

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

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

Deposition of:
Wayne Odell Henry
June 28, 1963

8310240049 830810
PDR FOIA
AHLERSB3-434 PDR



LAWYER'S NOTES

[illegible]

1 The deposition of Wayne Odell Henry was taken on the 28th
2 day of June 1983 at the legal offices of Duke Power Company,
3 500 South Church Street in Charlotte, North Carolina.

4 APPEARANCES:

5 For Duke Power Company - Ronald L. Gibson, Esq.
6 951 South Independence Blvd.
Charlotte, North Carolina

7 For Nuclear Regulatory - George Johnson, Esq.
8 Commission Office of the Executive
Legal Director
9 Mail Stop 9604
U.S. Nuclear Regulatory
10 Commission
Washington, D. C. 20555

11 For Palmetto Alliance - Robert Guild, Esq.
12 2135 1/2 Devine Street
Columbia, South Carolina 29205

13 (The deposition commenced at 11:14 a.m.)

14 WAYNE ODELL HENRY,

15 having been first duly sworn, was examined and deposed as
16 follows:

17 BY MR. GUILD:

18 Q Mr. Henry, would you state your full name and your
19 business address for the record, please?

20 A My name is Wayne Odell Henry, and my business address is
21 422 South Church Street, Charlotte, 28242.

22 Q All right, sir.

23 A That is Duke Power corporate offices.

24 Q And you are employed by Duke Power Company, are you not?

25 A That's correct.

1 Q In what capacity?

2 A I am the quality assurance manager of technical services,
3 QA department.

4 Q All right, sir. My name is Bob Guild, and I am counsel
5 for the Palmetto Alliance, an intervenor in the Catawba operating
6 license case, and we have filed a contention that has been
7 identified as Palmetto Alliance Contention 6, which the licensing
8 board has admitted for litigation, and it raises questions
9 about quality assurance and construction at Catawba. Are you
10 generally aware of that?

11 A I am generally aware of that, yes.

12 Q I want to show you a document that is dated December
13 31st, 1982, and your company's response to some interrogatories
14 by Palmetto Alliance, and on page 3 of that document there is
15 quoted the text of the contention as originally filed and then
16 as admitted by the licensing board, with some revision. Let
17 me ask you to take a few moments and just review that if
18 you will. It's the single-spaced, indented quotation that
19 begins on that page and goes to the next.

20 MR. GIBSON: While he is reading that, Mr. Guild, I
21 repeat as I did in earlier depositions, we take the position
22 that the scope of the deposition is limited in accordance
23 with the board's two most recent orders, narrowing Contention 6.

24 Q All right, sir. Have you had a chance to review that?

25 A Yes.

1 Q All right. Mr. Henry, can you identify the document that I
2 just had you looking at? Have you seen that before?

3 A Yes, I have seen it.

4 Q All right, sir. I am going to show you documents dated
5 February 23th, 1983, and it is a supplemental response by
6 the company to Palmetto Alliance's discovery request, and
7 ask you if you can identify that document.

8 A Yes, I have seen this before.

9 Q All right, sir. And finally, thirdly, a document that is
10 dated March 25th, and its response by the company to Palmetto
11 Alliance followup interrogatories. Can you identify that
12 document?

13 A I have seen that one also.

14 Q All right, sir. Did you participate in any manner in
15 preparing the company's responses to the interrogatories that
16 are contained in those documents with respect to Contention 6?

17 A Yes.

18 Q Would you describe your participation?

19 A Our participation was primarily a coordinating role, and
20 in that capacity providing the resources and primarily working
21 with Glenn Bell, that you deposed earlier, that worked for
22 me, and coordinating with the legal department those documents
23 and requests that come to us and getting those responses from
24 the right parties in quality assurance and getting them back
25 to legal.

1 Q Who else participated in preparing those responses, Mr.
2 Henry?

3 A Various people, depending on who had documents or knowledge
4 as to what the interrogatory was addressing.

5 Q Who?

6 A I could name names who did participate. Mr. Grier, my
7 boss, Larry Davison was a principal contact being located at
8 Catawba, and I would say those were the principal ones, but of
9 course other people who may have worked for them may have been
10 involved in collecting documents and providing answers.

11 Q To your knowledge, you, Mr. Grier and Mr. Davison were
12 the principal persons responsible for preparing those responses?

13 A On the technical matters, as it got in the personnel areas,
14 Neil Alexander, who is our manager of administrative services,
15 which includes personnel, would have been a principal party
16 in those areas.

17 Q You did not submit an affidavit reflecting your participa-
18 tion in preparing those responses, did you, Mr. Henry?

19 A To my knowledge, I didn't.

20 Q You don't recall?

21 A No, I did not submit one personally.

22 Q All right, sir. Let's go through these. Let's see if we
23 can shortcut this a little bit. In Mr. Bell's deposition he
24 indicated, as you have, that you participated in preparing the
25 responses. Your participation is not reflected in any of the

1 responses where asked to indicate who was preparing the
2 responses. Explicitly the applicants indicated that Mr. Bell
3 and Mr. Roger Ouellette, and Mr. Bell was deposed because he
4 was indicated as the person responsible. I learn now that he
5 says that you and Mr. Grier and Mr. Davison are, and is that
6 accurate, you, Mr. Grier and Mr. Davison are principally
7 responsible?

8 A For the technical areas, yes.

9 Q And then you have added for personnel, Mr. Alexander?

10 A That's correct.

11 Q Now, to have a complete understanding of who participated,
12 are there others that should be indicated as making a significant
13 contribution so I will know?

14 A I would say no others making a significant contribution,
15 but as I did state earlier, all of those people have others
16 who work for them and they may have been asked to help collect
17 documents or pull information from their files, but as far as
18 a significant contribution, no.

19 Q All right, sir. Of the three of you or the four of you,
20 Grier, Davison, Henry and Alexander, who had the most significant
21 contribution to preparing responses?

22 A I don't know that I could answer that as to which one was
23 more significant.

24 Q Who spent the most time answering them, if you know?

25 A Probably Mr. Davison but certainly I couldn't say that for

1 sure.

2 Q Who could best answer the questions concerning the process
3 and the circumstances of preparing those responses?

4 A I think any one of those four could answer that. I
5 could answer it, process.

6 Q I am going to try to save some time, but we have got all
7 four of those gentlemen lined up, and you are the first, so
8 we will start with you, sir.

9 A Okay. The process basically involved our legal department
10 trying to understand what the requests had been, what the
11 interrogatories were, and then coming to me or to Mr. Bell. As
12 I mentioned, both of us were identified as coordinators between
13 legal and QA. Then from that point we would collect the infor-
14 mation from whatever sources that might be available within the
15 quality assurance department, collect that information and
16 get it back to the legal department, where they would then
17 put it in a necessary form, or meet the required deadline,
18 submit it to the board, whatever that may be.

19 Q I am interested primarily, Mr. Henry, in the process as it
20 relates to the identification and production of documents,
21 and would your answer be the same with respect to that subject?

22 A My answer would be the same, that it would be an understand-
23 ing by legal as to what you asked for and then for us to
24 communicate that to the people who might have the answers of
25 the documents and produce those.

1 Q All right, sir. Was your role with respect to
2 documents limited to simply transmitting those documents from
3 quality assurance to legal?

4 A That was the major effort, but of course if there were
5 documents that I had that were required, they were also
6 produced. I was not only the coordinator but a party to
7 trying to answer those questions if it pertained to an area
8 where I had information.

9 Q All right, sir. Well, let's talk about that for a moment
10 then. What I first want to understand is, Mr. Bell, I think,
11 to fairly represent his characterization or his role was, that
12 he simply carried documents from point A to point B, quality
13 assurance to legal?

14 MR. GIBSON: I would object to the characterization but
15 will allow him to answer the question.

16 MR. GUILD: If that is not a fair characterization, I want
17 to inform the witness correctly and if you can submit a more
18 accurate one, please do so.

19 MR. GIBSON: I think he testified, among his duties, he
20 carried documents over here.

21 MR. GUILD: If he did more than that, I would like to know
22 what it was.

23 MR. GIBSON: I am just adding that to your characterization.

24 MR. GUILD: Is there anything else that the witness should
25 know, Counsel, that would fairly represent Mr. Bell's role?

1 MR. GIBSON: I have nothing else to add, Mr. Guild.

2 Q Mr. Bell said that he transmitted the document and that
3 if he read any of the documents, it was for his own curiosity
4 and not part of his responsibilities with respect to responding.
5 Did you have a similar limitation on your role or did you review
6 and read the documents that were made available to you?

7 A Answering your last question, yes, I read the documents.

8 Q All right, sir.

9 A That came through me.

10 Q Was that part of your responsibility, or did you do it
11 for your own curiosity, as Mr. Bell testified?

12 A I would not use your words, characterizing it as part of
13 my responsibility, but I feel it was more than curiosity. I
14 read the document to see what they communicated to me so that I
15 could logically discuss those with Ron and others, to make sure
16 they presented a fair representation of what we were represent-
17 ing.

18 Q Fine. So you participated in the substantive analysis
19 and review of the documents that were produced, is that fair?

20 A I conducted a review of the documents that were sent over
21 to legal.

22 Q All right. Now then, in addition to that, you identified
23 some documents with regard to which you were the source, or
24 that were your documents, is that right?

25 A What I earlier said is that I reviewed my files for documents

1 that might have helped answer the questions or might have
2 been pertinent to the questions that were being asked.

3 Q Yes, and did you find any documents in your files that
4 fit that description?

5 A I can only recall one document that was in my file, and
6 that involved an exit interview that was held several years
7 ago and transmitted over to legal.

8 Q Who was the subject of that exit interview? Do you recall?

9 A Marvin Johnson, an engineer at Catawba.

10 Q All right, sir. I show you a document and ask you if you
11 can identify that document.

12 A Yes, that's my signature.

13 Q That's your signature?

14 A Yes.

15 Q All right, sir. Describe the document.

16 A The document is a memo in the file, with copies to Glenn
17 Bell, George Grier and Al Carr. I assume the one that is marked
18 out is Larry Davison or Bob Morgan or someone else at Catawba.
19 What it is documenting is the search for additional information
20 that pertained to something we were trying to answer for legal
21 and summaries that we did that search and that the documents
22 were produced.

23 Q All right, sir. Is that document a copy of a document
24 that is in your file or was in your file?

25 A This is a copy of the original letter that either went to

1 one of these gentlemen or was in the file.

2 Q Well, when you write a memo to file, do you retain at least
3 one copy in your file?

4 A Yes, that's our practice.

5 Q So that document would not only appear in the files of the
6 gentlemen who were copied, but it would appear in your file,
7 be lodged in your file, is that right?

8 A Not in this form.

9 Q Without the handwriting notations?

10 A Right, correct.

11 Q Did you identify that document in your file when you
12 reviewed your files to determine whether there were documents
13 responsive to Palmetto's interrogatories and requests?

14 A No, I actually produced this document to send those documents
15 to legal to make those available as part of that process.

16 Q Did you understand the last question?

17 A I thought I did. Would you repeat it?

18 Q Sure. Did you find that document, when you reviewed your
19 files, to determine documents responsive to Palmetto's request,
20 and if you didn't, why not, and if you did, how come I didn't
21 get it from you?

22 A Okay. Yes, I understood your question before, and my answer
23 is the same. When I reviewed the file, this document was not
24 in there because this document was produced as part of subsequent
25 reviews to produce files to give to legal that were then

1 presumably to Palmetto Alliance.

2 Q One of the problems I am having, Mr. Henry, I am trying to
3 understand, and if you would just give me a general clarification,
4 perhaps we can move forward. It's our position that the
5 company has not been responsive in producing documents. I
6 am interested in what the process was that produced the documents
7 that we in fact got, and I am interested in your role in that
8 and your knowledge of that. Now, in this specific regard we
9 got a copy of a memo that you wrote to your file. We got a copy
10 presumably from someone else who was circulating that copy,
11 handwritten notes on it that appear to be made by one of the
12 persons copied. Mr. Morgan, correct?

13 A That's correct.

14 Q We didn't get that memo either in his noted form or --
15 either in its marked-up form or original form, from you, and the
16 inference that I drew from that, sir, and I want to ask you
17 whether it's accurate or fair or unfair, is that you didn't
18 produce that document, though it was in your file, and that there
19 must be some reason for that.

20 Now, is that an accurate understanding, that that
21 document was in your file in its original form, that either you
22 didn't find it or you found it and decided not to produce it,
23 and if that is accurate, how about explaining why?

24 A Okay. I don't agree that it's accurate, but I will
25 explain to the best of my ability what happened here. March

1 17th is the day of the memo, so that's the date it would be
2 in my files that this was written.

3 Q All right.

4 A Subsequent to that, the information that was identified
5 here was collected and was transmitted to legal as part of
6 what started the entire process, that is, being responsive
7 to what we understood you had asked for and we were required
8 to give you, records of any disputes, so this memo was
9 identifying the situation where there might be a record showing
10 the search that we did for the record, and giving a status as
11 of March 17th and then subsequent to that, the four welds that
12 were identified in this document as potentially being disputes
13 was sent to legal, and those are the facts.

14 Q All right, sir. Why wasn't that document not produced
15 from your file?

16 A It wasn't produced because it was stood on its own and given
17 to legal to say here is what we are doing to carry out what
18 has been asked for.

19 Q Did you perform the review and reach the conclusion that
20 that document was not required to be produced?

21 MR. GIBSON: Excuse me, Mr. Guild. I am not sure I
22 understand where we are. Are you contending that this memo
23 without the notations and attachments was not produced in
24 discovery?

25 MR. GUILD: Yes.

1 MR. GIBSON: At all?

2 MR. GUILD: Yes. I am not aware of it if it has been,
3 Counsel. I am aware of a copy, and I am aware of what the
4 witness has testified.

5 MR. GIBSON: I am talking about a copy. Are you saying
6 that you did not receive the original memo, and therefore the
7 document was not produced in discovery and therefore we have
8 not been responsive to interrogatories or responsive to
9 requests?

10 MR. GUILD: Yes.

11 MR. GIBSON: Well, Mr. Guild, you can proceed with your
12 questions, but I can tell you that in instances where a copy
13 of the document showed the substance of that document and was
14 attached to later documents that were a followup or were
15 responsive to that memo, to give you this document, we felt
16 was sufficient, rather than give you a copy and the document
17 again. There may have been some instances where you also
18 received a memo and got it two or three times, but where it
19 was clear, as in that instance, that you were getting the copy
20 of the memo as a packet or included with other data, you would
21 not have gotten another copy of this memo, a duplicate copy.
22 We hold out the number of duplicates simply to not give you an
23 extra couple hundred of pages of copies of things that were
24 already being produced, so that may clear up some of your
25 understanding of what is going on, but this document was produced

1 to you, now maybe not in the form you would have liked it
2 but the document was produced to you. With that, maybe that
3 will save some time and you can proceed with the questions.

4 Q Is that an accurate description of the process as you
5 understand it?

6 A That's accurate, yes, sir.

7 Q Now, the question, I guess, that still remains is, did you
8 perform the review and reach the conclusion that that document
9 in its original form need not be produced? Was that your
10 function and your decision, sir?

11 A I think Mr. Gibson's characterization was accurate as to
12 what happened, and I like that answer. If you want me to restate
13 it, I will.

14 Q That's what lawyers are for, sir, but I want what you know
15 and what you believe and what your opinion is, and the question
16 I will try to restate, and that is this, Mr. Henry: You told
17 me that in part your responsibility was to review your own
18 files, and you found only one document, and that document was
19 not the one we have just been talking about.

20 A That's correct.

21 Q All right, sir. My question to you, sir, did you find
22 that document, the one we are talking about now, and did you
23 in any way, shape or form contribute to the decision not to
24 produce that document, and if you did contribute, tell me
25 what your role was.

1 MR. GIBSON: I object to the form, but he can answer.
2 The document was produced though your question has the phrase
3 in it "not to produce the document." You may answer.

4 A With that -- if you are talking about me, my file and my
5 letter, I will answer to say that I knew that this document
6 and the other information that was required by it was produced.
7 Therefore I did not produce another copy of this letter from
8 my file.

9 Q All right, sir. Now, I want to make sure, Mr. Henry,
10 that there aren't things that got lost in the shuffle of that
11 sort. How can we know or have some level of confidence,
12 if we can, that in fact we have received all of these documents,
13 that you in fact have only eliminated duplicate copies of the
14 same document?

15 A I can tell you that that is what was done, the process
16 that was described, the way we produce the documents, and
17 that as an example, if there are others like this that serve
18 as a role to have some other action taken and then later
19 produced, no, you would not have gotten those intentionally,
20 but as Mr. Gibson said, sometimes they came in separate files,
21 and you may have duplicates in some cases and not in others.

22 Q You completely lost me there, sir. You are saying
23 documents of that character would not have been produced?

24 A No, I am saying, as we said, this document was produced.
25 Documents of this character would be produced.

1 Q It wasn't an accident that we got this particular one?

2 A It was not an accident that you got this one.

3 Q Tell me how you knew that we were going to get this copy,
4 the one that Mr. Morgan's files unearthed, and therefore
5 you decided to withhold the one from your file.

6 MR. GIBSON: I object to the term "withhold." He can
7 answer the question.

8 A As my memo stated, the review was being conducted at
9 Catawba. They were directed to forward any documents produced
10 that reflected disputes, and then I would forward those on to
11 Al Carr. Mr. Morgan did produce those, sent those to me,
12 basically carrying out the action that was identified in
13 this memo that would be done. I then put those in, servicing
14 in a coordinating role and passed those on to the legal depart-
15 ment. So the loop was closed, in my opinion.

16 Q All right, sir.

17 MR. GUILD: Let's mark this for identification as the first
18 hearing exhibit for Mr. Henry in this deposition, please.

19 (Thereupon, deposition exhibit number
20 1 was received and marked for
identification.)

21 Q Are the notes that are attached here yours?

22 A No, those are not my notes.

23 Q Whose notes are they?

24 A I can't say for sure because they are not signed.

25 Q What's your understanding of whose notes they are?

1 A My understanding of those notes is that Mr. Morgan, again
2 responding to this request, was transmitting this information
3 to be responsive to that.

4 Q They are Mr. Morgan's notes?

5 A I can't say that, whether he actually wrote this, no,
6 they are not signed notes.

7 Q The text of this memo that you wrote that is over your
8 signature reflects as follows: "In requesting previous
9 supervisors at Catawba documents which may show a dispute, R. P.
10 Ruth identified the concern on my attached notes." Where are
11 your attached notes, Mr. Henry?

12 A I don't know.

13 Q What did your attached notes reflect?

14 A The attached notes reflected what Mr. Ruth identified
15 that might be considered as a dispute because he remembered
16 instances such as these four welds that were identified, where
17 an individual had not originally signed off the document and
18 then it later had been signed off.

19 Q Why were your attached notes not produced? I don't think
20 your lawyer is going to help you on this.

21 MR. GIBSON: I object to your statement. I am going to
22 confer with Mr. Henry.

23 (The witness conferred with his attorney.)

24 Q Your answer?

25 A What I wanted to say is, I don't know that they have not

1 been produced but certainly what I wanted to tell you is that
2 these are not the notes that were attached to my letter. In
3 other words, this is a response to what I had summarized here
4 but I don't want to say that they haven't been produced. I
5 don't know that they have not been sent.

6 Q All right, sir. Well, I represent that they hadn't. In
7 your judgment --

8 MR. GIBSON: I move to strike that statement. It's not
9 a question. I request that you ask questions.

10 MR. GUILD: I represent that they have not. If you are
11 interested in the facts, and, Counsel, you have conferred with
12 your client, and you instructed him part on his answer, and
13 for clarification for the record I will state to you that I
14 represent that those notes have not been forwarded to Palmetto
15 Alliance.

16 MR. GIBSON: You represented throughout this proceeding
17 that you are familiar with what has been produced, and the
18 record reflects the status of that. Answer the question.

19 MR. GUILD: Counsel, do you dispute that they haven't
20 been produced?

21 MR. GIBSON: Ask the question. This is not counsel's
22 deposition. Ask the question.

23 MR. GUILD: I ask that the deposition reflect whether or
24 not those documents have been produced. It's a simple matter,
25 Counsel. I don't want to be fighting over something. If I am

1 in error, please correct me, but I represent to you that I
2 believe that those have not been produced, and I want to understand
3 this.

4 MR. GIBSON: You have changed your representation. Mr.
5 Henry has represented what he knows on the question and the
6 subject. I ask you now to direct another question to him.

7 Q Should those notes have been produced in your judgment,
8 sir?

9 A In my judgment, if the notes were adequately communicated
10 to the people who got it for action and they produced the
11 documents that showed whether there was or was not a dispute,
12 it would seem to me to be irrelevant whether they were there
13 or not.

14 Q Your answer is no, they shouldn't have been?

15 MR. GIBSON: His answer is what he answered, Mr. Guild.
16 Ask another question.

17 Q Is it your belief they should not have been produced,
18 sir? I want to understand clearly yes or no, and add whatever
19 explanation.

20 MR. GIBSON: He answered without answering yes or no,
21 and you are doing like you have done before in insisting on a
22 yes or no answer.

23 A I am comfortable with the answer I just gave.

24 Q Do you decline to answer the question?

25 MR. GIBSON: He does not decline, Mr. Guild. Wait until

1 another question is presented.

2 MR. GUILD: I am waiting for the witness to answer the
3 question.

4 MR. GIBSON: I am directing him to not answer unless he
5 has a further answer. Do you have a further answer, Mr. Henry?

6 A No.

7 MR. GIBSON: Ask another question, Mr. Guild.

8 Q Mr. Henry, a little bit of confusion here, sir. First
9 we get responses to interrogatories and requests who say they
10 have been answered by people who didn't answer them.

11 MR. GIBSON: I object to that question.

12 Q And then we get sworn testimony saying that you in part
13 answered them, and you have Confirmed that and identified
14 other individuals who participated in answering, one of whom
15 sits in the room whose sworn testimony will follow, and the
16 other who will be questioned as well, sir.

17 Now, I want to understand the truth, Mr. Henry, and you
18 are under oath, sir, and all I have is one document in front of
19 me and I don't want to make a tempest in a teapot but all I have,
20 sir, is one document that I know of that we can use as exemplary
21 of what your role and contribution has been to this process,
22 and it has your name on it, sir. I just want a fair under-
23 standing of where we got where we are, sir, to understand
24 where you are coming from and what your responsibilities are.
25 This document on the face of it reflects that you attached

1 notes which were part of your substantive instructions to the
2 people who were collecting documents in response to our request,
3 isn't that fair?

4 A No, I don't think that is fair.

5 Q Correct me, then. Please state where I am in error in that
6 characterization, sir.

7 A The notes, to the best of my recollection, were hand-
8 scribbled notes based on the phone communications with Mr. Ruth,
9 this possible dispute that would be on documents that would be
10 available. Those are notes I took when taking the phone call,
11 and it is my opinion that I could have written the memo and just
12 thrown those away. All they were doing was documenting the data
13 I got the phone call, that I talked to Mr. Ruth and he said that.
14 At that point I wrote the memo to make sure the proper action
15 was taken on Mr. Ruth's concern, directed the individuals at
16 Catawba to conduct that search, they did that, turned the
17 documents in, we turned them into legal. If that sounds like
18 what I said before, I am sorry.

19 Q Okay. Supply for me now your identification of the concern
20 which was contained on those attached notes, sir.

21 A The concern that was contained on those attached notes as
22 identified to me by Mr. Ruth was that there could possibly
23 be pieces of papers in the Catawba file where an inspector may
24 have made additional notes on the process control rather
25 than just signing off the document to say I accept or I reject or

1 whatever his normal function might be. He may have made other
2 notes. The concern expressed by Mr. Ruth was that those additional
3 notes could be construed by someone to reflect a dispute.
4 Therefore since it might reflect a dispute and we were in the
5 process of trying to produce all documents that did show a
6 dispute, we conducted the search that is mentioned here and
7 identified the four items or one item covering four similar
8 situations in attached notes, and that's the process or the
9 situation as I recall it.

10 Q Are those notes in your file now?

11 A They may be.

12 Q Do you know?

13 A I don't know.

14 Q All right, sir. I show you a copy of the notice of
15 deposition that is prepared for you, sir. Can you identify
16 that document?

17 A Yes.

18 Q Has that been served on you before?

19 A It has been given to me.

20 Q All right, sir. Have you read it before?

21 A Yes.

22 Q Would you read the middle paragraph in the text for
23 the record, please?

24 A You want me to read it?

25 Q Yes. Aloud.

1 A "You are required to attend and may be represented by
2 counsel and are required to bring with you any and all documents
3 in your possession or subject to your control reflecting your
4 knowledge of the above-described matters upon which you will
5 be examined."

6 Q Did you bring those documents with you today?

7 A I did not bring any documents with me.

8 Q Why did you not bring any documents with you?

9 MR. GIBSON: Mr. Guild, I will interject here. As has been
10 in earlier depositions, we have searched Mr. Henry's files
11 as a part of the discovery process in this case, and reviewed
12 his files prior to his coming to the deposition. We take the
13 position, as we have done in earlier depositions, that
14 every document Mr. Henry has that is responsive to discovery
15 has been produced. As has been the case with other gentlemen,
16 they have produced other documents that they have located.
17 We have no further documents regarding Mr. Henry, and there are
18 no others to be produced at this time.

19 MR. GUILD: We would ask that you produce the notes
20 that are clearly referenced in the one document that has been
21 produced so far, and those notes clearly relate to the subject
22 of welding at Catawba and I desire to examine the witness
23 further from the notes and would ask that he get those notes.

24 MR. GIBSON: I am telling you to put that on the list of
25 items you intend to take up with the board. We will not go

1 to search the file again. We have searched and produced every-
2 thing deemed to be relevant and discoverable as the case now
3 stands. If you have any further questions of Mr. Henry --

4 MR. GUILD: Do you refuse to adjourn the deposition and
5 instruct your witness to get the document that has now been
6 identified?

7 MR. GIBSON: Mr. Henry has indicated that he does not know
8 if the document exists, that he has reviewed his file and we
9 have produced everything discoverable. We will not adjourn the
10 deposition for that purpose. If you have any other questions,
11 Mr. Henry is available to answer them.

12 MR. GUILD: All right, sir. Please do note that I would
13 intend to examine the witness from the document that is
14 referenced here and you have declined to produce that document.

15 MR. GIBSON: I think the record reflects what both of
16 our comments are, and I don't agree with your characterization,
17 but we will let the record reflect what it reflects. Carry on
18 with your questions, Mr. Guild.

19 Q Just for clarity, sir, can you assure me that it's not
20 simply a matter of an error and oversight that the document
21 was omitted but that it reflects a reasonable judgment that
22 the document should not have been produced, the note that we
23 are talking about here, sir? I just want to understand whether
24 it is a reasonable position, as far as you know, sir, that those
25 notes should not have been produced and were not produced.

1 A I felt I answered that question before.

2 Q Yes. Can you exclude it's simply an error and oversight?

3 I just want to make sure that that's not your position, that
4 they weren't produced for that reason.

5 A I don't understand the question. Would you rephrase the
6 question, please?

7 Q Yes. Those notes were not produced, I represent, and I
8 ask you to assume they weren't. If we can't establish that --

9 MR. GIBSON: We object to the form, but he can answer.

10 Q If I ask you to just assume they weren't produced, sir,
11 can we exclude that the basis for their nonproduction was not
12 simply an oversight or an error?

13 A I will try to answer your question if I understand it.

14 Q Please.

15 A If they were not produced, it is my opinion that they
16 would not have been produced because they were not relevant
17 to the question that was asked, and the final documents that were
18 produced that did show in our view all of the documents
19 that we felt represented disputes, and that was the purpose of
20 the memo.

21 Q All right, sir. Did you prepare any other memos to file
22 reflecting the process for identifying and producing documents,
23 Mr. Henry, other than this that has been identified?

24 A Yes.

25 Q You did? Did you produce those memos?

1 A I don't know.

2 Q You don't know?

3 A I don't know.

4 Q Are they in your file?

5 A Yes.

6 Q All right. How many other memos did you prepare? Give me
7 an approximation. I don't expect --

8 A I don't know. Maybe six, eight.

9 Q What was the character? What were the characters of the
10 other memos?

11 A The characters of those would have been, again, fulfilling
12 the coordinating role to communicate with primarily the quality
13 assurance people who might have documents or information that
14 legal had requested of us. Using the normal means and communicat-
15 ing that type of information to certain people would be to write
16 a memo and ask them to produce it by required date, a certain
17 number of copies or whatever it may be, and then turn those
18 over to legal.

19 Q All right. Would those memos have been to the same people
20 that are indicated on that memo?

21 A Some would have been, yes.

22 Q All right. Mr. Bell, Mr. Grier, Mr. Morgan and Mr. Carr?

23 A But not in all cases.

24 Q All right, sir. Who else would have been included in
25 memos of the characters that you just described?

1 A Some of the memos may have been addressed to Mr. Gibson
2 rather than Mr. Carr.

3 Q Okay. Some in legal. How about persons other than legal?

4 A It's possible that a memo, as I have identified Mr. Alexander.

5 Q Personnel-related matter?

6 A Personnel, yes.

7 Q All right. The memo that has been identified, I will
8 ask that it be attached to your deposition as exhibit number 1.

9 MR. GIBSON: When you say attached to the depositions,
10 are you referring to transcripts that Palmetto might make and
11 be filed, or are you asking the court reporter here at the
12 request of applicants to mark that item?

13 MR. GUILD: Whatever you want to do, Mr. Gibson.

14 MR. GIBSON: You are in charge. I am just trying to
15 understand what you are doing.

16 MR. GUILD: If you want a copy of that attached to your
17 transcription, you are certainly welcome to do that, and I am
18 asking that both the record reflect that it be identified as
19 a hearing exhibit, and if you would like the court reporter to
20 attach it to the deposition you are having produced, do so.

21 MR. GIBSON: I am asking what you are intending. That's
22 all, Mr. Guild.

23 MR. GUILD: All right, sir.

24 Q Tell me what your duties are in your position.

25 A As I mentioned, I am in charge of technical services for the

1 quality assurance department. Primary functions are the area
2 of quality assurance procedures, also the procurement process,
3 vendor records and surveillances, carrying out the quality
4 assurance program as regards the designing engineer department.
5 Those are the primary areas of my responsibility.

6 Q All right. And you report to whom, sir?

7 A I report to Mr. G. W. Grier.

8 MR. GIBSON: Mr. Guild, it is now 12:00 o'clock. Could
9 you search for a convenient breaking point within the next
10 15 minutes?

11 MR. GUILD: Sure.

12 Q I am going to show you a document that is a figure 17.1-4
13 from amendment 6 to the company's quality assurance program
14 Topical Report. It is entitled "Quality Assurance Department
15 Organizational Chart." Can you identify that document?

16 A It is the document you stated.

17 Q Does that reflect the current organization in the quality
18 assurance department?

19 A Yes.

20 Q All right, sir.

21 MR. GUILD: If we can have this identified and marked as
22 exhibit number 2 to Mr. Henry's deposition.

23 (Thereupon, deposition exhibit number
24 2 was received and marked for
identification.)

25 Q Mr. Henry, who is primarily responsible for maintaining

1 the records of the quality assurance department?

2 A Primarily the records would be maintained at the location
3 of the site. That would be a vault, a storage location at the
4 site.

5 Q All right, sir. Who is primarily responsible for maintain-
6 ing the quality assurance department's records?

7 A The senior individual at whatever location is required to
8 maintain those records would be the primary individual responsible
9 for them.

10 Q All right, sir. I am looking at this organizational chart
11 that has been identified as exhibit 2 to your deposition, and
12 I notice that also reporting to the corporate QA manager on the
13 same functional level is QA manager for operations?

14 A That's correct.

15 Q QA manager for vendors?

16 A Correct.

17 Q QA manager for administrative services?

18 A Yes.

19 Q And senior QA supervisor, audits?

20 A Yes.

21 Q Now, under you, you are the QA manager for technical
22 services?

23 A That's correct.

24 Q Are boxes that reflect the functions of design, quality
25 assurance, quality assurance procedures and NDE?

1 A Yes.

2 Q And procurement and records?

3 A Right.

4 Q Are you the person at the QA manager level primarily
5 responsible for maintaining records?

6 A Not primarily. There are records that I am responsible
7 for. The block you have just indicated there indicates a
8 required review of certain vendor documentation, and I am
9 responsible for doing that, or having people to do that.

10 Q All right, sir. Those records relate to procurement
11 then?

12 A That's correct.

13 Q Who of the persons at the QA manager level has the primary
14 responsibility for the records of the quality assurance program
15 and department?

16 A All of the manager level individuals indicated here would
17 have some responsibility for some quality assurance records.
18 As I mentioned, the procurement vendors would be mine. There
19 are others that would not be my responsibility.

20 Q All right, sir. Let's make the focus documents that
21 are responsive to the discovery request that Palmetto Alliance
22 has made in which you participated in reviewing, and help me
23 understand, sir, who among the folks who are shown on this
24 chart here has what responsibility for maintaining the custody
25 of the records that we are talking about now.

1 A Okay. Which records are you referring to?

2 A I don't know what records you have, so you are going to
3 have to tell me.

4 MR. GIBSON: Mr. Guild, would you state clearly for the
5 record how you contend that is covered by the board's narrowing
6 of the contention of quality control and quality assurance and
7 welding? I want to be clear before I instruct him not to
8 answer.

9 MR. GUILD: You just have to make your judgment the way
10 you see fit, Counsel.

11 MR. GIBSON: Are you indicating you will not state how you
12 believe this is relevant?

13 MR. GUILD: Counsel, I am not going to engage in a
14 colloquy with you. I believe the question is clear. If you
15 want to instruct the witness not to answer the question, you
16 go ahead and do so.

17 MR. GIBSON: The question is clear. I am trying to
18 understand your rationale for it being included in giving the
19 board's recommendation. I am asking you to state that so I
20 will understand it so I will not needlessly object. Are you
21 indicating you are refusing to state that?

22 MR. GUILD: Counsel, I am trying to determine what this
23 witness's involvement was in the identification of records
24 that are responsive to discovery requests made by Palmetto
25 Alliance on this contention. Now, first I am told that a

1 different person other than this witness was responsible for
2 answering those interrogatories.

3 MR. GIBSON: You are not answering my question. My
4 question is, how are these questions about who is responsible
5 for records included within the narrowed scope of Contention 6
6 where the board indicated you may take depositions concerning
7 quality assurance and quality control? Again, if you will
8 just state that, you have no problem with having Mr. Henry
9 answer.

10 MR. GUILD: You have interrupted me again, Counsel. If
11 you just want to make a speech, Mr. Gibson, make a speech.
12 If you want to instruct your witness to not answer the question
13 and you want to produce another subject for dispute for the
14 board, we will do so, sir. I have a question pending.

15 MR. GIBSON: Would you repeat your question?

16 Q Explain to me who is responsible for maintaining the custody
17 of records in the quality assurance department, the quality
18 assurance program as it relates to the Catawba facility.

19 MR. GIBSON: Go ahead and answer if you know.

20 A This individual here would be responsible for all --

21 Q Please identify. The transcript won't reflect you are
22 pointing.

23 A I was going to do that. You previously asked about the
24 managers or the people reporting to this level. In the audits
25 area, that supervisor is responsible for the audits records

1 that he produces, and likewise all of the other managers are
2 responsible for the quality assurance records that are produced
3 in their area of responsibility. The area you had mentioned
4 about records under my responsibility is mentioned as a special
5 case because, as we discussed, those are the procurement
6 documents, where we have a requirement for quality assurance
7 records, and those records are reviewed by my staff.

8 Q All right, sir. Help me understand, Mr. Henry, how the
9 documents that are the subject of the memo that has been
10 identified as hearing exhibit 1 are documents for which you
11 as the manager for technical services have responsibility?

12 A Okay. The reason that is so is because of my coordinating
13 role that I explained earlier in providing a focal point for legal
14 to have someone to contact in quality assurance. And in carry-
15 ing out that coordinating role in getting the documents to
16 legal in a timely manner, I produced that memo and had those
17 discussions that said produce these records that another manager
18 may have been responsible for, which he did, and then
19 I turned them over to legal.

20 Q Was another manager responsible for the documents of the
21 sort identified in this memo?

22 A Yes.

23 Q And who was that manager?

24 A That manager would have been the projects QA manager
25 at Catawba.

1 Q Who was?

2 A Who is L. R. Davison.

3 Q Larry Davison?

4 A That's correct.

5 Q All right, sir. And Mr. Davison is the manager responsible
6 for documents regarding quality control at Catawba?

7 A As regards the construction activities.

8 Q Yes.

9 A Not operations.

10 Q And that's the subject of our concern and not operations,
11 so he is the manager responsible for QC construction related
12 documents?

13 A That is correct.

14 MR. GIBSON: Perhaps we can break for lunch. We will take
15 an hour for lunch. It is now 11 minutes after 12.

16 (Thereupon, the lunch recess was taken from 12:11 p.m.
17 to 1:17 p.m.)

18 Q Mr. Henry, I have shown you a couple of documents that
19 are responses by the company to Palmetto Alliance discovery
20 request, and I believe your earlier answer was you participated
21 in preparing those responses?

22 A Yes.

23 Q All right, sir. The first document that I showed you was
24 the December 31st response, and let me direct your attention to
25 page 41 of that response, and there is contained the company's

1 answer to interrogatories 23 and 25. Let me show you that
2 document. Did you participate in preparing that response?

3 A Yes.

4 Q All right, sir. The bottom of page 41, the company's
5 response states: "Applicants do not now represent that this
6 list is complete. Applicants are continuing their search to
7 determine whether there are additional documents within the
8 scope of interrogatories 23 and 25."

9 On the following page there are identified several documents.
10 Did you participate in the identity of the documents that
11 are set forth there?

12 A Yes.

13 Q Describe the participation. What did you do?

14 A The coordinating role I performed, and all of these would
15 have been available through me to get to legal. I can't say
16 which of any of these were specifically documents that were
17 under my control prior to getting them in that coordinating
18 role. I don't know if one of these is the exit interview
19 we talked about.

20 Q All right, sir. There are only nine documents listed
21 in that response, isn't that right?

22 A Yes.

23 Q How did you come to identify only nine documents as
24 responsive at that time to interrogatories 23 and 25?

25 A We were asked questions that took a day to list, but at

1 that time that's all we had.

2 Q I would ask that you not confer with Mr. Gibson prior to
3 responding.

4 MR. GIBSON: You are indicating that you are objecting
5 to him conferring with counsel?

6 MR. GUILD: I would like to reflect the witness's answer
7 to the question without being prompted by Mr. Gibson.

8 MR. GIBSON: I resent the implication there is a prompting.
9 I am conferring with the witness as I deem it necessary and
10 he deems it necessary. He asked to confer with me, and we
11 will do that whenever necessary.

12 MR. GUILD: I ask that the witness not confer with you.

13 MR. GIBSON: In spite of what you are asking, I am instruct-
14 ing you as to how we are going to do that.

15 MR. GUILD: I would like to reflect the counsel
16 instructing the witness how to answer that question.

17 MR. GIBSON: I instructed the witness to go ahead and explain
18 his answer and to reveal what he is asking about on this deposition
19 record..

20 MR. GUILD: I renew my request that the witness not confer
21 with counsel or that the counsel not instruct the witness as
22 to his answers to questions.

23 MR. GIBSON: Counsel has not instructed the witness as
24 to answers to questions. Counsel has provided counsel to the
25 witness as is the role of counsel, Mr. Guild. Go ahead Mr. Henry.

1 A Yes, at the time of this document, those nine documents
2 mentioned here were the ones that were responsive to this
3 item. The question I had was the statement "Do not represent
4 this list as now complete." Of course that is the phrase that
5 was put in the legal document that was filed with the board.
6 I just want to make it clear that I am talking about the docu-
7 ments we have here at this point in time are the ones that we
8 had coordinated those responses and given to our legal department.

9 Q All right, sir. Now, that response is dated the 31st of
10 December 1982. Do you represent, sir, that those are all of
11 the documents known to you that were responsive to that inter-
12 rogatory as of that date?

13 A I represent that these are the documents that I had given
14 to legal. Now, I do not represent that there may have been
15 some other actions ongoing before the board as to whether some
16 things were in or out, and I don't recall those dates.

17 Q Do you understand the question as asked, sir? I will
18 repeat it.

19 A I understand the question.

20 Q And is your answer that those are all of the documents known
21 to you, sir, at the time? I am not asking you to guess what
22 someone else may have known. I want to know what you knew,
23 as best you can recall, as of the 31st of December. Are those
24 all of the documents you knew of at that time that were responsive
25 to that request?

1 A Yes.

2 Q All right, sir. I am going to show you another document
3 and this is applicant's February 28th response, and at page 14
4 I show you paragraph number 6. Does that reflect, Mr. Henry
5 -- you recognize that document, don't you? You have already
6 identified it, I believe.

7 A Yes.

8 Q Paragraph number 6, doesn't that indicate that you
9 participated in a meeting on the 7th in response to Contention
10 6 in April of 1982?

11 A Yes.

12 Q Did you participate in a meeting in April of 1982?

13 A To the best of my recollection, yes.

14 Q All right, sir. What was the subject of that meeting?

15 MR. GIBSON: Objection, and instruct him not to answer.

16 Mr. Guild, I think from what is indicated there, that was a
17 meeting, a description of a meeting as indicated there and
18 I instruct him not to answer any further than is indicated in
19 answers to interrogatories.

20 MR. GUILD: Mr. Gibson, you put me in a difficult position,
21 sir, and believe your instruction is improper and considerably
22 overbroad. You have exerted an objection on the basis of
23 privilege to producing documents that are identified in the
24 document that I have referred to. I am not asking him to pro-
25 duce those documents. I am asking him to describe to the best

1 of his knowledge what had happened at a meeting. Now, are you
2 asserting an attorney-client privilege --

3 MR. GIBSON: I am asserting an attorney-client privilege.
4 I am not changing that position. You may ask another question,
5 Mr. Guild.

6 MR. GUILD: Are you instructing him not to answer?

7 MR. GIBSON: The answer to that question appears in those
8 answers to interrogatories.

9 MR. GUILD: No, it does not. You can't presume what the
10 witness's answer is, sir.

11 MR. GIBSON: I am instructing him not to answer any further
12 than is indicated in those responses. If you have another
13 question, Mr. Guild, ask the witness.

14 Q Did you discuss producing documents or the process for
15 producing documents responsive to interrogatories 25 and
16 23 on Contention 6 on or about the time indicated in this
17 document, that is, in April, approximately April 23rd, 1982,
18 Mr. Henry?

19 MR. GIBSON: Objection, instruct him not to answer. You
20 may ask Mr. Henry what he did in terms of his coordinating
21 role to produce documents for Palmetto Alliance.

22 MR. GUILD: I would like the question answered as asked,
23 Counsel. Are you instructing him not to answer?

24 MR. GIBSON: As I say, he is not answering that question.
25 I have indicated to you the kinds of questions you may ask him.

1 MR. GUILD: I am making a list here, Counsel --

2 MR. GIBSON: That is your prerogative. Ask another
3 question.

4 Q What did you do at the April 23rd meeting with respect
5 to reviewing documents or preparing to identify documents
6 responsive to interrogatories 23 and 25?

7 MR. GIBSON: Objection. Instruct him not to answer. You
8 may get similar information or perhaps the same information
9 by asking him what he has done in his role. I will not have him
10 discuss meetings involving counsel where legal strategy was
11 discussed, and I have instructed him not to answer. Now, do
12 you have another question, Mr. Guild?

13 MR. GUILD: Mr. Gibson, I am going to try very hard, but I
14 think your objections are misplaced and thwart substantially
15 my efforts to obtain relevant information from this witness.

16 MR. GIBSON: That is to be determined by the board. Ask
17 another question.

18 Q Recognize your lawyer's instructions to you, sir, which
19 I contest. What did you do, Mr. Henry, you, sir, independent
20 of any consultation with your lawyer, what did you do with
21 respect to identifying documents responsive to Contention 6,
22 interrogatories 23 and 25 on or about the date indicated?

23 MR. GIBSON: I am going to confer with the witness, and
24 you are free to let the record reflect that, Mr. Guild.

25 (The witness conferred with his attorney.)

1 MR. GIBSON: He is prepared to answer.

2 MR. GUILD: Did you instruct the witness as to his answer?

3 MR. GIBSON: I advised my client as to how he might answer
4 that question consistent with attorney-client privilege. You
5 may answer, Mr. Henry.

6 A Would you restate the question?

7 Q No, sir, I won't restate the question. You have consulted
8 your lawyer, he has instructed you how to answer the question,
9 sir, you clearly had an opportunity to discuss exactly your
10 answer, and I am not going to go through a charade of repeating.

11 MR. GIBSON: Are you going to argue with the witness?

12 MR. GUILD: No, sir, I am asking the witness to respond
13 as asked.

14 MR. GIBSON: Would you repeat the question?

15 MR. GUILD: Would the reporter read the question back,
16 please?

17 (Thereupon, the pending question was read back by the
18 court reporter.)

19 Q Do you need the document to respond to the question, sir?

20 A Yes.

21 MR. GUILD: The record should reflect I am showing the
22 witness the February 28th response.

23 A To the best of my recollection, that April date that is
24 mentioned there, what we did was discuss the areas of
25 responsibility, those areas that would be in my primary concern.

1 those areas that would be in the quality assurance area and
2 therefore require us to perform some role in being responsive
3 to whatever questions legal might ask.

4 Q Yes.

5 A And you asked about documents. To the best of my
6 recollection, we discussed no discovery or production of
7 documents at that meeting.

8 Q All right, sir. When did you first discuss your role in
9 identifying and producing documents responsive to those
10 interrogatories on Contention 6?

11 A I don't recall.

12 Q When approximately, to the best of your recollection?

13 A I can't recall a date.

14 Q All right, sir.

15 A But it would have been in response to when legal said
16 the time has now come to produce the documents. I would imagine
17 that's available somewhere in the record. I don't recall the
18 date.

19 Q That record has not been made available to me, sir, so
20 I am trying to get the information from you. Now, to refresh
21 your recollection, the best I can, sir, you received, or
22 the company received our interrogatories on Contention 6 on
23 or about April 20th, 1982?

24 A No argument.

25 Q Do you agree with that?

1. A I don't recall the date.

2. Q I am going to show you company's first response, which
3. is dated December 31st, and does that not reflect that those
4. questions were filed on April 20th, 1982, those interrogatories?

5. A Yes.

6. Q And then you met on the 23rd of April to discuss in part
7. your response to those interrogatories, yes?

8. A I don't recall. I have given you what I recall about
9. the April 23rd, '82, meeting, and I don't recall anything else
10. about the meeting.

11. Q All right, sir, but you did meet on April 23rd, didn't
12. you? I am trying to pick up the trail here.

13. A Again, that date is only familiar to me by what you just
14. showed me but I am assuming that is correct, and we met on
15. the 23rd.

16. Q And you didn't respond until the December 31st document,
17. correct? This is your response to the interrogatories with
18. regard to Contention 6?

19. A Your question, we didn't respond until then, if that's
20. the first response, yes, but I don't know those dates.

21. Q Well, I ask you to accept that, sir, that this is the
22. pleading, and this is your first response, and you don't
23. know to the contrary, do you, and if you do, please correct
24. me, and I believe --

25. A I don't know that to be correct or incorrect.

1 Q All right, sir. If you will accept, sir, that December
2 31st is the document and wherein the company responded, and in
3 that response you said you have only identified nine documents.
4 I want to understand, sir, what you did between April and
5 December to identify documents, if anything, and why did it take
6 you those months to identify nine documents, sir, if you know?

7 MR. GIBSON: I think he has answered that question.

8 Q Can you answer the question, sir?

9 A I don't think so any better than I already have.

10 Q When did you begin attempting to identify documents that
11 led to the identity of nine documents in December?

12 A I think I already answered that too. I don't recall.

13 Q You don't remember?

14 A I don't remember.

15 Q Do you have your files with you, sir?

16 A No.

17 MR. GIBSON: We will cross that bridge, Mr. Guild, and
18 our response is the same.

19 MR. GUILD: It may be, sir, but let me ask the question.
20 It's my deposition.

21 Q Would consultation with your files refresh your recollection
22 as to when you did what with respect to identifying documents,
23 sir?

24 A It possibly could.

25 Q Would you refer to your files? Do whatever you need to

1 do to refresh your recollection so I can get responsive answers
2 to my deposition questions.

3 MR. GIBSON: Mr. Guild, we are not going to refer to any
4 other files. I am suggesting you put that on the list of
5 matters to take up with the board. If you have another question
6 of Mr. Henry, feel free to ask him.

7 MR. GUILD: You decline to honor my request that Mr. Henry
8 consult his records to refresh his recollection as to when he
9 identified documents?

10 MR. GIBSON: Yes, I do. If you have another question,
11 ask him.

12 Q Do you maintain a calendar or a diary that reflects
13 the work that you performed for Duke Power Company, sir?

14 A No.

15 Q Do you maintain any other notes or memoranda reflecting
16 dates, responsibilities, due dates or work performed for
17 Duke Power Company?

18 MR. GIBSON: Mr. Guild, how is that involved with quality
19 control and quality assurance in welding at Catawba, would you
20 please state for the record?

21 MR. GUILD: I intend to subpoena this man's file documents,
22 Mr. Gibson, either for purposes of pursuing discovery in this
23 case or at the hearing in this case on the question of whether
24 or not documents responsive to our discovery request with
25 respect to quality assurance and welding at Catawba have in fact

1 been produced, sir. Now, I wish to establish on this record
2 at this deposition, sir, as permitted in the discovery rules
3 of Commission Rules of Practice the identity, nature, custody
4 and location of documents which I have notified you I intend
5 to seek production of, and I ask the witness to respond to the
6 question.

7 MR. GIBSON: Mr. Guild, it appears to me that consistent
8 with the Commission Rules of Practice, the board has placed
9 certain limitations on the scope of this deposition, and we
10 sat here and I think allowed you to spend a lot of time beyond
11 that scope without objecting. I am going to instruct him
12 to answer to the extent he maintains any records so that
13 you will have that identification and then we will move on to
14 another subject because we are not going to allow any more
15 questions about that.

16 MR. GUILD: Sir, you just instruct your witness as you
17 choose, and, Mr. Gibson, we will seek what relief we need to.

18 MR. GIBSON: That is my understanding of what we are going
19 to do so let's proceed with the deposition.

20 MR. GUILD: I intend to ask the questions that I intend
21 to ask.

22 MR. GIBSON: I intend to advise him how to answer on which
23 ones he has answered.

24 MR. GUILD: You have been doing it consistently and the
25 record should reflect it.

1 MR. GIBSON: He is my client. Ask another question.

2 MR. GUILD: I would like the question answered pending.

3 A I am sorry, I will have to have that one read then.

4 MR. GIBSON: Are you asking him if he maintains a calendar?

5 MR. GUILD: Please don't interrupt again.

6 MR. GIBSON: Mr. Guild, I indicated to you earlier --

7 MR. GUILD: We are simply going to have to have the question
8 read one more time. If the witness is incapable of answering
9 the question, he should so state, but I want the question the
10 way asked for the second time.

11 MR. GIBSON: I will just have to repeat to you I am not
12 going to have the witness answer a question that I don't
13 understand, and I am simply trying to clarify it for myself and
14 his sake. I understand you object to that, but absent some
15 indication from the board that my conduct in this area is improper,
16 I am still going to proceed this way.

17 MR. GUILD: Counsel, if I had an opportunity to seek a
18 ruling from the chairman of the board now, I would do so, and I
19 would have done so an hour ago.

20 MR. GIBSON: You don't have to pound on the table. I
21 hear you.

22 MR. GUILD: Counsel, you know well the board chairman
23 is unavailable. There is no presiding officer who can rule on
24 any matters pending between us, sir, and I am therefore
25 completely powerless to seek any remedy against your behavior,

1 sir.

2 MR. GIBSON: Do you maintain a calendar of any sort?

3 A Yes.

4 MR. GIBSON: Okay. Ask another question, Mr. Guild.

5 Q Where is that calendar, sir?

6 A The calendar is in my office.

7 Q And how far back does that calendar go, sir?

8 A That calendar starts December 1982.

9 Q What notations did you make on that calendar?

10 MR. GIBSON: I am going to instruct him not to answer any
11 further. He has identified the calendar. If you have other
12 questions, move on.

13 Q I want to know what information is contained in that
14 calendar so I can seek specifically the information of documents
15 that I intend to require production of.

16 MR. GIBSON: I think we are beyond the scope. I am
17 instructing him not to answer. Move on to something else.

18 MR. GUILD: The question is pending. Are you instructing
19 him not to answer?

20 MR. GIBSON: I am instructing him not to answer. Ask
21 another question.

22 Q Does that calendar reflect work performed for Duke Power
23 Company with respect to your responsibilities in responding
24 to the discovery request by Palmetto Alliance, sir?

25 MR. GIBSON: You may answer.

1 A Only as regards if it had stated on there a meeting or a
2 time of certain people to be with, the normal things one would
3 keep on a calendar.

4 Q Would those normal things one would keep on a calendar
5 in this case include such things, for example, a date when
6 you are required to have completed a search for documents or
7 made an inquiry or produced documents for legal in response to
8 a Palmetto Alliance request?

9 A No.

10 Q If you had a meeting where you were to discuss the
11 results of a review of documents, would that meeting be
12 indicated on that calendar?

13 A In most cases, yes.

14 Q If you had a meeting in which you were to meet with
15 personnel to review documents, would that meeting be indicated
16 on that calendar?

17 A In most cases, yes.

18 Q Mr. Henry, I am going to instruct you, sir, to maintain
19 the integrity of that calendar, to destroy --

20 MR. GIBSON: You are asking him, as I understand it, isn't
21 that correct, Mr. Guild?

22 MR. GUILD: I am going to instruct him.

23 MR. GIBSON: You are asking him, aren't you, Mr. Guild?

24 Q I am putting you on notice, sir, that I intend to seek
25 production of those documents. Do you understand, sir?

1 MR. GIBSON: He is not going to respond until we are
2 straight on what you are asking him, Mr. Guild.

3 MR. GUILD: Do you understand, Counsel?

4 MR. GIBSON: I am asking you a question. Are you requesting
5 that he to the best of his ability maintain his calendar until
6 this proceeding is over?

7 MR. GUILD: That's correct.

8 Q Do you understand that, sir?

9 A Yes.

10 Q Will you do that?

11 A I will do that.

12 Q For the record, Mr. Henry, can you tell me to the best of
13 your recollection when the nine documents that are listed in your
14 company's December 31st response were identified?

15 A No, I can't give you anything other than before the day
16 of that document. I really can't say when they were identified.

17 Q All right, sir. Page 41 reflects the following: "Applicants
18 are continuing their search to determine whether there are
19 additional documents." Were you in part responsible for that
20 search?

21 A Yes.

22 Q What was your responsibility?

23 A My responsibility was as stated before, in carrying out
24 this role of legal, identify the needs or for whatever reason
25 documents that were thought to be held by QA, we needed to search

1 for them. I was the principal contact and the coordinator
2 to try to obtain those documents.

3 Q All right, sir. This document, this December 31st answer
4 reflects that a search was continuing, isn't that correct?

5 A Yes.

6 Q Was there a search under way at that time? Is that a true
7 statement?

8 A Yes.

9 Q All right, sir. And you were in part responsible for
10 the search that was then pending, is that correct, sir?

11 A Yes.

12 Q What did you do?

13 A I can't recall specifically what I did or all I did but
14 it was in that role as a coordinator in being responsive to
15 what our legal staff needed.

16 Q All right, sir. What were your instructions with respect
17 to the scope of the search?

18 A To be responsive to the questions that were asked and the
19 documents that pertained to them.

20 Q And you had those questions available to you?

21 A Yes.

22 Q And you knew what interrogatories 23 and 25 or the other
23 interrogatories on Contention 6?

24 A Yes.

25 Q All right, sir.

1 MR. JOHNSON: I don't understand something. You are
2 asking him to clarify what he did at a time that is removed by
3 many months. It seems to me that the question is not what he
4 knew and what he was doing then because as far as the board
5 has ruled, they have already given you the benefit of the doubt
6 and said that certain documents were given to you at some later
7 date, so the question now should be, shouldn't it, what documents
8 does he have that he hasn't produced rather than the timing
9 of the production? I just don't see the point of discussing
10 this particular facet of the question because you have already
11 gotten the board to agree with you that some of these documents
12 weren't produced as soon as you would have liked. Do you
13 follow the drift of what I am getting at?

14 MR. GUILD: I hear you, Mr. Johnson, but I don't think
15 you are being very helpful. Finish your comments, if you would.

16 MR. JOHNSON: Well, my comments simply is that the line
17 of questioning, I think the board has already ruled in your
18 favor on the question of whether all of the documents that you
19 are seeking were produced at this time that we are talking
20 about, and given you more time, as a result, to take depositions
21 and pursuing how -- what he looked at at that time is a question
22 that the board has already decided indirectly that you are
23 entitled to certain additional discovery and now is the time
24 to get that discovery, not to go over this issue that has
25 already been decided, that's all.

1 Q Mr. Henry, did you cause a written request or an oral
2 request to be made to persons in order that the search referred
3 to in this for documents might be effected?

4 A Yes.

5 Q Would that request on your part have been at a time as
6 indicated -- as suggested in this document, the December 31st
7 response, before this response was written? Do you follow me,
8 sir?

9 A I follow you but I can't recall.

10 Q All right, sir. And again you have copies of any memos
11 that you would have transmitted to others in order to effect
12 that search. If you wrote a memo to somebody in QC at Catawba
13 and said let's look for, please search your files for X, that
14 memo would be in your file, is that correct, sir?

15 A It should be.

16 Q And you may have written such a memo, is that a fair
17 statement?

18 A Yes.

19 Q All right, sir. Now, I want to show you the company's,
20 again the February 28th response, and direct your attention to
21 page 29, and this is again with respect to interrogatories 23
22 and 25. Read for the record, if you would, sir, the first
23 paragraph of the text of the answer.

24 A The following documents relate to, one, disagreements,
25 differences of opinion between quality assurance inspectors

1 and their own supervisors and their management within the scope
2 of interrogatory 23 which have not been resolved between the
3 supervisor and the inspector; and, two, to complaints or
4 suggestions by workers within the scope of interrogatory number
5 25 known by Duke Power Company management.

6 Q All right, sir. The key phrases that I want to ask you
7 about, sir, are, first, the phrase that says, "which have not
8 been resolved as between the supervisor and the inspector."
9 What does that phrase mean to you, sir, and what is the
10 significance of it and in light of the search for documents that
11 you were then performing, please, as you know it?

12 A What that means to me is if there is a document that would
13 show that there was a difference of opinion at some point
14 in time between an inspector and a supervisor but subsequent
15 information on that document or some other related document
16 resolved that concern or difference of opinion, then no
17 difference of opinion existed.

18 Q Yes, sir, and therefore no document reflective only of that
19 dispute between the inspector and supervisor was identified
20 or produced?

21 A I can't say that no document that meets my interpretation
22 of that was not produced. I don't know that.

23 Q What I want to understand is what you do know, Mr. Henry,
24 and what is the significance of that phrase with respect to
25 any limits that were on the review or identity or search, as

1 you know it, sir, and as you performed.

2 A The limitation to me is that if there was a question on
3 these documents that might indicate that it was a dispute or a
4 difference of opinion, but then it was within that document or
5 related document shown not to be that way, then it was resolved,
6 it was a matter of that record and that document standing on its
7 own, so it did not reflect that dispute, difference of opinion.

8 Q All right, sir. And at that point in time, again the
9 point in time when the February 28th responses were served, had
10 you in fact identified documents reflecting disputes that were
11 resolved between inspectors and supervisors?

12 A I have not.

13 Q To your knowledge, had anyone with the Duke Power Company?

14 A To my knowledge, no.

15 Q Now, why was that limiting phrase "Employed either in the
16 search or the response," if you know, or in the instructions to
17 you or from you to others regarding the search for documents
18 under those interrogatories?

19 A I don't know.

20 Q Who was responsible for that portion of the response, if
21 you know?

22 A I don't know.

23 Q It was not you?

24 A You are talking about specifically the words where you
25 started a question, "which have not been resolved"?

1 Q Yes, that's correct.

2 A I was not responsible for that wording.

3 Q And you don't know who was?

4 A No.

5 Q Would it have been Mr. Grier or Mr. Davison?

6 A To my knowledge, no.

7 Q Would it have been someone in the legal department?

8 A Not to my direct knowledge, but I would say yes.

9 Q Were you a participant in any discussions with respect
10 to the use of that phrase and response?

11 A Not that I recall.

12 Q What I want to understand, Mr. Henry, and if I am missing
13 the point, please try to break it out for me, but it seems one
14 could draw from that answer that when you sat down, you said
15 how are we going to identify these documents, that you might
16 have figured well, there is a class of documents that we don't
17 think is really important or we don't think is really to the
18 point or we don't think is really responsive, and it's described
19 by that phrase, all right, sir, and therefore we are going to
20 presume that that's not something we are going to produce, and
21 we are going to tell them that that's not what we are producing.
22 Now, if that's the fair kind of shorthand for what went on,
23 you know, I would like for you to confirm that. If I am just
24 off base or my presumption is not correct, tell me that, but
25 you get the drift of what I am trying to get you to tell me about

1 it?

2 A I think so but let me talk to Mr. Gibson a second.

3 Q Please do.

4 (The witness conferred with his attorney.)

5 A I guess that didn't help a whole lot. I don't know how
6 to answer your characterization of what we may have done with
7 it. I am telling you what I did with it, and to my knowledge
8 it was not a statement I used in collecting documents, and to the
9 best of my recollection had no documents that anyone reported
10 to be a dispute or disagreement and that I judged, no, it's
11 resolved, therefore don't turn it in if that's what you are
12 after.

13 Q Yes, sir. Let me put it this way. Let me represent
14 this now.

15 MR. GIBSON: Mr. Guild, I have some trouble with your
16 representing certain assumptions and if you could possibly
17 ask questions, it might save me from interrupting you unnecessarily

18 MR. GUILD: Let me try this, Counsel. What Mr. Henry's
19 testimony is going to look like after you have instructed him
20 and conferred with him repeatedly, I don't know, but I am going
21 to try to see if I can put this in front of him and you, and you
22 can do whatever you want to with it, but I want to try to get
23 some truth and some information.

24 Q I represent to you, sir, and I am going to ask you a
25 series of questions following, but I represent to you, sir,

1 that after that February 28th response was served, I
2 conferred with your counsel, and I said, to paraphrase now,
3 our Contention 6 says that because of pressure brought to bear
4 by management, inspectors approve faulty workmanship, and so
5 when I read that limiting phrase, the phrase that says "Not
6 resolved as between the inspector and supervision," it occurred
7 to me that that goes to the heart of our concern, that there
8 were disputes that never got beyond that supervision because
9 the supervision applied pressure on the inspectors to not carry
10 their disputes further. That's what I said in paraphrase
11 to your counsel, and in paraphrasing their response, they said,
12 "Oh, well, that's a good point. We will look further and
13 conduct a further search to see if there are documents that go
14 beyond that limiting phrase," and they did, or at least they
15 represented to me that they did, and there was more information
16 forthcoming.

17 All right, sir. Now, that representation having been made,
18 sir, what I want to understand, and why I am trying to direct
19 these questions to you, sir, I want to know who did that search,
20 sir, and what that search looked like and what you found, and
21 I have understood in part from your answers that you were
22 partially responsible for the search that was performed. First
23 of all, were you in fact partially responsible for the search
24 that was performed?

25 A Yes.

1 Q And did your counsel or management or somebody come to you
2 and say, in effect, Mr. Henry, let's look for documents that
3 fall within that limiting phrase, reflecting disputes that may
4 have been resolved between the inspector and the supervisor,
5 and someone asked you to conduct that search?

6 A I don't recall a search where those specific words that
7 you just used were directed to me, to go search it in that manner.

8 Q Anything like that, sir? I am not trying to be too narrow
9 or overly technical about it.

10 MR. GIBSON: What is the time frame you are talking about,
11 Mr. Guild?

12 MR. GUILD: Counsel, this is after the February 28th
13 response, very shortly after February 28th. It would have been
14 early March probably.

15 A Of '83?

16 Q Yes, sir, of '83.

17 A I don't recall --

18 Q All right.

19 A -- counsel giving me that instruction.

20 Q And you don't recall having that instruction or instructions
21 to that effect from anybody?

22 A Not with the specific points you have mentioned about dis-
23 putes that may have been resolved.

24 Q All right, sir.

25 A I am not saying that I was not coordinating any other

1 responses or answering legal's questions or collecting documents.

2 Q All right, sir. If you don't recall -- first of all, you
3 are not the one, is that what you are telling me, that conducted
4 that search, if that search were conducted at all? You don't
5 have knowledge of it yourself, is that right?

6 A Not the way you characterize it.

7 Q Fine. And you are responding to the substance of my
8 question, I take it, sir, and I am not trying to be overly
9 technical or narrow.

10 A No, the way you characterize it and that date, no, I was
11 not told to go do that search the way you characterize it.

12 Q Are you aware of anybody else who had the responsibility
13 of conducting that search or I will refer to it as that search?

14 A No.

15 Q All right, sir.

16 MR. GUILD: We will have to continue our search to find
17 that then.

18 MR. GIBSON: Objection. Move to strike the side comments.

19 MR. GUILD: Tell me who is the witness who does know this
20 since we have not had an accurate indication of who supplied
21 these interrogatory responses.

22 MR. GIBSON: I indicated to you earlier that if you
23 would ask him what he did with respect to searching for
24 documents and without some of these characterizations, you could
25 probably get the information requested.

1 MR. GUILD: I am trying to do that, Counsel.

2 MR. GIBSON: Direct your questions, Mr. Guild.

3 MR. GUILD: Mr. Grier, of course, will come after this
4 witness and then we will have Mr. Davison and maybe we can
5 find out, you know, days from now, who really does know the
6 answers to these questions. But, Counsel, you would save us
7 all a lot of time, if you know, if you would just supply the
8 information.

9 MR. GIBSON: Counsel, if you have a question, ask Mr. Henry.

10 MR. GUILD: That is a request of counsel, if you know,
11 or if the company can find out who does have this information.
12 I would not hunt the peanut, as you said.

13 MR. GIBSON: I will indicate to you that we are making
14 available the people who have knowledge about the search of
15 documents. Mr. Henry is one of them. I told you to ask him
16 what he has done and what his involvement has been in searching
17 for documents. You danced around that, but you don't focus
18 him in on asking him what he has done. You characterize things.
19 I repeat, ask Mr. Henry about his involvement with the search
20 for documents.

21 Q Turn to page 43. Initials appear at the bottom of page
22 43?

23 A Right.

24 Q Whose initials?

25 A G.H.B., D.A. and M.L.C.

1 Q What are your initials?

2 A W.O.H.

3 Q Your initials don't appear there, do they?

4 A No.

5 Q You did participate in responding to those interrogatories,
6 didn't you, 23 and 25?

7 A Yes.

8 Q Why aren't your initials there, sir?

9 A It's my understanding that those initials there would be
10 an individual that our legal staff could refer to as having
11 collected the information and gotten it over to them, therefore
12 somebody to go back to and these people would not necessarily
13 and in all likelihood would not have actually prepared the
14 answers.

15 Q They didn't answer those questions?

16 A Well, I don't know who D.A. and M.L.C. are.

17 Q You don't know?

18 A No.

19 Q You don't know who D.A. and M.L.C. are?

20 A I say no.

21 Q All right, sir. A man named Childress works for the company?

22 A Yes.

23 Q What is his full name?

24 A Mike.

25 Q L. Childress?

1 A That's a good assumption. I don't know his middle
2 initial.

3 Q What is his job, sir?

4 A He works in design engineering.

5 Q Was Mr. Childress involved in some form or fashion in
6 preparing the responses to those interrogatories, if you know?

7 A I know he would have been involved again in a coordinating
8 role. I am not taking exception to your word "preparing,"
9 but just to make it clear again, I know he would have been
10 involved in helping assemble these answers and documents.

11 Q Is there a David Abernathy who works for the company?

12 A Yes.

13 Q Who is Mr. Abernathy?

14 A He works in construction.

15 Q What does he do, if you know?

16 A He is in the personnel area of construction.

17 Q Did Mr. Abernathy participate in preparing responses to
18 these interrogatories?

19 A Some, yes.

20 Q All right, sir. Would that be D.A. and M.L.C.?

21 A That is probably true.

22 Q Anybody else participate that I haven't guessed yet, that
23 you know of, that you haven't identified yet?

24 A You are identifying these, sir?

25 Q Anybody else, you know, sir?

1 A Yes, W.O.H. participated.

2 Q That's you.

3 A That's me.

4 Q Anybody else you know of? We have talked about Mr. Grier.
5 We have talked about Mr. Davison, and now we have talked about
6 Mr. Childress and Mr. Abernathy and yourself. Anybody else
7 you want to talk about?

8 A Mr. Gibson and Mr. Carr.

9 Q That's it?

10 A I could read it and probably give you others that
11 participated in it.

12 Q Please do. Please give me as complete a list as you can,
13 sir, because I would like to get down and to know who did what.

14 A Okay. I have given you Mr. Grier, Mr. Davison, Mr.
15 Alexander, myself, Glenn Bell, and our legal folks you have
16 identified, and I have agreed that this is probably David
17 Abernathy and Mike Childress, and it is entirely possible that
18 the staffs of several of those people may have helped them in
19 collecting those documents.

20 Q Who would those be?

21 A Those would be any number of people who may work for Mr.
22 Davison or Mr. Grier or Mr. Abernathy and I don't know all of
23 those people.

24 Q All I want to know -- all I am asking from you, Mr. Henry,
25 is who you know, what you know. I don't want you to guess.

1 I don't want you to speculate. I want you to tell me who you
2 know. And if you know, just be candid and tell me. Please
3 don't hold anything back that you do know.

4 A I am not holding anything back. I know a lot of people
5 who work for the company. It's my understanding that it was
6 legal's responsibility to put together these answers to be
7 as responsive as possible, and they used the resources and people
8 whose jobs were involved with these areas, and that could be
9 a large number of people.

10 Q I want to know who you know of, if you know of anybody
11 other than the people I have identified so far.

12 A I have given you the people I know of.

13 Q All right, sir, completely?

14 A No, I did not say that.

15 Q Then do that. Give it to me completely, the people you
16 know of, sir.

17 MR. GIBSON: Is the hangup you are trying to get some
18 other names that he is describing where they might be? Just
19 trying to interpret what might be the hangup.

20 MR. GUILD: I really don't know, Counsel. I certainly
21 don't presume what is in the witness's head.

22 A I can tell you what is in my head. Every one of those
23 guys, if he wrote anything, has a secretary working for him.

24 Q Right.

25 A And I guess it's your job to ask the questions, but I

1 don't understand how many people you would want me to answer
2 who have touched or seen some or a portion of this document.

3 Q Well, I guess I will put it this way, Mr. Henry. My problem
4 is, I don't think that I have gotten a truthful and complete
5 answer to who participated in responding to those interrogatories,
6 either on the face of them or through your testimony until now,
7 sir, because you now identified two more people who had more
8 than insubstantial responsibilities since their initials
9 appear on the document and yours don't. Now, at the risk of
10 providing another loophole to drive through, sir, I don't want
11 to know about clerical people who answer those interrogatories.
12 Although you are not a clerical person and you provided sub-
13 stantive information or did substantive work in response and your
14 name isn't anywhere indicated in there, but I want to know about
15 the people who made substantive contributions to the process of
16 responding, sir. If there are any others, I want to know them.

17 A I will answer that I know of no other people than the ones
18 I have already mentioned who made substantive input to these
19 responses.

20 Q All right, sir. Let me just make this a continuing
21 request, Mr. Henry. If anything occurs to you, any other names
22 come to mind, sir, that fall within that description in the
23 course of the remainder of this deposition, please supply them,
24 okay?

25 A I will try.

1 Q Now, finally, sir, on the third go-round we have a March
2 25th response. Page 22 of that document is a follow-up
3 interrogatory number 9, the company's response to it. Did you
4 participate in preparing the response as indicated there, sir?

5 A Yes.

6 Q What was the nature of your participation, sir?

7 A My participation was again as being the coordinator and
8 the collector of the documents that were responsive to this and
9 transferring those over to our legal staff.

10 Q All right, sir. Now then, first let's start with that.
11 As your lawyer suggested, tell me what you did.

12 A As I recall, there was a period where we collected the
13 information from the consultant who was involved in the welding
14 inspector task force. Of course his report was already on
15 file, and we had to send all of his notes, transfer those over
16 to legal.

17 Q Did you do that, sir?

18 A Yes.

19 Q Did you contact Mr. Zwissler?

20 A Yes.

21 Q Did you call him, write him, how did you contact him?

22 A I called Mr. Zwissler and then I followed up that call
23 with a memo telling him to send us those documents, which we
24 received and turned over.

25 Q ~~As far as you know, have you produced that memo and response?~~

1 A As far as I know -- my memo?

2 Q Yes, sir.

3 A As far as I know, no.

4 Q What did you ask Mr. Zwissler for?

5 A I asked Mr. Zwissler to send all of his notes pertaining
6 to his involvement of the welding inspector task force, that
7 we were now required to turn that over as part of this hearing
8 proceeding.

9 Q All right, sir. What else did you do with respect to respond-
10 ing to that interrogatory?

11 A I don't recall any other specific answers.

12 Q All right. Now then, sir, with respect to the initial
13 search for documents responsive to interrogatories 23 and 25,
14 tell me what you did.

15 A As I recollect, I carried out that same role of discussing
16 with counsel what was being asked for, when he would need it
17 and then going about the search and collecting the documents,
18 either myself or Mr. Bell, and then transmitting those over to
19 legal.

20 Q Did you ever go to the Catawba site?

21 A Yes.

22 Q When did you do that?

23 A I don't recall the dates.

24 Q Give me an approximation, your best recollection, Mr. Henry.
25 More than one occasion?

1 A Yes.

2 Q For what purpose?

3 A Well, my job carries me there pretty often anyway, but I
4 assume you are talking about in regards to this discovery from
5 the previous line of questions.

6 Q Yes, sir.

7 A Remember, the occasion where we went with our legal
8 representatives to go request documents from any QA personnel
9 that might reflect disputes or differences of opinion, dis-
10 agreements.

11 Q Now, approximately March of this year did you do that?

12 A That would be a good guess but I really can't recall.

13 Q All right, sir. Describe the circumstances and what
14 happened.

15 A The circumstances were that we -- I reserved a rather
16 large conference room and then brought crews of people in
17 and gave them the information on what we were trying to do and
18 asked them to produce any documents that they had that might
19 reflect these things that the board had directed that we give.
20 They were instructed to whom to give those documents. That
21 person was told how to copy them and then ultimately to get
22 them on to me, at which point I would get them on to legal.

23 Q First of all, who did you go with to Catawba that time?

24 A The one occasion I recall, I rode down with Mr. Carr.

25 Q All right. Who else was with you, or who else was

1 participating in the meeting?

2 A Present there was Mr. Carr, Mr. McCrary, Mr. Grier, and I
3 mentioned Mr. Davison, of course his job, Mr. Davison.

4 Q All right, sir. When the crews came in, how did the crews
5 come in? What crew are you referring to?

6 A I am referring to all inspectors and other QA people who
7 might have documents that would be responsive to that request,
8 so except for everybody -- everybody there was given a time
9 expected to be there.

10 Q Broken down by craft?

11 A As much as possible, as I recall, it was by crew, but of
12 course some of them would be a couple of crews together.

13 Q Do welding inspectors all come in at one time, for example?

14 A To my knowledge, all of them would not have been there at
15 one time.

16 Q A couple of different welding inspector crews come in?

17 A Yes.

18 Q There are lots of welding inspectors?

19 A That's a large crew.

20 Q How do you break welding inspectors down? Shifts?

21 A I can't recall. It's possible but, as I recall, very
22 unlikely that all of the welding inspectors would have been in
23 one crew. Some would have been at one time, another another
24 time.

25 Q And then electrical inspectors at a different time perhaps?

1 A As I said, everybody came in at some point in time, but
2 some electricals could have been at welding, and the request
3 for documents and the presentation was a repeat.

4 Q All right, sir. And besides the inspectors, or all of the
5 inspectors, who else attended?

6 A Well, as I mentioned, everybody in QA. The supervisors are
7 the people there, and for a couple of those sessions Mr. Van Doorn
8 of the NRC was there.

9 Q Anybody else that you recall? Any other NRC people?

10 A No. I don't recall any.

11 Q Any other Duke people that you can recall?

12 A Outside of QA, none that I recall.

13 Q All right, sir. Who of the QA people?

14 A Mr. Grier, Mr. Carr and Mr. McCrary.

15 Q Did they have prepared remarks?

16 A Not that they read, but they had -- no, they did not
17 have prepared remarks that they read.

18 Q Did they have notes that they read from, to the best of
19 your recollection?

20 A I don't recall seeing any of them using notes, but I
21 can't say that no one had notes.

22 Q Are you aware they prepared notes for this presentation?

23 A I am aware that prior to going down, yes, legal had
24 prepared an outline of the points they felt should be covered.

25 Q All right, sir. And what were those points? What was

1 covered?

2 A To give an overview, explanation, to these people that we
3 were involved in the hearing, that the discovery process was
4 going on, and that one of the points was to state that as
5 a result of this discovery process, the names, addresses and
6 phone numbers of the people were given to the people who had
7 requested them at the direction of the board, and then to
8 state the requirement --

9 Q Let me slow you down a second. Who did that part, if it
10 was one of the people, if you can recall?

11 A I can't recall specifically who made that portion.

12 Q One of the lawyers talking about the hearing process?

13 A Yes, they did.

14 Q That is either Mr. Carr or Mr. McCrary?

15 A Right.

16 Q All right, continue. If you just let me know who the
17 speaker is, as best you can recall.

18 A Okay. And then, as I recall at that point, the main purpose
19 of the session then was to request of these people any documents
20 that they had that might reflect disputes or disagreements, and
21 that they were to produce them, and they were given an
22 employee relationship representative -- she was identified as
23 the person they should turn their documents in to. That person
24 would then send them on to me.

25 Q Who was that employee relationship representative?

1 A Debbie Ensley. I should state Debbie -- I said employee
2 relationship, but that is within the QA department. She was
3 in the QA department.

4 Q She was at the Catawba site?

5 A She was at that time.

6 Q Where does she work now?

7 A She works in the general office now.

8 Q In quality assurance?

9 A In quality assurance, correct.

10 Q All right. Who made the part of the presentation concerning
11 the documents?

12 A Either Mr. Carr or Mr. McCrary or some combination of
13 the two.

14 Q All right, sir. Anything else? What other points were
15 presented?

16 A Those were the significant points, all of the points that
17 I recall that we were making at that presentation.

18 Q What did Mr. Grier have to say?

19 A Mr. Grier basically opened the meeting, and of course is the
20 boss of all of these people, welcomed them there and identified
21 the people that he had brought with him, basically Mr. Carr and
22 Mr. McCrary, and explained that they would then be covering
23 the points that I just mentioned.

24 Q All right. Were there any questions from the people
25 who were hearing this?

1 A Yes.

2 Q What were the questions?

3 A I don't recall all of the questions. I recall a question
4 having to do with do I have to talk to these people, and some
5 questions along that line.

6 Q What was the response to the question?

7 A The response was that you are free to talk to anybody
8 you choose to talk to, but that you do not have to talk to
9 anybody if you don't want to talk to anybody.

10 Q And who specifically was this reference made to? Who
11 talked to whom?

12 A "Intervenors" was the term used.

13 Q All right. Any other questions you recall?

14 A I guess in the same vein it seems that I recall an
15 individual saying do they have the right to come on my property.
16 And the answer, at that point you are a private citizen, and
17 just conduct yourself as you would when you are with anyone else.

18 Q Did Mr. Van Doorn have anything to say?

19 A No.

20 Q All right, sir. What documents then came your way by way
21 of this process?

22 A The documents that were produced were those that the
23 individuals who we had talked to who might have felt would
24 represent a dispute or disagreement, and, as I recall, that pro-
25 duced documents from seven or eight people, altogether maybe

1 an inch of documents.

2 Q And did you review those documents?

3 A Yes.

4 Q What did you do with them after you reviewed them?

5 A I transferred those on to legal.

6 Q Did you transfer all of them on?

7 A Yes.

8 Q And do you know whether those were produced?

9 A I don't know for sure.

10 Q All right, sir. Have you received any documents since?

11 A Yes.

12 Q What have you done with those?

13 A I have passed those on to legal.

14 Q Have those documents been produced?

15 A Have been produced to legal by me.

16 Q Do you know whether they have been produced to Palmetto
17 Alliance?

18 A I don't know for sure.

19 Q Do you have any understanding whether they have been
20 produced or not?

21 A So far as I know, they have been available, and they were
22 there, but I don't know. My job was to get them to legal,
23 and I didn't physically copy them from that point. That's
24 what I am saying, I don't know for sure but it's my under-
25 standing that, to the best of my knowledge, legal took those

1 and represented them as they were, and they were available.

2 Q Available where?

3 A Available either in the document room when it was set
4 up or passed on to Palmetto Alliance or whatever legal was
5 doing with them.

6 Q All right, sir. Do you know of any documents that were
7 identified that were not passed on to Palmetto Alliance?

8 A I don't know of any.

9 Q Mr. Henry, I am going to show you a six-inch stack of
10 documents that were given to me this morning. Can you identify
11 those?

12 (The witness looks at the documents.)

13 A Your question, can I identify them, I recognize all of
14 them, and, yes, each one I could identify what it is.

15 Q What are they? I don't mean for you to go through the
16 entire stack. Can you represent what those documents are?
17 Have you seen them before?

18 A Some I have seen before.

19 Q Do you know -- let me short-circuit this. Do you know how
20 they came my way this morning? Did you have anything to do
21 with that?

22 A Yes.

23 Q Why don't you just tell me about it then?

24 A I provided the clerk who copied these. Again, I don't
25 know all of them. I haven't been through all of them, but I

1 provided the clerk to copy the documents very similar to these,
2 and I assume those are the same documents that we copied and
3 gave to legal.

4 Q How did those documents come to your attention, sir?

5 A Came to my attention -- I am trying to remember first.
6 I guess from Mr. Gibson.

7 Q Counsel?

8 A Yes. That there were these documents, that I now choose
9 to copy and get them over to legal and then decide what, if
10 anything, we should do with them.

11 Q They came from legal?

12 A No, the document did not come from legal.

13 Q They came from Mr. Gibson?

14 A You asked how I learned about them or the situation.

15 Q Right.

16 A Mr. Gibson informed me that there were additional
17 documents that we should copy and get them over to him for him
18 to decide whether or not they should be given to you.

19 Q Tell me what your understanding is as to how those
20 documents came to be identified?

21 A My understanding is that these documents were in the
22 possession of Bill Bradley, and he questioned whether or not they
23 should be copied and made available to legal. And, of course,
24 as I just described, Mr. Gibson said yes, copy them, and now
25 we have done that and given them to legal.

1 Q Who did Mr. Bradley inform, if you know?

2 A I don't know. I heard it from Mr. Gibson, so I would
3 presume that it got to him through some means.

4 Q Where does Mr. Bradley work? What is his job?

5 A He works in the quality assurance in the general office
6 here.

7 Q All right. What's his job?

8 A He is assistant to the corporate QA manager.

9 Q Mr. Grier?

10 A Mr. Grier, that's correct.

11 Q All right. Is Mr. Bradley the person responsible for
12 implementation to the recommendation of the welding inspector
13 task force?

14 A He is responsible for seeing that the task force's recommenda-
15 tions were implemented, that the assignments were passed out,
16 that some record was kept, that all of the items that were
17 identified in there did get assigned to somebody to carry out
18 the action.

19 Q Had you ever contacted Mr. Bradley by word of mouth
20 or by writing in the context of search for documents? Do you
21 know whether he was ever contacted by others?

22 A To answer your first question first, yes, I had contact
23 with him to get a copy of the welding inspector task force docu-
24 ment that was turned over to legal. As I recall, that was
25 verbal to him. The second question was, would you repeat,

1 please.

2 Q You got the gist of it. Did you ask Mr. Bradley then or
3 later to identify documents known to him that were responsive
4 to Palmetto Alliance interrogatories?

5 A I did not.

6 Q Do you know if anyone ever did?

7 A I don't know that, no.

8 Q Do you know if Mr. Bradley identified these documents
9 after he was notified that his deposition was going to be
10 taken in this case?

11 A I don't know that.

12 Q When did you learn your deposition was going to be taken
13 in this case? The date on the face of it was the 21st of
14 June. It was probably put in the mail on that day.

15 A I knew on Wednesday of last week, which I guess was
16 the 22nd.

17 Q Do you know whether Mr. Bradley identified these documents
18 after that day?

19 A It came to my attention after that date. I don't know
20 that.

21 Q All right, sir. Mr. Henry, what I want to understand,
22 let's assume this is the process, and I don't know what it is,
23 and if you know otherwise, tell me. Assume that Mr. Bradley
24 learned first that he might have documents that were relevant
25 to quality control welding at Catawba only after being informed

1 that his deposition was going to be taken on that subject and that
2 documents in that connection would be the subject of the deposi-
3 tion questions. Let's assume that Mr. Bradley, since he was
4 not contacted by you beforehand seeking documents, had no other
5 reason to produce documents that were in his possession. Might
6 there be others within Duke Power Company who similarly have
7 documents relevant to welding at Catawba who you missed?

8 MR. GIBSON: Object to the form. He may answer although
9 it includes some assumptions that are objectionable.

10 A I don't know of anyone else that would have documents
11 that would provide any substantive information or new infor-
12 mation.

13 Q You say you don't know of any other besides Mr. Bradley
14 now. Why did you miss Mr. Bradley?

15 A I don't know why Mr. Bradley was missing.

16 Q Are there other persons in quality assurance who no one
17 has ever asked that would be in a position similar to Mr.
18 Bradley?

19 A No.

20 Q Are there other persons in construction who might have knowl-
21 edge who you just never asked?

22 A Yes, I have knowledge.

23 Q And therefore have documents?

24 A It's possible.

25 Q Mr. Henry, I want to show you a document and ask you

1 if you can identify it, sir. Don't worry about the text on
2 the front. Look on the back, if you would, of the second
3 page. Does your signature appear on that page?

4 A Yes.

5 Q All right, sir. In what capacity did you have occasion
6 to sign that paper? What were the circumstances?

7 A I signed that in my capacity as a supervisor of the
8 two individuals who had previously signed the document.

9 Q What position did you hold at that time?

10 A I was in the same position I am in now.

11 Q All right, sir. That's a nonconforming item report?

12 A That's correct.

13 Q And what's the number on it, just so we can be clear?

14 A Twelve thousand five hundred forty-nine.

15 Q All right, sir. Is it customary for you to sign off
16 on NCI's?

17 A Some, yes.

18 Q What kind of circumstances?

19 A In the circumstances where my people might be performing
20 the evaluation or resolving the NCI.

21 Q All right, sir. You resolved that NCI, you approved
22 the resolution of the NCI, in effect?

23 A Yes.

24 Q Are you a welder by training?

25 A No.

1 Q Do you have any expertise in welding?

2 A No expertise in welding.

3 Q Do you have any expertise in radiography?

4 A No.

5 Q Any expertise in welding inspection?

6 A Not as an inspector, no.

7 MR. GUILD: Let's mark this as the second one to the Henry
8 deposition.

9 (Thereupon, deposition exhibit
10 number 2 was received and marked
for identification.)

11 Q Mr. Henry, how long have you been in your present position,
12 sir?

13 A Since February of '81.

14 Q What did you do before that?

15 A Before that I was the QA manager construction, and that
16 was from the period of January '80 to February of '81.

17 Q Who holds that position now?

18 A The position similar to that is held by Larry Davison,
19 though it is substantially changed because of reorganization.

20 Q Okay. Tell me how it has changed. Help me to understand
21 what the roles are.

22 A The major change would be the change that was made in
23 February of '81, when quality control inspectors and their
24 supervision, who had previously been in the construction
25 department, were transferred to quality assurance department.

1 Q Did you have responsibility for supervising quality
2 control when you held the position of quality assurance manager
3 construction?

4 A No, not supervising people in quality control.

5 Q Explain to me, Mr. Henry, what change took place in
6 February of '81 with respect to this reorganization and why the
7 change was effected.

8 A As I mentioned, the major change was bringing over the
9 people, primarily inspectors who had been in the construction
10 department, to the quality assurance department, and that
11 basically necessitated two moves to accommodate that -- one,
12 the establishment of a personnel division because of the
13 large numbers of people there; and then the other, the senior
14 QA individuals or the projects QA organization, as we now
15 call what had been construction, was a much larger division.
16 So again mostly numbers as far as moving people and the
17 admission of large numbers of people or the additional
18 responsibility of QA when it had not been the case in those
19 numbers before.

20 Q I guess I missed your second point. The first point
21 was there established a personnel division because there was a
22 large influx of new people, the inspectors.

23 A Right.

24 Q And the second point I just missed.

25 A The second point would be, it's basically a subset of the

1 first, and that is these large numbers of people are now
2 within the quality assurance department, so the construction
3 QA division is now much larger than it had been before, and so
4 the supervisory structure within that division was changed
5 also.

6 Q And how was that supervisory structure changed?

7 A Well, the major change from the top down being that
8 Larry Davison, who had supervised the quality control function
9 at Catawba, became the manager of the projects division, which
10 included all of the QA and inspection functions at our construc-
11 tion sites, at that time including the Catawba, McGuire and
12 Cherokee.

13 Q All right. Why was that change made?

14 A That change was made primarily to aid in the admission
15 of running the department and the quality assurance functions
16 were still as they had always been, and it seemed that the
17 time was appropriate and the department was mature enough to take
18 on those large numbers of people in the administrative burden
19 in addition to the QA technical functions that had always
20 been there, and it just seemed appropriate to incorporate that
21 under one manager and do it as a department. That's my
22 understanding.

23 Q Did you participate in that change?

24 A I participated in the sense that when the change was
25 made, I switched jobs, so I would say yes.

1 Q Did you participate in either the planning for that
2 change or the decision to make the change?

3 A I participated in relaying to my management my opinions
4 as to whether or not it would make the administration of our
5 department better or improve our ability to do our job, whether
6 it was a good idea or a bad idea.

7 Q What was your opinion?

8 A My opinion was that it would be a good move to consolidate
9 the quality assurance and quality control functions in one
10 department.

11 Q All right, sir. What was your opinion as to the effect of
12 this reorganization on the quality control function?

13 A My opinion was that it should make the lines of
14 responsibility clearer, and, if anything, improve the ability
15 to manage that department in carrying on our duties.

16 Q How do you understand the terms "functional supervision"
17 and "administrative supervision" as they are used in this
18 context?

19 A Basically that's my understanding of the terms I would
20 have used in explaining what I just did, that is, we had
21 functional responsibility for the quality assurance prior to
22 the merger --

23 Q I am sorry, we --

24 A QA. I was in the quality assurance department prior to
25 February of '81.

Q Yes.

A And we had, we in QA, had functional responsibility for that quality control activity, and the administrative activities was primarily I would associate with the timekeeping schedule, scheduling, planning, number of people, that sort of thing was in the construction department. So the functional was in QA prior to February of '81. The administration of the inspectors was in the construction department.

Q Was it your opinion, do I understand fairly that your opinion was having unified that supervision, both the functional, administrative, having represented a clarification of the line of responsibility?

A Yes.

Q Are you familiar with the provisions of appendix B of 10 CFR, part 50?

A Yes.

Q Do you understand those to be the Nuclear Regulatory Commission quality assurance criteria?

A Yes.

Q Is part of your responsibility assuring that those criteria are met with respect to the carrying out of the quality assurance program with respect to Catawba?

A Yes.

Q All right, sir. Are you familiar with the first criteria, that title organization? Let me get you to take a look at it

1 and refresh your recollection.

2 A Yes.

3 Q In your opinion is there any significance to the organiza-
4 tional structure either before or after the February '81
5 reorganization with respect to compliance with quality assurance
6 criterion 1?

7 A No.

8 Q Have you ever supervised the quality control function in
9 construction at Catawba?

10 A No.

11 Q Have you ever been the chain of supervision over that
12 function?

13 A Only as I related before, prior to February of '81, where
14 functionally I had responsibility through other supervisors
15 for that function.

16 Q And in that capacity as indicated by your role reflected
17 on the NCI, you participated in supervision of quality control
18 in that instance in approving the resolution of an NCI?

19 A No.

20 Q Help me understand that.

21 A Okay. As I said, this is after February of '81.

22 Q Fine.

23 A And these are individuals that I supervised, but they are
24 not inspectors.

25 Q I see. So both before and after, you had responsibilities

1 that included supervision of quality control work?

2 A I had responsibilities for supervision of quality assurance
3 people who prior to February of '81 had functional responsibility
4 for the quality control activity. After February of '81 I
5 still supervised quality assurance individuals but those
6 individuals do not fall in the supervisory chain of any inspectors.

7 Q All right, sir.

8 A If that helps.

9 Q Yes. But your role today under the present organization
10 includes approving NCI's, the resolution of NCI's?

11 A Yes.

12 Q Including in the area of welding?

13 A Yes.

14 Q All right, sir. Now, before February of '81, when QA had
15 functional authority over the quality control inspection
16 function but not administrative authority, how was your
17 responsibility different? Let's take an example before you
18 answer the general question. Would you have done then as you
19 do now, that is, approved the resolution of NCI's?

20 A Yes, I would on occasion have approved resolution or
21 disposition of NCI's.

22 Q All right, sir. Why were quality control functions
23 under construction before February of '81?

24 A It's my understanding that it was a continuation of in
25 many ways an activity, that it served Duke well in that when

1 a quality assurance department was established, when it was
2 established, the administration of the large numbers of
3 inspectors traditionally had been done by construction and
4 that had served our purpose as well, and the mechanisms were
5 in place, the supervision was there, and so that personnel
6 burden was deemed more efficient to continue it that way.

7 Q What changed that made it appropriate to reorganize
8 those functions in February of '81?

9 A I don't believe I can give a better answer than what I
10 gave before in that the maturity of QA and the feeling or the
11 recognition that the lines of responsibility could be made
12 much clearer by having functional administrative duties combined
13 in one department and one chain of supervision.

14 Q All right.

15 A It is a change that we chose to make or our management
16 chose to make because it would improve those lines of
17 responsibility.

18 Q Why wasn't it made earlier?

19 A It was not made earlier because it wasn't deemed appropriate,
20 and it wasn't necessary to do it. Nor was it required to be done
21 in February of '81.

22 Q Help me understand, if there is a basis, why at the time
23 in February of '81 and not before, why more appropriate then
24 than before?

25 A Nothing magic about February of '81 that I am aware of.

1 It's just a date, and that is when it was done.

2 Q And had it been in the works for some time before that?

3 A To my recollection, it had been considered from day one,
4 as to recognizing that quality control is not a separate
5 and distinct function from quality assurance, but also recognizing
6 the administration and the personnel portion of the people
7 can be done somewhere else, so I don't think it was considered
8 at this time for the first time or that there was anything magic
9 about that date being picked. It just happened.

10 Q Are you aware of any role by the Nuclear Regulatory
11 Commission in suggesting, urging or recommending or requiring
12 the change?

13 A No, none.

14 Q Was the approval of the NCR sought in making the change?

15 A They were advised that we were going to do that, and filed
16 the appropriate organization charts with them.

17 Q And what was their response, if anything?

18 A Their response was fine. I mean, I don't want to say that
19 like a quote.

20 Q Did they make any substantive response that you know of?

21 A None that I am aware of.

22 Q Just took the papers and said "We acknowledge this"?

23 A They acknowledged that we were continuing the same
24 functions in the same requirements and procedures in place that
25 we had before, and that this was to them what it was to us,

1 a consolidation of the supervisory responsibilities and just
2 making that line of responsibility clearer.

3 Q All right, sir. Did this reorganization have any effect
4 on the effectiveness with which the welding inspection function
5 was performed at Catawba?

6 A None that I am aware of.

7 Q Would you have been aware if there was such an effect?

8 A Possibly.

9 Q But you know of no such effect?

10 A I know of no effect.

11 Q Mr. Henry, I want to show you a document, 0834, NRC
12 Licensee Assessments. Can you identify that? Have you ever seen
13 that before? I direct your attention to page B-1. It's towards
14 the very rear.

15 A On Catawba?

16 Q Yes, sir. This is the 1971 SALP report, S-A-L-P. Have
17 you ever seen that before?

18 A I don't recall seeing this summary statement, but I am
19 familiar with the SALP report on Catawba.

20 Q There are two SALP reports on Catawba, right?

21 A Right.

22 Q This is their first of the two, and you may or may not
23 have seen it is your testimony?

24 A This is a summary, and I don't know. You asked if I had
25 seen this document. I don't recall seeing this summary statement.

1 Q Are you aware of the NRC SALP review board's 1981 rating
2 of Catawba construction as below average?

3 A Yes. As I said, I have seen the SALP report. I just
4 didn't want to not answer your question in this form.
5 I don't recall seeing that, but I am familiar with the SALP
6 report, yes.

7 Q Are you familiar with their findings with respect to
8 quality assurance at Catawba?

9 A Yes.

10 Q You are aware of their observation at page B-1 of this
11 report, that Catawba received a relatively large number of
12 items of noncompliance when compared to other power reactory
13 facilities?

14 A Yes.

15 Q And most of these items of noncompliance were contributed
16 to weakness in the licensee's quality assurance and management
17 overview process?

18 A Yes.

19 Q What corrective action, if any, are you aware of was taken
20 to address those findings?

21 A I am aware of a study by Duke of the report to try to
22 understand what NRC's characterization meant and when they
23 assigned that below average rating, whether or not it was based
24 on the facts as we saw them. As far as specific corrective
25 actions as a result of the SALP report, I don't know of any

1 specific corrective actions at the time the report was received
2 that we either felt necessary or that were imposed on us by NRC,
3 so I don't know of any specific ones.

4 Q I see. Now, what was the nature of the study that was
5 performed?

6 A Well, the nature of the study was NRC had submitted the
7 report, they had indicated that Catawba was below average, as
8 their rating went, or above an abnormally high number of
9 areas to meet their noncompliances, so the study involved a re-
10 view of the reports for those individual noncompliances would
11 have been identified by NRC, the responses we gave, and to
12 reassess whether or not the corrective actions that we
13 took at that time, at the time of the specific noncompliance,
14 was still valid or whether anything further was needed. As
15 I just stated, as I recall, that review confirmed that we had
16 already put into place corrective actions, improved training
17 or better procedures that addressed the things that the NRC had
18 now summarized in this report.

19 Q All right. Were you involved in the conduct of this
20 study and preparation of this review?

21 A Yes.

22 Q What was your responsibility?

23 A My responsibility was to -- I attended the presentation
24 by NRC of that report, and then I received my hard copy of the
25 report and reviewed that language and then reviewed those reports,

1 as I just mentioned, to make sure that the actions that we were
2 already taking were appropriate or whether or not to decide whether
3 they needed any additional actions.

4 Q First of all, let's start with the first point you made.
5 You attended a presentation. How is that presentation made?

6 A It's NRC's practice, or was in SALP, to present that to the
7 management of the company involved.

8 Q All right, sir. This report was published in August of
9 '81, or the new rates in front of you. Would that have been
10 close to the time that the presentation was made, to the
11 best of your recollection?

12 A No.

13 Q There are two SALP reports, Mr. Henry?

14 A Yes.

15 Q You are thinking of the second one perhaps, in '82?

16 A No, I think you may be. What's the date of the first one?

17 Q That is the first one that you have there.

18 A What's the date of the second one?

19 Q It should be '82. Mr. Henry, the second one has a
20 summary and then quite a bit of detail attached to it, station
21 by station analysis. This is all I know of it, as the first
22 SALP report.

23 A This, as I said, I have not seen this document, and these
24 dates of the evaluation period don't -- are not my recollection
25 of when I reviewed.

1 Q They are earlier dates?

2 A No. As I recall, the first report went through May of
3 '80, but that's my recollection.

4 Q All right.

5 A I just haven't seen --

6 Q What are the evaluation reports?

7 A This document, but the summary statements do agree with
8 what I recall in the first SALP report as to whatever those
9 dates were that we got a below average rating, and quality
10 assurance and management overview was cited in that report.

11 Q What is the review period that is on the face of this
12 summary?

13 A 9-1-79 to 8-31-80, and I just can't recall when this
14 SALP report is, but that may be accurate.

15 Q All right, sir. Now, did you prepare a written report?

16 A I don't recall preparing a written report.

17 Q Did you make a report to Duke management as a result of
18 your review?

19 A I recall marking the copy of the report and routing that
20 to my management that here is what I think caused this particular
21 activity and here is what we are doing about it.

22 Q Who is your management that you reported to?

23 A My management at that time was Jim Wells.

24 Q He was the corporate QA manager?

25 A That's correct.

1 Q Were you aware of any other meetings or reports that were
2 made to higher Duke management in response to the SALP 1
3 report?

4 A I am not aware of any specific reports that were made
5 to higher management, no.

6 Q All right.

7 A Let me correct that. I am aware that, I don't remember
8 the date, but I believe it would have been report 1, that was
9 identified or submitted as a possible question that the SEC would
10 rule on to go before a stockholders' meeting. And I don't
11 recall the date of that stockholders' meeting, but some
12 individuals, stockholders, had requested that that be a question
13 presented before the board at a stockholders' meeting, and I
14 did participate in giving my views to our legal staff as to why
15 that was inappropriate for that, and then that was sent --
16 I believe it is SEC that would rule on the appropriateness of
17 those stock questions.

18 Q That is the only review you recall making of the SALP 1
19 report?

20 A Other than the verbal or marked-up thing to my previous
21 management, my boss.

22 Q Mr. Wells?

23 A Mr. Wells.

24 Q All right, sir. What corrective action are you aware of
25 that was taken, if any?

1 A As I said, no specific corrective action that I recall
2 as a result of receiving that report at that time. As you
3 note, the report is downstream and is a compilation of
4 activities that have occurred over some previous time period.
5 A program requires, as those deficiencies are identified, they
6 are corrected and corrective action taken on them at that time.
7 So, as I recall, my review, when the whole report was put
8 together to my satisfaction, had confirmed that we already had
9 in place corrective actions to preclude the cause of that
10 type in the future.

11 Q Let me call your attention specifically to this finding.
12 Catawba received a relatively large number of noncompliance
13 when compared with other power reactor facilities under
14 construction. What corrective action was taken with regard to the
15 substantive finding, that is, a large number of nonconforming
16 items, either occurring after that report was issued or after
17 the initial finding was made, that is the basis for that report?

18 A I don't read that the way I understand you just read it.
19 I think you read noncompliances, and then you may have compared
20 that to nonconforming items, and I don't read that that way.

21 Q All right. So that said, "What corrective action was
22 taken?"

23 A Okay, corrective action that I say would have been taken,
24 the way I read this, is that the causes of those infractions or
25 noncompliances where the NRC had observed and given as violations,

1 had already been taken.

2 Q Yes, and what were those corrective actions?

3 A They would have depended on the specific violation that
4 occurred. If it were a failure to follow a procedure by one or
5 more individuals, a typical corrective action may have been to
6 retrain those people, but I can't say what they were and don't
7 recall what all the corrective actions were. What I am saying
8 is, corrective actions had been taken on all of the violations
9 and the noncompliances that NRC had given us.

10 Q There were numerous items of noncompliances involving
11 failure to follow procedures involving welding, it goes on,
12 quality control, records control, and electrical equipment
13 installation. Focus on two, welding and quality control inspec-
14 tions. What corrective action was taken with respect to the
15 finding of numerous items of noncompliance in welding and QC
16 inspection?

17 A I can't say specifically based on what those noncompliances
18 were as to what the infraction may have been in the welding
19 process or what inspections may not have been done proper or
20 whatever. I don't recall what those were.

21 Q All right. And you don't recall the corrective action?

22 A No, because the corrective action would be tailored to
23 the infractions, so if I don't recall the infraction, it would
24 just be speculation as to what corrective action we took on
25 something I don't remember the infraction.

1 Q All right, sir. Are you aware of the complaints by a
2 large number of Catawba welding inspectors regarding technical
3 and nontechnical concerns that led to the formation of a welding
4 inspector task force at Catawba and subsequent followup action?

5 MR. GIBSON: Excuse me. This seems to be shifting to another
6 topic area, so it might be a good time to take a moment to
7 assess the time and perhaps even take a short break. I have
8 been advised that Mr. Rogers' quitting time at Catawba I assumed
9 was 5:00 o'clock is 4:00 o'clock. Are you in a position to say
10 anything about the schedule following Mr. Henry?

11 MR. GUILD: Sure. What time is it now?

12 MR. GIBSON: It is now 3:25, 3:22, something along that
13 line.

14 MR. GUILD: Okay.

15 MR. GIBSON: I can't represent Mr. Dick's availability
16 tomorrow, and I haven't checked on Mr. Rogers. Mr. Dick is
17 across the street and can be here in ten minutes at the most,
18 but I thought it might be a good time for us to touch base
19 about that.

20 MR. GUILD: Why don't you ask Mr. Rogers to come back then.

21 MR. GIBSON: What I am saying is, his quitting time has
22 already occurred or will occur beyond the time he gets here.
23 I expect he will come. Does this say we can now release Mr.
24 Dick and then talk with you later about his availability?

25 MR. GUILD: No, let's get Mr. Rogers to come in. We

1 will finish with him very quickly and then we will do as best
2 we can in fitting Mr. Dick in.

3 MR. GIBSON: I suggest that we take a short break so I
4 can make those arrangements.

5 (Thereupon, a recess was taken from 3:25 p.m. to 3:45 p.m.)

6 MR. GIBSON: Bob, before you resume questions, with
7 respect to Mr. Wells, Duke will make Mr. Wells available at
8 company expense, with the exception of the witness fee, which
9 will not be waived, on either July 7th, in the afternoon, or
10 July 8th, in the morning. I think his preference and our
11 preference is the morning because of some other commitments
12 Mr. Wells has but he could be available on the afternoon of
13 July 7th and we will await some confirmation from you as to
14 whether you want to depose him at that time and confirm a
15 specific time.

16 MR. GUILD: Good. That's great. He has a commitment
17 that is going to take him away for the 9th, is that right, or
18 the 10th?

19 MR. GIBSON: I think the following week he will begin a
20 two-week inspection at some location I am not familiar with,
21 but will be essentially out of pocket I believe two weeks
22 following.

23 MR. GUILD: Okay, good. Well, I will let you know on that
24 tomorrow.

25 Q Mr. Henry, I believe before the break you had acknowledged

1 that you are aware of what I will just call hereafter the
2 welding-inspector complaints at Catawba?

3 A Yes.

4 Q And how did those come to your attention?

5 A Those came to my attention in -- as I recollect, those came
6 to my attention in reviewing or in reading the report that was
7 put together to investigate the concerns that were there. I
8 don't remember the date of that report but that would have
9 been the report that the task force put together.

10 Q That would be the first task force report?

11 A I hesitate to say a number, but, yes, say the first welding
12 inspector technical task force.

13 Q The technical task force, the one that was organized
14 at the direction of Mr. Lee in early December of '81?

15 A That sounds correct.

16 Q And a report published before the end of that month, late
17 December '81?

18 A Yes.

19 Q And so that report was the first you learned of those
20 concerns?

21 A As I recall, yes.

22 Q Then generally, if you would, describe your involvement
23 in, if any, in responding to those concerns or investigating
24 those concerns.

25 A As I recall, my involvement would have been input to

1 my management for the areas that were addressed, communications
2 could be improved, and whether or not there were ways we could
3 improve that communication.

4 Q Communication from who to whom?

5 A As I recall, it was addressing the fact this need for
6 better communication between QA supervision and the inspectors,
7 period.

8 Q All right. And is that the limits of your involvement
9 and response?

10 A That's all I recall at that time. Now, I say the limit,
11 of course since we got into this discovery phase, those documents
12 were available, and I have read those again, and I know they
13 have been submitted. That's all I recall.

14 Q All right. That's the limit of your substantive
15 involvement in either investigating those concerns or responding
16 to them?

17 A In that report, yes.

18 Q I don't want to artificially limit the scope of the
19 inquiry, Mr. Henry. I am not limiting it to that report now,
20 but I want to address the subject of the welding inspector
21 concerns and understand what the scope of your involvement
22 was.

23 A Okay. Then after that task force, welding inspector task
24 force two to address technical concerns that may have been
25 identified in the first task force, and it was determined to

1 proceed with that task force which was set up to investigate
2 those welding inspector technical concerns, and my primary in-
3 involvement there was to provide one of my people, an individual
4 who works for me, to serve on that task force and make him
5 available to participate in the technical evaluation of those
6 welding inspector concerns.

7 Q Who was that person?

8 A Larry Coggins.

9 Q What is Mr. Coggins' job?

10 A Mr. Coggins is a QA engineer. That's a job title, and
11 he supervises a -- he is one of three supervisors who reports
12 to me.

13 Q Who are the other supervisors that report to you?

14 A The other two are Tom Roberts and Charles Bell.

15 Q What are their positions?

16 A Their titles are QA supervisor within my division, technical
17 services, but their title is QA supervisor.

18 Q Mr. Coggins was in fact the chairman of the task force 2,
19 was he not?

20 A For a brief period, for a matter of not more than a week
21 or two, as I recall. The task force report as it was seen
22 in its final form and throughout most of the period of that
23 investigation, Mr. Coggins was not the chairman.

24 Q All right. So you participated in responding to the
25 first report by being involved in the subject of improving

1 communication between QA supervision and inspectors, and the
2 second task force by providing Mr. Coggins with service on that
3 task force. Is that the limits of your involvement?

4 A No, as the additional involvement would have been to --
5 one other role I played in that was when it was decided to
6 bring in a consultant to provide that independent review of that
7 task force, I served I think we can characterize as a contact
8 for him, to make sure arrangements were made, that he had an
9 office to work out of, to provide a vehicle, whatever it took
10 for him to carry out his duties. And then my ultimate involvement
11 would then have been, if any of the recommendations of the task
12 force, taken it to the end, actions were required that would have
13 been in my area of responsibility, I would have been responsible
14 for carrying out those actions.

15 Q And there were recommendations in your area of responsibility?

16 A Yes, there were.

17 Q Would you describe those?

18 A Primarily they were in the area of review of procedures
19 to see if they were clear, complete, if they had been subject
20 to some different interpretations, was there a way to better
21 word that, provide some training sessions so that we all
22 understand the clear purpose and intent of those procedures,
23 and there were a number of procedures that were reviewed by
24 even myself or people working for me in carrying out specific
25 recommendations from the task force report, the second task

1 force report.

2 Q And a number of procedural changes?

3 A Some procedures were changed, yes.

4 Q What were the most significant changes in procedures?

5 A I think maybe the most significant changes were in the
6 area of trying to make it clear what an individual's
7 responsibility was and that then if a document was to proceed
8 somewhere else, that it would be clear what the additional
9 responsibilities would be. And all of that goes to say that
10 trying to improve the communications, the individual who may
11 have written the procedure originally may have understood
12 exactly his intent, but now as others have to implement it,
13 quite often it was necessary to give additional words, maybe
14 even some additional administrative detail to make it clear
15 what was done in the field.

16 Q You are referring to what documents?

17 A At this point I would be referring to QA procedures.

18 Q Documents that reflect QA procedures, procedural policy
19 directives?

20 A No, I am sorry, when you say document, if a QA procedure
21 identifies a document that is to be used in carrying out that
22 procedure. In reviewing these procedures, it was to -- we tried
23 to improve the handling of the documents that were required by
24 the procedures and make the responsibilities quite clear as
25 to what one individual might be -- what his job was as far as

1 whether it was a review, a signoff or what his particular job
2 may be.

3 Q Again I am interested in the most significant changes.

4 A I am not trying to avoid your question but I think we
5 previously identified altogether probably six or eight procedures
6 that were changed as a result of the review precipitated by
7 that task force. I don't know -- in my mind I don't know which
8 one was more significant than the others, and I guess for me to
9 answer, I wouldn't characterize one as being more significant
10 than the other. They were all reviewed where the task force
11 said, "This may not be perfectly clear to everyone, if it's
12 in my area, Henry, you go review it and try to come up with some
13 clearer language if that is possible." And I can't honestly
14 tell you that I feel one was more significant than the other.

15 Q All right. What are the documents that you have reference
16 to? Again, the significant.

17 A The documents that I referred to, what I just spoke of
18 here?

19 Q Yes.

20 A Those would be documents that would be required to be
21 produced by the procedure.

22 Q Yes.

23 A For instance, if it were a document requiring a piece of
24 process control to be produced by technical staff to be given
25 to a craftsman that would then be turned over to an inspector,

1 that would again be reviewed by QA. This would be a typical
2 process of which a piece of process control might be generated
3 and used. Usually that piece of process control is something
4 that is identified and required to be used by the QA procedure.

5 Q Were there any significant changes that affected the use
6 in proceeding of nonconforming item reports?

7 A The only thing in that area that to me was significant
8 was an emphasis, and I don't really recall so much in this area
9 whether it was procedure change, that an NCI, when written,
10 should be dealt with on that form, such that the record is
11 clear, how it was handled and provide a situation for whomever
12 made the disposition, that it is clear who did it and the reasons
13 for his doing it. I feel that was probably the most significant
14 change to the NCI activities as a result of that task force.

15 Q And were those changes and procedures in your area of
16 responsibility?

17 A Yes.

18 Q Was any significant change effected in the circumstance
19 in which a quality control inspector was required to complete
20 a nonconforming item report?

21 A No, but in reviewing that procedure and others, we tried
22 to give clearer direction as to which document might be more
23 appropriate in certain situations.

24 Q All right. What were the choices among documents that
25 might be appropriate in different circumstances?

1 A If you are referring to an inspector, he would have, as
2 we talked about, the process control, whereby he is performing
3 his job inspecting something to accept or reject.

4 Q Let's talk about a weld, to use a concrete example.

5 A A weld, if he is called to inspect, there would be in
6 almost all cases an opportunity, and a requirement, where he
7 would sign off that document that he had accepted the weld.
8 He, of course, does not sign that off until it has been
9 accepted by him, that it meets the criteria that are given in his
10 inspection. If it is a minor and readily correctable item and
11 the welder or his foreman is available such that that item can
12 be corrected on the spot, that is an option available to him,
13 to point out the minor discrepancy and have the craftsman
14 correct it, at which point if he corrects it to the inspector's
15 satisfaction, the inspector would sign off on the document
16 accepting the weld.

17 Q Let me stop you right there. If that were the case,
18 as you just posed, would the procedure either before or after a
19 change call for the welding inspector to note the discrepancy?

20 A No, it would not require him to note minor, really
21 correctable, discrepancies.

22 Q Both before and after any procedural changes resulting
23 from this task force?

24 A That's correct.

25 Q No change in that regard?

1 A No change in that regard as to what he would be required
2 to do.

3 Q I stopped you as you were describing the circumstances.

4 A Okay. The other choice in that process where the weld
5 is unacceptable to the inspector would be to just not sign
6 for the weld that it is acceptable, if he feels it isn't, and
7 advise either his supervision or the craft people or their
8 supervision that I am not accepting the weld, you need to rework
9 it and recall me when I inspect it. In that case it is reworked
10 to his satisfaction and at that point he would sign it off.
11 That's very similar to the first case, the difference being
12 if it is minor and readily correctable and someone is available
13 to do it. But in the latter case, it is something that he
14 considers minor and readily correctable. In most cases if an
15 individual is not there to communicate with directly and get it
16 corrected, he would need to take some other steps to assure
17 that it did get corrected.

18 Q All right. And how would those steps differ than in the
19 first instance?

20 A He would have a couple of choices. He could write an
21 inspection deficiency report. It could document that on the
22 form.

23 Q What form would that be?

24 A That would be a form R-2A, stating what he found, and
25 that would be the piece of paper that would assure that it got

1 to the right people and got corrected and back to him for
2 reinspection.

3 Q Is that title form The Inspection Deficiency Report?

4 A The title of the form covered two periods in time, as
5 I recall, used to be corrective action, and it is now called --
6 I don't recall the exact name of that.

7 Q I will have to give you a stack of papers. I have just
8 handed you the documents that were given to me this morning
9 by counsel that I understood came from Mr. Bradley. Mr. Bradley
10 was the one who was responsible for implementing the task force
11 recommendations, isn't he?

12 A Yes. This is not necessarily giving us what you want.
13 If it's now the title of R-2A, it's only R-2A included in
14 here, and one of the latest revisions would give us that current
15 title. Prior to the task force it was called corrective
16 action, and the title at one time was considered or may have
17 been their inspection deficiency report. However, that form,
18 there are people other than inspectors who find deficiencies,
19 and that form is now currently used by people other than
20 inspectors. I just don't recall what we named it, and it may
21 just be deficiency report.

22 Q How about looking in there and see if you can find it?

23 A I don't see it in here and I would doubt that it is in here.

24 Q All right. Here is another stack, and see if you can
25 help me with this one. I have a stack of documents with a

1 cover letter of March 7th, 1983, and it is from you to Mr.
2 Carr. Does that reflect procedure changes resulting from the
3 task force report?

4 A Yes.

5 Q All right.

6 A And as you can see, R-2A, that is procedure R-2, it was
7 not changed as a result of the task force, but as you got me
8 into the example to say what an inspector would do, say he
9 would fill out this report, so I am comfortable with calling it
10 a deficiency report because that is what it is, and I just
11 want to make it clear to you, although our example here is an
12 inspector signing it, it is not a report that might only be
13 used by an inspector recording deficiency.

14 Q All right, sir. Now, so your second example, the inspector
15 has the choice of writing a deficiency report?

16 A Right.

17 Q And that is under procedure number R-2A?

18 A The procedure is R-2. There is a form R-2A within that
19 procedure.

20 Q And form R-2A is the form we just can't put our hands on?

21 A Right.

22 Q All right, sir. Now, what's his other choices?

23 A His other choices, in some portions of the process control
24 that he is using, it provides an accept or reject block on the
25 form, and if he rejects it, he then might or would on the form

1 reject it, send it back to be reworked. When it was reworked,
2 it would be resubmitted to him, he would reinspect it. If he
3 accepts it, he accepts it.

4 Q All right. What other choices?

5 A Then he has an additional choice to nonconform an item that
6 he considers nonconforming in accordance with the procedure
7 Q1, which is a nonconforming item procedure.

8 Q All right. And when would the inspector choose that alterna-
9 tive?

10 A He would choose that alternative in almost all cases
11 if he found a deficiency that were not part of his planned
12 activity that he was inspecting for, such that it were a com-
13 pleted activity and was now found to be deficient or there
14 was no other activity that was to inspect this and accept it
15 and he just happened to discover that problem. In almost all
16 cases that would be defined as a nonconforming item.

17 Q All right. Any other alternatives?

18 A I guess there is one other alternative that addresses
19 it, and that would be to stop the work if the situation prevailed,
20 but that would involve in getting to that, writing nonconformance
21 so that is basically a nonconforming condition anyway. That's
22 all of the ones I can think of.

23 Q All right. Now, those choices are choices that are
24 available to a welding inspector under present procedures?

25 A Yes.

1 Q All right. Now, what were the choices available to a
2 welding inspector prior to the procedural changes prior to the
3 task report?

4 A All of those choices were available to him prior to the
5 task force also.

6 Q All right. And what procedural changes with respect to
7 those choices was implemented as a result of the task force?

8 A The changes were to try to make the language clearer
9 such that it would be more obvious to the inspector, the
10 example you are using here, of when to use which form.
11 Our language previous to that, and I think identified by the
12 task force, is that an inspector might not be clear as to
13 when he should use a nonconformance under the R-2A, and if we
14 could make that clear, we should do it, and I think the language
15 -- well, we think made clearer. Included with that task force
16 recommendation was to provide training to all people to use that
17 procedure and to help them to understand the intent in how
18 to use it.

19 Q Was the effect of that procedural change to increase the
20 number of instances where a welding inspector would utilize
21 an R-2A as opposed to an NCI?

22 A I can't say that the net effect of that was there but
23 in saying that the language was not clear, I think we would
24 say that in making it clearer, if one had used an NCI where
25 now the language is clearer and he now uses an R-2A, then the

1 net effect would be to reduce the NCI's, but the intent of the
2 change was to try to make it clear to the inspector or other uses.
3 If there is a better form to use in this situation that meets
4 all of the requirements, you use that one and not have him in
5 addition to doing his job of inspecting the item, accepting and
6 rejecting, having to debate which is the correct form. The
7 procedure could be made clearer, and we tried to do that, and we
8 think it is clearer now.

9 Q Is it your opinion, Mr. Henry, in the case of a minor
10 item, a minor discrepancy but one where the craft and/or
11 craft supervision is not immediately available to correct the
12 deficiency, that the use of the R-2A is more appropriate than
13 the use of an NCI?

14 A If it were a planned inspection and activity the inspector
15 was required to look for and expected to find, I think an R-2A
16 would be more appropriate than an NCI.

17 Q Help me understand what that definition means. Let's
18 make a reference to the specifics of the procedure at this
19 point. Procedure Q1.

20 A Okay. Now, you don't have the procedure in here, I don't
21 think.

22 Q I don't know what I have in there. It was just given
23 to me this morning.

24 A Do you want to refer to procedure 1?

25 Q Yes. That's what I would like to do.

1 A I don't know if you are going to get that from here.

2 Q In that rolling chart I am informed are all of the
3 documents that have been identified in response to discovery in
4 Contention 6.

5 MR. GIBSON: What document do you want him to refer to
6 again so that we can attempt to find it?

7 MR. GUILD: The procedure that he just referenced to.

8 MR. GIBSON: Which one is that?

9 MR. GUILD: Q1.

10 MR. GIBSON: Were these documents attached to what was
11 shown earlier or just the memo?

12 MR. GUILD: I think all of them were attached together.

13 A Yes, these are two separate ones here. Okay.

14 Q Is this procedure Q1?

15 A Yes.

16 Q All right. Now, this is the -- 17 is the current
17 version?

18 A Yes.

19 Q And this is with the change resulting from the welding
20 task force report?

21 A It includes that, yes.

22 Q All right, sir. Now, direct my attention to the definitional
23 change that specifies the conditions in which a nonconforming
24 item is to be written.

25 A Okay. If you look in scope, the change bar up there, when

1 I was speaking to you, the discrepancies discovered during
2 preplanned inspections may be identified and resolved in
3 accordance with the process procedure or procedure R-2. So
4 in our example we identified where he had process control
5 where he could get it corrected thereon or say he has got the
6 choice of using procedure R-2. The process procedure doesn't
7 handle that.

8 Q I am sorry. The choice is R-2 or --

9 A Well, just reading the last sentence of the scope I just
10 read.

11 Q Yes.

12 A It says --

13 Q In accordance with the process procedure?

14 A Or procedure R-2. What he is doing is preplanned inspec-
15 tions.

16 Q Process procedure meaning noting it on the process control
17 form?

18 A Yes.

19 Q Reject?

20 A That would be one. Not all points in all process control
21 forms have accept or reject. Process procedure, where if he
22 is within a specific QA procedure that has the forms and the
23 necessary controls or the direction within that procedure to get
24 it and correct it, then he would use that procedure. If there
25 is a procedure that doesn't have that detail and he is doing a

1 preplanned inspection, he would then have the choice of using
2 procedure R-2, which he would use the R-2A.

3 Q All right, sir. When, if at all, a deficiency or a
4 discrepancy is discovered in the course of preplanned inspection,
5 when is the inspector to write a nonconforming item?

6 A If he is doing a preplanned inspection and he finds what
7 he is expected to find and it is not an unusual or a gross
8 situation, which it should not be if he finds what he is
9 looking for and expects to find, he would be following either
10 the procedure he is in or procedure R-2 and would not be
11 required under those conditions to write a nonconformance.

12 Q Help me find in procedure Q1 the language which would
13 instruct an inspector in applying the terms that you just
14 used, "unusual or gross".

15 A Okay. Once again, if you look at the scope, the first
16 sentence saying in almost all cases an inspector would be work-
17 ing to some other QA procedure, and that procedure, one of
18 its intents is to provide direction and control over whatever
19 situations that individual, in this case an inspector, may
20 find while he is working on whatever he is working on. If
21 that adequate control over a discrepancy is not found within
22 that area, then the scope of Q1, which he would also be trained
23 in, expected and allowed to use, would say this is the procedure
24 that is available for him to use.

25 Q All right. I understand that answer. Show me in the

1 terms of Q1, if it is here, and if it isn't, just tell me
2 that, where there is a standard for judgment about the severity
3 of the discrepancy. That's what I heard you say, the gross or
4 unusual characteristics of the discrepancy.

5 A Okay. By that I mean that if an inspector is doing his
6 planned inspection, as said here, and he discovers a situation
7 that in his judgment is very unusual, although he was inspecting
8 in that area and is going in, and one would fully expect him
9 to find and see that, if it is of a very unusual gross nature,
10 that the judgment of the inspector might very well be to go ahead
11 and nonconform that.

12 Q All right.

13 A And that would be perfectly acceptable in my opinion.

14 Q Is that language that gives that guidance contained in
15 the terms of procedure Q1, and if so, point that out to me.

16 A I don't see that language in there, no.

17 Q That is judgment then that the inspector would have to
18 supply for which there is no guidance contained in the terms
19 of procedure Q1?

20 A That's something available to him if in his judgment the
21 other procedures that he is working on don't adequately control
22 the situation he sees. He can write a nonconformance.

23 Q Is there another written procedure of the company that
24 would spell out that standard?

25 A Not that I am aware of.

1 Q Now, turn to I guess -- I don't know how to cite this
2 procedure. Is it paragraph 5.1.7, page 4?

3 A Okay.

4 Q That details the circumstances under which and the
5 procedure by which an inspector would note a matter that is
6 significant deficiency affecting safety, and for possible
7 reporting to the Nuclear Regulatory Commission under 10 CFR
8 50.55(e)?

9 A Right. Except if I heard you correctly, you said whereby
10 an inspector would do that. That is not something that an
11 inspector would be required to do to form an evaluation. Did
12 I hear you correctly?

13 Q Yes. I may have misunderstood. This is where an
14 inspector would note the possible reportability of a deficiency?

15 A No.

16 Q No?

17 A This speaks to the requirement on Duke, and in this case,
18 in this procedure, speaking of the requirement on the construction
19 project manager and quality assurance manager to assign people
20 who will evaluate the nonconformances, including those that
21 would have been written by inspectors, to determine if it is
22 significant enough to require reportability.

23 Q I see.

24 A And those would not be inspectors who would be making
25 that further evaluation of reportability.

1 Q What I am looking for I guess is the initial judgment.
2 Is there a requirement or a procedure that would call for the
3 inspector to make an initial judgment as to potential report-
4 ability, and if so, point that out to me.

5 A No. He would not be making that determination. He
6 would be determining that it is a nonconformance. If he
7 determines that, he writes it, and then it would be assigned
8 to people who are trained and required to make this evaluation.

9 Q And they would see the nonconformance and in due course
10 make the evaluation described in this procedure E, not the
11 inspector, they, the supervision?

12 A Right, or the individual assigned to do that.

13 Q Yes.

14 A Yes.

15 Q Now, if the inspector for a given deficiency followed
16 either the process control alternative or the corrective action
17 deficiency report R-2A alternative, how would the deficiency
18 be reviewed for potential reportability under 10 CFR 50.55(e)?

19 A The R-2 procedure requires all of those deficiencies
20 to be evaluated by the technical people to whom they are assigned
21 for that evaluation, to see if it is a nonconformance. So even
22 though it is written up as a deficiency, it gets a review,
23 and if it needs to be escalated to a nonconformance, it is done
24 so, and then it is reviewed, gets this review as required by
25 the nonconformance for potential reportability.

1 Q Once it is escalated to a nonconforming item, Q1 would
2 govern that, and then having become a nonconforming item, it
3 would be reviewed for potential reportability?

4 A That's correct.

5 Q Now, help me find the procedure that describes that
6 facet of completing an R-2A.

7 A It is not in here.

8 Q Okay.

9 A Well, let me check to make sure. The required review and
10 escalation of R-2A is in procedure S-2.

11 Q Is that a procedure that was changed as a result of the
12 task force report R-2?

13 A I think -- I guess I need to see that. I think no, but
14 once again, as you see, Q1 references R-2, so the language would
15 have been made consistent to make sure there was no inappropriate
16 cross-reference, but it was not a specific recommendation or
17 a specific action to go change R-2 and correct something in the
18 task force, as I recall.

19 MR. GUILD: Counsel, maybe you can help. I was trying
20 to put my hands earlier on a document that you sent to me
21 last week, and it was further changes. I think it was revision
22 3 to the task force final report.

23 MR. JOHNSON: Do you want to use this?

24 MR. GUILD: Yes, if you have a final copy.

25 Q Take a look at this and see if this will help us.

1 This is on the cover of June 22nd, and it's a letter with
2 the latest revision of the task force report. Will that at
3 least make a reference to R-2 and whether or not there was an
4 amendment?

5 A No, no, I don't believe that's going to get you the R-2.

6 MR. GIBSON: Mr. Guild, I have asked Mr. Bell to give us
7 a copy of R-2. As I understand it, because it was not changed,
8 it's not among the documents that were made available. As I
9 understand it, that might speed us up. He is going to see if
10 he can put his hands on one shortly so if there is another
11 question or two you can ask while he is doing that, it might
12 speed us up.

13 MR. GUILD: Sure.

14 Q That document doesn't answer that question?

15 A Not that I can find.

16 Q Does the company maintain statistical records of the
17 incidents of utilization of various procedures for noting
18 construction deficiencies?

19 A Yes.

20 Q Specifically does the company maintain statistical records
21 of the number of nonconforming item reports for construction
22 deficiencies at Catawba?

23 A Yes.

24 Q In what form is that?

25 A Well, they are numbered in sequence, and there is a log

1 of those kept so that the last number on the log is the number
2 of NCI's that have been written.

3 Q All right. Is that a report that reflects the number of
4 NCI's during a period of time or against time or per man-hour
5 of work on a jobsite or by some -- a statistical measure of the
6 incidents?

7 A Yes, there is a review done of the number of NCI's
8 over certain periods of time.

9 Q All right. And what's the form of that review?

10 A The one that I am familiar with is a review that we
11 call a trend analysis, to see what types and categories of
12 NCI's may be our primary concern would be increasing and try to
13 take appropriate corrective action and at least get a good
14 explanation as to why that would be the case.

15 Q And who is responsible for performing those trend analyses?

16 A The one I just spoke of, I am responsible for.

17 Q It's done by you?

18 A It's done by people under my direction, yes.

19 Q And is there a trend analysis performed of other procedures
20 for noting construction deficiencies, say, the R-2 procedure?

21 A Yes, they are trended also.

22 Q And how about the use or process control for noting and
23 correcting construction deficiencies?

24 A Some process control may be specifically trended by some
25 levels of management, supervision, in the form of report. Others

1 may just be available to those people in charge of the work
2 activities and not a formal trending of those per se.

3 Q How about in the welding area at Catawba?

4 A In the welding area the review -- I am not aware of any
5 specific trend analysis other than documents that are --
6 deficiencies that might get reflected on either an NCI or an R-2A.

7 Q All right.

8 A I am not aware of any trend analysis in any other areas.

9 Q Have such trend analyses of NCI's and R-2A's been performed
10 before and after the work of the welding task force and procedural
11 changes came from that?

12 A The answer to your first question, yes, they have been
13 performed before and after, but prior to the task force there
14 was no specific requirement in a procedure to trend the R-2A's.

15 Q But now there is?

16 A There is now.

17 Q And what procedure specified is that?

18 A It is in the procedure R-2.

19 Q That then would be a change procedure R-2 that resulted
20 in the task force?

21 A No.

22 Q It just came after, coincidentally?

23 A Yes.

24 Q Well, Mr. Henry, it is fair to conclude that the procedure
25 changes resulting from the task force placed greater emphasis

1 on the use of the R-2 procedure as an alternative to the Q1
2 NCI procedure, isn't that fair?

3 A I would state that it provided clear direction to anyone
4 who may not have understood clearly when to use Q1 or R-2.

5 Q You did state in your opinion the net effect would be
6 likely increased use of the R-2 as an alternative to the NCI,
7 the Q1?

8 A I said, as I recall, that if someone were confused as to
9 which one to use, and he had chosen to use the NCI and now it is
10 clear language that an R-2A would be better, if that occurred,
11 then the net effect would be to reduce those numbers, but I
12 don't have those numbers and don't know that that's the case.

13 Q All right, sir. You wanted to make sure you capture
14 any changes and trend in the use of the R-2 and therefore the
15 procedure was specified to trend R-2's as well as NCI's, is
16 that fair?

17 A Now that we have the procedure here, to give you the specific
18 reason that we made the change and included trending of R-2A's
19 was that we were responding to an evaluation done by Duke Power
20 Company of Catawba in October of '82, and we had a finding on
21 ourselves there that it would be beneficial to us to trend those
22 R-2A's, and at that time we proceeded to change procedure
23 R-2 and made the changes as a result of that finding that we got
24 on ourselves.

25 Q What was the nature of that evaluation?

1 A That was an evaluation that was conducted by a joint team
2 of Duke Power and TVA people who reviewed the design and
3 construction activities on Catawba Nuclear Station.

4 Q Was that a level 3 audit?

5 A No.

6 Q Was that a corporate audit?

7 A That was a self-initial evaluation of Catawba.

8 Q It was a what now?

9 A It was not done by INPO, but it was done in October of
10 '92 by a joint team of Duke and TVA people.

11 Q Was this an audit that was a part of the quality assurance
12 audit?

13 A Quality assurance was one significant area that was looked
14 at.

15 Q What was the purpose of this audit?

16 A The purpose of the audit was to evaluate the effectiveness
17 of the program.

18 Q Was the audit result submitted to the Nuclear Regulatory
19 Commission?

20 A They were made available to NRC, yes.

21 Q It was submitted to them?

22 A They were invited to the committee interview to hear the
23 findings and a presentation was made to the NRC of what those
24 findings were. Yes, they were well aware of the ongoing
25 evaluation and the findings and the corrective actions from this.

1 Q What I would like to understand is, I have never seen
2 that audit, and as far as I know, it has never been made
3 available to the parties to the license case, and what I
4 want to understand is, as a publicly available document, has
5 it first been filed with the Nuclear Regulatory Commission?

6 A One, is it publicly available? It's in the Duke Power
7 files, and in that regard it is not public, but it is available
8 to people who have a need to see it.

9 Q How about people who have an interest in seeing it, like
10 Palmetto Alliance?

11 MR. GIBSON: Mr. Guild, if you want that document, you
12 can make a formal request for it, and we will determine whether
13 we will make it available, and if there is a controversy at that
14 time, you can take that up with the board among the other things
15 you take up with the board.

16 MR. GUILD: You hear my request right now.

17 MR. GIBSON: Subject to further review, submit a
18 request in writing. We will not make a copy available at 4:50
19 this afternoon.

20 MR. GUILD: Make a copy tomorrow.

21 MR. GIBSON: You submit a request in writing, I will let
22 you know, take that matter up with the board with the others
23 on your list. I am telling you we will review whether we
24 will make it available, but if we don't, just include it in
25 the matters you will take up with the board.

1 Q Do you know whether it has been filed with the Nuclear
2 Regulatory Commission?

3 A I don't recall filing that with the NRC.

4 Q So you don't know whether it is on the public record in
5 the public document room or available through NRC? You don't
6 know?

7 A I don't know that, no.

8 Q What deficiencies did that audit find?

9 MR. GIBSON: Mr. Guild, I am going to instruct him to
10 limit his response to welding inspection and quality control at
11 Catawba, consistent with the board's narrowing of Contention 6.

12 A I don't recall any findings in the welding area. I don't
13 recall at this time the findings that I would characterize as
14 any specific to inspection but I will just say I don't recall.

15 Q Again, Mr. Henry, for clarity, what is the name of this
16 report, the title?

17 A As I recollect, "Self-initiated Evaluation for Catawba
18 to INPO, Design and Construction Criteria."

19 Q All right, sir. And do you have a copy of that report
20 in your custody?

21 A Not in my personal custody. I have access to it.

22 Q You have access to it? Who has it in their custody?
23 Who is the appropriate person with Duke Power who would have a
24 copy of that in their files?

25 A I guess the record copy is maintained in quality assurance.

1 Q Mr. Grier?

2 A No, he has assigned that to me. I have access -- I don't
3 personally have it, but someone has that copy of that report.

4 Q I just wonder who -- if y'all are resisting --

5 MR. GIBSON: If we decide to make that available or if
6 we are ordered to make it available from the board, we
7 will, so I think in terms of questions of finding it, I think
8 you can probably speed it up.

9 MR. GUILD: Mr. Gibson, I appreciate your cooperativeness,
10 but I intend to seek compulsory production of that document.
11 If you don't make it available voluntarily, and I would like
12 to know who is the custodian, and the rules say that is a
13 legitimate inquiry of discovery.

14 MR. GIBSON: I am offering that, if you want to proceed,
15 if we are ordered to, we will find it.

16 MR. GUILD: If you are not going to voluntarily produce
17 it, I would like to draw a subpoena for it and would like to
18 know who to serve that on.

19 Q Mr. Henry, are you the appropriate person?

20 A I have access to it. As far as I am concerned, I am
21 the appropriate person.

22 Q All right, sir. Now, I want to understand back to the
23 subject that prompted this digression. You now trend R-2A's
24 as well as NCI's, is that right?

25 A They are required to be trended, yes.

1 Q And they were required to be trended after what point in
2 time, sir?

3 A After the changes were made to procedure R-2 in December
4 of '82.

5 Q All right, sir. Now, you have a copy of procedure R-2?

6 A Yes.

7 Q Okay. First, if you would, sir, indicate where it is
8 provided in that procedure that the R-2A's are trended.

9 A Okay. That is in paragraph 4.11.

10 Q And what does it say there?

11 A "R-2A's shall be trended to identify any developing or
12 existing trends adverse to quality. The results of this analysis
13 shall be provided to the project QA manager and project
14 manager."

15 Q All right, sir. Now, how about also direct my attention
16 to the provisions of that procedure that specifies that the
17 R-2A is to be evaluated for purposes of determining whether it
18 is more appropriately treated as on a nonconforming item under
19 procedure Q1.

20 A It is in paragraph 4.2.

21 Q What does it say?

22 A "The individual designated by the project manager or
23 project QA manager shall evaluate the problem to determine if
24 it should be elevated to an NCI. An item shall always be
25 elevated to an NCI if any of the following conditions exist."

1 Q And they are?

2 A "The discrepancy represents a designed deficiency. Note:
3 Interpretations, clarifications and editorial changes on
4 designed documents are not considered design deficiencies and
5 should be resolved using the R-2A. The discrepancy requires
6 design evaluation other than interpretations, clarifications
7 or editorial changes. The discrepancy represents a manufacturer
8 discrepancy other than minor material discrepancies. The
9 discrepancy will require extensive rework. The discrepancy
10 represents a bypassed inspection hold point."

11 And finally, "The discrepancy was discovered at other
12 than a preplanned activity and no other required activities
13 were planned that would check for this type of discrepancy."

14 Q All right, sir. And when was that provision that you just
15 read of procedure R-2A adopted?

16 A As worded there, it was approved on 12-29-82, but there
17 would have been some transmittal time to reproduce the documents
18 and send them, so sometime after 12-29-82.

19 Q May I hold the document, please? This shows up through a
20 revision 9. Is that the current revision, as far as you know?

21 A Yes.

22 Q Is this revision a completely new revision of the pro-
23 cedure?

24 A It is a major rewrite, such that significant wording
25 changes were in there, and you will see the notation "entire

1 page revised."

2 Q At the bottom of the page, except the third page, which is
3 a new page?

4 A Right, and that's where the trending information appears.

5 Q Yes. And is revision 9 the revision that was the major
6 change in this procedure?

7 A Yes, as I recall.

8 MR. GUILD: I would like to ask that this be identified
9 as the next hearing exhibit, next exhibit to Mr. Henry's
10 deposition.

11 (Thereupon, deposition exhibit number
12 5 was received and marked for
13 identification.)

14 (Thereupon, Mr. Henry's deposition was adjourned at
15 5:02 p.m.)

16 * * *

1 I, Wayne Odell Henry, hereby certify that I have read
2 and understand the foregoing transcript and believe it to be
3 a true, accurate and complete transcript of my testimony.
4

5 _____
WAYNE ODELL HENRY

6 This deposition was signed in my presence by Wayne Odell
7 Henry on the _____ day of _____ 1983.
8

9 _____
NOTARY PUBLIC

10 CERTIFICATE
11

12 I, Ann P. Harris, court reporter and notary public, do
13 hereby certify that the foregoing 132 pages are a true, accurate
14 and complete transcript of the proceedings during the deposi-
15 tion of Wayne Odell Henry; that Mr. Henry was duly sworn
16 prior to the taking of his deposition, and the parties were
17 present as stated.

18 I also certify that I am not of counsel for nor in the
19 employment of any of the parties, and that I am not interested
20 either directly or indirectly, in the outcome of the lawsuit.

21 This 8th day of July 1983.

22 Ann P. Harris
23 ANN P. HARRIS - NOTARY PUBLIC
24 State of North Carolina
County of Mecklenburg

25 My commission expires:
June 30, 1986.