

ORIGINAL
UNITED STATES
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

DOCKET NO: 50-413
50-414

DUKE POWER COMPANY, et al.

(Catawba Nuclear Station,
Units 1 and 2)

LOCATION: BETHESDA, MARYLAND

PAGES: 1 - 98

DATE: WEDNESDAY, APRIL 3, 1985

TR-01

delete one copy to ASLAP. 3 copies to 532 E/W

0/1

ACE-FEDERAL REPORTERS, INC.

Official Reporters
444 North Capitol Street
Washington, D.C. 20001
(202) 347-3700

8504050089 850403
PDR ADOCK 05000413
T PDR

NATIONWIDE COVERAGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

```

-----x
In the Matter of:
DUKE POWER COMPANY, et al.
(Catawba Nuclear Station,
Units 1 and 2)
-----x

```

: Docket No. 50-413
: 50-414
: ORAL ARGUMENT

Nuclear Regulatory Commission
Fifth Floor Hearing Room
4350 East-West Highway
Bethesda, Maryland

Wednesday, April 3, 1985

The above-entitled matter came on for oral argument,
pursuant to notice, at 10:00 a.m.

BEFORE:

ALAN S. ROSENTHAL, Chairman
Atomic Safety and Licensing Appeal Board

THOMAS S. MOORE, Member
Atomic Safety and Licensing Appeal Board

HOWARD A. WILBER, Member
Atomic Safety and Licensing Appeal Board

APPEARANCES:

ROBERT GUILD, Palmetto Alliance and
Carolina Environmental Study Group
(Intervenors)

J. MICHAEL McGARRY III and ALBERT V. CARR, JR.,
Duke Power Company, et al.
(Applicant)

GEORGE E. JOHNSON, Nuclear Regulatory
Commission Staff

P R O C E E D I N G S

1
2 CHAIRMAN ROSENTHAL: Please be seated. This
3 Board is hearing oral argument this morning on the appeals
4 taken by the Intervenors, Palmetto Alliance and Carolina
5 Environmental Study Group, from the Licensing Board's
6 three partial initial decisions in this Board's licensing
7 decision involving the Catawba Nuclear Station. The
8 argument is governed by the terms of our February 26 order.
9 As provided therein, each side is allowed a total of 45
10 minutes for the presentation of argument. If they so
11 desire, the Appellants may reserve a reasonable portion of
12 their time for rebuttal.

13 The February 26 order also noted that, in preparing for
14 argument, counsel should assume that the members of the
15 Board will be generally familiar with each of the partial
16 initial decisions, as well as with the appellate positions
17 of the parties as developed in their respective briefs.
18 We assume that this notation has been given proper
19 recognition and that we will not be favored, this morning,
20 with detailed background statements. Rather, counsel
21 should proceed immediately to the heart of the principal
22 issues presented by the appeals.

23 I will now call on counsel to introduce themselves
24 formally for the record, and we'll start with the counsel
25 for the Intervenor/Appellants, Mr. Guild.

1 MR. GUILD: Mr. Chairman, my name is Robert
2 Guild, Columbia, South Carolina. With me is Philip
3 Rutledge from the Carolina Environmental Study Group.

4 CHAIRMAN ROSENTHAL: Thank you, Mr. Guild. For
5 the Applicants?

6 MR. MC GARRY: I'm Michael McGarry, representing
7 Duke Power Company.

8 CHAIRMAN ROSENTHAL: Is Mr. Carr sharing the
9 argument with you?

10 MR. MC GARRY: I believe that I will be the
11 principal spokesman for Duke Power Company in this oral
12 argument, Mr. Chairman.

13 CHAIRMAN ROSENTHAL: All right. I therefore
14 assume that any questions that we might have with respect
15 to any of the issues can be addressed to you, Mr. McGarry?

16 MR. MC GARRY: That is correct, your Honor.

17 CHAIRMAN ROSENTHAL: Thank you.

18 For the Nuclear Regulatory Commission Staff,
19 Mr. Johnson?

20 MR. JOHNSON: Yes, sir. I will be making the
21 argument for the Nuclear Regulatory Commission Staff, sir.

22 CHAIRMAN ROSENTHAL: Thank you, Mr. Johnson.

23 All right, Mr. Guild, you may proceed.

24 MR. GUILD: Thank you, Mr. Chairman.

25 CHAIRMAN ROSENTHAL: I assume, Mr. Guild, that

1 you will wish to preserve some time for rebuttal?

2 MR. GUILD: Yes. If it please the Board, I ask
3 you reserve five minutes to reply, if need be, to
4 Applicants and Staff.

5 Mr. Chairman, if I may begin?

6 The record in the Catawba proceeding in the view of the
7 Appellants, Palmetto Alliance and the Carolina
8 Environmental Study Group, reflects a serious erosion in
9 the Commission's adjudicatory process, both in assuring
10 adequate protection of the public health and safety as
11 well as for protection of the private hearing rights
12 interests of parties, Palmetto Alliance and CESH, which
13 hearing rights are assured by the Atomic Energy Act,
14 Environmental Policy Act, and the Administrative Procedure
15 Act. We urge that the status of the record is one that
16 can only be characterized as flawed and incomplete for
17 reaching the critical determination of a definitive
18 finding of safety which the Supreme Court urges is the
19 task of the Commission at this stage.

20 The relief we seek is a remand to the Atomic Safety and
21 Licensing Board for instructions to reopen discovery, as
22 urged, for the conduct of an independent review of
23 construction and quality at the Catawba facility, and for
24 the consideration of a number of important safety and
25 environmental claims which the Licensing Board has

1 rejected.

2 Let me turn first to the issue of quality assurance.

3 The burden of proof, of course, remains with the
4 Applicants, Duke Power Company, et al. However, our view
5 is that the Licensing Board in failing to properly
6 consider this Appeal Board's instructions on the critical
7 question of quality assurance reflected in your Calloway
8 decision --

9 CHAIRMAN ROSENTHAL: Let's stop right there,
10 Mr. Guild. Is it your contention that this record
11 establishes that there has been a pervasive breakdown in
12 quality assurance? Or is it your contention that the
13 record establishes that there remain defective equipment
14 or structures of safety significance? And, if so,
15 specifically what does the record establish in one regard
16 or another, because that's what we are talking about if we
17 are invoking the Calloway decision, aren't we? We are not
18 talking about whether there have been some quality
19 assurance deficiencies. Calloway recognized in projects
20 of this size there will always be deficiencies of that
21 nature.

22 MR. GUILD: Yes, sir. Calloway, in our view,
23 teaches two fundamental points. First, that of course one
24 must assure oneself that ascertained defects have been
25 remedied, that there are no safety significant flaws

1 remaining in the plant.

2 CHAIRMAN ROSENTHAL: What ascertained defects
3 have not been remedied in this instance?

4 MR. GUILD: In our view, there are serious
5 defects known to exist in the facility that compromise its
6 safety.

7 CHAIRMAN ROSENTHAL: What are they?

8 MR. GUILD: I'll point to those reflected in the
9 most recent decision, on the foreman override process.

10 Specifically, first and foremost, the conscious
11 violation of regulatory commitments by Applicants to abide --

12 CHAIRMAN ROSENTHAL: We are not talking about
13 that. You are telling me that there are --

14 MR. GUILD: Yes, sir, if I may.

15 CHAIRMAN ROSENTHAL: -- equipment in this
16 facility that has deficiencies in it which have not been
17 remedied. I'm asking you to identify the specific
18 equipment or structure.

19 MR. GUILD: Absolutely.

20 CHAIRMAN ROSENTHAL: Which you say is deficient.

21 MR. GUILD: Right. Safety-related, critical
22 welds in the primary and associated systems that have been
23 performed in violation of regulatory commitments to abide
24 by interpass temperature controls, which are therefore
25 sensitive to intergranular stress corrosion cracking.

1 Applicants have a regulatory commitment, pursuant to
2 regular guide 1.44, to assure that there is protection
3 against sensitization. They have implemented that
4 commitment through a commitment to a 350-degree F
5 interpass temperature requirement for stainless steel
6 socket welds, and that requirement was consciously
7 circumvented by foremen, pressuring and directing their
8 craft, particularly welders in this instance, to weld in
9 derogation of that standard in order to get the job done
10 faster.

11 CHAIRMAN ROSENTHAL: The record establishes
12 there are defective welds; is that your position?

13 MR. GUILD: The record establishes that they
14 fail to meet that commitment.

15 JUDGE WILBER: How do they do that? Are you
16 saying because of surveys made on them? How do you know
17 they are defective?

18 MR. GUILD: Sir, we know they are defective and
19 were welded without abiding through interpass controls --

20 JUDGE WILBER: And where does this come from,
21 the fact that they didn't abide by interpass temperatures?

22 MR. GUILD: In a number of fashions. First
23 through direct evidence from the craftsmen involved.
24 Sworn statements.

25 JUDGE WILBER: They measured it?

1 MR. GUILD: Sworn statements that they violated
2 interpass temperature at the direction of their
3 supervisors.

4 JUDGE WILBER: I don't understand. Did they
5 measure it? Or how was this accomplished? Was it just an
6 estimate on their part that they violated the temperature?

7 MR. GUILD: Well, it's accomplished in a number
8 of fashions. They employed temperature sticks that were
9 designed to indicate whether the temperature exceeded the
10 350-degree maximum interpass temperature requirement, and
11 those temp sticks reflected a failure of those welds to
12 pass.

13 Through experience as craftsmen, they understood that a
14 weld that appeared in a blackened condition, charred and
15 blackened, was indicative of weldments that had been
16 performed without adherence to interpass temperature
17 requirements.

18 It seems, Mr. Wilber, that the evidence is beyond
19 dispute that there were, in fact, craftsmen who understood
20 that they were violating instructions to abide by
21 interpass temperature requirements.

22 Now Applicants, in a facile approach to this technical
23 question of violation of interpass temperature control,
24 attempt to suggest that they did a study which showed that
25 there could be -- they could not verify that welds had

1 been, in fact, performed in violation of the interpass
2 temperature control requirements.

3 What they in fact showed, their own people
4 characterized as misleading -- they did not report to the
5 Licensing Board or the parties until discovered in the
6 process of discovery -- was that in fact their field
7 testing identified a significant proportion of welds that
8 were tested that violated the ASTM practice acceptability
9 standard for sensitization.

10 Further, that lab tests that the company performed
11 indicated that they simply could not tell one way or the
12 other whether or not the sensitized welds were performed
13 in violation of interpass temperature requirement.

14 In fact, what the evidence reflected was that the
15 350-degree F interpass temperature requirement was likely --
16 it was likely insufficiently conservative, given the
17 materials that were employed, to assure that there would
18 not be sensitization.

19 In other words, sensitization was found in welds that
20 were welded at temperatures even lower than 350 degrees F.

21 But the evidence that's directly from the craftsmen is
22 undisputed that their foremen were directing them to get
23 the work done regardless of whether they abided the temp
24 pass temperature requirement.

25 The only conclusion that one can reach -- and the Staff

1 reached this conclusion and the Licensing Board reached
2 this conclusion -- was that there had been welds performed
3 in violation of the interpass temperature requirement.

4 Now, we -- it's a slim reed to rely upon that
5 additional conservatism will alleviate the ultimate fear
6 that those welds will fail in service. The assertion by
7 the Applicants, post facto, after ignoring or
8 transgressing the interpass temperature commitment, is
9 that water chemistry will assure that the corrosive
10 environment will minimize the likelihood of failure in
11 service. But that reduced level of safety conservatism is
12 something that, one, is inconsistent with the requirement
13 that they meet the original safety commitment; and, second,
14 reflects known reductions in safety and, we submit, flaws
15 in construction.

16 JUDGE MOORE: Where does the interpass
17 temperature come from? Is it a code requirement?

18 MR. GUILD: We are told, sir, it's of obscure
19 origin and traditional application. The NRC consultant,
20 for example, said a Navy requirement is employed in the
21 Navy nuclear programs even more conservative than the
22 350-degree standard. It's adopted as part of the regular
23 guide, which I cite at 1.44.

24 JUDGE WILBER: Is 350 degrees in the regular
25 guide?

1 MR. GUILD: No, sir. But the 350 F is Duke's
2 procedural commitment to implement that regular guide and
3 reflects a safety commitment of the Applicants.

4 JUDGE MOORE: Do any of the weld codes have an
5 interpass temperature in them for this kind of weld?

6 MR. GUILD: Not that I am aware of.

7 JUDGE MOORE: Indeed, do any of the codes
8 disregard interpass temperature by labeling it a
9 noncritical element?

10 MR. GUILD: Well, sir, there's a technical
11 dispute that is not material to this point, as to
12 mechanical properties of the welds, that may bear on that.
13 But in terms of sensitization to intergranular stress
14 corrosion cracking, it appears that the clear regulatory
15 position of the agency is that protection against
16 sensitization is a critical element to minimize failure in
17 service, and that's a clear commitment. We can go back
18 and say the commitment doesn't make any difference or that
19 it's safe enough notwithstanding that.

20 JUDGE MOORE: But if the commitment is not
21 safety significant, what significance is it, other than a
22 procedural violation?

23 MR. GUILD: We think it's safety significant and
24 we think there wouldn't be a requirement, the regular
25 guide wouldn't exist, there wouldn't be a commitment by

1 the agency extracted from Applicants to abide this
2 standard if it wasn't safety significant.

3 JUDGE WILBER: I wish I shared your optimism
4 about all of those agency requirements.

5 MR. GUILD: The point clearly, though, is that
6 Applicants committed to it as a safety requirement. And
7 we are instructing their people -- they should have been
8 instructing their people to abide this requirement; and in
9 derogation of that requirement over at least four years, a
10 number of welding foremen in the face of a quality
11 assurance system that should have caught this, instructed,
12 directed, pressured and threatened their craft to violate
13 in derogation of this standard.

14 Now, one can say after the fact it doesn't matter. I
15 don't think that's an accurate view and I don't think
16 that's putting safety first and employing appropriate
17 conservatism. But it's clear that they did it in knowing
18 violation of it as a safety requirement.

19 Mr. Wilber, I'm sorry?

20 JUDGE WILBER: You said that if it weren't a
21 requirement, the regular guide would not have been written.

22 Is this the only thing in the regular guide that the
23 regular guide recommends to reduce the sensitization is
24 interpass temperature? Or is it one of many?

25 MR. GUILD: My recollection is that it's one of

1 several measures. Stress --

2 JUDGE WILBER: May or should or shall? I'm a
3 little -- I'm wondering if this is just something that is
4 a recommendation?

5 MR. GUILD: It's clearly a mandatory requirement
6 as a commitment by Applicants to the agency in obtaining
7 their construction permit and completing the plan
8 according to code specification and procedures.

9 JUDGE WILBER: Is there any distinction between
10 the types of reactor and attendant water quality?

11 MR. GUILD: That's certainly part of Applicant's
12 efforts to demonstrate that the matter is not of safety
13 significance, is that the problem has occurred
14 predominantly in boiling water reactors where there has
15 been a corroding environment.

16 But we submit that in the very systems where Duke did
17 its suppressed field weld tests -- those are sampling
18 lines in particular associated with the primary system --
19 that there is the potential for contamination. There's a
20 potential for stagnant process fluids. And, of course,
21 there's always the ever-present residual stresses from
22 welding and temperature and pressure stresses in operation.

23 So, clearly, two of the three elements necessary for
24 the actual occurrence of intergranular stress corrosion
25 cracking are present, and we think there's slim basis for

1 assurance that the third element will not be present
2 either, over the life of the plant.

3 CHAIRMAN ROSENTHAL: Apart from the matter we
4 have been discussing, the welds --

5 MR. GUILD: Yes, sir?

6 CHAIRMAN ROSENTHAL: Are there other aspects of
7 the construction of this plant that, in your judgment,
8 present a concrete safety hazard?

9 MR. GUILD: Absolutely. Yes, sir.

10 CHAIRMAN ROSENTHAL: What is it? I want to know
11 what equipment or what structure? I don't want
12 generalizations about failure to comply with particular
13 quality assurance requirements. Again we are talking --

14 MR. GUILD: Let's talk about the first prong of
15 your instructions in Calloway, and that is known uncorrected
16 construction defects.

17 CHAIRMAN ROSENTHAL: That's what we are talking
18 about. What besides these welds?

19 MR. GUILD: The foreman override, partial
20 initial decision, the evidence that was available to us in
21 the fall indicates clear known violations of requirements.

22 CHAIRMAN ROSENTHAL: I'm not interested in the
23 known violations of requirements as such. I would like
24 you to focus. Our time is something of the essence. I
25 would like you to focus on what it is in this plant that

1 is an uncorrected defect?

2 MR. GUILD: Undocumented repair of arc strike
3 damage. Clearly, evidence in the foreman override phase
4 of the quality assurance hearings indicated that under
5 pressure from foremen, foreman override craftsmen repaired
6 arc strike damage without proper process control; without
7 assuring that the repair of arc strike damage was
8 performed in a fashion that did not adversely affect the
9 safety of particular -- let's say a pipe.

10 Testimony indicates that, for example, welders in
11 carrying their welding rigs from one place to another, on
12 regular occasions, frequently would strike an accidental
13 arc. Some serious, some minor.

14 In order to expedite production in order to get the job
15 done quick, in order to save the company paper and time,
16 according to the testimony it was common practice for the
17 welders to simply file the defect or, in some cases if the
18 defect was sufficiently grave, to grind and reweld. And
19 that those arc strike damages were repaired without
20 process control, the process control being the necessary
21 predicate to assure that the actual work was done
22 according to specified codes and procedures.

23 Now, that's evidence.

24 Third --

25 JUDGE WILBER: What's the safety implication of

1 a repaired arc strike damage?

2 MR. GUILD: Evidence indicates from the NRC's
3 own consultant who reviewed the issue of intergranular
4 stress corrosion cracking, in reviewing a sample weld
5 there he found a hairline crack on the coupon that was a
6 hairline crack caused by an arc strike. That's an example
7 of the kind of adverse effect on a piece of -- a component
8 or pipe that can occur from an arc strike. It can be as
9 serious as causing a crack because of the added
10 temperature from the accidental arc strike, or it can be a
11 minor matter of simply a surface blemish or imperfection.
12 The problem is we just don't know, because no effort has
13 been made to look and determine specifically what arc
14 strike damage has existed out there.

15 Let me add another point. Similarly, foreman override
16 evidence indicates that there were cold pulling -- cold
17 springing of pipes, forced fitting of safety-related pipes
18 in derogation of the safety standards; that these
19 incidents, the ones that were specifically identified now,
20 were verified when Duke, in response to the concerns by
21 its employees, went back, looked at a couple of these cold
22 springing instances, cut the pipe open and found
23 unacceptable spring, indicating that the pipe had
24 originally been fit without proper authorization using
25 come-alongs and other mechanical kinds of means.

1 That has safety significance, potentially, in the sense
2 that --

3 JUDGE MOORE: Didn't the Licensing Board treat
4 each and every instance of that and find it was not
5 safety significant?

6 MR. GUILD: The Licensing Board reached the
7 conclusion we think unsupportable by the evidence
8 available.

9 JUDGE MOORE: What's the standard on which we
10 review facts?

11 MR. GUILD: Well, sir, my familiarity with your
12 instructions in reviewing the McGuire license is that, in
13 essence, this Board has the authority to find facts itself;
14 that this is not a court of appeals reviewing under
15 substantial evidence tests.

16 JUDGE MOORE: We do, but the evidence has to be
17 overwhelming and convince us the facts are wrong. It's a
18 very high standard; is it not?

19 MR. GUILD: I don't think that this Board should
20 lightly undertake that task, but we think it's compelled
21 here.

22 The fundamental problem is this, Judge Moore: There
23 simply is no sufficient known evidence to be able to reach
24 the kind of definitive findings of safety on these very
25 important questions that was reached by the Licensing

1 Board at the very 11th hour. They are relying in essence
2 upon an affidavit from a Duke employee, taken by a Duke
3 investigator -- in our judgment an investigation designed
4 from the outset to lead to the foregone conclusion that
5 these were not problems -- okay? -- and those affidavit
6 evidence are the extent of the factual basis for reaching
7 conclusions about the lack of safety significance of these
8 practices.

9 One simply cannot support the definitive finding of
10 safety based on an affidavit that's not been subject to
11 cross-examination, on no further field work, no further
12 investigation. And that's the status of the record on
13 this issue.

14 CHAIRMAN ROSENTHAL: I think you can count on us
15 to look at the record. I want you to have the time in
16 order to address some of your other arguments.

17 MR. GUILD: All right, sir.

18 CHAIRMAN ROSENTHAL: But I just want to say:
19 Are there any other specific -- without going into detail
20 on them, any other specific deficiencies that you believe
21 the record establishes have not been corrected?

22 MR. GUILD: The foreman override PID enumerates
23 those, and I have just mentioned them.

24 CHAIRMAN ROSENTHAL: All right.

25 MR. GUILD: In the June 22nd partial initial

1 decision in the principal quality assurance case, the
2 Board indicated there were a number of defects that were,
3 at the point of their consideration, brought to the
4 attention of Applicants only by the extraordinary measures
5 taken by the welding quality control inspectors. They
6 were not identified in the normal course of application of
7 Duke's quality assurance program.

8 I can't state as a matter of fact that any of those
9 remain uncorrected as of this date. The significance,
10 though, for purposes of this Board's consideration, is
11 that the quality assurance system failed to work at the
12 time that it should have worked. All right?

13 Let me turn to the second prong of this Board's
14 Calloway instruction, and this is the prong which I think
15 proves most seriously troubling in the record at Catawba.
16 And that is, essentially, looking at the quality assurance
17 program and its implementation and the flaws in that
18 program, and drawing from a review of those flaws, an
19 analysis of the implications of those flaws for the
20 existence of yet undetected deficiencies in construction.

21 Here we have the most serious problems. The evidence
22 in Catawba available to Intervenors as participants only
23 through the discovery process -- not identified by the
24 Nuclear Regulatory Commission's enforcement staff, but
25 only through the course of this adjudication -- indicates

1 serious structural and fundamental flaws in Duke's quality
2 assurance system. I am going to focus on one because I
3 think it is exemplary.

4 The evidence found by the Licensing Board charging Duke
5 Power Company as a corporate entity, because of the
6 involvement of the senior quality assurance managers, with
7 illegal retaliation and recrimination against a quality
8 control inspector supervisor, a Mr. Gary --

9 CHAIRMAN ROSENTHAL: Was this pervasive? Were
10 there a lot of inspectors that were being subjected to
11 retaliatory measures or was this an isolated instance?

12 MR. GUILD: One simply does not know.

13 CHAIRMAN ROSENTHAL: What does the record
14 establish? Does the record establish one instance or a
15 number of them?

16 MR. GUILD: There are a number of instances of
17 harassment of quality control inspectors. It establishes
18 only one instance, only one known to the party, of a
19 senior quality control inspector who supervised a crew of
20 welding inspectors who himself, because -- and this is the
21 language of the Licensing Board -- because of his crew's --
22 multiple inspectors now -- "crew's commitment to quality
23 enforcement procedures and expression of safety controls.
24 Now, "Retaliation against an individual supervisor because
25 of his subordinates' efforts to do the job right is

1 violation of the spirit of the Commission's substantive
2 antidiscrimination rule, 50.7, this Board's teaching in
3 the Calloway decision, appendix B.B quality assurance
4 requirement, and ultimately the reasonable assurance
5 standards of the Commission's substantive safety
6 regulations." That's the Licensing Board's finding.

7 That finding was attributed to Duke's senior quality
8 assurance manager, Mr. George Greer. It was also
9 attributed to the senior quality assurance manager at the
10 Catawba site, Mr. Larry Davis. The Licensing Board found,
11 because of the senior status of these individuals, it was
12 fully chargeable to Duke Power Company.

13 That itself is very, very seriously troubling. The
14 Commission's own substantive implication on implementing
15 the Energy Reorganization Act antidiscrimination
16 provisions make a finding of violation of that provision
17 the basis for license denial, license suspension, license
18 modification, or civil penalties.

19 Currently there is a request by my clients for a
20 director's decision under 2206 to take action because of
21 the finding of discrimination against Mr. Beau Ross. But
22 the licensing Board in this case simply concluded that it
23 was enough to slap the Applicant's wrist by publicly
24 exposing this practice in its licensing decision without
25 more, and that there was -- since there was no other

1 evidence of others being victimized by this practice,
2 although if there were a pattern of this practice it would
3 implicate entitlement to a license, the Board simply
4 concludes without evidence that this particular incident
5 does not impugn overall the integrity of the quality
6 assurance program.

7 Now, it relies improperly in reaching that conclusion
8 on simply saying, first, when responding to questions by
9 their own counsel, Applicant's counsel, as to whether the
10 welding inspectors thought the plant was safe? They all
11 said it was. They all thought it was safe.

12 JUDGE WILBER: What was the effects of this
13 intimidation or whatever you wish to call it, of Mr. Ross?
14 Did that result in an unsafe situation out there?

15 MR. GUILD: We clearly believe so. What other
16 conclusion can we draw?

17 JUDGE WILBER: What did Mr. Ross say about his
18 work?

19 MR. GUILD: Mr. Ross said -- and this is the
20 point I was trying to reach -- that in response to the
21 question from his own counsel, "Did you continue to do
22 your job?" Of course he is going to say, "I continued to
23 do my job."

24 JUDGE WILBER: Do you have anything to dispute
25 that?

1 MR. GUILD: One can only say, sir, that when one
2 is harassed, when one is intimidated, that by definition
3 this Board has reached -- has, essentially, expressed the
4 same view, that harassment and intimidation's effect is
5 that it works. It accomplishes its end, and that is it
6 discourages one from doing one's job.

7 One can't quantify that. But that is exactly, we think,
8 the point of your Calloway teaching -- is that when one
9 looks at the implication of such a fundamental flaw,
10 reaching to the highest corridors of Applicant's quality
11 assurance organization, one must do more than simply
12 glibly assume that in the absence of known other examples
13 that there is no -- it does not raise, in your words, a
14 legitimate doubt as to the overall integrity of the
15 facility.

16 We think that it's clear that when one senior quality
17 assurance manager retaliates against a conscientious
18 supervisor whose crew is trying to do their job, that one
19 must do more than simply assume that there are no other
20 instances out there.

21 JUDGE MOORE: Did you put forth any evidence to
22 support that assumption?

23 MR. GUILD: What we did, Judge Moore, we sought
24 then, and prior to that, and subsequent to that, an
25 opportunity, as litigants, to, through the discovery

1 process, obtain additional evidence.

2 The evidence that we obtained under the welding
3 inspector concerns that ultimately led to the production
4 of the evidence of harassment of Mr. Beau Ross and others
5 was obtained, in the Board's own terms, only at the last
6 minute in discovery, and the Board criticized Applicants
7 and the NRC Staff for essentially sitting on this evidence
8 when they should have disclosed it earlier.

9 We came forward and asked to extend discovery because
10 in the course of reviewing the welding inspector concerns
11 we discovered that the only semi-independent review of
12 quality assurance at Catawba done under INPO standards in
13 the self initiated evaluation format indicated, as the
14 Board characterized it, serious quality assurance flaws.
15 We sought to obtain discovery about evidence of flaws in
16 specific safety systems that were indicated in that report
17 and evidence of flaws that extended from design through
18 the testing phase, including fabrication and installation.

19 The Board, faced with what it understood were its
20 instructions to get this licensing decision out by the
21 Applicant's fuel load date -- an improper interpretation,
22 we feel, of the Commission's statement of policy on
23 licensing proceedings -- said, in essence, "We are not
24 going to give you that discovery opportunity. We are
25 going to wait and see."

1 They listened to a panel of the sponsors of this study,
2 without giving us an opportunity to prepare through
3 discovery for cross-examination, and on the last day of
4 the hearings or at the termination of the hearings said:
5 "Time is up. No further opportunity."

6 In addition, when in camera witnesses came forward who
7 raised serious safety issues, which were ultimately to be
8 verified in the reopened foreman override hearings, we
9 again sought to reopen discovery. Welder Sam Nunn raised
10 the question initially of foreman override. The Staff
11 denied on the record in presenting its case there was any
12 question -- any problem with harassment of workers, of
13 pressure to violate rules. They had taken an adversary
14 position saying there was no problem of this sort.

15 Yet, when they pursued their investigation of his
16 concerns of foreman override, they discovered what has
17 come to be characterized as the "welder B incident": a
18 welder saying that for a period of four years his foreman
19 had been standing over him, hiding on the second shift,
20 performing these welds in derogation of the interpass
21 temperature requirements, and then threatening this
22 individual and others, physically, should his involvement
23 in this practice be identified.

24 We had no opportunity to conduct any discovery on those
25 issues until after the Company and Staff had performed

1 what they characterized as investigations of this issue,
2 and we then in a period of a week preparing for a reopened
3 series of hearings to address these very, very serious
4 foreman override claims, were charged with the task of
5 reviewing evidence from over 200 Duke craftsmen, thousands
6 of pages of documents. And we did the best we could.

7 But the short and the long of it, sir, is that tied
8 clearly to the flawed nature of this record is the fact
9 that, in essence, Intervenors have been forced to perform
10 what we think is the essence of the task of the NRC Staff
11 in this case, and that is investigating and probing
12 evidence that came to our attention, as adversaries, of
13 serious structural flaws in Duke's quality assurance
14 system. That's not our job.

15 We, of course, are interested in the issue of the
16 safety of the facility. We are interested in protecting
17 our personal interests. But we think if this Board's
18 Calloway teaching means anything, one must look at the
19 implications of what now is known on the record at Catawba.
20 And that is, on the one hand in terms of quality assurance,
21 the harassment, structural flaws, the lack of management
22 support for quality control inspectors in performing their
23 function, the violation of the independence criteria from
24 cost and schedule pressure; and, on the other side of the
25 coin, making the first even more serious, conscious

1 efforts by construction supervision to circumvent quality
2 assurance requirements. And that's the foreman override
3 practice.

4 On the one hand you have foremen pressuring workers to
5 violate the rules; posting lookouts to make sure that
6 quality control inspectors don't catch craftsmen violating
7 the rules; conscious circumvention of the quality
8 assurance requirements which the NRC Staff's witnesses
9 characterize as practices, you know -- I'll characterize
10 them as akin to detecting fraud by an accountant; a system
11 of accounting is designed not to find willful defalcation.

12 Similarly, the NRC Staff's witness said a system of
13 quality assurance catches honest mistakes. It's designed
14 to find, you know, defective workmanship that happens
15 because people make mistakes, but it's not designed to
16 detect willful circumvention. That is what we have
17 through foreman override.

18 CHAIRMAN ROSENTHAL: Mr. Guild, you have taken
19 half an hour. If you want to reserve 15 minutes for
20 rebuttal, you better bring your presentation to a close.

21 MR. GUILD: Yes, I do. And let me conclude by
22 stating that we have raised a number of serious safety and
23 environmental issues. I'd be happy to address any
24 questions you may have about those subjects, now or upon
25 reply.

1 We think that those issues must be addressed before the
2 definitive finding of safety can be reached, and before
3 the Commission can authorize, under the National
4 Environmental Policy Act, the federal action of licensing
5 this facility.

6 On the quality assurance record, though, we simply
7 submit that the fundamental flaws in Duke's implementation
8 of its quality assurance system, if your Calloway decision
9 is to mean anything -- not talking about lapses of
10 individual QA procedures or mistakes, but willful
11 circumvention of the QA system -- cannot support licensing
12 in this record without more. One simply has to take an
13 independent look at the quality of construction to be able
14 to resolve that legitimate doubt that we think has to be
15 seen as present in this record.

16 Thank you.

17 JUDGE WILBER: Mr. Guild, before you leave I
18 have one question on your emergency planning, the sirens.

19 MR. GUILD: Yes, sir?

20 JUDGE WILBER: Did you anywhere in the record
21 find any flaws in the Applicant's consultant's work, where
22 I believe he specified the placement of 10 more sirens?

23 MR. GUILD: In terms of the matter of the 10
24 more sirens, no, sir. The evidence clearly reflects that
25 the sirens alone will not meet the 100 percent

1 notification obligation. That's undisputed. People are
2 not going to hear the sirens. And that is the reason --

3 JUDGE WILBER: No, I'm saying his survey which
4 he claims meets the requirements. Did you find any flaws
5 in that?

6 MR. GUILD: In the sense that it doesn't
7 demonstrate that they meet the obligation for 100 percent
8 prompt alert, it is flawed. In terms of his methodology,
9 in terms of his technical approach, that wasn't an issue.
10 The issue was simply people are not going to hear the
11 sirens, it's not going to do the job. Therefore the
12 supplementary means of notification must be implemented.
13 Those can't be done without doing the field survey and
14 testing that FEMA is obligated to perform and hasn't
15 performed.

16 CHAIRMAN ROSENTHAL: Thank you, Mr. Guild.
17 Mr. McGarry? I assume correctly, I trust, that you and
18 Mr. Johnson are dividing the 45 minutes more or less
19 equally?

20 MR. MC GARRY: Equally, your Honor. 22-1/2
21 minutes apiece.

22 CHAIRMAN ROSENTHAL: I don't know if we are
23 going to be that precise, but proceed.

24 MR. MC GARRY: Thank you, your Honor.

25 Four issues are involved in this case, as this Board is

1 well aware: quality assurance issue, discovery,
2 regulation of the hearing issue, and emergency planning
3 siren issue; and dismissal of various contentions.

4 Addressing the quality assurance issue, the question is,
5 is the Catawba plant a safe plant? Is there an effective
6 quality assurance program?

7 The Board found that there was; the NRC Staff found
8 that there was; the licensee, Duke Power Company, found
9 there was. The Licensing Board's determination was based
10 on over 50 days of hearing on this subject and examination
11 of hundreds of documents.

12 The NRC's determination was based on hundreds of
13 man-hours of inspections, of on-site observation, of
14 review of procedures, and of countless interviews.

15 Duke's determination was based on a detailed review of
16 the subject allegations and a thorough knowledge of the
17 program.

18 The Intervenor has set forth the goal in its brief of
19 an effective quality assurance program. Two points, as
20 this Board has pointed out in Calloway, are of
21 significance: First, has deficient work been identified?
22 And second, has deficient work been corrected?

23 Taking the latter point first, has deficient work been
24 corrected? This Board has asked, today, the Intervenor to
25 set forth any areas of deficient work that remain

1 uncorrected in this plant. Let's address those.

2 The first is the sensitized weld issue. That point is,
3 we believe, adequately briefed both by the licensee, Duke
4 Power Company, and the NRC.

5 The simple point is, there are no unsafe welds at
6 Catawba that result from sensitization.

7 As the evidence clearly points out, you need three
8 elements: stress, you need sensitization, and you need a
9 corrosive environment. The evidence is clear on the point
10 that there is absolutely no corrosive environment at the
11 Catawba plant, and therefore the sensitized welds do not
12 pose a problem.

13 Indeed, the Staff's witness, when asked a question in
14 this regard, said there are sensitized welds on numerous
15 plants throughout the country.

16 JUDGE MOORE: Do you concede that the welds are
17 sensitized?

18 MR. MC GARRY: We will not concede the welds are
19 sensitized. They may be sensitized. We will not concede
20 they are, because we ran the tests -- as, Judge Moore, you
21 are familiar with -- and those tests were inconclusive.
22 Therefore we can't concede. But accept for the sake of
23 argument that there are some sensitized welds, we then
24 rely on the corrosive environment.

25 JUDGE MOORE: Assuming that there are, what's

1 the magnitude, in numbers, that are in issue here, of
2 alleged violations of interpass temperature?

3 MR. MC GARRY: They are not great. If we look
4 at the 217 individuals who gave the 300 affidavits, one
5 would then look at the number of interpass temperature
6 violations that were alleged, and it is clearly --

7 JUDGE MOORE: Just a handful?

8 MR. MC GARRY: A handful.

9 JUDGE MOORE: But they are on safety-related
10 equipment or systems?

11 MR. MC GARRY: Some are. Some are not. And the
12 comfort that this Board should take is with respect to
13 those allegations, Duke Power Company went out and
14 investigated every single one of those welds, took any
15 corrective action that was necessary, and resolved the
16 matter to the satisfaction of the person who made the
17 allegation.

18 JUDGE MOORE: Does the record establish that if
19 an interpass temperature of 350 degrees fahrenheit is
20 violated, that you end up with a sensitized weld?

21 MR. MC GARRY: No, it does not. We tried to
22 conduct tests that would tell us whether or not interpass
23 temperature was violated. We ran a series of tests from
24 250 degrees to 750 degrees, and we are not able to draw
25 any significant or definitive conclusions.

1 JUDGE MOORE: I'll ask you the same question I
2 asked earlier: Do any of the codes deal with interpass
3 temperature?

4 MR. MC GARRY: No, sir, except Charpy V notch
5 test requirements, which are not in issue in this case.
6 And that is pointed out in Applicant's Exhibit 116.

7 So, for the welds in question, the activity in question,
8 there are absolutely no code requirements that are
9 applicable.

10 JUDGE MOORE: Was there a requirement by Duke to
11 abide by a regular guide that in any way implicates this
12 interpass temperature?

13 MR. MC GARRY: Yes, sir. Duke in a regulatory
14 procedure said it would [^]would abide by regular guidance, I
15 believe it's 134.

16 JUDGE MOORE: Does that regular guide mention
17 the 350-degree interpass temperature?

18 MR. MC GARRY: No, it does not.

19 JUDGE MOORE: How does one conclude, then, that
20 Duke violated that commitment if there is no mention of an
21 interpass temperature in the regular guide?

22 MR. MC GARRY: One would conclude because, in
23 Duke's procedure, they do make reference to the 350.
24 That's internal Duke procedure.

25 JUDGE MOORE: You have an internal --

1 MR. MC GARRY: Yes.

2 JUDGE MOORE: How did you arrive at 350 degrees?

3 MR. MC GARRY: We not dispute Mr. Guild's
4 statement. That is in the record. It's a long-standing
5 practice to come down to 350 degrees. None of the experts
6 could put their finger on the exact requirement. Quite
7 frankly, as counsel for the licensee, Mr. Carr and I asked
8 our witnesses to find out the answer to that question,
9 and they called all over the country and talked to the
10 most learned experts at various universities and could not
11 come up with that answer. It's just a long-standing
12 practice.

13 One other point I think is interesting here, Judge
14 Moore, and that is with respect to the 350-degree standard,
15 indeed it is a practice requirement, but it is not some
16 vital code requirement. And the point I'm trying to make
17 is, to determine whether or not you are down to 350
18 degrees, you can satisfy that requirement by putting your
19 hand on the pipe.

20 Now, that is not a very scientific means of determining
21 the temperature, but that is an acceptable practice in
22 industry. So I think you should take some comfort that
23 the 350 degrees has got some leeway in there.

24 CHAIRMAN ROSENTHAL: Let me move on to another
25 aspect of quality assurance, and that is the intimidation

1 and harassment.

2 Why isn't Mr. Guild right when he suggests that, if
3 you've got some incidents of that, all of the folks around
4 the plant presumably know it, and that might well lead to
5 an assumption or a presumption that there are some defects
6 that haven't come to light and they haven't come to light
7 because the intimidation and harassment assured that they
8 were being covered over?

9 MR. MC GARRY: I think we have to look at the
10 evidence in this case, and we have to look at the role of
11 the Board in this case.

12 The Licensing Board in this case took particular care
13 to address itself to that precise question. And it found
14 that all the employees continued to do their job, despite
15 any harassment that may be in evidence; despite any
16 retaliation that might be in evidence.

17 CHAIRMAN ROSENTHAL: What did they base that on?

18 MR. MC GARRY: They did their job and concluded
19 the plant was safe.

20 CHAIRMAN ROSENTHAL: What evidence did the Board
21 base that conclusion on, that all of these inspectors that
22 were involved in looking over the work continued to do
23 their jobs notwithstanding the fact that there apparently
24 were instances of harassment of inspectors?

25 MR. MC GARRY: Look at the incidents, Judge

1 Rosenthal. Look at the Reed-Jackson incident with
2 grinding disks.

3 The inspector -- it's not the Reed-Jackson, it's the
4 Jackson-MacKenzie. Jackson continued to do his job,
5 despite the physical contact there was between Jackson and
6 MacKenzie. He did his job.

7 That was the incident involving the weld rods, and he
8 took them from the pouch. He continued to do his job
9 despite the situations that they found themselves in.

10 Then the second part is, how about those inspectors who
11 weren't involved in the harassment? Did it affect them?
12 And that question was asked of the inspectors who
13 testified, and every one of them said it didn't affect
14 them. So, not only were the people who were actually
15 involved in the harassment not affected, the people who
16 heard about the harassment weren't affected in their jobs.

17 CHAIRMAN ROSENTHAL: It just happened there was
18 a group of stout-hearted inspectors there, this just
19 rolled off their back?

20 MR. MC GARRY: It just happened they are Duke
21 Power Company employees and that's the way Duke Power
22 Company does business; that's the way we run our shop.
23 And I think the record amply supports that, not only with
24 these welding inspectors but the craftsmen overrides. We
25 are very proud of our employees.

1 As you point out, this is a large project. There are
2 going to be defects. We don't like to see harassment or
3 retaliation. It doesn't mean it doesn't happen, but it
4 doesn't mean the plant is not safe.

5 I was talking about the welds, and I think I have
6 addressed that. Two other things were mentioned, the arc
7 strikes and the cold spring.

8 As I pointed out with respect to the welds, the arc
9 strikes and cold springing allegations were thoroughly
10 reviewed, explored by Duke's task force and found to be
11 adequate or corrective action was taken. The matters were
12 resolved to the satisfaction of the people making the
13 allegations. Therefore, any potential defects that
14 existed with arc strikes or cold springing has been
15 resolved. There is no evidence whatsoever in the record
16 to the contrary.

17 CHAIRMAN ROSENTHAL: What do you have to say
18 about Mr. Guild's claim that this record would have
19 reflected a lot more with respect to pervasive quality
20 assurance problems had not the Licensing Board cut off,
21 unreasonably, discovery simply to assure that the
22 Applicant's schedules were met?

23 MR. MC GARRY: I think the Board had a unique
24 way and proper way of addressing this issue: they said in
25 their decision they were looking for footprints, they

1 didn't need a microscope.

2 With respect to the issue concerning quality assurance,
3 90 percent of the issues raised were raised by those
4 witnesses who testified. If there was a pervasive problem,
5 I submit 90 percent out of 100 is going to tell you
6 whether or not there is a pervasive problem.

7 Curiously we offered all the exhibits, the affidavits,
8 100 percent of them, into evidence, and the Intervenors
9 opposed their admission. With respect to foreman override,
10 every single affidavit was admitted into evidence and,
11 indeed, the Intervenors in their proposed findings relied
12 upon some of the affidavits of individuals who didn't come
13 to the stand to testify.

14 So the entire universe for all intents and purposes in
15 both the welding inspector concerns and the foreman
16 override is in the evidence. It is part of the record.
17 And that was the basis on which the Board could then
18 determine, based on Calloway, whether or not there was a
19 pervasive finding.

20 CHAIRMAN ROSENTHAL: Are you suggesting that if
21 there had been a larger period given for discovery, that
22 that larger period would have been of no particular avail?

23 MR. MC GARRY: I think one could reach that, but
24 let's talk about discovery. First of all let's talk about
25 the first phase of discovery, which dealt with the welding

1 inspector concerns.

2 There was clearly a sufficient period of time for that
3 discovery. What happens if one goes through the record is
4 clear. The Intervenors sat on their rights of discovery.
5 They didn't participate in the discovery process like they
6 should have. They only visited the Duke discovery room on
7 several instances.

8 There were hundreds of documents in that discovery room.
9 We listed, we identified them in our interrogatory
10 responses. Any diligent discoverer --

11 JUDGE MOORE: Was the INPO report categorized or
12 indexed by you?

13 MR. MC GARRY: Yes, it was. And let's talk
14 about the INPO report, because that's a matter that
15 continues to be raised.

16 JUDGE MOORE: Did the Licensing Board make a
17 finding? Or was it just a comment that that could have
18 been turned over earlier?

19 MR. MC GARRY: Yes, and we think they are wrong.

20 JUDGE MOORE: Did they make a finding it could
21 have been? Was it ever contested in front of him that it
22 was covered by a discovery request?

23 MR. MC GARRY: Yes, it was. Yes, it was.

24 We, in our brief take issue with that. And the reason
25 we take issue with it, if you are interested, Judge Moore,

1 is that the pertinent interrogatory was: "All audits that
2 have been conducted pursuant to criterion 18 which show
3 defects," and thus and such.

4 This audit was never performed by -- pursuant to
5 criterion 18. It was a whole different mechanism.

6 JUDGE MOORE: Nevertheless it was indexed by you
7 in response to that interrogatory? Or was it only indexed
8 in the Duke discovery document room?

9 MR. MC GARRY: The INPO report was not put in
10 the public document room until May of 1983, at the close
11 of discovery, and then that document became known.

12 JUDGE MOORE: Is that when the Intervenors found
13 the document?

14 MR. MC GARRY: No. That document then became
15 available, I think the record reflects, in the latter part
16 of the summer; about August time frame, is my recollection.

17 JUDGE MOORE: But there was a dispute in front
18 of the Licensing Board as to whether that report was
19 covered by an interrogatory request?

20 MR. MC GARRY: That is correct. And, again, our
21 brief addresses that in a footnote.

22 Now, be that as it may, we think the Board took a very
23 reasonable approach in resolving the INPO question, should
24 there be discovery on the INPO document.

25 As the Board well knows, a full day was devoted to

1 ascertaining the extent of this document, and the Board
2 concluded, based on thorough questioning of witnesses who
3 the Intervenors thought would be the appropriate witnesses,
4 on areas that the Intervenors thought would be appropriate
5 areas, and on cross-examination conducted by the
6 Intervenors, that, indeed, discovery wasn't warranted. It
7 was looking at a general question of the significance of
8 the document to the proceeding, and it determined that it
9 was not that significant.

10 If anything, it was very helpful to the Duke Power
11 Company case.

12 CHAIRMAN ROSENTHAL: Let me ask you this:
13 What's your response to the Intervenor's claim with
14 respect to the limitation placed upon them on the number
15 of witnesses and the time for cross-examination with
16 regard to the foreman override issue? As I recall their
17 brief, they draw quite a contrast between the 217
18 affidavits of Duke employees which were submitted by your
19 clients, and the five that they were permitted to put into
20 evidence.

21 MR. MC GARRY: That last point, Judge Rosenthal,
22 they weren't limited to five. In fact the Licensing Board
23 told them at the outset, much to our chagrin, that "If you
24 could produce 12 or 15 witnesses, that would shake the
25 foundation of the Applicant's case; then you've made your

1 case." And I can tell you, Mr. Carr and I looked at one
2 another and scratched our heads. We didn't like that low
3 number.

4 And, despite being advised that that's all they had to
5 do, they spent a lot of time wasting time on what we
6 believe was needless cross-examination of other witnesses.

7 JUDGE MOORE: Did they have an opportunity to
8 depose any of these inspectors?

9 MR. MC GARRY: They certainly did. And they
10 didn't.

11 JUDGE MOORE: So this would have been -- they
12 wanted to call a substantial number of them without
13 knowing anything about these witnesses, put them on the
14 stand and start asking them questions? No discovery? No --

15 MR. MC GARRY: No. That's not correct. They
16 had access to who those individuals were and could have
17 talked to them.

18 JUDGE MOORE: They could have interviewed them?

19 MR. MC GARRY: They could have interviewed them.
20 Which, as an aside, there is a point made in the discovery
21 argument of the Intervenor in their brief that they
22 weren't able to contact our employees until this Licensing
23 Board and the Commission stepped in and said: "The
24 Applicant is wrong when it says you can't talk -- you,
25 Intervenor -- can't talk to Applicant's witness."

1 That's wrong. We did take that position as a trial
2 strategy point, that when we finally closed the doors to
3 the courtroom and began the case that those were our
4 witnesses and we wanted them to talk to us and not to the
5 intervenor because we didn't want any surprises. But the
6 record is clear that in the discovery phase we provided
7 the names and telephone numbers and addresses of all these
8 individuals back in March of 1983, and they had access and,
9 in fact, the record is also clear Mr. Ross and Mr. Bryant
10 testified they were contacted by Billie Garde back in
11 the early summer, late spring of the year, before this
12 issue ever arose. I just wanted to clear that up for the
13 record, that's an incorrect statement.

14 But to answer your question again, Judge Moore, they
15 had access to these individuals.

16 The last point, Judge Rosenthal, with respect to the
17 foreman override issue, is that they never complained, as
18 the Licensing Board pointed out, which was curious. The
19 Licensing Board when this issue came up said: "Here is
20 what we are going to do, and you all think about it; we'll
21 call you back in a conference call several days hence and
22 let's discuss what you think of it."

23 There was no objection ever raised to the process.

24 CHAIRMAN ROSENTHAL: They didn't object to the
25 limitations placed upon their cross-examination?

1 MR. MC GARRY: That issue hadn't arisen at that
2 particular point in time.

3 CHAIRMAN ROSENTHAL: I would have thought so.
4 When it did arise I would assume there was an objection,
5 was there not?

6 MR. MC GARRY: I imagine there was, because I
7 think Mr. Guild regularly objected to quite a bit. I
8 can't recall whether or not he did object on that, quite
9 frankly.

10 CHAIRMAN ROSENTHAL: Is it true that they were
11 only allowed to cross-examine 15 of the 35 welding
12 inspectors and supervisors that appeared as witnesses?

13 MR. MC GARRY: Welding -- I'm sorry, say that
14 again, please?

15 CHAIRMAN ROSENTHAL: I said: Is it true, as I
16 recall the Intervenor's claim, that of the 35 welding
17 inspectors and supervisors that appeared as witnesses,
18 they were only allowed to examine 15?

19 MR. MC GARRY: Every single welding inspector
20 who appeared as a witness, they were entitled to
21 cross-examine and did cross-examine. I think the question
22 might be that there were some welding inspectors who were
23 not called as witnesses.

24 CHAIRMAN ROSENTHAL: You are saying they had an
25 opportunity to cross-examine all witnesses that, in fact,

1 were called?

2 MR. MC GARRY: Absolutely. And they did.

3 JUDGE MOORE: But they were not given an
4 opportunity to call, carte blanche, any one of those
5 inspectors they wanted to?

6 MR. MC GARRY: No. That's not totally correct,
7 Judge Moore. There was a lot of discussion of who should
8 be called, and the Board said, "Look, let's list your top,
9 your best for your case, and then we'll take some more."
10 And that's, indeed, what happened. And that universe does
11 not equal the total number of welding inspectors, but as I
12 pointed out earlier, it does equal 90 percent of the
13 concerns raised by the welding inspectors.

14 CHAIRMAN ROSENTHAL: Okay. Mr. McGarry, your
15 22-1/2 minutes are running down.

16 I would like to ask you a question on an entirely
17 unrelated issue, and that is: With respect to the
18 Intervenors' argument regarding the transshipment of spent
19 fuel from either Oconee or McGuire or both to Catawba,
20 they relied on our decision in the Oconee/McGuire
21 proceeding for the proposition that the environmental
22 aspects of this had to be considered. And I found it
23 rather surprising that neither you in your brief nor the
24 Staff in its brief referred to their reliance on
25 Oconee/McGuire. I'm just curious as to whether that

1 should be taken as a tacit admission that the Intervenors
2 are correct in their claim that Oconee/McGuire does
3 establish that here there should have been a consideration
4 of the environmental effects of this transshipment, or
5 whether there was some other reason why you chose to
6 simply ignore their reliance on our decision?

7 MR. MC GARRY: I feel like I'm entering
8 Charlotte's web, here as this Board well appreciates.

9 JUDGE MOORE: Well, might I, as Templeton then
10 ask is it because you think Alab 651 is incorrectly
11 decided?

12 MR. MC GARRY: That's the transportation
13 decision? No, we think that was eminently, properly
14 decided.

15 CHAIRMAN ROSENTHAL: I'm sure you did. I had no
16 doubt about that.

17 JUDGE MOORE: Then why isn't it applicable here?

18 MR. MC GARRY: I want to say that it's
19 applicable to this case, but I'm not fully appreciating
20 the extent of the question.

21 JUDGE MOORE: What you did, as a matter of
22 background, was in your application for an operating
23 license, pursuant to part 50 of the Commission's
24 regulations, asked, or sought permission to store fuel
25 generated at facilities other than Oconee?

1 MR. MC GARRY: Correct.

2 JUDGE MOORE: And you didn't seek, at least
3 initially, a separate part 70 license for that permission?

4 MR. MC GARRY: Which?

5 JUDGE MOORE: Where is it written in the
6 regulations that you can combine a part 50 and part 70
7 proceeding and do it that way?

8 MR. MC GARRY: Again we are in the web, but in
9 the prior case we really -- initially we were proceeding
10 under part 50 and didn't have to proceed under part 70,
11 except for our construction schedule when we hadn't
12 received our part 50 license, and it was clear we wouldn't
13 receive our part 50 license in McGuire and indeed we
14 didn't receive it until 1981. But if we wanted to
15 transship, as we did back in '79 and '80, we needed to
16 have licensing authority, and you have to get that
17 licensing authority under part 70. That's why it was a
18 part 70 case as a part 50 case. There's nothing that
19 prevents us to seek this under part 50, I think, to answer
20 this question.

21 JUDGE MOORE: Why, then, do you say in footnote
22 6 of your original filing with the Licensing Board that,
23 as a matter of formal documentation, you would have to
24 file part 50 and part 70 applications?

25 MR. MC GARRY: Yes, but that's a different point,

1 your Honor. What that involves is security requirements
2 and approval of routes. It's that activity that would be
3 covered by those regulations.

4 CHAIRMAN ROSENTHAL: My point was simply this:
5 It's usual, I thought, where an appellant relies on a
6 decision of the very tribunal before which the appellant
7 is appearing, that the appellees come in and say either
8 the decision was wrong or the reliance on the decision was
9 misplaced or something. But here was not merely a
10 reliance, but a quotation from the decision, and it was
11 greeted by stony silence in the briefs of both the
12 Applicants and the Staff. And I just was asking whether
13 it was a tacit admission that your adversary was on target
14 in their reliance upon that decision?

15 MR. MC GARRY: Let me see if this is responsive.
16 The transportation decision of this Board said that the
17 environmental impacts of this transshipment activity had
18 to be considered. In that case, at the Licensing Board
19 phase, we tried to convince the Licensing Board that,
20 under table S-4, the environmental impacts of the
21 transportation activity from Oconee to McGuire were
22 covered under table S-4 and were covered on the Oconee
23 docket and you need not consider it.

24 That Licensing Board didn't buy that argument. This
25 Licensing Board bought the argument, and we think it's a

1 correct one.

2 CHAIRMAN ROSENTHAL: Okay. Your time has
3 expired.

4 JUDGE MOORE: I have a few more questions on
5 this point. I take it, then, the reason you believe that
6 it's appropriate and that the Licensing Board had
7 jurisdiction to consider your application to store Oconee
8 and McGuire fuel at Catawba, is dependent on the
9 conclusion that that request, although normally under a
10 part 70 license, is integral to the part 50 licensing
11 proceeding, and we have permitted in other situations,
12 such as Diablo Canyon and Limerick, the consideration of
13 part 70 license proceedings in a part 50. Is that --

14 MR. MC GARRY: I think that would be appropriate;
15 yes, your Honor.

16 JUDGE MOORE: Those prior examples, Diablo
17 Canyon was a case of moving fuel on-site before part 50
18 license was granted. Limerick is a case of moving it from
19 outdoors to indoors, into the facility, and then another
20 request to move it into the fuel pool for storage. That
21 clearly, under the language of those cases, is an integral
22 part of the operation.

23 Why is storing spent fuel not generated at facility C
24 integral to the part 50 application of the Catawba license?

25 MR. MC GARRY: One on first blush would say it

1 is not integral. The integral part is that the spent fuel
2 pool was reviewed and the spent fuel pool was designed to
3 accommodate the spent fuels from other nuclear facilities.
4 So that issue was on the part 50 docket. Indeed --

5 JUDGE MOORE: In what sense was it designed and
6 reviewed?

7 MR. MC GARRY: To see whether or not the cooling
8 components were adequate; to see if the temperature was
9 adequate; to see if the spacing was adequate. All those
10 were reviewed on the part 50 docket involving both the
11 Oconee and McGuire fuel as well as the Catawba fuel. So
12 that then did come into the part 50 phase of the case.

13 The ability for Catawba to store other spent fuels from
14 Oconee and McGuire was on the part 50 docket, reviewed by
15 the Staff and subject to --

16 JUDGE MOORE: Even given that, I'm not sure I
17 can agree that it's necessarily integral to an operating
18 license for this facility.

19 MR. MC GARRY: It's not integral to the
20 operation of Catawba.

21 JUDGE MOORE: That's what we said in Diablo that
22 set the standard. I guess I'm troubled by the precedent
23 that in the future the transshipment won't be considered,
24 or should not be considered separately under just a part
25 70 proceeding; and indeed, if it's a "no significant

1 hazards" determination the hearings would be subsequent
2 and they'd be on with it. But I don't understand nor do I
3 necessarily agree with setting a precedent that you should
4 consider this transshipment and storage at a reactor that
5 didn't generate the fuel --

6 MR. MC GARRY: I guess there are two
7 considerations --

8 JUDGE MOORE: -- as part of the OL licensing
9 procedure.

10 MR. MC GARRY: Your concern could be either one
11 of two: I'm concerned about the opportunity of the
12 public, or I'm concerned about the jurisdiction of the
13 decisionmaker.

14 Now, with respect to the first concern, if you have a
15 concern about the public and their opportunity, there is
16 no question that the entire issue was before --

17 JUDGE MOORE: But the notice of opportunity for
18 hearing, which sets the Licensing Board's jurisdiction,
19 doesn't mention this.

20 MR. MC GARRY: It doesn't mention a lot of
21 things. It just mentions here is an application for a
22 license. And then as you well know, Judge Moore, what
23 happens in this process is the Intervenors are supposed to
24 come forward with contentions and, presumably, they have
25 looked at the documents that are available in the public

1 document room. Looking at those documents they would have
2 found this.

3 JUDGE MOORE: Well, that brings up -- how would
4 someone who lives on that transshipment route know, from
5 the notice of opportunity of hearing, and the notice
6 requirements of the APA, that you are going to talk and
7 litigate in this hearing transshipping fuel in front of
8 his front door?

9 CHAIRMAN ROSENTHAL: Sure. Why isn't -- if I
10 may follow on Mr. Moore's question, why wouldn't that
11 individual be reasonable in assuming that what we are
12 talking about is an operating license for the Catawba
13 facility and that all that will be involved is the
14 operation of that facility?

15 JUDGE MOORE: -- which is what the notice of
16 opportunity of hearing clearly says.

17 CHAIRMAN ROSENTHAL: It doesn't cast any thought,
18 does it, that in addition to the Catawba operation, that
19 you are going to be talking about transshipping spent fuel
20 from other facilities?

21 MR. MC GARRY: I don't believe that the notice
22 says that.

23 JUDGE MOORE: It doesn't.

24 CHAIRMAN ROSENTHAL: Or could be reasonably
25 interpreted as embracing that.

1 MR. MC GARRY: I would concur with that. I'll
2 still go -- I think we are unique, first that Catawba is
3 fairly proximate to both Oconee and McGuire, so --

4 JUDGE MOORE: Still, a lot of front doors get
5 passed in front of with the spent fuel.

6 MR. MC GARRY: Aside from the opportunity for
7 members of the public to go to the public document room --
8 let's leave that aside

9 JUDGE MOORE: But isn't that the purpose and the
10 requirement of the Administrative Procedure Act and the
11 Atomic Energy Act, to give notice of what is going to
12 transpire on the application for an operating license
13 pursuant to part 50 of the Commission's regulations?

14 MR. MC GARRY: I would say this. Let me back
15 off, then.

16 The environmental impact of transshipping from Oconee,
17 or transshipping to McGuire, is not a Catawba matter.
18 When I want a license for Oconee, I say to the public I'm
19 seeking an operating license for Oconee. Part of that
20 license is going to let me take this spent fuel and drive
21 down past your house 22 miles away, or 217 miles away, or
22 2000 miles away. It's going to let me do that.

23 Somebody sitting 2000 miles away I dare say isn't going
24 to be aware of the Oconee proceeding, but it lets me do
25 that and the public is on notice of that fact. That's

1 what they are doing.

2 It's an Oconee shipment, it's the Oconee license until
3 it comes to the McGuire door, and the Board found that the
4 McGuire license that takes you all the way up to the
5 Catawba door.

6 So the people from Oconee to Catawba, the people from
7 McGuire to Catawba, are governed under the Oconee and
8 McGuire license and not the Catawba license, and that's
9 why the people don't have to be concerned at Catawba.

10 JUDGE MOORE: Well, that assumes, then, that
11 Catawba is going to be a storage dump for spent fuel, and
12 I think that that's somewhat of a circular argument; isn't
13 it? It's one thing to say that the fuel is going to go
14 from the plant that generated it to a repository; it's
15 another thing to turn any or every nuclear power plant
16 into a repository.

17 MR. MC GARRY: That's the second. Now your
18 question is -- forget about the people on the highway and
19 the doors, because now you have moved to the plant, you've
20 now got a concern that we have got a nuclear repository
21 here.

22 The members of the public, they know if they look at
23 part 50, people who live around Catawba, know that that's
24 what's going to happen. Not permanent; interim. And that
25 issue was litigated or was available for litigation. I

1 believe it was a contention on that that was eventually
2 dismissed. Because we did assess the environmental
3 impacts at Catawba of keeping this fuel on-site.

4 JUDGE MOORE: Where is it taken into account to
5 get rid of all of the Oconee and McGuire fuel out of
6 Catawba, in addition to the Catawba fuel?

7 MR. MC GARRY: Oconee and McGuire's license,
8 because as I said the Oconee license lets me go 200 to
9 2000. They have only gone 117.

10 JUDGE MOORE: Is it your position, then, that
11 the S-4 table permits any number of way stops for Oconee
12 and McGuire and Catawba and any other reactors' fuel?

13 MR. MC GARRY: I don't think we have to reach
14 that. The question should be does it allow for reasonable
15 stops? Clearly this is a reasonable stop. This is along
16 the way. We are not -- this is from Catawba to McGuire is
17 30-some-odd miles, 40 miles.

18 From Oconee to Catawba is 150 miles, thereabouts.

19 That's clearly a reasonable portion of the
20 transportation segment. And, clearly, S-4 lets you go out
21 2000 miles.

22 So the only concern you have is gee, there's a stop in
23 between. And what happens to the handling of it? What
24 happens to the storage of it?

25 JUDGE MOORE: Well, there's two stops for Oconee

1 fuel; aren't there? Doesn't it go from Oconee to McGuire
2 to Catawba?

3 MR. MC GARRY: No, sir.

4 JUDGE MOORE: You are just going to put McGuire
5 fuel into Catawba?

6 MR. MC GARRY: We are going to put McGuire fuel
7 into Catawba and the other.

8 JUDGE MOORE: That seems to be two stops.

9 MR. MC GARRY: Oconee fuel, send it to Catawba.

10 JUDGE MOORE: Not through McGuire? None of the
11 Oconee fuel will go to Catawba?

12 MR. MC GARRY: I don't think that's our plan. I
13 can't say for certain. I don't think that's our plan.

14 JUDGE WILBER: What's to prevent you from doing
15 that?

16 MR. MC GARRY: I don't think there's anything to
17 prevent us from doing that. I think the record -- well,
18 I'll stop on that.

19 JUDGE MOORE: Is it your position that if you --
20 well, you now do. That the operating license for Catawba,
21 putting aside meeting all the part 73 transportation
22 requirements, and security requirements, entitles you to
23 receive fuel from another plant, just by that license?

24 MR. MC GARRY: Yes. And, indeed, I think every
25 nuclear facility is entitled -- well -- yes. Our answer

1 is "yes."

2 JUDGE MOORE: By operation -- how do you reach
3 that point? What's the analysis that gets you to that
4 point?

5 MR. MC GARRY: Why is -- all right. What we
6 have to do is look at our handling facilities. Can we
7 handle the fuel?

8 We got into details in depositions and --

9 JUDGE MOORE: Just the license. Because the
10 license itself only permits you -- both the Oconee license
11 and the McGuire license, and to date the Catawba low power
12 license, the conditional license -- only permits you to
13 have fuel that was generated by the facility.

14 MR. MC GARRY: I'm not following you. I'm sorry.

15 JUDGE MOORE: Your argument, as I understand it,
16 is that your part 50 license to operate permits you to
17 possess the fuel generated at Oconee and generated at
18 McGuire, and that the regulations permit you to transfer
19 that fuel. And they clearly do. But --

20 MR. MC GARRY: You are talking about Oconee now?

21 MR. MOORE: Yes.

22 MR. MC GARRY: All right.

23 JUDGE MOORE: But, if the -- and if you had in
24 hand the Catawba license at this point, the operating
25 license --

1 MR. MC GARRY: Which we did.

2 JUDGE MOORE: Yes. You have a conditional
3 license.

4 MR. MC GARRY: No, it's a complete license.

5 JUDGE MOORE: Oh, you now have -- that's right.
6 I apologize.

7 MR. MC GARRY: We have full power.

8 JUDGE MOORE: And it's in the same basic format
9 as the Oconee and McGuire license? Do you need anything
10 further as far as permission from this agency to transship
11 fuel from one to the other, as far as receiving and
12 storing it?

13 MR. MC GARRY: I think maybe I can answer it
14 this way. Let's take Oconee. If Oconee were, today, to
15 decide if it could receive Catawba fuel --

16 JUDGE MOORE: All right.

17 MR. MC GARRY: -- what it would have to do is
18 make some demonstration that its spent fuel pool could
19 handle that.

20 JUDGE MOORE: Would that be under part 70? Or
21 wouldn't it need to do it in any formal licensing
22 proceeding?

23 MR. MC GARRY: No. I think that would be an
24 amendment to the part 50 license.

25 JUDGE MOORE: That's all I wanted to know.

1 Thank you.

2 CHAIRMAN ROSENTHAL: Your time has expired. I
3 will say to Mr. Johnson, we will take a recess before I
4 get to you, but the last 15 minutes I'm charging to
5 Mr. Moore so it will not go out of the 45 minutes
6 allocated to your side of the case.

7 MR. MC GARRY: Thank you, your Honor.

8 CHAIRMAN ROSENTHAL: All right. We'll take a
9 10-minute recess and then hear from the Staff.

10 (Recess.)

11 CHAIRMAN ROSENTHAL: All right, we seem to be
12 here. Mr. Johnson, you may proceed.

13 MR. JOHNSON: May it please the Court, Palmetto
14 Alliance's allegation 6 alleges serious allegations about
15 the quality assurance program at Catawba. Back in July
16 1981 they made their first allegations in their
17 intervention petition affidavits regarding systematic
18 deficiencies and pressure to approve faulty workmanship at
19 the Catawba plant, and they have had three years to
20 litigate this contention and they have had over 41 days of
21 hearings on the quality assurance contention. Over 80
22 witnesses appeared, over 200 exhibits are in the record,
23 over 10,000 pages of transcript.

24 CHAIRMAN ROSENTHAL: What's the relevance of all
25 that?

1 MR. JOHNSON: The relevance of that, sir, is
2 that this issue has been very thoroughly examined by the
3 Licensing Board in two partial initial decisions and they
4 have done so under the Calloway criteria, and they have
5 failed to show that there are either systematic
6 deficiencies or pressure to improve faulty workmanship.

7 CHAIRMAN ROSENTHAL: What significance do you
8 attach to the episodes of harassment or intimidation, in
9 terms of the probability or at least possibility that
10 there may be undetected safety deficiencies?

11 MR. JOHNSON: These are serious allegations,
12 your Honor. The Board treated them as serious allegations.
13 It heard extensive testimony. On the question of
14 retaliation, it heard testimony on that question from a
15 number of individuals. The Board found, based on the
16 testimony and other evidence of Mr. Ross, that there was a
17 case of retaliation against Mr. Ross in his performance
18 evaluations.

19 However, the Board looked beyond that very fact to the
20 safety implications of those evaluations, to see whether
21 Mr. Ross, or his crew, were affected in the work that they
22 did. And Mr. Ross and his crew members said that they
23 were not affected. Mr. Ross said that he continued to do
24 his job. It didn't make him happy, but he continued to do
25 his job.

1 The Board found that there was no relaxation of the
2 quality assurance program because of the evaluation, be it
3 discriminatory or not, of Mr. Ross. And it looked further
4 into the question of whether this was an isolated instance
5 and it determined that it was an isolated instance and had
6 no overall impact on the QA program at Catwaba.

7 CHAIRMAN ROSENTHAL: How did it determine that
8 it was isolated?

9 MR. JOHNSON: There was no other evidence in the
10 record that showed that there was a similar evaluation.
11 That was one basis.

12 In its partial initial decision it said that if there
13 was another instance of this sort of behavior being
14 uncovered that it likely would have been known around the
15 plant and have been reported by the inspectors, or
16 Mr. Ross, had there been other instances of such serious
17 allegations.

18 CHAIRMAN ROSENTHAL: You mean the people who had
19 been intimidated would have likely come forward? Why
20 would one assume that?

21 MR. JOHNSON: I don't think that was the logic.
22 I think the logic was that these inspectors had been
23 around for a long time and they were aware of -- that the
24 instances, the 130 technical concerns and the other
25 nontechnical harassment and retaliation concerns they had

1 were the most serious they could find and they brought
2 them forward.

3 CHAIRMAN ROSENTHAL: Mr. Ross' testimony was:
4 "Yes, I was harassed but it didn't influence me, and,
5 insofar as I am aware, there was nobody else that was
6 harassed or intimidated and I would have known if they had
7 been? Is that really the thrust of it?

8 MR. JOHNSON: Yes, although he didn't use the
9 word "harassed."

10 CHAIRMAN ROSENTHAL: Whatever.

11 MR. JOHNSON: He said he was not affected. His
12 men were affected. And he was not aware of any
13 construction problems, any safety-related problems, that
14 had arisen as a result of any of this activity.

15 His men and he continued to do their jobs

16 CHAIRMAN ROSENTHAL: I know. But what about the
17 possibility of other people being intimidated, harassed,
18 or whatever term you wish to employ? Did Ross
19 specifically state that to his knowledge this was an
20 essentially isolated instance?

21 MR. JOHNSON: No.

22 CHAIRMAN ROSENTHAL: Then how do we know it was
23 isolated?

24 MR. JOHNSON: I believe the Board made
25 inferences based on the record.

1 CHAIRMAN ROSENTHAL: What specifically in the
2 record were those inferences based upon? I would think --
3 I could be wrong -- that while Mr. Ross apparently was a
4 very stout-hearted individual and he was prepared to come
5 forward and inform the world at large that he had been
6 intimidated or harrassed or whatever, that there might be
7 other individuals who wouldn't be that stout-hearted and
8 might keep the fact of harassment or intimidation to
9 themselves. On what evidence did the Board draw the
10 inference that the Ross incident was essentially isolated?

11 MR. JOHNSON: The Board had before it the
12 testimony of Mr. Van Doorn, the senior resident inspector
13 for Catawba, from the Nuclear Regulatory Commission, who
14 had been there during this entire period, who had
15 performed 100 percent evaluation of nonconforming item
16 reports during the period in question from 1981 to '83; he
17 had done a detailed evaluation of the Duke task force
18 reports, the three that were done on the welding inspector
19 concerns during this period, and he testified that he did
20 not believe that there was a problem with harassment.

21 CHAIRMAN ROSENTHAL: Had he been aware of the
22 Ross harassment? And, if not, why should we draw any
23 inferences from his statement of a lack of awareness of
24 other people being harassed?

25 MR. JOHNSON: Okay. I don't think it's clearly --

1 I don't recall anything directly in the record which
2 addressed that. I don't believe he was asked whether he
3 was specifically aware of the events, contemporaneously --

4 CHAIRMAN ROSENTHAL: Well, is it fair to say
5 that all that one really can say is that this record does
6 not affirmatively establish the existence of widespread
7 practices of harassment or intimidation?

8 MR. JOHNSON: Yes. I think that's what the
9 record does show.

10 CHAIRMAN ROSENTHAL: There's an absence of
11 affirmative evidence.

12 MR. JOHNSON: That's correct.

13 CHAIRMAN ROSENTHAL: But there's nothing, really,
14 on which one could base an inference that it didn't take
15 place?

16 MR. JOHNSON: We have to stand back and look.
17 We have the foreman override record which came toward the
18 end of the case and the welding inspector record which
19 came earlier in the case.

20 The concerns were focused based on discovery and other
21 pretrial devices, mechanisms. And the focus of the
22 hearing had to be on what evidence, basis there was to go
23 forward.

24 The ways -- on the welding inspector concerns and later
25 on the foreman override concerns -- this is where the

1 Board felt it was compelled to look for evidence, and it
2 found no significant evidence of quality assurance
3 deficiencies. And it found no significant evidence of
4 construction deficiencies stemming from quality assurance
5 lapses.

6 Based on extensive probing of these matters, which it
7 believed were the most serious that could be brought up
8 out of the quality assurance program, it then made its
9 inferences concerning the overall QA program. I think
10 that's the logic that it took.

11 Mr. Ross testified that out of all the concerns, there
12 were 130 welding inspector technical concerns. 39 were
13 specifically evaluated in the partial initial decision.
14 These, the Board determined, were what were likely to be
15 the worst cases of technical concerns.

16 Mr. Ross said out of all the cases, and he was the
17 chief protagonist out of all these concerns, that maybe
18 one had possible technical deficiency significance, and
19 that involved the route pass of a weld which had been
20 ground and possibly had resulted in the wall thickness
21 becoming too small.

22 Mr. Ross said this was the only matter that he was
23 concerned about. The record shows that that was NCI'd and
24 corrected and there was other evidence by the Applicants
25 that even if it had not been repaired it would not have

1 violated any applicable criteria.

2 Mr. Van Doorn, as I said, also examined these concerns.
3 He also examined all the nonconforming item reports during
4 a two-year period, and found that there were six
5 violations during this two-year period, and he was asked
6 on two occasions whether there were any uncorrected
7 deficiencies and he said he did not believe that there
8 were any. It's possible, it's likely, in fact, that there
9 were some procedures that would go undetected --
10 violations that would go undetected, but the Duke program
11 was an in-depth program and it prevented any construction
12 deficiencies going undetected. There's no evidence in the
13 record of any construction deficiencies going uncorrected
14 or undetected.

15 The fact that Mr. Guild was asked this morning at this
16 late date what are the construction deficiencies and all
17 he could point out was sensitization of welds, which the
18 Board found was not a construction deficiency, and vague
19 references to arc strikes and cold springing, which were
20 not even specific -- he couldn't point to a specific arc
21 strike that caused any problem because there wasn't any;
22 he couldn't point to a specific cold spring that caused
23 concern because there wasn't any. And moreover, the Board
24 examined each of the allegations, all the evidence on
25 those¹ points and found they were not safety-significant.

1 On the question of whether they were pervasive or
2 generic quality assurance problems, again the Board
3 examined the nature of the violations on the welding
4 inspector record. It said: We find that there were
5 approximately two dozen quality assurance violations under
6 appendix B, but that's not an excessive amount, an amount
7 that we wouldn't expect. And, given the vast number of
8 inspections that are ongoing during the process of
9 constructing a nuclear power plant and considering the
10 fact that there were 17,000 nonconforming item reports
11 written during this period, that this is a very small
12 number.

13 And secondly, it looked at the construction
14 significance of the procedural violations and found that
15 only a few involved design specifications not being met
16 and none resulted in any unsafe weld or installation.
17 The Board specifically found that.

18 With respect to the generic problems that Mr. Guild has
19 referred to that he considers to be the fatal flaw, the
20 harassment, retaliation, again I won't repeat what I said
21 about Mr. Ross.

22 There was only one instance. The Board found it didn't
23 have safety implications with respect to harassment. The
24 Board found three specific cases it considered to be
25 harassment but in each case the Board found that the

1 individual concerned out of his own mouth testified it had
2 no impact on his present or future work. It did not
3 result in any unsafe weld or installation. And the Board
4 specifically found it had no impact on the independence of
5 the QA program, which is the heart of Mr. Guild's
6 contention.

7 He makes the allegation, but there's no record evidence
8 to substantiate the safety significance of this so-called
9 fatal flaw that he purports to have found.

10 On the foreman override record, there was a question of
11 pervasive breakdown in quality assurance procedures. The
12 evidence really was that foremen had directed that
13 construction procedures be violated.

14 The Board examined -- there were 217 interviewees who
15 were investigated by Duke, and a large number, perhaps 80,
16 that were interviewed by the Nuclear Regulatory Commission.
17 The Board had all this evidence before it.

18 Out of all this evidence there were about a dozen
19 instances in which allegations specific enough to be
20 called foreman override, if true, were found.

21 Only a handful of these were substantiated. And they
22 involved only one foreman, Mr. Arlan Moore, one area,
23 interpass temperature, and it was found outside of those
24 areas that there was no pattern involving other
25 individuals or violations in other areas of the numerous

1 sort suggesting a problem of another nature.

2 Mr. Guild harps on the point that these were willful
3 circumvention. Well, what is the significance of that?
4 The point I think, here, is that we don't have some kind
5 of haphazard inadequacy on the Duke program. We had one
6 man who was identified to have a problem, to have
7 pressured people in order to get the work done on the
8 second shift. That man was identified. That man was --
9 65 welders that worked for Mr. Moore were interviewed to
10 find out what work they had done, whether they had been
11 pressured and whether there had been any violation of
12 procedure and construction defects resulting from that.
13 Another similar number, about 65 additional welders, were
14 interviewed and asked the same question.

15 The evidence shows that Mr. Moore was basically the
16 only source of this foreman override pressure. He was
17 dismissed as a supervisor as a result.

18 CHAIRMAN ROSENTHAL: Now, Mr. Johnson, the
19 Intervenors claim that because of arbitrary limits placed
20 upon them they were not able to develop the record as they
21 might have, and they refer at page 44 of their brief, to
22 the alleged fact that they were only permitted the
23 opportunity to present five affidavits, whereas there were
24 217 Duke employees' affidavits presented in evidence by
25 the Applicants. And they said also that of the 35 welding

1 inspectors and first line supervisor witnesses, they were
2 permitted to question only 15.

3 Now, is all of that true? And, if it is true, why
4 aren't they right that they didn't have the opportunity to
5 develop a record that might have established the things
6 which you say the existing record does not establish?

7 MR. JOHNSON: Okay. Well, let's start with the
8 welding inspector record. There we had, as I indicated
9 earlier, a very large record that was developed. We had
10 31 days of hearings, just on that part of the record. And
11 we had 15 inspectors, and first line supervisors were
12 called. Based on a stipulation, the most important such
13 individuals were stipulated and called. Those individuals
14 with 90 percent of the welding inspector concerns were
15 called. The Board did not give -- did not fix hard and
16 fast cross-examination times, except toward the very end.
17 It provided two days for cross-examination of Mr. Ross.
18 It provide a whole day of cross-examination for Mr. Bryant.
19 including four hours for the intervenors --

20 CHAIRMAN ROSENTHAL: Were there actually 35
21 witnesses? Were these people that actually testified?

22 MR. JOHNSON: There were 35 individuals who were
23 identified with prefiled testimony by the Applicants at
24 the last prehearing stage of the case.

25 CHAIRMAN ROSENTHAL: Do you regard them as

1 having been witnesses in the proceeding?

2 MR. JOHNSON: They were not witnesses. What I'm
3 saying is there were a total of 15 welding inspectors and
4 first line supervisors who did testify. They testified
5 over a nine-day period.

6 CHAIRMAN ROSENTHAL: That actually appeared,
7 who were there in body as well as in spirit?

8 MR. JOHNSON: That's correct.

9 CHAIRMAN ROSENTHAL: And those 15 were available
10 for cross-examination, is that right?

11 MR. JOHNSON: Absolutely.

12 CHAIRMAN ROSENTHAL: Now the other 20 that's
13 being referred to here?

14 MR. JOHNSON: It was stipulated they were less
15 important witnesses. All the parties had the prefiled
16 testimony of these individuals, and the Board determined
17 that it wasn't necessary to call all these witnesses.

18 JUDGE MOORE: Did their prefiled testimony stand
19 or was it stricken?

20 MR. JOHNSON: It never became part of the
21 evidentiary record.

22 CHAIRMAN ROSENTHAL: This was submitted in
23 writing in advance but it wasn't actually, at the hearing,
24 made a part of the record; is that correct?

25 MR. JOHNSON: That's correct. And one may infer

1 that Palmetto Alliance looked at all of it and determined
2 that which was most interesting and helpful to it and it
3 chose those witnesses who it believed could help it. And
4 I believe the Licensing Board relied on that kind of
5 reasoning.

6 CHAIRMAN ROSENTHAL: You mean they had a hand in
7 the decision as to which of the 35, which 15 were actually
8 served up?

9 MR. JOHNSON: Yes.

10 JUDGE MOORE: Did they object on the record to
11 not being able to call the rest?

12 MR. JOHNSON: They probably did. I don't recall
13 specifically.

14 CHAIRMAN ROSENTHAL: What about this affidavit
15 matter?

16 MR. JOHNSON: I interpreted that statement in
17 Mr. Guild's brief to refer to the five witnesses that were
18 examined on the record. There were five employees whose
19 affidavits were taken by Duke out of the 217 individuals
20 who Palmetto called as witnesses and cross-examined in the
21 foreman override record. I could not put my hands on five
22 affidavits he was referring to. Maybe he was referring to
23 their affidavits. I don't know.

24 But the point of the matter is that all 217 individuals'
25 affidavits were in the record. Mr. Guild had the

1 opportunity to call a reasonable number of such
2 individuals. The fact that he only called five in the end
3 is due to his strategy in cross-examination. He spent
4 over two days cross-examining Applicants' panels. He
5 spent another day -- part of the third day on them and
6 part of the third day on other witnesses. And only at the
7 very end of the third day did he get to these witnesses.
8 And he basically only had one long day to cross-examine
9 these employee witnesses who had submitted affidavits.
10 This was something of his choice.

11 The Board was faced with a request to call 60 witnesses.
12 And it said: We don't have to hear 60 witnesses to know
13 whether there's a hole in the Duke case. We believe 12 to
14 15 witnesses. You choose your best witnesses, like you
15 did in the welding inspector record. And we believe that
16 if you start making a hole or dent, he said, in their case,
17 maybe we'll have to look at further witnesses. But that's
18 your choice. You decide which witnesses you want to call.

19 At a certain point he cautioned Mr. Guild and said: We
20 would like to be at the end of the second day. We'd like
21 to be able to get to the employee witnesses during the
22 third day. He made his choice.

23 CHAIRMAN ROSENTHAL: Mr. Johnson, your time is
24 running rapidly to a close and I would like to ask you, as
25 I did Mr. McGarry, about the reliance of the Intervenors

1 upon our Ocone/McGuire decision, Alab 651. On page 70 of
2 their brief they have a quotation from this decision, to
3 the effect that: "Should Duke seek at some future date
4 permission to make further spent fuel shipments between
5 its facilities, the request will have to receive a
6 separate environmental assessment."

7 And they go on to quote from our decision as to what
8 that assessment would have to include. And, as I
9 indicated to Mr. McGarry, I found it strange that neither
10 the Applicants nor the Staff saw fit to even refer to the
11 decision.

12 I looked right away to the index of your two briefs to
13 see it, because, you know where I come from, at least, if
14 your opponent cites a decision of the tribunal before whom
15 you are appearing, you darn well address that decision.

16 So I would like to know from you as to whether I should
17 take the absence of any reference to it as being a tacit
18 admission on the part of the Staff that the decision
19 stands for the proposition for which the Intervenors cited
20 it?

21 MR. JOHNSON: I will admit that I did not
22 include that case in the index. It is not specifically
23 cited.

24 However, if you look at footnote 54 on page 68 of my
25 brief, the Staff's brief, you'll note that the passage

1 which is referred to from the Oconee/McGuire case is in
2 fact addressed. And there we relied in part on your
3 decision, the Appeal Board's decision in the North Anna
4 case, which said that if -- the Appeal Board's language
5 says: "If, after initial environmental assessment, the
6 agency determines that no significant impact will result
7 from the proposed action without additional analysis it
8 may publish a statement indicating that such is the case."
9 That is what occurred in this instance.

10 CHAIRMAN ROSENTHAL: So we were wrong -- well,
11 now, let's see. We said in Oconee/McGuire that the
12 initial inquiry will be into whether those further
13 shipments will have a significant environmental effect.
14 You are saying that has been determined in this instance,
15 that they will not have a significant environmental effect?

16 MR. JOHNSON: That is correct.

17 JUDGE MOORE: But it was done by reference to
18 the S-4 table in this case; was it not? Why wasn't it
19 done by reference to S-4 in Alab --

20 CHAIRMAN ROSENTHAL: -- 651.

21 JUDGE MOORE: -- 651?

22 MR. JOHNSON: That was the determination by the
23 Staff, I believe, in that case.

24 CHAIRMAN ROSENTHAL: It was what?

25 MR. JOHNSON: A determination by the Staff that

1 they took a position that would litigate the matter in
2 that case.

3 In this case we determined that the environmental
4 impacts of spent fuel transshipment from Oconee and from
5 McGuire had previously been evaluated in connection with
6 the licensing of those plants.

7 JUDGE MOORE: If that's the case, then is it
8 your position that what we said in Alab 651, that any
9 future use by Duke to pursue the so-called Cascade plan at
10 some future date would require an environmental impact
11 assessment?

12 MR. JOHNSON: It does. But it was performed.
13 It is attached. It is an appendix to the FES.

14 JUDGE MOORE: But it was withdrawn; was it not?

15 MR. JOHNSON: There was a DES environmental
16 assessment which made specific statements about doses, et
17 cetera. And that was taken out.

18 JUDGE MOORE: Then you tore it up when you
19 published your final environmental impact statement?

20 MR. JOHNSON: Yes. And we relied on the fact
21 that these impacts were previously assessed in the first
22 paragraph, and the second paragraph -- it was very short --
23 said that if we were going to take them into account we
24 would do so through the use of table S-4.

25 JUDGE MOORE: Where does that leave what we said

1 in Alab 651?

2 MR. JOHNSON: To the extent that it was
3 addressed by the Intervenor, we addressed it in our brief.
4 We said that an environmental assessment may have been
5 required but it was performed, and insofar as the Appeal
6 Board said that they weren't guaranteed an environmental
7 impact statement, it wasn't necessary, we rely on that
8 more recent case, Alab 790.

9 JUDGE MOORE: I have a question concerning the
10 Intervenor's contention on diesel generators. The
11 Licensing Board, in not admitting that late-filed
12 contention, found that after essentially conditionally
13 admitting it, the Intervenor wouldn't make a significant
14 contribution to the record.

15 How do you square that finding under that of the five
16 criteria of 10 CFR 2.714, with the fact that we have held,
17 and the Commission has affirmed on numerous occasions,
18 that an intervenor can make its case through
19 cross-examination? It found specifically that he had to
20 offer up an expert witness.

21 MR. JOHNSON: That's incorrect, your Honor.
22 What the Board did was this. It asked them to either
23 provide a witness, provide an expert for cross-examination,
24 or at very least make a detailed statement of technical
25 positions with the help of some expert assistance, about

1 site-specific problems that were raised in the contention.
2 And, in addition, what site-specific fixes Duke Power
3 Company was going to employ.

4 It did not require them to go forward with an
5 affirmative case. All it required was they make a
6 detailed statement of technical positions. What they came
7 up with was the prefiled testimony from the Shoreham
8 proceeding.

9 The Board made a recent finding that this was a very
10 technical contention which required some technical input.
11 But at very least, they were entitled to know what it was
12 about these problems that they had a problem with.

13 I would say that in the Alab 747 case, decided by the
14 Appeal Board in the WPPSS case, the Appeal Board relied
15 heavily on the third factor because, although that case
16 involved a late intervention rather than late contention,
17 it determined that since no hearing would otherwise be
18 held we have to have good reason to go forward to invoke
19 the hearing procedures.

20 In this case the Licensing Board looked and didn't find
21 sufficient reason for going forward, that they weighted
22 very heavily against the other factors in addition there's
23 the Vermont Yankee decision by the Supreme Court in 1978,
24 which requires Intervenors to make a showing sufficient to
25 make reasonable minds inquire further, in that they have a

1 burden of going forward in some respect.

2 The Alab 226 design case, this Appeal Board made a
3 similar statement that you can rely on cross-examination.
4 You can. But you still have a burden of going forward.

5 I think the Licensing Board in this case, whether it
6 was part of its third factor of the late filing criteria
7 or otherwise, made a determination, or can be upheld as a
8 determination, that they did not state specific technical
9 positions and they didn't meet their burden of going
10 forward. There was no reason to go forward in such
11 circumstance.

12 Alternatively if you look at the five factors, the way
13 they were weighted, the Board did find only one in favor
14 of rejection, the other four in favor of admission. But
15 first of all, the second and fourth factors are typically
16 weighted lightly. The fifth factor the Staff argued
17 weighted against admission. The Board disagreed, but if
18 you look at the circumstances on June 22 when the decision
19 was made, June 22, 1984, there was no other diesel
20 generator contention, therefore it would definitely
21 broaden the proceeding; second, there was no other
22 hearings schedule, so it's very likely delay would be
23 entailed. The Board declined to make those findings, but
24 you could make the finding that some delay might have been
25 entailed. The fact that the Intervenors sought delay in

1 order to get their witness, suggests, perhaps, that delay
2 was a factor.

3 Thirdly, the Intervenors did not raise a contention in
4 a timely manner when the issue of site-specific problems
5 first arose. They first arose with the February 17 letter
6 by the Applicants.

7 At that time, on February 23, and then February 27, the
8 Licensing Board stated it was going to, sua sponte support
9 an affidavit on site-specific matters.

10 The Intervenors could at that time have offered their
11 own contention. They did not.

12 There is case law that says that one Intervenor cannot
13 rely on the fact that another Intervenor had sponsored a
14 contention and it was dismissed, to then come in and try
15 to replace them and try to sponsor it themselves.

16 This is not exactly the same and we are not saying that
17 there wasn't some good cause, all we are saying is that it
18 was weak. Therefore, you can affirm the Licensing Board's
19 decision as being within its scope of discretion based on
20 this alternative basis as well.

21 CHAIRMAN ROSENTHAL: Thank you, Mr. Johnson.

22 JUDGE WILBER: One quick question, Mr. Johnson,
23 when is the FEMA yearly survey take place? When does the
24 clock start for that?

25 MR. JOHNSON: That's a good question, your Honor.

1 Because according to the evidence that was in the record
2 in this case, in the southeast region, FEMA had not done
3 any such --

4 JUDGE WILBER: No, I'm talking about the yearly
5 survey. Is that the case or is it just the assessment of
6 the sirens?

7 MR. JOHNSON: Maybe I misunderstood your
8 question.

9 JUDGE WILBER: There are two things I understood:
10 One, they go out and make an evaluation of the sirens
11 sometime in the future; but I thought there was also a
12 yearly survey where they would go around, either in
13 conjunction with a test or at some other time, and make a
14 survey of people in the area.

15 MR. JOHNSON: My understanding of that, sir, is
16 that they go together; that the survey of the sirens, the
17 acoustical survey --

18 JUDGE WILBER: That's a one-time situation;
19 isn't it?

20 MR. JOHNSON: No. What is called for upon --
21 the acceptance criteria of 1547(b)(5) calls for the means
22 to be established to notify the public. The acceptance
23 criteria state that the physical means will be provided
24 for that and that appendix 3 of NUREG 0654 says "This
25 acceptance criteria can be satisfied by a design report

1 which is verified and documented by the Applicants and the
2 local and state authorities, that either through some
3 design analysis or laboratory test of the siren or actual
4 field survey of at least one of each type of siren that's
5 being used."

6 That will be accompanied by a statistical survey of the
7 population, as to whether they heard it and what they knew
8 about what to do with regard to hearing that siren.

9 Those were to go together and that's what the "yearly"
10 refers to, I believe. That's not part of the acceptance
11 criteria that are specified in NUREG 0654 with respect to
12 approving the requirements under 5047(b)(5).

13 CHAIRMAN ROSENTHAL: Thank you, Mr. Johnson.

14 Mr. Guild, we'll hear from you in rebuttal. As I'm
15 sure you understand, rebuttal has to be precisely that.
16 It has to address the matters that arose during the
17 arguments of your adversaries.

18 MR. GUILD: Yes, sir.

19 At the outset, Judges, let me focus on this point:
20 the language used in your inquiries earlier, and contained
21 in the Calloway decision, distinguishing "pervasive" from
22 "isolated" when reviewing quality assurance flaws, I
23 believe it was cast much too broadly by the Licensing
24 Board in the way it weighted or looked at the implications
25 of the failures it saw.

1 A flaw can certainly be equivalent, while isolated and
2 singular, to a significant workmanship defect.

3 The point is not a numbers game. The point is not some
4 kind of imprecise or subjective standard of how widespread
5 problems are. It's whether or not they are indicative of
6 uncorrected -- undetected safety-significant flaws in the
7 workmanship of the plant. That's the substance. That's
8 the point.

9 So, one can't find much comfort in the notion that
10 there are only 23 supervisors who were implicated on the
11 face of the affidavits submitted by Duke Power Company in
12 the record, over our objection, on the foreman override
13 phase. Or that one welding inspector supervisor and his
14 crew of a dozen subordinate welding inspectors were the
15 subject of retaliation by senior QA management for their
16 strict enforcement of quality assurance procedures.

17 CHAIRMAN ROSENTHAL: What is there, Mr. Guild,
18 in this record, that would allow us to infer that, as a
19 result of the intimidation of certain inspectors, there
20 were construction defects that were overlooked and may
21 have still gone undetected? As I understand it, those
22 folks that admitted to the existence of intimidation or
23 harassment also stated it didn't affect their work.

24 Now, what is there in in record to suggest -- I mean we
25 can't engage in speculation that something might have

1 happened.

2 MR. GUILD: No, sir. But I think that the test
3 that need be applied, and the test that this Board has
4 enunciated, really is a question of what are the
5 implications? What kind of a window on quality assurance
6 at Catawba do we have?

7 You have to look at it that way because we have a
8 limited opportunity to view exemplary facts. They are not
9 the full range of evidence available at the plant. We are
10 not going to do an independent inspection of the plant.
11 That's the job for the NRC Staff.

12 All of this came out in the context of adjudication.

13 It's not at all clear that the testimony of Mr. Ross
14 and his crew just stands for the position that they just
15 continued to do their job. I think they were exemplary
16 employees, and I think that bears large significance to
17 the performance of other inspectors who were likely less
18 exemplary. Nevertheless, Mr. Ross said things like: Well,
19 when I was under this harassment or retaliation I may have
20 gone up the hill only once to raise a question about a
21 nonconforming item report when my supervisor wouldn't let
22 me file, whereas before I would have gone up two or three
23 or four times or as many as it took to get the job done,
24 to see the deficiency was documented as it should be in my
25 interpretation of the QA procedures.

1 Now, that is not exactly equivalent to continuing to do
2 my job unimpeded. It's simply an inference by the
3 Licensing Board without factual basis in the record that
4 is the only way out, absent doing one of two things:
5 Going forward and seeing what other evidence there was out
6 there through the device before it, which was having an
7 adversary with a request to expand discovery to be able to
8 use an adversary's tools to acquire evidence; or second,
9 as has been done by licensing boards facing these kind of
10 problems where legitimate doubt about the existence of
11 undetected deficiencies was reflected in the record,
12 requiring an affirmative plan to verify the quality of
13 construction at the facility.

14 Now, that has simply not happened at Catawba. Catawba
15 has never had independent verification of construction
16 quality. The INPO report is the closest thing we had to
17 it, and the flaws on the face of that report were manifest
18 even to the Licensing Board.

19 We think that the window on quality assurance at
20 Catawba reflected in this record compels the Licensing
21 Board to have gone and done more.

22 JUDGE MOORE: Isn't what's compelled by this
23 record the fact that you came forth with a few anecdotal
24 incidents and you failed in your proof to establish a
25 pervasive basis? You could have come forth, if you had

1 had the proof, to establish a pervasive case. You failed
2 to do that. Now aren't you asking us to change the
3 standard to meet your proof instead of the other way
4 around?

5 MR. GUILD: I don't think so, Judge Moore, and
6 the fundamental point -- the burden of proof is not on the
7 Intervenor, the burden of proof is on the Applicant.

8 JUDGE MOORE: And the record as I read it and as
9 the Licensing Board found, established that the Licensee
10 met that burden.

11 MR. GUILD: That's the conclusion of the
12 Licensing Board. There's no other conclusion they could
13 reach, having granted a license. But the fact of the
14 matter is, we acquired evidence that was limited because
15 of the scope of discovery and the scope of hearing rights
16 that were given us, and with that narrow window we had --

17 JUDGE MOORE: The scope of discovery is wide
18 open.

19 MR. GUILD: It wasn't. The scope of discovery
20 was strictly limited in time and discovery matter.
21 Repeatedly we sought on the basis of what we think was
22 good cause in part found by the Licensing Board -- well,
23 they were dilatory in providing this document or yes, they
24 should have provided it to you, yes it has serious safety
25 significance. We believe because of the drive to complete

1 licensing by the fuel load that time and time again the
2 Board imposed arbitrary time limits on discovery

3 JUDGE MOORE: Were there not five months of
4 discovery given you in the first phase of this -- before
5 the first phase of this hearing?

6 MR. GUILD: The document -- the time actually
7 ran when documents -- discovery was hotly contested. The
8 Licensing Board found that. "Highly adversarial and
9 unproductive" was their words.

10 The substantive responses on the QA issue that revealed
11 the welding inspector concerns came to us as the Licensing
12 Board said, very late in the game, in May. We asked to
13 extend discovery and were given 20 days. During that 20-day
14 period we conducted depositions. Those depositions
15 detected the INPO report, and were the basis for us
16 seeking to expand discovery beyond welding inspection into
17 the other areas that were indicated on the face of that
18 document.

19 The Licensing Board said: We read the document. It
20 raised serious QA concerns. Then they adopt the
21 methodology that has been glowingly supported by the
22 Applicants, of instead of reaching a decision about
23 letting an adversary have access to this discovery tool,
24 essentially saying: We are going to wait and see,
25 allowing the company to put up its case-in-chief to rebut

1 the significance of the facile conclusions about QA
2 problems, which they did.

3 JUDGE MOORE: Wasn't that INPO report on an
4 index in the Duke document room available to you months
5 before?

6 MR. GUILD: No. I am absolutely not aware of
7 that, if that's the case; and I don't believe it to be the
8 case. The Board found in fact they didn't identify this
9 document until very late in the game.

10 That INPO report was clearly material to our QA
11 contention. The Licensing Board so found, and the
12 Licensing Board found if they wanted to expedite the
13 proceeding and identify -- produce clearly relevant
14 information in response to our discovery request they
15 should have produced it at the beginning of discovery.
16 That's what the Licensing Board found.

17 It certainly wasn't through any lack of diligence on
18 our part that this material -- these materials were not
19 uncovered.

20 That same pattern of literally having to pull teeth to
21 find the evidence that is as glaring as it is, finding it
22 only at the last minute and then seeking on the basis of
23 good cause to expand the scope of discovery, that same
24 pattern led through the entire hearing up until the
25 partial initial decision in December.

1 JUDGE MOORE: When the INPO report was given to
2 you it was not given to you in response to an
3 interrogatory which allegedly covered that document?

4 MR. GUILD: No, sir. Nor was it, to the best of
5 my knowledge, listed in any response as existing.

6 As best I can submit to the Board at this point, it was
7 in the course of a deposition that was during the first
8 reopened discovery period of 20 days, the existence of
9 this report became known. And it was sought. And
10 ultimately it was required to be produced by the Licensing
11 Board's order over the objection of the utility.

12 JUDGE MOORE: Did you file a motion to compel?

13 MR. GUILD: Either motion to compel or in the
14 course of a less formal process; but it was compelled,
15 not given voluntarily. Then that became the basis for a
16 general -- a more general motion to expand discovery into
17 the substantive problem areas that were indicated in the
18 INPO report.

19 Now, the same kind of pattern faced us on the foreman
20 override phase of the hearing, with four days for
21 discovery depositions. Four days we were faced with the
22 prospect of trying to review evidence from -- of an
23 anecdotal sort, to characterize, from the 217 craftsmen.

24 JUDGE MOORE: Where do you get the four days?

25 MR. GUILD: The four days was the specific

1 discovery limit placed on us by the Licensing Board. They
2 said: You can conduct depositions during these four days
3 and we are going to hearing next Tuesday. We'll go
4 through to try and the hearings will begin the next --

5 JUDGE MOORE: Prior to those four days how much
6 time did you have to discover the names which you wished
7 to depose?

8 MR. GUILD: Nothing. None, Judge.

9 If you recall, the foreman override issue was
10 identified by one of the in-camera witnesses. We sought
11 discovery on the in-camera issues, either formal or
12 informal. We wanted information. We weren't looking for,
13 you know -- the tools were not the significant point. We
14 were refused those discovery opportunities. The hearing
15 record was closed but for the foremen override issue
16 without any opportunity for discovery.

17 The Staff and Applicant proceeded to do their work on
18 the issue and then, in the fall of 1984 when the report
19 reflecting these glaring problems was finally published on
20 the basis of our motion over the opposition of the Staff
21 and Company, the Licensing Board reopened the hearings for
22 evidentiary hearings on the subject and provided then for
23 discovery, the entire course of which was completed within
24 a week.

25 A stack of technical documents, including all of the

1 information about intergranule stress corrosion, cracking,
2 which was found by the Licensing Board to include
3 suppressed field weld test data, we had to find that
4 during the last minute during the last day of depositions;
5 and an opportunity to review anecdotal evidence, yes,
6 personal experience from 217 craftsmen.

7 We were told get this done and we are having a hearing
8 beginning next Tuesday. All because, your Honor, the
9 Licensing Board was faced with the prospect of an October
10 1 fuel load date at that time. And knowing that they
11 simply could not accommodate what they understood to be
12 the drive of their --

13 JUDGE MOORE: Prior to that point you had no
14 opportunity to interview any of the welding crafts?

15 MR. GUILD: That's not true. It's clear that on
16 a blank slate if we had started out having some notion
17 that there was a basis for looking at foreman override
18 evidence, from what we had learned in discovery, yes, we
19 could have moved to take a deposition of a welder.

20 But the point is, on the basis of good cause shown, the
21 foremen override subject matter only arose at the point
22 where we sought additional discovery, and that discovery
23 was refused.

24 At the point where the Board gave us any discovery
25 rights on the subject of foreman override for the reopened

1 hearings the total course of discovery was in less than a
2 week; there were four days of depositions, we had
3 thousands of pages of technical documents that we were
4 required to digest and build a case from.

5 We then went to hearing, your Honor, and the charade
6 was this: Picture everyone in this room lined up across
7 the wall. And then realize you can't fit everybody in
8 because then you have to put second and third ranks of
9 people, name tags that are obscured because there are two
10 rows. And the Board says: Mr. Guild, you have an hour
11 and a half. And the time for cross-examination of the
12 panel of Applicants' witnesses is measured in minutes.
13 And we have to judge how to use our time.

14 The Licensing Board said: Well, we'll let you borrow
15 your time from -- from a previous witness to use with this
16 witness. We'd conclude our examination or get to the end
17 of our time limits and we'd move to extend our time for
18 good cause, we would try to show.

19 The Board would call time on us, repeatedly called time
20 on us.

21 There's an error in my brief. It's not of substance.
22 But the word "affidavits" when used, when comparing the
23 five affidavits to the 217 affidavits, it should be five
24 witnesses. Okay? We sought a reasoned selection based on
25 the limited discovery rights we had, of a number of the

1 217 affiants plus a number of persons who were not
2 affiants but who were responsible supervisors or foremen
3 involved in foremen override, and of that number, five,
4 were those we were limited to in hearing.

5 Now, we opposed admission of the affidavits because
6 they stand as self-serving, in our view; documents that
7 were compiled by Applicants to standby and support their
8 conclusion.

9 JUDGE MOORE: But on appeal you haven't argued
10 in front of us any of those evidentiary rulings.

11 MR. GUILD: The evidentiary ruling isn't the
12 significant point. It really isn't. The significant
13 point is: What does this say to you about the
14 implications of what we do know about quality assurance
15 flaws at Catawba. What is the window through which we
16 have to look at this evidence and yes, we make the
17 fundamental point that our hearing rights were
18 circumscribed improperly.

19 Just points of a technical sort that were raised: The
20 NRC Staff had confidential concerns expressed by the
21 welding inspectors to them. Those concerns were framed in
22 terms of falsification of documents, harassment, lack of
23 support for the quality assurance program at Catawba going
24 back years and a fear that, having raised these complaints
25 with Duke management, Duke would whitewash their concerns.

1 "Whitewash" is the term contained in the NRC Staff
2 document summarizing these complaints.

3 The NRC Staff sat back and allowed Duke to continue
4 their investigation of this subject and they did no
5 independent investigation, no investigation that can be
6 characterized substantively as independent.

7 The harassment concerns of the individuals were not
8 investigated at all. The remedial program for harassment
9 was framed by Mr. Larry Davison, who was the site quality
10 assurance manager, who was implicated as the perpetrator
11 of the retaliatory evaluation of Mr. Ross. And his
12 remedial program was to remove Mr. Ross from his
13 supervisory position.

14 The 130 technical concerns were largely disposed of as
15 indicative of communications problems between the
16 inspectors and their supervisors. No technical substance
17 to them.

18 Yet a number of the concerns required significant
19 amounts of additional amounts of rework. Mr. Ross himself
20 raised a concern about failure to specify dimensional
21 requirements on socket welds that required reinspection of
22 some 12,500 welds. These were not found in the course of
23 the QA program. They were found only in the course of
24 these inspectors sticking their necks out and raising
25 these concerns. Then getting harassed.

1 CHAIRMAN ROSENTHAL: Mr. Guild, I don't think
2 this really is rebuttal. Your time is about expired.
3 I'll give you three or four additional minutes if you
4 would like.

5 MR. GUILD: Yes, sir.

6 CHAIRMAN ROSENTHAL: But I would like you to
7 confine yourself to matters that were discussed during
8 your adversary's argument.

9 MR. GUILD: All right, sir. I'll do that.

10 Duke, in looking at the question of sensitized welds,
11 took a sample, identified 2000 safety-related welds. Of
12 those, 361 they characterized as on critical systems, not
13 particularly defined, but most likely involving small
14 break LOCA analysis, and the systems which would be
15 included in such an analysis.

16 Of those, they did an actual field test of 23.

17 Of the 23, 6 -- or 4 at the least, depending on whose
18 testimony you credit -- failed to meet the ASTM practice
19 standard for sensitization. That's between 16 and 24
20 percent.

21 That's indicative of -- that test was designed to be
22 statistically significant. Whether it is flawless or not
23 is unclear, but at least is indicative of a widespread
24 problem.

25 In terms of instances of interpass temperature

1 violation, one particular welder whose testimony appears
2 to be credited even by the Licensing Board identified
3 between 12 and 24 welds on safety systems that he believed
4 were welded in violation of interpass temperature
5 requirements.

6 The magnitude of this problem cannot simply be called
7 de minimis. There's a substantial number of welds defined
8 by Duke as critical that don't meet that practice for
9 sensitization.

10 The safety importance of those welds is reflected in
11 Duke's own estimate, or designation of them as welds that
12 are on critical systems. We think -- we believe very
13 strongly that you simply can't rest on the assurance that
14 water chemistry will eliminate the reduced margin of
15 safety that's clearly involved in two, now, of the three
16 constituent causes of IGSCC being present.

17 Mr. Ross, as I believe an exemplary employee, should
18 not be seen as someone who came forward and went public,
19 thereby providing us, you know, easy -- an easy source of
20 information that reveals the glaring instance of
21 harassment and retaliation that's been identified.

22 Mr. Ross didn't approach the Intervenors; didn't go
23 public. He raised in the course of a personnel grievance
24 the harassment claim, the discrimination claim that's now
25 been the subject of the Licensing Board's finding.

1 He said, and I quote: Reflective of the Licensing
2 Board's partial initial decision at page 150: "I have
3 questioned some construction practices, on several
4 questionable cases, my supervisor calls this not
5 communicating with craft. I have found inspectors not
6 properly doing their duties, he blames me for entrapment.
7 I get deliberately left out of some major decisions which
8 could affect my ability to properly cover my area and
9 provide inspection coverage. I ask questions and don't
10 get answers. I felt I was being punished on my evaluation.
11 I felt I was being punished for standing up for what I
12 felt was right. With God as my witness, I submitted
13 nothing except what I morally felt was wrong. I felt that
14 my evaluation was payback because I was not a yes man."

15 If the Commission's quality assurance requirements are
16 to be meaningful, a loyal Duke employee who does nothing
17 more than trying to do his job simply has to be provided
18 more support when he indicates harassment and retaliation
19 extending to the highest levels of Duke management. And
20 we think that that, the implications of that flaw, raise
21 what you characterize in Calloway as a legitimate doubt
22 about the safety of -- the adequacy of safety-related
23 systems.

24 CHAIRMAN ROSENTHAL: I think your time,
25 Mr. Guild, has expired.

1 MR. GUILD: Thank you.

2 CHAIRMAN ROSENTHAL: On behalf of the entire
3 Board I would like to express appreciation to counsel for
4 their illuminating arguments this morning. And on that
5 note, the Intervenors appeals from the three partial
6 initial decisions in question will stand submitted.

7 (Whereupon, at 12:25 p.m., the oral argument was
8 adjourned.)

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF OFFICIAL REPORTER

This is to certify that the attached proceedings before the UNITED STATES NUCLEAR REGULATORY COMMISSION in the matter of:

NAME OF PROCEEDING: DUKE POWER COMPANY, et al.

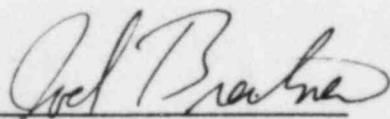
(Catawba Nuclear Station,
Units 1 and 2)

DOCKET NO.: 50-413, 50-414

PLACE: BETHESDA, MARYLAND

DATE: Wednesday, April 3, 1985

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission.

(sig) 
(TYPED)

JOEL BREITNER
Official Reporter
ACE FEDERAL REPORTERS, INC.
Reporter's Affiliation