the names should be used only subject to a
20 protective order, and the Board is granting a protective
21 order with respect to the use of those names by the
22 parties, including Palmetto.

23 We did take into account Palmetto's argument
24 that there was some need for a neutral person to take the
25 position that confidentiality should be waived or foregone,

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1 and this was in connection with the scenario, for example,
 2 where one of these people would come in let's say for a
 3 deposition next week and it might be pointed out by
 4 Palmetto, by some other party, that they didn't
 5 necessary have to keep their identity confidential, but
 6 they could go public.

7 In that connection we have prepared a statement
 8 from the Licensing Board that can be used the parties if
 9 the parties wish to use it in that kind of a context.
 10 Now, I'll read it to you now.

11 The caption, the caption on this is "Licensing
 12 Board's Statement Re", strike re. "The Licensing Board's
 13 Statement Concerning Confidentiality." And the text is
 14 as follows. And you might, I can read this slowly,
 15 want to take this down in case you want to use it the
 16 first part of next week because you won't see transcript
 17 perhaps until Tuesday at the earliest.

18 Here's the text: "The Licensing Board understands
 19 that you were told that your name would be kept confidential
 20 if you cooperated and furnished information to the Duke
 21 Power Company investigation of concerns about some foremen
 22 overriding applicable procedures.

23 "Whether your name should be kept confidential
 24 through the further investigation of those concerns and
 25 possibly in the coming Licensing Board hearing on those

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1 concerns is for you to decide. You may request that your
2 name continue to be kept confidential, as far as possible,
3 or you may allow your name to be used in the investigation
4 and, if you are called as a witness, in a public hearing."

5 That is the end of the Board's statement in that
6 regard. Let me just add that as we envision this, let's
7 take first the context of a, say, a deposition next week.
8 One of the parties could read that to the person, the
9 intervenors could, the utility could, the Staff could.
10 That's up to you to resolve.

11 Outside of that context, it occurs to use that
12 Palmetto may simply want to telephone or go visit some of
13 the people whose names and addresses they'll be getting,
14 and if Palmetto wishes to do so, they can use the Board's
15 statement for the same purpose, read it to the, to the
16 person and then that person can decide how he wants to go,
17 whether he wants to be confidential or not.

18 So those are our basic rulings on that first
19 point about the use of the names in the affidavits. Let
20 me just say that by way of rationale we don't see this
21 as a privacy matter.

22 It seems to us, rather, that, as a matter of
23 policy, licensees should be able to encourage their
24 employees to come forward and talk about their super-
25 visors, come forward and be critical about foreman, and

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1 that, in a sense, is analogous to the NRC privilege of
2 confidentiality for names. We don't think it's as strong
3 a policy, but we think it serves...

4 A terrible noise just came in. Can everybody
5 still hear me?

6 MR. JONES: I can hear you.

7 JUDGE KELLEY: Mr. Guild, are you there?

8 MR. GUILD: Yes, sir.

9 JUDGE KELLEY: Okay. I was just saying we
10 dn't think the argument here in the policy is as strong
11 as the one for NRC confidential sources, but we think that
12 there is some basis for it and a basis for the kind of
13 rather limited privilege we're according.

14 We think, conversely, in reaching that decision
15 we've taken into account what we think is the potential
16 harm to the intervenors in their ability to investigate
17 these matters if the names are subject to protective
18 order and we don't think that, that that restriction will
19 substantially impair their ability to pursue the facts.

20 And having reached those two conclusions, that's
21 where we come out. We'd like to pass now to the Staff
22 documents.

23 MR. GUILD: Judge, if I may, could I ask a
24 question? Guild.

25 JUDGE KELLEY: All right.

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344

1 MR. GUILD: When you say names here, we're
2 speaking of the, the, the name of the answerer of the
3 question.

4 JUDGE KELLEY: Right. And...

5 MR. GUILD: As contrasted with names that may
6 be mentioned by the applicant in an affidavit.

7 JUDGE KELLEY: If the affiant's name that I
8 understand could be in question, right. Turning to the
9 Staff's categories of information, the first thing we
10 talked about were the five people who had requested and
11 had so far been given confidential treatment by the Staff.

12 MR. CARR: Excuse me, Judge Kelley. Could I
13 back up just one second?

14 JUDGE KELLEY: Yes.

15 MR. CARR: In our affidavit...

16 JUDGE KELLEY: Carr.

17 MR. CARR: ...which person's names are mentioned,
18 this is Al Carr...

19 JUDGE KELLEY: Right.

20 MR. CARR: ...as Mr. Guild said, that those
21 persons whose names are mentioned in an affidavit may
22 well also have an affidavit of their own which is part
23 of the package.

24 JUDGE KELLEY: Well, okay. So you're saying
25 nothing is simple. That's what we've all learned in these

1 cases.

2 MR. CARR: Yes.

3 JUDGE KELLEY: You're saying that Smith says
4 that Brown did such and such and then five affidavits
5 down, you'll have a Brown affidavit, right?

6 MR. CARR: That's correct, sir. Usually on
7 the same...

8 JUDGE KELLEY: Covering the same waterfront?

9 MR. CARR: Yes, sir, generally.

10 JUDGE KELLEY: Well, in that case... However,
11 seeing that case directly, and I guess the Board hasn't
12 really focused on it directly, but...

13 MR. CARR: It is not really our... The situation
14 exists but it's not really common throughout the affidavits,
15 and all I'm doing is just, I'm calling people's attention
16 to it.

17 In other words, if there's a name, if there's
18 a name in an affidavit, don't assume that there's not
19 another affidavit by that, by that person. And it's easy
20 enough to cross check.

21 JUDGE KELLEY: Okay, so you're saying that there
22 ought to be a cross check and if you find that named
23 person in an affidavit in some other, in his own
24 affidavit...

25 MR. CARR: And it doesn't affect the question

1 about the facts, obviously.

2 JUDGE KELLEY: Yeah, but the name would be
3 protected, right?

4 MR. CARR: Yes, sir.

5 MR. GUILD: Judge, this is Guild. I understood
6 the applicant's assertion was that they wanted to protect
7 the sources of information, and that it was the affiant
8 as the source of the information that was therefore a
9 limitation that they sought and that I understand the
10 Board to be approving.

11 It, in fact, defeats the, the very freedom that
12 I understood the Chairman to say we would still have. If
13 A says that he witnessed B doing something, we can't go
14 to B and disclose the fact that someone alleged that you
15 did something.

16 That was exactly the example that I understood
17 Mike McGarry to say and permissible.

18 MR. CARR: This is not what I'm saying at all.
19 What I'm saying is you would have an affidavit by A
20 that says B did something and you might want to go check
21 that with C, for example.

22 And B would also have an affidavit on the same
23 subject.

24 MR. GUILD: Judge, the only thing I understood
25 applicants to be arguing was that, that they objected to

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1 our disclosure of the identify, the name of the source of
2 the information.

3 MR. CARR: And what I'm saying is when you have
4 an affadavit by A disclosing something about B, you can
5 well have an affadavit from B disclosing information about
6 the same matter.

7 MR. GUILD: Then it seems to me that if A
8 discloses it, so long as A's identity is not revealed,
9 that the information he states in his affadavit should be
10 available to us to use without restriction.

11 MR. CARR: The only restriction that I think
12 that would come, come under the Board's ruling is that
13 you don't go to C and disclose either A or B's name
14 because they are both sources of information.

15 MR. GUILD: Well, Judge Kelley, that's our
16 problem then. If we understand that, that the identities
17 of individuals as sources are what's within the interest
18 of the company to protect, the identities of those
19 individuals as persons involved in facts that are signifi-
20 cant, events that are significant, should be not be pro-
21 tected. And if they are protected from disclosure, then
22 indeed our efforts to track this down are severely
23 hamstrung.

24 Another matter is if A says he saw a number of
25 people present to witness an incident of foreman override,

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1 we should be able to say that we have seen allegations
2 that a number of people were present and witnessed an
3 incident of foreman override.

4 Your name is among them, can you confirm with
5 a nod this event.

6 MR. CARR: All right, then perhaps we're just
7 talking about the same thing. If that's the case, as
8 long as A's name is not disclosed, I think we're well
9 within the... I think we're well within the ambit of
10 the protective order.

11 JUDGE KELLEY: Well, gentlemen, I see, frankly,
12 you've lost me. Maybe I'm just tired. The fact of the
13 matter is the Board has not discussed the particular
14 point that's been raised here. I can't speak for the
15 Board.

16 We can ask people to go off the phone while
17 we talk about it, I suppose. Short of that, I don't
18 know what to suggest.

19 MR. GUILD: I think we may have resolved it,
20 Judge Kelley.

21 JUDGE KELLEY: If you have, it's great. I'm...
22 That's terrific. Have you resolved it? Can somebody
23 restate it in resolved form?

24 MR. GUILD: Carr, do you have a problem on
25 formulation? So long as the source of the information is

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1 not disclosed, that's consistent with...

2 MR. CARR: I don't have a problem at all with
3 that. That's correct. The formulation that you just gave
4 where you approach a third person whose name is mentioned
5 in A's affidavit and say they alleged that you saw thus
6 and so, did that happen, is consistent with my understanding.
7 That's right.

8 JUDGE KELLEY: Okay, gentlemen, you seem to be
9 on the same track?

10 MR. GUILD: I think so, Judge.

11 JUDGE KELLEY: Okay, let's move on then. Moving
12 to the Staff documents and their various claims of
13 privilege, we though... I think I'm repeating myself, but
14 I'll, for context, do it anyway.

15 We've talked about the five summaries of
16 interviews in which these informants who had requested
17 confidentiality had been granted it by the Staff and
18 Staff continues to assert that claim here.

19 Palmetto opposes it. We've considered the
20 arguments back and forth and we're going to sustain the
21 Staff's privilege claim as to those five people. We have
22 considered whether, in our view, the disclosure of those
23 names is needed for the decision in the terms of 2.740
24 that apply here.

25 We don't think that that disclosure is necessary

1 for a proper decision of the matter. It is only the names
2 that are being kept back. The allegations that these
3 various anonymous people have made have been put forward.

4 We thought it significant that Mr. Jones pointed
5 out that the NRC itself and its field people runs
6 investigations where they have an anonymous source in
7 just the fashion that would be required if we sustain the
8 claim here.

9 Furthermore, what we're interested in here is a
10 pattern of foreman override. Even assuming there may be
11 an isolated instance of two or four or more matters that
12 fall within the destination for foreman override, that's
13 not going to by itself affect the decision.

14 There has to be a really significant pattern,
15 enough to make us be concerned about the safety of the
16 facility. And, therefore, where a lot of names and
17 addresses, upwards of 200 have been given, a lot of names
18 and addresses of people who have given information adverse
19 here to the company or the foreman or both have been
20 given, the fact that as few names as are involved here
21 being kept back doesn't strike us as fatally inhibiting
22 the ability of Palmetto to investigate the facts.

23 There is a very large population to draw from
24 and to look at and so we think that, that sustaining the
25 claim here is proper and it is so sustained. The second

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1 category of information had to do with the addresses that
2 have been provided, addresses and phone number that have
3 been provided by Duke Power to the NRC Staff and, in turn,
4 these addresses and phone numbers are blanked out of
5 Palmetto's copy and show up in the Board's copy.

6 The rationale here is not promotion of
7 investigatory ability. It's, it's a privacy rationale
8 really, to keep people's addresses and phone numbers, in
9 some cases unlisted phone numbers, out of the public eye.

10 And in the course of arguments the Staff
11 stipulated, I believe it's fair to say, that they would
12 agree to release of this information if it were under a
13 protective order similar to the one that's, that had been
14 asked for with respect to the names.

15 Mr. McGarry, for the applicant, said that with
16 regard to the 217 or 20 people, the addresses and phone
17 numbers are not in the affidavits of those people, but
18 Mr. McGarry indicated he would be willing to provide that
19 information, again provided it was subject to the
20 protective order I've referred to.

21 UNIDENTIFIED SPEAKER: That's correct.

22 JUDGE KELLEY: We do not think that a protective
23 order of this nature will represent a substantial practical
24 inhibition of the ability of Palmetto to pursue its
25 investigation.

1 Palmetto dissents from recognizing any privilege
2 for this information and wanted its position noted for
3 the record, which we do. They indicated their willingness
4 to just... In order to get the thing moving, though,
5 to get their dissent noted in the record and they
6 accede to the Board's decision, as I'm sure they would
7 in any event.

8 But I understand your desire to have your
9 position noted. So we come out saying that this infor-
10 mation, it's already in the summaries provided by the
11 Staff, should be provided and, in addition, the applicants
12 as soon as they can, upon request from Palmetto will
13 provide other addresses and phone numbers that they have
14 so as to expedite the ability of the intervenors to
15 talk to people and find them.

16 The next category of information that we talked
17 about was Appendix C of Mr. Johnson's letter. We described
18 this at some length in the last, the telephone conversation
19 before lunch and I won't do that again.

20 I think everybody knows what I'm talking about.
21 But the way this comes out certain information has been
22 deleted from various parts of these documents. It's
23 almost all names. There are a few other references like
24 whether it's first shift or early shift or late shift or
25 maybe a date, but basically it's names.

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1 The information deleted, in turn, falls into
2 two categories. Category 1 is information that either
3 states the names of the five withheld confidential sources
4 or give some information that might indicate who they are
5 in the unexpurgated Board copies.

6 These are marked in red and we have reviewed the
7 deletions, these red markings, and we are going to sustain
8 the claim of privilege for the reason previously given
9 about the five names.

10 As to the yellow markings, however, these are,
11 for the most part, names that have been provided by Duke
12 to the Staff and, as we understand it, the Staff primarily
13 asserted privilege here because they understood these
14 names have been obtained under pledges of confidentiality
15 by the, by the Duke Power Company.

16 So we now have a ruling on how those names
17 should be treated, namely they're under the protective
18 order, so our ruling here is as follows, and we're going
19 to ask Mr. Jones to help us out here.

20 When we're through here, Mr. Jones, and at the
21 mutual convenience of yourself and Mr. Guild, we'd like
22 you to do this. Go through... You've got a red and
23 yellow copy, don't you?

24 MR. JONES: Well, I don't have a red and yellow
25 copy, but if I get really (inaudible), I can, I can

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1 categorize what's in red and what's in yellow easy
2 enough.

3 JUDGE KELLEY: Okay. Could you then, when you
4 can get together with Mr. Guild, pass on to him the
5 information in yellow? Just give it to him over the
6 phone?

7 MR. JONES: Yeah.

8 JUDGE KELLEY: And now, that information itself,
9 as we understand it, falls into two categories. There will
10 be names that you would get that way, Mr. Guild, who are,
11 who are also names of affiants in the stack of affidavits,
12 and to treat that information consistently then, their
13 names would be subject to the protective order.

14 However, there may be names in there, we're not
15 sure this is true, but they're may be some names in there
16 that are not among the affiants. There may be names of
17 people who have not been given any promise of confiden-
18 tiality, and those names you could use for whatever
19 purpose you wanted to use them.

20 They wouldn't be subject to the protective
21 order. Is that... Well, let me ask Mr. Jones is the one
22 that may be closest to this paper. Is my, is the Board's
23 approach to this, are our factual assumptions accurate as
24 far as you know?

25 MR. JONES: As far as I know they are accurate, yes.

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JUDGE KELLEY: Okay. You understand what we're saying?

MR. JONES: I do.

JUDGE KELLEY: Is that clear to you, Mr. Guild?

MR. GUILD: Yes, sir.

JUDGE KELLEY: Okay. And the only thing left then is this Exhibit 20, is it 27? From last January which was just sent along as part of the basis, but we don't see that there's any particular ruling called for with respect to that.

It's just turned over as part of the basis, so we have no ruling to offer on it. We'd just note that it's, it has the status that it has. We do want to note a few other things.

The Staff submitted a protective order, a text of a protective order and affidavit of nondisclosure, which is proposed by them as a mark-up of last protective order and affidavit.

I can speak briefly to the order. The order is unchanged, except in one respect. The Staff last fall objected to our including them in the order saying that they were included, they were borrowed from, from certain kinds of disclosure, confidential information, under the NRC Regs and they didn't want to have to go around getting affidavits from everybody in the Staff saying you might

NRC 166
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1 have something to do with it. And we listened to that and
2 rejected the argument.

3 Since then, the Appeal Board has upheld an order
4 containing the differentiation of the Staff along the lines
5 requested by the Staff, and that being so, we propose to
6 exempt the Staff from the order proposed by them, following
7 the Appeal Board's order.

8 The affidavit is going to require a little word
9 changing, a little wordsmithing, if you will, to reflect
10 the matters we talked about here. We've restricted the
11 protective order just to names, for example. We've added
12 some protection for addresses, and what I'd like to do,
13 if it seems sensible to the parties, is just state the
14 concept this afternoon as clearly as possible and then
15 follow up.

16 Maybe I can arrange a time on Monday or
17 something to phone down the exact wording of the order
18 in the affidavit, but when we get through all this process,
19 we'd like a little time just to focus on that.

20 Is that... The idea would be we gave an interim
21 protective order the other day about use of names, and
22 the same concept would be embodied in the order we're
23 going to issue and in the affidavit we're going to
24 approve.

25 So that's the concept that'll be operational.

1 It'll stay operational until you get the exact text
2 probably on Monday. And I think you understand the
3 restriction on public use of the addresses. Is that
4 satisfactory to the parties, if we leave it on that
5 basis until, and I'll arrange a time to get the word to
6 you, to get the wording to you, probably on Monday. Is
7 that satisfactory until then, do you think, Mr. Carr?

8 MR. CARR: That's fine with us, Your Honor.

9 JUDGE KELLEY: Is that okay with you, Mr. Guild?

10 MR. GUILD: Yes. I understand the Staff
11 admission, and understanding what it is that's being
12 protected from this discussion, and that's fine. And
13 those who are working with me have had agreed to those
14 restrictions and all. I think they understand this
15 additional, the additional matters that you've ruled on
16 today, subject to the formal text of an order, I guess,
17 and an affidavit that would accompany that.

18 JUDGE KELLEY: Yes, the order we would have to
19 sign, and then the affidavit would be sent down there and
20 you could hand it around to your people who are going to
21 work on it and they can sign it.

22 But the Staff's text will have to be changed
23 some, as I say, and so I'd like to operate on that basis
24 until then. Is that okay with you, Mr. Jones?

25 MR. JONES: Yes. Let me make sure I've got it

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1 correct. Based just on what we've verbally said here,
2 we can go ahead and give the information to Mr. Guild and
3 we'll get some affidavit in writing to be executed next
4 week.

5 JUDGE KELLEY: That's right, there'll be an
6 affidavit next week. I don't remember now, last year
7 when I had all these affidavits, they were turned in to
8 the Board. Were the parties serving copies of affidavits
9 on each other also?

10 MR. GUILD: No, sir.

11 MR. JONES: No.

12 JUDGE KELLEY: I didn't think so. But there'll
13 be an affidavit from, from the parties and the people
14 who work for them and, as a matter of fact, I guess
15 Staff, Staff really doesn't have that much interest in
16 how this thing's worded anymore since you're not covered
17 by it.

18 But you have an interest in how it's worded
19 insofar as you're protected, so, okay. But in any event,
20 that's the way we'll do it. Are you gentlemen going to
21 be reachable on Monday sometime?

22 MR. CARR: This is Al Carr, Judge. All of us
23 will be down here at my office on 2570, can be reached
24 here at...

25 JUDGE KELLEY: Okay. It may end up being my

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1 secretary calling up and... What it'll probably be,
2 undoubtedly, is just, just some minor rewording of last
3 year's stuff. If you can pull out a copy of last year's
4 order and affidavit, then you could just take down the
5 changes. Have you got those documents or copies of them,
6 Mr. Guild?

7 MR. GUILD: I have what George Johnson sent down.
8 It's a marked up version of it.

9 JUDGE KELLEY: Yeah, you can work from that. It
10 won't be that much different, so if you just have that
11 handy. Could I call you sometime on Monday?

12 MR. GUILD: That'd be fine, Judge. I'll have
13 to call you first and tell you where I'm going to be.
14 I'm not certain.

15 JUDGE KELLEY: Give me a call on Monday and tell
16 me where you'll be and we'll get the text down to you
17 sometime during the day.

18 MR. JONES: Judge Kelley, this is Brad Jones.
19 I just wanted to indicate that on Monday, to my knowledge,
20 George Johnson will be back in the office and you should
21 contact him to take care of that stuff.

22 JUDGE KELLEY: All right. Now, there are just
23 a couple of other things. In looking over the transcript...
24 By the way, Mr. Guild, I mailed your transcripts today
25 from last Friday and Wednesday.

1 I didn't have the Wednesday transcript 'til
2 yesterday, but you may get it on Monday.

3 MR. GUILD: Did you send it to South Carolina,
4 Judge?

5 JUDGE KELLEY: No, I think I sent it to
6 Raleigh. Is that a mistake?

7 MR. GUILD: You're probably one step ahead of
8 me then, or one step behind me, rather.

9 JUDGE KELLEY: Well...

10 MR. GUILD: I'll get them to send it along.

11 JUDGE KELLEY: Okay. In looking over the
12 transcript from last Friday and the schedule that we put
13 out, there's one thing in there that we just omitted, we
14 didn't put it in.

15 And that is the time at which the parties should
16 designate who they're going to call as witnesses. You'll
17 recall that we had any, any, their testimony is supposed
18 to be filed a week from Monday and the deposition inter-
19 viewing process was a Tuesday-Wednesday-Thursday operation.

20 So we considered when that ought to be, and
21 this would be a list of witnesses, including anybody you
22 intend to subpoena. We'd like to have submitted, it
23 could be done by telephone, but we'd like to have it on
24 Friday the 5th, which is the Friday before the hearing.
25 Is that practical? Applicants?

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1 MR. CARR: It is for us, yes, sir.

2 JUDGE KELLEY: Guild?

3 MR. GUILD: Well, sir, I'd like to be heard a
4 little bit at some point before we go off the line about
5 time problems that we're facing here. And we have been
6 operating under the assumption, frankly, that, that we
7 would be able to have until that Monday to identify
8 witnesses, just assuming that's what you meant when you
9 said exchanging testimony.

10 JUDGE KELLEY: Yeah.

11 MR. GUILD: So Friday is, Friday cuts out the
12 weekend and we, frankly, are planning on working straight
13 through on this matter until the hearing, so every day
14 counts.

15 JUDGE KELLEY: Well, how about a best efforts
16 thing? Could you contact the applicants and the Staff
17 on Friday and the people you're pretty sure you're going
18 to... well, you've decided you're going to call as
19 witness, tell them that.

20 But the understanding would be then that you
21 may be still considering some others over the weekend
22 and you wouldn't know them 'til Monday.

23 MR. GUILD: That's fine.

24 JUDGE KELLEY: Okay.

25 JUDGE PURDOM: Judge Kelley?

1 JUDGE KELLEY: Yeah?

2 JUDGE PURDOM: This is Purdom.

3 JUDGE KELLEY: Yeah?

4 JUDGE PURDOM: I have a prior commitment. I
5 didn't realize the conference would go on this long and
6 I'm going to have to sign off by now.

7 JUDGE KELLEY: I think we're about done, Walt.
8 Okay, I'll be in touch with you.

9 MR. CARR: Judge Kelley, this is Al Carr. We
10 have no problem with deciding. I believe that Mr. McGarry
11 said he had mentioned to you the possibility or rebuttal.

12 JUDGE KELLEY: Yeah.

13 MR. CARR: And obviously, we wouldn't...

14 JUDGE KELLEY: No, I don't mean that.

15 MR. CARR: Okay, fine.

16 JUDGE KELLEY: Whatever may come up about
17 rebuttal we'll just have to deal with that.

18 MR. CARR: Okay.

19 JUDGE KELLEY: I meant the direct case sort of
20 a thing.

21 MR. JONES: The Staff has no problem with that,
22 Judge.

23 JUDGE KELLEY: Okay. Well, I don't think...
24 Dick, do you have anything else?

25 JUDGE FOSTER: No, I don't have anything else.

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1 JUDGE KELLEY: Okay.

2 MR. JONES: Can I ask Mr. Guild a question
3 before we hang up? Bob, did you get a chance to consider
4 who on the Staff you wanted to talk to and when?

5 MR. GUILD: No, not yet, Brad, but maybe we
6 need to talk, in any event, and try to go over these names
7 from the Staff document, names, addresses and phone numbers.

8 MR. JONES: Want to call me back?

9 MR. GUILD: Let me try to reach you back in
10 Atlanta.

11 MR. CARR: This is Al Carr. Just one question,
12 Judge Kelley, before we go. On the addresses and phone
13 numbers...

14 JUDGE KELLEY: Yeah.

15 MR. CARR: ...did you, was that requirement
16 proposed (inaudible) Brad, the Staff, to turn those over?
17 Was that what I understood?

18 JUDGE KELLEY: Well, what I, what I meant was
19 this, and let me restate it. The Staff has certain names
20 and addresses and they were just blocked out in the papers
21 that they gave Palmetto.

22 So we were saying that those addresses ought to
23 be given to Palmetto as soon as possible. As to you, my
24 understanding was that Mr. Guild would just like to be in
25 a position... I don't think that you should necessarily

1 have to go out now and find 220 names and addresses all of
2 a sudden. But as soon as Mr. Guild knows who it is he
3 wants to get in touch with, you should be able to provide
4 it.

5 MR. CARR: Yes, all right.

6 JUDGE KELLEY: Okay?

7 MR. GUILD: Judge, this is Guild. Unfortunately,
8 that's exactly what we face right now, is in order to be
9 able to intelligently designate who we want to talk to on,
10 on Monday, you made the observation yourself that what
11 we're looking for here is a pattern and we're trying to
12 probe the question of the significance or pervasiveness
13 of these problems.

14 I submit that, that applicant's identification
15 of the scope of discovery which is contained in those
16 affidavits, either the ones you disclosed some concerns
17 or the ones that don't or the ones who are asked should
18 not be the limiting factor.

19 And, frankly, what we're very desirous of is
20 being able to turn to some extrinsic sources of infor-
21 mation in order to be able to designate who we should
22 talk to.

23 And I, frankly, assumed just the contrary, that
24 when we started our pleadings our identification and
25 location of persons with knowledge that that included

1 addresses and phone numbers from the very outset. I
2 expected to see those in the Wednesday submissions from
3 both applicants and the Staff.

4 We don't have them. I think now it's clear
5 that we're entitled to them under a protective order over
6 our objection. The fact of the matter is we now have two
7 days to go to work on this investigation beyond the
8 documentation here, and we have no means for being able
9 to reach these people.

10 I wanted to raise two points. First, I'm
11 certain that while the whole discipline requires some
12 effort, applicants with some ease have that information.
13 They provided it to the Staff as the people who had
14 concerns.

15 MR. CARR: It is purely a logistics problem
16 and what I want is the address where you can get a package
17 delivered to you tomorrow morning.

18 MR. GUILD: Well, that'll be fine, and if that's,
19 what I'm doing is leaving Raleigh and coming to Charlotte
20 as soon as I can get business done here and get in the
21 car and drive, so I'll be in Charlotte tomorrow and we
22 can make arrangements to accept that information if it'll
23 be available tomorrow.

24 MR. CARR: It certainly will and that simplifies
25 things. Why don't you give me a call after we finish?

1 MR. GUILD: That's fine.

2 MR. CARR: We can work that out.

3 MR. GUILD: Judge, if we can work that out, then
4 that's a very important beginning. Now, the other problem
5 is even given that information, what certain cycle we
6 intended to do was to make an effort to contact a number
7 of people, not simply specify people based on the reason
8 of the affidavits or the reports from Duke and the Staff,
9 but be able to do some field investigative work to
10 establish the direction for determining use of the limited
11 discovery devices we have.

12 And, frankly, the only ability we have to do that
13 is now over the weekend. Based on what we think is the
14 need to identify these people and find them, now only
15 available to us on Saturday, we would ask relief from the
16 restriction that the Board imposed in the action of a
17 tentative procedure on the identification of the number
18 of persons to be interviewed and deposed be required
19 on Monday.

20 We're prepared to go forward and identify
21 people to start interviewing on Tuesday. We're ready
22 to jump in and get going in the process, but if that is
23 to be, if the exclusive universe of people that we can
24 speak to or interview or depose, that's what I mean to
25 say, interview and depose, is, is, is to be closed out on

1 Monday, we miss the opportunity to get, to identify
2 people and names provided by the affidavits because all
3 we have, all we happen to have is Sunday.

4 JUDGE KELLEY: I understand what you're saying
5 and you can designate on Monday who you want to talk to
6 from the investigators and managerial people of Duke, I
7 assume?

8 MR. GUILD: Yes, sir.

9 JUDGE KELLEY: And the same with respect to the
10 Staff.

11 MR. GUILD: That's correct.

12 JUDGE KELLEY: How long, when do you want to, as
13 your deadline for naming other employees?

14 MR. GUILD: Well, I mean we're being given an,
15 a limited number of days. I would like to be able to begin
16 the process of... I can't say, Judge. If you give us,
17 if you give us 'til Wednesday to be able to do that and
18 give us the prerogative of being able to use Thursday and
19 Friday for employees, to the extent that we're not able
20 to, there are others we need to identify and can't identify
21 until Wednesday, that would be a useful additional amount
22 of time.

23 JUDGE KELLEY: We unders... Refreshing my
24 recollection, we said Tuesday, Wednesday, Thursday is the
25 interview-depose days, right?

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MR. GUILD: Right.

JUDGE KELLEY: Okay, now, if you had until... well, if you named as many people as you can as soon as, you know, sort of as-soon-as-possible basis but you had a final outside deadline of Wednesday noon or something. I'm just thinking how long it takes Duke to find these people and bring them in. Mr. Carr, how about from your perspective?

It's mostly a logistical problem, I think, that we're talking about. We've allocated the extra amount of time and you can only do so much in that time, but you need to know some time in advance which welder or which foreman to bring in.

MR. CARR: Well, we do it... It's complicated by the fact that with construction winding down on Unit 1 a lot of people have been transferred to other places on the system.

Some of them are down at Oconey (ph), for example, things like that. And we don't know, of course, until we know what the names are where these people might be. We've got to see the names first and then go about finding them.

JUDGE KELLEY: Yeah.

MR. CARR: I would say this, that as long as they're still employed, the major part of them are still

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344

1 down at Catawba and we're talking a couple hours, at best.
2 Assuming they're at work. They may be out sick or on
3 vacation or something.

4 JUDGE KELLEY: Yeah.

5 MR. CARR: If they're down at Alcony, it may
6 take as much as a day to get them up here.

7 JUDGE KELLEY: Well, I think we can understand,
8 you know, the practical problem on both sides, both from
9 the intervenors and the company and we just, our concern
10 is that we get these formal interviews completed by
11 Thursday.

12 I might just add what I assume everybody knows
13 anyway, but if you're going to continue your investigative
14 effort, Mr. Guild, beyond, beyond Thursday, into that
15 following weekend, you know, you can do that to the
16 extent that you contact somebody and they're willing to
17 talk to you.

18 You don't have a formal deposition right is
19 all.

20 MR. GUILD: What I ask is given... If we are
21 to have the opportunity essentially to draw names from
22 beyond the affidavits as a source, we either have some
23 means of opportunity to do that after we get them on
24 Saturday.

25 And what I would, what I would ask is that

1 Wednesday, if we could provide those names by Wednesday
2 and reserve the right to interview or depose those people
3 through the end of the week, we're still meeting our
4 obligation to make a best effort to designate witnesses
5 on Friday, which we'll do.

6 That additional time is absolutely essential if
7 we're to be able to go beyond the four corners of the
8 paperwork that we've been given.

9 JUDGE KELLEY: Let me just make sure I'm clear
10 on the request. Hold on a second, we've got to change
11 the tape.

12 (Off the record.)

13 JUDGE KELLEY: As to designation of people for
14 witnesses what we've said, as I recall, was make a best
15 effort on Friday, but you could still make some desig-
16 nations on Monday. The interview-deposing time is now
17 set for Tuesday, Wednesday, Thursday.

18 So in that framework now, what do you think you
19 need beyond that, Mr. Guild?

20 MR. GUILD: What I'm asking is that interview
21 framework be extended through Friday and, and that we
22 be extended until Wednesday the opportunity to complete
23 the designation of persons to depose.

24 JUDGE KELLEY: Any objection to that, Mr. Carr?

25 MR. CARR: Really, the Wednesday completion of

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1 naming 12 people really, it puts us in a bind. We'll do
2 what we can to live with it.

3 JUDGE KELLEY: How about, how about interviewing
4 through Friday rather than Thursday?

5 MR. CARR: I don't think that's a, I don't think
6 that's a real problem if we could do something like cut it
7 off at mid-day Friday, unless somebody just absolutely
8 cannot be available.

9 JUDGE KELLEY: Well, I think you're pretty close
10 to a, to a negotiated settlement here.

11 MR. JONES: This is Brad Jones. I assume that
12 the real problem for Mr. Guild is the number of people
13 he's going to be talking to from, from Duke. I'm not,
14 I have not checked with the availability of our people
15 for Friday.

16 JUDGE KELLEY: Now, I thought... Gentlemen,
17 maybe we should perhaps say this out loud. If we're going
18 to be bringing people like Mr. Urich up from Atlanta,
19 then he ought to come up on day certain and be heard and
20 turn around and go back home.

21 The whole problem here is contacting employees
22 who you may want to call, isn't that right? You're not
23 talking about people like Urich?

24 MR. GUILD: No, sir, that's fine. And I think
25 we all, we're all talking the same language. We know who

1 the universe of people are on the NRC Staff who have
2 knowledge of this and they're few and well known. I'll
3 talk to Brad and make clear who we're looking for as best
4 I can tell him right now after this call. But it's the
5 employee people that we're talking about.

6 JUDGE KELLEY: Okay. Well, why don't we say
7 this? Inform Duke as soon as you can, whenever you decide
8 you want to talk to a particular employee, and you're going
9 to use, you know, you've got limited time to talk to these
10 people, but you're going to use it.

11 Let them know as soon as you can and let them
12 know, you know, well, close of business Wednesday will be
13 the outside deadline. The actual interviewing, let's
14 say 'til 1:00 Friday, possibly a good cause consideration
15 beyond then, but the goal would be to finish it off by
16 1:00 Friday. I think that's a reasonable compromise.

17 I don't think we have anything else then,
18 gentlemen, from this end. Let me ask, Judge Purdom,
19 anything else?

20 JUDGE FOSTER: I think Walt left.

21 JUDGE KELLEY: Oh, that's right, he did.
22 How about you, Dick, anything else?

23 JUDGE FOSTER: No, I don't... A follow up
24 question, but you don't have to stay on, is do we need
25 to talk on Monday?

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1 JUDGE KELLEY: I'll call you Monday. You going
2 to be home?

3 JUDGE FOSTER: Well, I might... If you call me
4 early in the morning.

5 JUDGE KELLEY: Okay, I understand. Okay, is
6 there anything else that anyone needs to bring up now?
7 Then I'll be in touch with you or have my secretary call
8 you Monday with the text of this protective order and
9 affidavit that you can just adapt from last year's.

10 MR. JONES: Judge, Before we hang up, Bob, do
11 you have my number?

12 MR. GUILD: Why don't you give it to me, Brad?

13 MR. JONES: Okay. It's area code 404-221-5611,
14 and if you could give us about 10 minutes to get everything
15 together here, we may be able to answer your question
16 right away.

17 MR. GUILD: Fishing here for a number.

18 MR. CARR: It's 2570, Bob.

19 MR. GUILD: Your number?

20 MR. CARR: 704-373-2570. Give me a few minutes
21 so I can call down to the site. I've got a guy who is
22 prepared to put a Federal Express package and as soon as
23 I've got an address, let me make the arrangements to get
24 him that stuff to me this evening, for him to get that
25 stuff to me this evening.

1 MR. GUILD: Okay, fine, Al.

2 MR. CARR: And you can call me and...

3 UNIDENTIFIED SPEAKER: (inaudible) in case I
4 need to reach you later?

5 MR. CARR: Pardon?

6 MR. GUILD: How about your number at home in
7 case I miss you?

8 MR. CARR: 333-1350.

9 MR. GUILD: Thanks.

10 MR. JONES: Bob, this is Brad. I'm going to
11 give you another number and you can call it collect so
12 that you don't have to pay for the call, if that's helpful.

13 JUDGE KELLEY: Do you guys need anything else
14 from the Board?

15 MR. CARR: I don't think so, thank you.

16 JUDGE KELLEY: Anything else, Mr. Guild?

17 MR. GUILD: No, sir.

18 JUDGE KELLEY: Okay, so long. Talk to you soon,
19 bye.

20 (Whereupon, the conference call was concluded at
21 4:20 p.m.)
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I, Georgia Pinkard , do hereby certify that the testimony contained herein was duly recorded by me on the date specified on the cover sheet of this transcript and that said testimony was thereafter reduced to typewritten form, either by me or under my direction and supervision.

I further certify that the foregoing pages contain a complete and accurate record of the testimony given, to the best of my knowledge and belief.

I further certify that I am neither attorney or counsel for any of the parties involved in this action, nor am I related to or employed by any of the parties hereto, and that I am not interested in the outcome of this action in any way.

Georgia Pinkard
Court Reporter

Beverly Hooks
Transcriber