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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of:

CAROLINA POWER & LIGHT COMPANY and
NORTH CAROLINA MUNICIPAL POWER AGENCY
No. 3

Docket No. 50-400 OL
50-401 OL

(Shearon Harris Nuclear Power Plant
Units 1 & 2)

Telephone Conference

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CAROLINA POWER & LIGHT COMPANY and
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Shearon-Harris Nuclear Power Plant,
Units 1 & 2

TELEPHONE CONFERENCE CALL

1625 Eye Street, N. W.
Washington, D. C.

Thursday, March 8, 1984

A telephone conference call in the above-entitled
matter was convened at 11:07 a.m., pursuant to notice.

APPEARANCES:

Board Members

JAMES L. KELLEY, Esq., Chairman
Administrative Law Judge
Atomic Safety & Licensing Board Panel
Washington, D. C. 20555

GLENN O. BRIGHT
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Washington, D. C. 20555

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Administrative Law Judge
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1 APPEARANCES, Cont'd

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P R O C E E D I N G S

JUDGE KELLEY: Good morning.

Mr. Baxter, are you there?

MR. BAXTER: Yes.

JUDGE KELLEY: Is Ms. Flynn there?

MS. FLYNN: Yes.

JUDGE KELLEY: Mr. Carrow is not available, I hear; right?

MS. FLYNN: That is correct.

JUDGE KELLEY: Okay.

MR. BARTH: I have Janice Moore with me, who will help with representing the Staff, Mr. Kelley.

JUDGE KELLEY: Thank you.

Mr. Eddleman?

MR. EDDLEMAN: Right.

JUDGE KELLEY: We can't hear you very well; can you hear me?

MR. EDDLEMAN: Yes, I can hear you all right. I've still got the throat problems.

JUDGE KELLEY: I think we've got an electrical problem as well as your throat problem here. Your voice is very faint.

(Pause)

JUDGE KELLEY: By the way, Judges Carpenter and Bright are here with me, also.

1 MS. FLYNN: Judge Kelley, let me just tell the
2 court reporter who is with me:

3 I have Dave Fowler, who is a lawyer with CP&L;
4 and Harry Dicus, Eddie McRae and Don Hall, who are legal
5 specialists.

6 JUDGE KELLEY: Okay, thank you.

7 MR. BAXTER: Judge Kelley, Tom Baxter, I should
8 do the same thing.

9 With me are John O'Neil, Deborah Bowser,
10 Elissa Ridgeway, who are all attorneys here.

11 JUDGE KELLEY: Thank you.

12 Do we have Mr. Reid with us yet? Mr. Reid, are
13 you with us?

14 (No response)

15 JUDGE KELLEY: Apparently not. And we have
16 Mr. Eddleman on a bad connection.

17 I think what I'll suggest in the interest of
18 everybody's time:

19 Mr. Eddleman, you say you can hear me okay,
20 right?

21 MR. EDDLEMAN: Yes, I can.

22 JUDGE KELLEY: The primary purpose of this is for
23 us to deliver a fair number of rulings. We will have an
24 opportunity for questioning and comments at one place or
25 another; and it may be quite important that we hear you, as

1 well as vice-versa at some point. But I think at least to
2 get us going, if you can hear me okay, we are in a Board-
3 announcement mode, so why don't we go ahead on that basis.
4 And if we get an operator back and it's convenient we can
5 try to recall you; we may do that.

6 Excuse me a moment.

7 (Pause)

8 JUDGE KELLEY: I'll try to repeat: we are going
9 to be announcing some rulings. These will be on the record
10 with the reporter transcribing.

11 And we will provide a copy of this transcript
12 free to all parties since it will be in lieu of a memorandum
13 and order that would otherwise be issued.

14 What we intend to do is state the rulings today
15 on the record, and we will go over the transcript, of course,
16 as soon as we get it. I expect we will have a few changes,
17 additions, whatever; since it's important that we convey our
18 meaning precisely when we're making rulings.

19 What we would then propose to do is simply
20 mark-up the transcript, Xerox it, and serve it; so you will
21 hear today what the rulings are. And I hope they will be
22 clear.

23 (Pause)

24 JUDGE KELLEY: Mr. Reid, are you on now?

25 MR. REID: Yes, sir.

1 JUDGE KELLEY: Okay.

2 As I said to the others before you joined us,
3 we are on the line this morning primarily to announce some
4 rulings, one or two of which, anyway, is of direct interest
5 to you. And that's what we'll be doing as soon as we get
6 all the lines patched-in correctly.

7 (Pause)

8 JUDGE KELLEY: Maybe we should have just packed
9 up and gone to Raleigh.

10 (Laughter)

11 (Pause)

12 MR. EDDLEMAN: I'm here, can you hear me?

13 JUDGE KELLEY: That's fine, good morning,
14 Mr. Eddleman; yes.

15 Can other people hear Mr. Eddleman, also?

16 (Chorus of "yes".)

17 JUDGE KELLEY: All right. Mr. Reid, are you
18 there?

19 MR. REID: Yes, sir.

20 JUDGE KELLEY: Well, why don't we go ahead. If
21 the voices simply fade-out, then we'll have to do something.
22 But we seem to be more or less in contact, so we'd like to
23 proceed.

24 We want to cover a rather wide range of matters
25 this morning, just to give you a sort of a quick road map:

1 we've got a few miscellaneous procedural rulings; we have a
2 number of rulings on contentions; we have some points to
3 discuss about emergency planning; a point or two about the
4 security plan; status of the various pending summary
5 disposition motions; some comments on the pending health
6 effects issues; and, finally, we'll take some questions and
7 comments from the parties, whether by way of clarification
8 or other points you want raised.

9 First of all, we have Applicant's motion of
10 January 13, 1984, seeking a protective order to limit
11 disclosure of information about welders employed by the
12 Daniel Construction Company.

13 Now, only in the last day or two we also got a
14 revised letter.

15 Do I take it that the proposed revised order is
16 the last progress on this matter, and there remains a
17 dispute between Mr. Baxter and Mr. Eddleman? Is that
18 correct?

19 MR. BAXTER: Yes, sir.

20 JUDGE KELLEY: Can't settle it, in other words?
21 You made some progress, but you didn't get it all settled.
22 Very well.

23 Mr. Eddleman opposes the application for a protec-
24 tive order. He does, however, make a counter-offer of
25 certain restrictions on disclosure of that information that

1 he is willing to abide by.

2 The Staff filed a pleading registering no
3 objection to the motion, but questioning whether the
4 theory advanced for the protective order fits the facts in
5 terms of the deciding cases.

6 As I said earlier, we have the more recent
7 revised proposed order from the Applicant.

8 We do appreciate the efforts to settle this.
9 And it does appear that it didn't get settled. So the Board
10 will now rule.

11 The motion for protective order is denied,
12 except as noted herein.

13 Our denial rests basically on what we see as
14 the Applicant's not sustaining their burden of showing need
15 on the facts of this case.

16 The prospects of reading on trained welders seems
17 to us to be not self-demonstrating. We're not talking about
18 opera singers or quarterbacks; we're talking about people
19 who are not that uncommon.

20 There is a presumption in favor of availability
21 of information not brought forward in litigation, and we don't
22 think that presumption was overturned in this case.

23 And we are bearing in mind the cases that were
24 brought to our attention, notably, Wolf Creek.

25 We note, however, that Mr. Eddleman has agreed to

1 take the information subject to certain restrictions,
2 basically the willingness of the welder in question to have
3 his name disclosed in some public fashion--as an example;
4 the restrictions are all set forth in Mr. Eddleman's response
5 of January 30, 1984.

6 These restrictions seem reasonable to us. And
7 they do give the Applicant and Daniel some protection, and
8 therefore, our order is that this information is to be turned
9 over subject to the conditions in Mr. Eddleman's response.

10 Now, in casting our order in this way, these
11 conditions have been referred to as "voluntary." They
12 aren't "voluntary" as far as we are concerned.

13 We are saying that these restrictions Mr.
14 Eddleman proposes will be binding, gentlemen, in condition
15 of his receiving the information in question.

16 MR. EDDLEMAN: Yes, sir, Judge.

17 JUDGE KELLEY: Okay.

18 Now, we are not reaching the further deposition
19 question.

20 It seems to us in light of our order and general
21 discussion, there may not be problems of that sort. If
22 there are, then, the party who thinks he needs relief can
23 come to the Board.

24 But we're not going to try to reach that part
25 and rule on that at this point.

1 So that is our ruling on that matter.

2 Secondly, Mr. Eddleman has a motion dated the
3 28th of January to require the Staff to file their filings
4 if they are going to be in support of the Applicant's
5 summary disposition motions, within ten days of the Applicant's
6 deadline for filing.

7 We have two Staff papers in our possession,
8 dated January 20 and February 21.

9 We are going to grant this motion in part:
10 not in whole, but in part.

11 The problem is that the way the schedule works
12 as we initially set it up, Mr. Eddleman has to file twice
13 if the Staff supports Applicants in some new and different
14 ground.

15 Now, that double-filing is not inconsistent with
16 the rule in 2.749, but the Board can alter that practice
17 if the circumstances warrant.

18 And we didn't focus, frankly, on this particular
19 point when we set up the schedule. We granted some ad hoc
20 relief notably in the context of the health and safety
21 contentions.

22 But for the future it is our ruling that
23 as to summary disposition motions filed in the future, as
24 to those that are now pending where responses have not yet
25 been filed--and I'll mention them later--our ruling is that

1 the Staff's papers, if they are going to be in support,
2 ought to be filed 20 days after service, just as in the
3 present rule.

4 And that Mr. Eddleman should then be required
5 to file 25 days after service.

6 And the practical effect of this is to give
7 Mr. Eddleman an extra five days to address any new matters
8 in Staff's supporting papers.

9 MR. EDDLEMAN: Judge, could I request clarification?
10

11 JUDGE KELLEY: Okay. I'm not sure if we should
12 question as we go or later; but, go ahead?

13 MR. EDDLEMAN: Well, I want to know whether that's
14 25 days plus 5 days for the mailing or not?

15 JUDGE KELLEY: The rule right now is 20 days
16 after service which means 20 plus 5; right?

17 MR. EDDLEMAN: Um-huh.

18 JUDGE KELLEY: This would mean 25 days after
19 service--let me pause a minute.

20 (Pause)

21 JUDGE KELLEY: Hold on a minute while I think
22 this out. That's a good question.

23 (Pause)

24 JUDGE KELLEY: 2.749 says, any other party may
25 serve an answer supporting or opposing the motion with or

1 without affidavits, 20 days--

2 That, as I would read it, means 25 days after
3 service by mail, which is what everybody does, technically.

4 That would mean, then, that the Staff gets 20
5 plus 5 for a total of 25 from service by mail; and you'd
6 get 25 plus 5 days for mailing by certified mail, which
7 means 30.

8 Okay?

9 MR. EDDLEMAN: Okay.

10 JUDGE KELLEY: Okay.

11 MR. REID: Judge, as I heard it, that means only
12 Mr. Eddleman having 25 days?

13 JUDGE KELLEY: Not necessarily, but Mr. Eddleman
14 is the only one who made a motion.

15 MR. REID: Okay.

16 JUDGE KELLEY: Now, Mr. Eddleman, I think we can
17 stipulate is the busiest single person in this entire case
18 by far.

19 MR. REID: That's correct.

20 JUDGE KELLEY: One of the ways to give him
21 relief is the very reason. I'm not so sure this applies to
22 others.

23 If anybody else wants relief, they can file a
24 motion and put their factual situation before the Board.

25 Okay.

1 Next we have motion from Mr. Eddleman to withdraw
2 the motion of his of February 20 concerning circuit breaker,
3 a report of circuit breakers.

4 The motion is unopposed; and it is granted.

5 Moving into the contention area, we've got a
6 series of rulings on contentions which we will now state:

7 First of all, focusing on Mr. Eddleman's filing
8 of January 17, 1984, the--to do with amended and deferred
9 contentions on the Staff's SER--we have a separate motion
10 related to that which seeks further deferral of
11 Contention 107.

12 And we have opposition papers from the Applicant
13 and Staff on both of those matters.

14 The separate motion on deferring 107 is denied.

15 And we'll move now into the contentions them-
16 selves, including 107.

17 First of all, 107, the initial contention which
18 lists a number of, well, unresolved safety issues as they
19 relate to Harris; it came initially into the case; it was
20 deferred to the SER. Now there's a motion to defer it
21 further, which we have denied.

22 There are three additional contentions in the
23 area of unresolved safety issues, 107x, 107y, and 107z.

24 Now, all three of these three contentions, plus
25 the initial 107, are basically criticisms of the Staff's

1 analysis of these various kinds of problems.

2 His contentions, to state again, 107, 107x, y and
3 z, four altogether, are rejected.

4 As the Staff points out in its opposition,
5 contentions of this kind which basically are directed to the
6 adequacy of the Staff's analysis, are impermissible under
7 an Appeal Board Decision in the Diablo Canyon case; the
8 citation is 17 NRC 777, and particularly pages 806 and 807.

9 There's one sentence in particular that we would
10 like to quote into this record, because it's important not
11 just for these contentions but for certain others:

12 The opinion says this at page 807: "Prohibition
13 against a party's enforcing a Staff obligation"--referring
14 to the Staff's obligation to pass on unresolved safety
15 issues--"is in accord with the general principle that in an
16 operating license proceeding, with the exception of certain
17 NEPA issues, Applicant's license application is in issue,
18 and not the adequacy of the Staff's review of that applica-
19 tion."

20 In other words, let us assume that some section of
21 the Staff's SER is deficient in some respect in its
22 analysis, whatever it may be. It doesn't necessarily have
23 to be unresolved safety issues; it can just be a deficient
24 analysis of some issue or other.

25 That is not the basis for a contention.

1 So what if it's deficient? What is at stake here
2 is the applicant's application.

3 And that principle, it seems to us, is
4 dispositive of the issues we just referred to. We'll apply
5 it to some others and will refer to it in the future.

6 Next in order on these SER contentions is
7 173; now this concerns common mode failures on outside power
8 lines.

9 And we are rejecting this contention basically
10 for three reasons:

11 First of all, once again, it's a fault of the
12 Staff analysis. And that's the approach. It isn't that
13 there's something wrong out there in the real world, there's
14 something wrong in the SER.

15 And under Diablo Canyon, that's irrelevant.

16 Secondly, we agree with the Applicants that the
17 common mode failure analysis of offsite power is not
18 required by NRC rules.

19 Thirdly, it seems to us that this contention is
20 untimely. Certainly this sort of contention should have
21 been advanced at the FSAR stage, which contains much more
22 detailed discussions of offsite power.

23 Those are our reasons for rejecting 173.

24 174 through 177 are seismic contentions. They
25 all in one way or another rest upon the submission of the

1 United States Geological Service with respect to the
2 significance of the 1886 Charleston earthquake for sites
3 like Shearon-Harris.

4 We had some difficulties with these contentions
5 as stated, which I will mention; but our decision on them
6 basically hangs on the balancing of the five factors.

7 As to the contentions, themselves, quite apart
8 from the five factors, we couldn't accept them as they
9 are; because, once again, they are attacks on the Staff
10 analysis. And we've made clear, I think, why we don't see
11 that as a basis for a contention in an operating license
12 proceeding.

13 Secondly, they allege various failures of the
14 Staff to perform various investigative duties, as set forth
15 in 10 CFR Part 100, Appendix A. While the appendix printing
16 is not as clear as it might be in that regard, it has been
17 held, and we believe those duties are not imposed on the
18 Staff; they are imposed on the Applicant.

19 And we would cite in that connection a decision
20 in the San Onofre licensing case, California Edison,
21 San Onofre Nuclear Station, 15 NRC page 71 and 74.

22 Now, we wanted to register those two points. But
23 apart from those two points, the five factors come into
24 play.

25 And we went through this balancing exercise and

1 on the question of good cause, which really is a question of
2 timeliness, we think it's a close call.

3 We don't believe that a party ought to be charged
4 with knowledge of a meeting just because the meeting got
5 noticed in the Federal Register. Really information in the
6 public domain has some limits. Similarly, we have our
7 doubts about the relevance of the Catawba SER for this case.

8 However, for the draft SER in this case, January
9 of '83, and while it didn't include the text of the
10 USGS evolving position on the Charleston quake, it referred
11 to it; and it set forth, we think, enough of the parameters
12 of this whole matter that an Intervenor interested in
13 litigating the trial of an earthquake as it relates to
14 Shearon-Harris was on notice to come forward with a contention
15 in this area, without waiting until now.

16 So we come out that the good cause factor,
17 factor-one, the timeliness factor, if you will, lays slightly
18 against Mr. Eddleman, because of the draft SER.

19 Passing to factors number two and four, which
20 can conveniently lumped together: number two is other means
21 by which an intervenor can present or have his views heard;
22 four refers to being represented by another party--we don't
23 believe that--we think those two factors weigh in favor of
24 Mr. Eddleman in this sense:

25 I can't point to anything in the way of other

1 means except for a possible petition; and the only other
2 party presumably would be the Staff. Both of those arguments
3 were looked at by the Appeal Board fairly recently--rejected
4 in their decision in ALAB 747 concerning the WOOPS facility.

5 We don't see those as cutting against this
6 contentions and back in the opposite direction. We might
7 add, however, that we don't regard these two factors as
8 being as weighty.

9 Now, the next factor is the ability of the
10 proponent of the late contention to make a substantial
11 contribution to the resolution of this issue. And, again,
12 we want to underline the WOOPS case and call it to the
13 attention of all the Intervenor, in case they haven't seen
14 it.

15 It imposes a rather significant burden on an
16 Intervenor who wants to come in late.

17 I'll just read the one sentence:

18 "Because of the importance of the third factor
19 which initially addresses this criteria, it should set out
20 with as much particularity as possible the precise issue it
21 claims to cover, identify its prospective witnesses and
22 summarize their proposed testimony"--

23 We think identification of witnesses is especially
24 important in this kind of a contention. It's a little bit
25 like the health effects dispute, in a way; there's just not

1 an awful lot of people around who know that much about
2 health effects.

3 And, similarly, there aren't that many seismolo-
4 gists who are available to anybody--Intefvenors or anybody
5 else.

6 We don't have, in connection with this proffered
7 contention any proposed seismologist. At least two of us
8 here on this Board have set through two very lengthy
9 seismic hearings, and know from personal experience that
10 a party can't litigate a seismic case without a very good
11 person helping you out.

12 We think the contribution weighs heavily against
13 this contention.

14 Finally, the delay factor: and this is related
15 to what we just said about the complexity of these issues.
16 We think that allowance of seismicity in this case at this
17 point would delay this case very substantially if it were
18 to be litigated in any detail and if anybody were to learn
19 anything; the issues are very complex with a lot of ramifi-
20 cations. And they are not something you an deal with
21 easily. That is a firm negative in balancing the five
22 factors.

23 And when we do that, we see the balance is
24 against the four proposed seismic contentions, No. 174, 5,
25 6 and 7; and we reject it on that basis.

1 No. 178 and 179 are as to the Transamerica-
2 Delavalle, Incorporated, diesel generators that either have
3 been or are being installed at Shearon-Harris.

4 We note first that these contentions as drafted
5 rest on what we will call generic considerations, not facts
6 which are unique to Shearon-Harris diesels.

7 By that we mean insofar as they allege, for
8 example, as they do, problems in quality assurance at
9 TDI manufacturing place, the vendor's work place; and the
10 same kinds of things that TDI generators at other plants
11 have, the 15 or so that do have them at the moment.

12 Secondly, we would note that we don't see them
13 as untimely; they are not untimely. This whole business
14 just came to the surface really in the past several months.

15 Boards like this one have only been letting them
16 in and rejecting them on the merits for the past three
17 months. And that we don't see as a factor affecting
18 admission.

19 But we do think it's significant that these
20 are generic contentions in the sense I have described. You
21 may or may not be aware of the fact that the Catawba Board
22 recently rejected two contentions of this type and conceded
23 it was a difficult, close, question; and referred them to
24 the Appeal Board.

25 And that referral is pending before the Appeal

1 Board. Staff is going to be in the position of telling the
2 Appeal Board what it, the Staff, thinks ought to be done
3 about these matters later on this month. And that's one
4 thing that we would like to see an answer on.

5 But we perceive and as the records of these
6 various cases will tell you, the Staff has an ongoing
7 program to investigate the problems associated with the
8 TDI diesels; and it's moving ahead fairly rapidly. It seems
9 doubtful to us that if we had a contention in on this subject
10 right now that anything very useful would happen anyway.

11 So we are going to defer ruling on these two
12 contentions until further Board order.

13 We are not keying that to a particular date or
14 event, but we are deferring it in light of ongoing matters
15 with the intention of reviewing it again as more light is
16 shed on the situation.

17 So that's our ruling on 178 and 179.

18 Number 180 has been argued, and we think
19 persuasively, as redundant to a portion of Joint Contention
20 7; and we are rejecting it on that basis as presumably the
21 same point can be made on Contention 7.

22 Number 181--this is the last in that particular
23 pleading--has to do with control room design review. On
24 that one we agree with the Staff, that this contention
25 --I'll just quote the Staff: "The contention should be

1 rejected now. If the information presented by Applicant
2 and reviewed by Staff contained some specific inadequacies
3 they should be raised at that time Mr. Eddleman receives
4 the pertinent information."

5 Those are rejected as premature.

6 Next I'll mention and then pass on, but we
7 have two deferred contentions in the environmental area
8 with regard to the draft impact statement and which were
9 deferred to the final; and by number they are Eddleman
10 85b and Eddleman 8f3.

11 And we focused on them to some extent, but I'll
12 just add at this point, health effects matters said it
13 before, and we'll have a couple of things to say about it
14 a little later--we are going to issue a memorandum and order
15 separate from this oral series of rulings.

16 And what we intend to do is include in that
17 memo and order rulings on 85b and 8f3.

18 Next, a series of contentions on the safety
19 parameter display systems and opposition pleadings from both
20 the Applicants and Staff to these contentions.

21 And I'll read just a short statement from our
22 approach for now, as follows:

23 Contentions 169 through 172 concern the safety
24 parameter display systems for the Harris facility. Both the
25 Applicants and Staff urge rejection of these contentions on

1 the grounds that they rest on incorrect premises and
2 reflect a lack of understanding of the function of the SPDS
3 systems.

4 Applicant's and Staff's pleadings are fairly
5 detailed and are generally persuasive.

6 The Board's present inclination is to reject
7 these contentions.

8 We recognize, however, that the questions are
9 relatively complex and that a reply from Mr. Eddleman
10 might disclose a valid contention among those now before us.

11 Mr. Eddleman may, accordingly, file a brief
12 reply to the Applicant and Staff reply responses by
13 March 20, 1984.

14 This is not, however, an opportunity to submit
15 new or revised contentions.

16 Get that, Mr. Eddleman?

17 MR. EDDLEMAN: Yes, Judge.

18 JUDGE KELLEY: All right.

19 A response, if you want to make one, by
20 March 20; but focus on what's before us now.

21 And I might just add that in talking about the
22 function of the SPDS systems you might take into account
23 what is mandated by Commission regulations as opposed to
24 what is the Staff's view. There are a lot of documents
25 cited there, cases.

1 But that's there if you want to take the oppor-
2 tunity.

3 Okay.

4 The next is Eddleman proposed Contention 161,
5 having to do with safe shutdown systems failure.

6 We are rejecting this contention.

7 The original form of 161 lacked specificity.
8 And the Board, at the Applicant's alternative suggestion,
9 allowed a revision, an opportunity for revision of 161 by
10 Mr. Eddleman, to provide some specifics based on some changes
11 Applicants had for that system. And the information was
12 provided basically.

13 Three, that the Applicant's and Staff's proposition
14 say that revised 161 doesn't really take into account those
15 changes; that it's the same contention that was before us
16 before; it's no more specific.

17 We think that's right.

18 There is an added allegation in there about
19 Criterion 22, but we also agree that that's not timely.
20 It wasn't in the initial one, and we weren't holding this
21 over for new contentions.

22 So on those bases, we reject 161.

23 We have three contentions, Eddleman 164, 165
24 and 166, concerning spent fuel shipping cans.

25 These contentions I think encompass both

1 release of radioactive material during accidents and the
2 possible criticality of the steel wall of the cask.

3 Staff and Applicant opposed this on various
4 grounds, including lack of jurisdiction, that they constitute
5 an attack on Commission regulations, lack of specificity.

6 The cask in question has been found to comply
7 with the applicable provisions of 10 CFR Part 71 and has
8 been licensed by the NRC.

9 The contentions make no claim as to the inade-
10 quacy of either the licensing process or as to the Staff
11 analyses that have been performed.

12 I think in view of the separate licensing process
13 for containers, the contentions do lack specificity.

14 More fundamentally, however, we are rejecting
15 these contentions on jurisdictional grounds. They are
16 addressed primarily to the safety of shipment of spent fuel
17 in Licensee's facilities in Brunswick and Robinson and
18 Shearon-Harris.

19 We agree with the recent holding of the Catawba
20 Licensing Board that we lack jurisdiction over safety aspects
21 of such shipments.

22 I cite in that connection Duke Power Company at
23 16 NRC page 167, and at page 172.

24 The next point concerns--Mr. Eddleman had a
25 financial concerns qualification contention in the case,

1 which we rejected because of the Commission's rule as to
2 that requirement.

3 And we recently received a motion from Mr.
4 Eddleman.

5 I mention in light of the provision of the
6 appeal in New England Coalition on Nuclear Pollution--I
7 believe Mr. Eddleman's motion was filed before the Commission
8 issued its Statement of Policy on January 27, 1984, which
9 has been given to us and also served on us by Applicant and
10 Staff in response to Mr. Eddleman's motion for reinstatement.
11

12 It is clear to us that the Commission's Statement
13 of Policy expects Boards to abide by the rule that is
14 given before the Court.

15 The second paragraph I'll just read quickly:
16 "In response to this decision, the Commission intends to
17 conduct an expedited financial qualification rulemaking to
18 address the problems which the Court perceived in the
19 Commission's present rule. The Commission understands from
20 the Court's order that the mandate will issue no later than
21 45 days from the date of the Court decision, i.e., not
22 before March 23, 1984. Until then the present rule remains
23 valid; therefore, the Commission directs Atomic Safety and
24 Licensing Boards and Atomic Safety and Licensing Appeal
25 Panel to continue treating the rule as valid. The

1 Commission expects to complete an adequate response to the
2 D. C. Circuit's decision before it issues its mandate."

3 So, we have been told to proceed as before
4 pending any different actions.

5 This necessitates our denial of Mr. Eddleman's
6 motion.

7 Next we have a motion from Dr. Wilson to withdraw
8 his Contention 3. This motion enjoins the Staff's unquali-
9 fied support. We didn't hear from anyone else.

10 Granted.

11 Dr. Wilson, I believe at this point, doesn't
12 have an active contention in the case. I think he had some
13 in the deferred emergency planning case, a contention; and
14 he may well have more--it depends on what we have recently
15 received.

16 We regard him in that sense as a party to the
17 case; but he has so far as we are aware, no active
18 contentions at the moment.

19 Passing to--still in the general area of emergency
20 planning, and we have some other comments--first on the
21 contentions, No. 157 and 151; we deferred in our order of
22 last fall.

23 One of them had to do with human factors and
24 the so-called TSC.

25 We recently received a filing from the Applicants

1 about that subject. It's not germane, but they supplied
2 the information.

3 The petition asked for the names of offsite
4 medical personnel, and that was supplied.

5 Our approach, then, is going to be this: we are
6 going to be focusing very soon on emergency planning
7 contentions generally; and we are going to leave these two,
8 157 and 151, even though they are technically on-site
9 contentions, we are leaving them deferred for the moment.

10 And I would say this, if any of the Intervenor
11 have any comment they want to make on the Applicant's
12 human factors discussion re: No. 157, or the now-identified
13 doctors, concerning 151, do so at the time you file--
14 make comments at the time you file your proposed contentions
15 on the offsite plans; and we'll take them into consideration.

16 And then we'll decide what to do with 157 and
17 151, probably at the same time we decide the offsite
18 contentions.

19 Now, as to the offsite contentions, we looked at
20 our calendar in light of the intermission date as planned;
21 --have all the Intervenor received the covering letter of
22 February 28, enclosing emergency plans?

23 Have they got that?

24 (Chorus of: "Yes.")

25 JUDGE KELLEY: Fine, thank you.

1 Going back to our old timing formula, it was
2 30 days following receipt in order to file contentions;
3 and it was 15 days following receipt of contentions to file
4 responses. That happens to coincide fairly well with a
5 previously-scheduled prehearing of May 1 in which we'd hear
6 some argument on these things and any replies people wanted
7 to make.

8 But according to our calendar calculations,
9 contentions would be due on April 3rd, which is--that
10 calculus is 5 days for the mailing plus 30, makes it April
11 3rd.

12 And the same approach, responses due on the
13 23rd of April.

14 And, again, that is our mechanical application
15 as we understand if of what we said before.

16 Anybody have any problem with those dates?

17 (Chorus of: "No.")

18 JUDGE KELLEY: Okay.

19 MR. EDDLEMAN: Judge?

20 JUDGE KELLEY: Yuh?

21 MR. EDDLEMAN: I don't have a severe problem with
22 them, but, you know, I've been disfunctional for a couple
23 of weeks.

24 JUDGE KELLEY: How are you doing? Are you well?
25 Are you "re-functional"?

1 MR. EDDLEMAN: No, sir, my capacity factor is
2 still limited. I'm better than I was. I've been able to
3 get out and around, and I taught two yesterday. But I'm
4 not in real good shape.

5 I don't know, let me just say: I might need to
6 slip something like April the 7th or something like that.

7 JUDGE KELLEY: Well, I tell you what: why don't
8 we treat it this way.

9 April is, you know, a month off; and I appre-
10 ciate you've been ill. And you and I have talked a couple
11 of times--quite ill, as a matter of fact--but I think we'd
12 like to set it on the 3rd, taking into account your
13 mentioning now that you may have a problem; and then we can
14 take it into account then if you need more time.

15 MR. EDDLEMAN: Okay.

16 JUDGE KELLEY: Okay? Let's do that. We'll have
17 those dates.

18 I think I mentioned before, we had a May 1 date
19 for health effects prehearing. And I'll have some more to
20 say about health effects in a few minutes.

21 But since that's on the rails and one of the
22 things we'll do there is talk about emergency planning. And
23 we said May 1, but if we have to take more than a day to
24 cover it, everything that's before the house, then we'll do
25 that.

1 But we'll have a better idea of how long it
2 will be I think a little bit later.

3 Turning to the subject of security plans,
4 we have a motion for reconsideration on a contention
5 concerning--it's called "liaison with local police."

6 Now, we are in the area of so-called "safeguards"
7 information; but I think we can say what we've got to say
8 this morning without imposing any safeguards information.
9 It's going to be kind of short and sweet.

10 But we do want to make a ruling on that motion
11 for reconsideration.

12 We are denying the motion for reconsideration.

13 In the main the arguments being made were
14 considered before.

15 It appears some language in our opinion which
16 gives the phrase "literal compliance with the rule,"--which
17 in retrospect may have been a little bit ambiguous.

18 When we said that we did not mean to imply
19 full compliance had been shown. We used "literal" in the
20 sense of really "narrow".

21 And our ruling proceeded on a somewhat broader
22 reading of the rule.

23 I think that that's all, strictly speaking, we
24 have to say; because I think that we've covered those
25 arguments pretty much the first-time around.

1 If the parties feel that further explanation is
2 necessary, then we can consider that. But we for our part
3 don't think so.

4 That then brings us to a short discussion on the
5 schedule for the security plan litigation:

6 I am looking now at a proposed schedule that
7 was sent to us in early February by Carrow. It has on the
8 second page a proposed schedule for remainder of hearings
9 on security plans.

10 And it lists a number of dates. And I gather
11 all parties have been privvy to developing this schedule,
12 and we are agreeable to it.

13 Our comment now is that what you have here may
14 be okay, but we would like to see it simply accelerated
15 a little bit. And we think it can.

16 So that we would at least be in a position if
17 we need to have a hearing on one or more of these issues,
18 that we can do it in about June.

19 And we suggest it in part because a couple of
20 contentions that were not very long ago in the case, I
21 understand have been negotiated and are out. So it is our
22 impression that what is now in the case is not all that
23 broad, and might be moved somewhat more quickly than you
24 had previously suggested.

25 What I would like to do is this: just taking

1 your proposed dates and we made a few changes; and I'd
2 like to have those of you participating in this particular
3 litigation to mull this over a bit and see whether our
4 proposal isn't feasible.

5 And, Ms. Flynn, are you the pretty litigator for
6 the--

7 MS. FLYNN: Yes.

8 JUDGE KELLEY: Is Runkle there?

9 MR. RUNKLE: Yes, sir.

10 JUDGE KELLEY: I gather that you and Mr. Carrow
11 sort of worked out this schedule; right?

12 MR. RUNKLE: Yes, sir.

13 JUDGE KELLEY: And I guess Mr. Barth.

14 If you have in front of you that schedule I am
15 referring to--

16 (Chorus of: "Yes.")

17 JUDGE KELLEY: Well, let me just do this, let me
18 read off the proposed alternate dates.

19 I am not asking you to react to it right now,
20 but you might think about it a bit. You might discuss it
21 among yourselves and if it's workable, fine. And if it's
22 not workable then we can discuss it some more. But let me
23 try this on you:

24 Down three notches, where it says Board ruling
25 on requests for reconsideration--that's today, March 8th.

1 Change the next date to March 15th.

2 And that's the last date for filing discovery
3 requests.

4 And the next date, change it to April 6th; that's
5 the date for responding to discovery requests.

6 The next one, the April 20, the date for filing
7 summary disposition motions.

8 Leave May 4 alone.

9 Next one, change May 15th to June 4th, ruling
10 on motions for summary disposition.

11 Change July 15 to June 1, for filing direct.

12 And change August 6 to June 18.

13 Now, these kinds of dates are very much for the
14 convenience and workability of the parties. The Board isn't
15 trying to dictate these by any means. It's just our thought
16 under the circumstances they might work.

17 So, if you look at them and talk to each other,
18 and then simply--if they are okay, or if there is just some
19 minor change that you all want to make, you could just
20 call us back and tell us.

21 MS. FLYNN: We'll do that.

22 JUDGE KELLEY: Okay.

23 MR. EDDLEMAN: Thank you.

24 MR. BARTH: The proposed schedule you suggested
25 just now I think more comports with our own thinking about

1 what should be done about security in view of what remains.

2 And rather than calling you, I can put it in
3 front of everybody that we pretty much agree with the
4 schedule you suggested, sir.

5 JUDGE KELLEY: Well, that's fine.

6 I'm not particularly prone to--if the other
7 parties want to think about it a little bit, that's okay with
8 us.

9 Want a little time to think it over,
10 Mr. Runkle? Ms. Flynn?

11 MR. RUNKLE: It sounds pretty good to me. I have
12 to just check those dates.

13 JUDGE KELLEY: You mean the precise dates?

14 MR. RUNKLE: Yuh. I mean, there's only the one
15 contention left.

16 JUDGE KELLEY: Yuh.

17 What about it, Ms. Flynn?

18 MR. EDDLEMAN: It looks good to me, also.

19 Why don't Mr. Runkle and I just confer, and
20 we will confirm if this is all right.

21 JUDGE KELLEY: Fine. Thank you, that's fine.
22 Okay.

23 Now, next we'd just like to go over the sort of
24 status review of some six different motions for summary
25 disposition.

1 In two or three cases they are outstanding
2 motions, or some question has been raised; and I think we
3 can address all those points.

4 MR. REID: Mr. Kelley?

5 JUDGE KELLEY: Yes?

6 MR. REID: This is Daniel Reid. I have a meeting
7 right now, I am afraid I'm going to have to sign-off.

8 JUDGE KELLEY: Well, hold on just a second.

9 (Pause)

10 Mr. Reid?

11 MR. REID: Yes?

12 JUDGE KELLEY: Contention No. 44, change 44,
13 now that was also similar and the same as Eddleman 132,
14 I think.

15 MR. REID: Right.

16 JUDGE KELLEY: We got an opposition from
17 Mr. Eddleman.

18 Did you make a filing?

19 MR. REID: No, sir.

20 JUDGE KELLEY: Okay. That answers the question.

21 Okay, well, thanks. I think what remains on
22 here is not stuff you are directly involved in; but I'll be
23 sending you a copy of the transcript anyway. Okay.

24 Goodby.

25 Okay, back to motions for summary disposition.

1 These are not in any particular order. I'll
2 walk through them.

3 These are all motions by the Applicant for
4 summary disposition.

5 The first one is 83-84, and we got the motion from
6 Applicant and Staff. Eddleman had a question about the
7 timeliness of this position. And I spoke with him, I was
8 talking to him about some other matter. But the point came
9 up, and I think we avoided ex parte discussion because the
10 point was in dispute and I simply told him I thought it was
11 timely and he'd be required to respond.

12 We had one motion for summary disposition and
13 the way we set up the schedule, it said motions by a certain
14 date, and responses by a certain date; and it appeared that
15 the schedule could be read to suggest one only got one bite
16 at the apple so far as summary disposition motions are
17 concerned.

18 I think if we really focused on that, we would
19 have made it clear; and that that isn't necessarily the
20 case; particularly in light of the postponement of the
21 January hearing there's time to go through another round of
22 summary disposition motions. And the Applicants want to do
23 that.

24 There's an interest if we can resolve things that
25 way in doing just that.

1 So, now, our prior schedule says--plus that, it
2 might even have been somewhat misleading--I think it's
3 timely; and our ruling is that it is timely and Mr.
4 Eddleman should respond.

5 Now, I did leave open--I told Mr. Eddleman this--
6 when we made that ruling there's a question of what the
7 due-date ought to be.

8 I suggested to him and I think Mr. Baxter, too,
9 that they negotiate some date. I don't know when they're
10 goign to be able to do that.

11 MR. BAXTER: Judge Kelley, we agreed on March
12 19.

13 JUDGE KELLEY: That's just fine.

14 MR. BAXTER: I also wanted to ask, Judge, whether
15 the Board had received, as we did just this morning,
16 Mr. Eddleman's motion to declare Applicant's motion on
17 Contention 15aa untimely? It seems to me to raise basically
18 the same thing.

19 JUDGE KELLEY: I don't believe I have the
20 motion.

21 I think Mr. Eddleman mentioned this to me
22 before, and the question did strike me somewhat--well, as
23 long as we're on the phone, we ought to speak to it.

24 MR. EDDLEMAN: Judge, if you have the paper,
25 you're welcome to go ahead and rule on it. But I think you

1 should read what I filed. There are some differences and
2 I laid them out in my motion. It was in the express mail
3 packet that I sent to you yesterday.

4 JUDGE KELLEY: You know, it could be, for all I
5 know, it's in another part of the building; and I haven't
6 seen it yet today.

7 Okay.

8 We can wait on that.

9 But as to 83-84 we've got a date of March 19th.

10 Now, just mentioning two others: 44-132, it's
11 the same motion. The TLD motion, thermoluminescent dosimeters;
12 those two we have pleadings on; and they stand submitted to
13 the Board. And we will be ruling on them.

14 I might say as to all of these motions for
15 summary disposition, we don't contemplate an oral ruling.
16 We expect to issue a memorandum and order. We might consoli-
17 date some of the , but there will be a written ruling.

18 The next one is Applicant's filing on Joint
19 Contention No. 5. That's dated the 27th.

20 We don't have any opposition or supporting
21 papers due at this point. I'll just mention we made this
22 earlier ruling about the staggered system, so that our
23 ruling about the Staff filing after 20 days plus service,
24 and Mr. Eddleman's 25 plus service--to file.

25 Now, 15aa would be in the same schedule, and

1 Mr. Eddleman advises that he's got a motion on the way,
2 probably here.

3 And, well--we'll consider that. I mean, you know
4 what we said on 83a-4; we'll consider the motion and
5 focus on the argument before we make a ruling.

6 I gather, Mr. Baxter, we'll get a response from
7 you on the motion.

8 (No response)

9 Is Mr. Baxter still with us?

10 MR. BAXTER: Yes.

11 JUDGE KELLEY: Now, the other thing that
12 we have on summary disposition motions is No. 65,
13 Eddleman 65.

14 The Staff has filed in support of that.

15 And there's a dispute between Mr. Eddleman
16 and the Applicant and Staff to some account, I guess,
17 about whether they are entitled to finish covering before
18 he has to file in response.

19 And our disposition is he shouldn't have to. We
20 have an answer from Applicant disputing that position.

21 Mr. Eddleman has asked by way of relief to move
22 that he be given until 15 days following the second round
23 of discoveries.

24 Now, the Applicants have a counter-motion which
25 would be to the effect that if we grant Mr. Eddleman's

1 motion, we should extend the time to answer discovery
2 requests. It's kind of a preservation of the status quo
3 motion essentially, because if we hadn't gotten around to
4 ruling on Mr. Eddleman's motion until now, that time would
5 have gone past.

6 We are going to grant both motions, Mr. Eddleman's
7 motion, Mr. Baxter's motion.

8 We are also including in the grant of Mr. Baxter's
9 motion the same relief for the Staff with regard to their
10 obligations to answer to discovery.

11 And the result of all that follows:

12 Discovery requests are deemed to be served today,
13 the day we're making this ruling.

14 This means that the answers and/or objections
15 are to be served by March 23rd, the time allowed by the
16 rule.

17 Now, beyond that, we have a standing directive
18 to the parties to try to negotiate differences; and we'll
19 just restate it here:

20 On any differences between Mr. Eddleman and the
21 Applicant, they should seek to negotiate those differences
22 by, say, March 30th. That's a little early maybe.

23 April 6th.

24 Try to work it out.

25 MR. EDDLEMAN: I'm sorry, Judge Kelley, could you

1 go over those dates one more time?

2 JUDGE KELLEY: As your motion is formulated the
3 discovery reuquests would be deemed to be served today.

4 That being so, under the rule your answers would
5 have to be served by the 23rd.

6 And we are saying that any differences between
7 the parties you should seek to negotiate by April 6th.

8 Now, if come April 6th, you've got outstanding
9 differences, let me know, the whole Board or some portion
10 thereof will initially hear out what the differences are.

11 But we'll try to work it out as quickly and as
12 informally as we can and rule if we need to.

13 What I am saying, gentlemen, is this whole
14 business of motions to compel and answers and all the rest
15 --let's try to short-circuit that.

16 If you've got differences you can't negotiate,
17 just let us know, and we'll see what we can do.

18 Then, finally, Mr. Eddleman's answer would be
19 due 15 days after the discovery round is complete, say.
20 I can't give a specific date for that, obviously; but that's
21 the game plan.

22 Now, we stated in our ruling a few words as to
23 why:

24 It is true, as the Applicants point out, that the
25 NRC rules don't prohibit filing summary disposition motions

1
2 on discovery; and there's at least one case on point.

3 We think the Board could put some restrictions;
4 we didn't here, not explicitly.

5 This precise issue hasn't come to a head until
6 now, and we suspect that the question of filing summary
7 disposition before discovery is over, is academic, an
8 exception of the emergency plans area.

9 We can talk about that when we talk about emergency
10 plans at the next prehearing.

11 Until then, we're just going to take it case-by-
12 case. We've only got one case, we think, of this kind of
13 problem.

14 And I think in view of the fact that Mr. Eddleman
15 has gone ahead, he's filed his discovery questions; they are
16 before you; in view of the fact that the schedule will
17 accommodate finishing this round; we think that's the way
18 in fairness it ought to be done.

19 So that is that ruling.

20 Turning next to the question of health effects,
21 and the Board issued its rulings in this area in January.

22 We have since received motions for reconsideration
23 and clarification and the like from all interested parties,
24 including the Applicant and Mr. Eddleman, the Joint
25 Intervenors by Mr. Eddleman.

1 In this regard, earlier as we said, we intend to
2 issue a memorandum and order fairly shortly, hopefully in
3 ruling on the various papers before us. Given the general
4 complexity of this whole matter, we don't think it's
5 appropriate to try to address this in oral fashion, as we've
6 done with the other matters.

7 But we do think we should tell you a couple of
8 things, so that you will be aware of it, first:

9 We had expressed our intention to call
10 Dr. Goffman as a Board witness, as you know, our earlier
11 discussions with him indicated his interest and some
12 availability.

13 We regret to say that Dr. Goffman now advises
14 us that he is not available for that purpose, at least in
15 that general time frame of summer.

16 And, therefore, we don't intend to call him.

17 Moreover, we don't have any plans to call any
18 Board witness on this subject.

19 And that has implications for our earlier
20 position, and we spell them out in our order; but I thought
21 you'd be interested in knowing that fact.

22 Secondly, the Board was rather embarrassed to
23 discover that we had completely omitted any ruling on
24 Contention 2d. And this was an inadvertence on our part.
25 And one that we will cure in the order.

1 I'll pause a moment.

2 (Pause)

3 Lady and gentlemen, that takes us to our
4 outline for this morning so I'll go around the engineering
5 table and see what you have.

6 Mr. Baxter?

7 MR. BAXTER: I don't believe I have questions,
8 Judge Kelley.

9 But I had prior to this conference attempted to
10 prepare my own list of matters that were pending before
11 the Board. And I just wanted to raise two, which I am sure
12 you are not prepared to discuss; but just to make sure--

13 JUDGE KELLEY: I'm happy to have you do that.
14 There are a lot of matters in this case, and I have no doubt
15 that we have just demonstrated our capacity for inadvertent
16 omission.

17 (Laughter)

18 So why don't you tell us what we've missed?

19 MR. BAXTER: The two I have are Mr. Eddleman's
20 Section 2.758 petition to waive the Commission's legal
21 power in alternative energy sources rule.

22 JUDGE KELLEY: Yes.

23 MR. BAXTER: In a ruling last fall on summary
24 disposition of Eddleman's 64f, the Board requested briefs
25 from the parties on whether or not to condition the license

1 to provide for additional hearings on spent fuel shipping
2 casks.

3 JUDGE KELLEY: Yuh.

4 Is that it?

5 MR. BAXTER: Those are the only two I have; yes.

6 JUDGE KELLEY: Let me ask a question of you and
7 Mr. Eddleman:

8 We've done some work on 2.758, the petition;
9 I wish we'd done more, obviously.

10 But one thing that's occurred to us, since those
11 papers were filed, if my memory serves, it, too, has been
12 cancelled; right?

13 MR. BAXTER: That's correct.

14 JUDGE KELLEY: Do the parties think that a
15 brief mail filing now of how, if at all the cancellation
16 of Unit 2 affects the argument--I'm not suggesting we reopen
17 the whole thing; it was a big effort in the first place.
18 But on the other hand we at the Board now are looking at
19 the matter and addressing it.

20 Do you see it, Mr. Eddleman, as a subject that's
21 worthy of some further work?

22 MR. EDDLEMAN: Judge, I could give you, I think,
23 some pretty short words. I think I can handle it in about
24 two pages. I'd be glad to.

25 I think that it does affect the argument some.

1 And I'd be glad to do that.

2 Also, I should tell you that in the package you
3 are receiving is a motion to allow filing of an affidavit
4 of Dr. Blackburn, which concerns the economics on this.

5 JUDGE KELLEY: Okay.

6 Well, you think something short might be useful.

7 Mr. Baxter, any thoughts?

8 MR. BAXTER: Our initial response went to what we
9 thought was a legal deficiency in Mr. Eddleman's whole
10 approach. I don't think it will be affected by that, but
11 we'll respond.

12 JUDGE KELLEY: I see your point. I understand
13 what you are saying.

14 MS. MOORE: Judge Kelley, our position was also
15 a legally-based position, and I don't believe that the
16 cancellation of Unit 2 affects that position at all.

17 JUDGE KELLEY: All right.

18 Well, tell you what, Mr. Eddleman, if you want to
19 do something short, but file something before the prehearing
20 on May 1st, that would be fine. And if you want to speak to
21 it briefly at the prehearing, that's okay, too.

22 MR. EDDLEMAN: Okay, Judge.

23 JUDGE KELLEY: Thank you.

24 Now, Mr. Eddleman, any questions or other points
25 to raise on your part?

1 MR. EDDLEMAN: Yes, sir.

2 I need to tell you that I was not in compliance
3 with your order on negotiations re: 9, 11 and 132c2; but
4 I realized this morning I was not. And I contacted
5 Mr. O'Neill for the Applicant. I read off the objections
6 to him, and he agreed to negotiate further with me once
7 he sees them in writing, which is a position Applicants have
8 often taken in the past.

9 I gather from what you are saying about
10 Dr. Goffman being not available that we don't need to make
11 any response to the arguments Applicant and Staff raised
12 against having him?

13 I did want to ask clarification:
14 Is it possible for us to subpoena him?

15 (Laughter)

16 JUDGE KELLEY: I don't know.

17 MR. EDDLEMAN: Well, the reason I ask this,
18 Judge, is that a long time ago I contacted him.

19 JUDGE KELLEY: Yuh?

20 MR. EDDLEMAN: This was before the Board had
21 done anything, so far as I know, back sometime in '82. I
22 don't have notes on it here.

23 But I talked to him. And he said that he was
24 unwilling to appear--period--you know, an unconditional
25 thing. It wasn't that he was hostile to the Intervenor or

1 anything like that; he was just unwilling to appear.

2 And so that was the reason we didn't bother to
3 contact him about being a possible witness.

4 But in light of these Board orders and so on,
5 if he's not willing to appear voluntarily, I'd like to know
6 --there's something in the rules about being able to
7 subpoena a witness?

8 JUDGE KELLEY: Well, there are provisions for
9 subpoena of witnesses; that's true.

10 There's some ramifications in your question that
11 I am not sure that we want to read right off the tops of
12 our heads.

13 What concerns me a little bit is the question
14 of has there been a substantial showing made? You asked
15 for that. And as far as Dr. Sternglass, and our reaction
16 was that I didn't think that was going to educate us,
17 listening to him; and that's pretty much what we said.

18 Are we now to--I don't know what your showing
19 might be in the light of the possibility of your subpoena
20 of Goffman--I don't know: I raise the question; I'm not
21 sure about the answer.

22 MR. EDDLEMAN: Well, Judge, I just wanted to raise
23 the question, too.

24 In other words, we tried to get witnesses. We
25 didn't really consider Dr. Goffman to be a possibility

1 because he told us flat-out that he didn't want to appear.
2 And we didn't want to drag him in there against his will
3 under those conditions.

4 But, having seen the Board's order, it says,
5 well, gee, Goffman's the best witness you can get; and
6 you know, under the circumstances he was going to
7 voluntarily appear, we didn't feel like we should do anything.

8 But now it looks like there's a whole different
9 face on it.

10 JUDGE KELLEY: He was saying maybe to us before,
11 with interest; and now he's saying no.

12 Presumably we could subpoena him, too; but
13 frankly, we don't want to because our feeling is that
14 an unwilling witness who wants to be doing something else
15 is not very helpful.

16 You can't direct him to prefile testimony, that's
17 for sure.

18 MR. EDDLEMAN: Well, Judge, I understand that,
19 and if we subpoenaed him, I guess we'd prefile his book.

20 JUDGE KELLEY: I guess, Mr. Eddleman, I hadn't
21 thought about it. And for all I know, we would get objec-
22 tions from other parties to the whole idea.

23 (Laughter)

24 I'm not prepared this morning to give you anything
25 more than a very preliminary reaction to the thought.

1 MR. EDDLEMAN: I understand, Judge.

2 The reason I wanted to bring it up now is to
3 kind of put them on notice about it.

4 JUDGE KELLEY: Okay.

5 MR. EDDLEMAN: I have one other question.

6 Concerning Eddleman Contention 9, environmental
7 qualification, there was a ruling a long time ago saying
8 once the Applicants put the information in the FSAP you
9 can file other contentions.

10 And I want to know if I can get a deadline for
11 doing that?

12 JUDGE KELLEY: Frankly, I'm trying to remember.
13 I'm trying to remember the contention.

14 Has something come out recently on environmental
15 qualification?

16 MR. EDDLEMAN: Oh, no, it's something that hasn't
17 come out, Judge.

18 If you look in the SER, I believe it's approxi-
19 mately pages 3-50 and 51, the Staff has a big list of
20 additional data that they want to require.

21 JUDGE KELLEY: Yuh?

22 MR. EDDLEMAN: What I want to know is, am I
23 obligated to make my contentions before that data comes in,
24 or afterward?

25 JUDGE KELLEY: Our general approach has been

1 after, as long as it's done promptly.

2 That's consistent, I think, throughout the case.
3 And we still go through these five factors exercise.
4 But if you are in promptly, then, you're pretty well home
5 on the good cause factor.

6 That's just sort of general guidance.

7 Well, we do have, Mr. Eddleman, as I recall,
8 our general rule in the September 1982 ruling where we
9 set the 30 days, 15 days, a cycle on new information.

10 MR. EDDLEMAN: All right.

11 JUDGE KELLEY: So in the absence of the Board
12 setting some other date, if you've got information, that's
13 the rule.

14 MR. EDDLEMAN: Okay.

15 Just for clarification with the Applicants, if I
16 may:

17 I understood from Mr. O'Neill that the Applicants
18 file all this stuff and send copies of all this stuff anyway?

19 JUDGE KELLEY: Is that a question to Mr. Baxter?

20 MR. EDDLEMAN: Correct.

21 MR. BAXTER: I believe you are being provided with
22 copies of FSAR amendments.

23 MR. EDDLEMAN: Right.

24 What I am saying is, is the stuff you send the
25 Staff, what they ask for, some of that goes into FSAR

1 amendments; and I want to know what triggers it?

2 Is it triggered when you send it to the Staff?

3 Or does it get triggered when you send me a copy of the

4 FSAR amendment?

5 MR. BAXTER: Your getting copies of the information
6 sent to Staff that they request; it may later end up in the
7 FSAR; you will see it first--

8 MR. EDDLEMAN: Okay.

9 So what you are saying is, when you send it to
10 the Staff, that's the trigger?

11 JUDGE KELLEY: Oh, you mean the 30days?

12 MR. EDDLEMAN: Yes, sir.

13 JUDGE KELLEY: Yuh, when you get it.

14 MR. EDDLEMAN: Right. Okay.

15 MR. BARTH: Mr. Kelley, Mr. Treby has joined us.
16 He's the Assistant Chief Hearing Counsel in the hearing
17 section; and you asked if something new has transpired on
18 the environmental qualifications; Mr. Treby would like to
19 address that.

20 JUDGE KELLEY: Okay.

21 MR. TREBY: What I would like to bring to the
22 Board and parties' attention is that the Commission issued
23 a Policy Statement on environmental qualifications dated
24 March 1, 1984.

25 They state this statement of policy is intended

1 to explain the Commission's response to the D. C. Circuit's
2 remand. The remand is the case of the Union of Concerned
3 Scientists versus the Commission, et al., at 711 Fed 2nd 370,
4 and to describe other related actions the Commission will
5 take until the conclusion of the rulemaking proceedings,
6 which the Commission intends to initiate by an accompanying
7 notice of proposed rulemaking.

8 JUDGE KELLEY: Well, that's background on what's
9 going on generally with environmental qualification; right?

10 MR. TREBY: That's right.

11 MR. EDDLEMAN: Is that something the Staff can
12 make available to the parties?

13 MR. BARTH: I will send it to all the parties.

14 JUDGE KELLEY: Did you get your questions in,
15 Mr. Eddleman?

16 MR. EDDLEMAN: Yes, sir, that was what was on
17 my list.

18 JUDGE KELLEY: Okay.

19 MS. FLYNN: May I just make a point on that?
20 The proposed rule in the policy statement affects plants
21 that are already licensed, as I understand it. I don't
22 believe that has any direct bearing on operating license
23 applicants.

24 JUDGE KELLEY: Okay. I confess I don't know,
25 haven't read it.

1 Mr. Runkle, any questions, comments?

2 MR. RUNKLE: I do not have either questions or
3 comments, your honor.

4 JUDGE KELLEY: Okay.

5 (Pause)

6 Mr. Reid left us.

7 Mr. Barth, you had one point; do you have other
8 questions?

9 MR. BARTH: For the Staff, your Honor, we have
10 no more questions. Thank you.

11 JUDGE KELLEY: Okay.

12 JUDGE CARPENTER: I'd like to give the parties
13 a little bit of perspective on the unavailability of
14 Dr. Goffman.

15 Our prior information was that he would be
16 available.

17 In December, Dr. Goffman indicated to me that
18 he was involved in a case involving not a nuclear power
19 plant, but the effect of radium-painted instrument dials
20 in Kansas--which has occurred in a particular facility. So
21 he was involved in that proceeding, and also had a
22 commitment to a publisher to submit a manuscript for a
23 book.

24 And those were the bases for his feeling that
25 he couldn't be available for several months.

1 And just to give you the perspective, I spoke
2 with him last Friday, and it turns out that his anticipa-
3 tions that his progress in the proceeding where he's a
4 witness, and also his progress in meeting his commitments
5 which I presume are not legal, but certainly are binding on
6 him to finish the book by some prescribed date--both of
7 those milestones have slipped.

8 I just want to explain to all the parties, that's
9 the reason for Dr. Goffman's unavailability.

10 It wasn't a matter of his changing his mind, just
11 that physically he's not able to participate in the
12 proceedings.

13 JUDGE KELLEY: Okay. I don't think we have any-
14 thing else.

15 If there's nothing else on hand, I'll just say
16 we'll do a mark-up probably of the transcript and mail out
17 copies to you, so you'll have it with changes we're going
18 to make; but I don't think you'll get that until the later
19 part of next week.

20 So if anything happens in the meantime you have
21 knowledge of it; we've been over it; and we expect the
22 rulings of today to be enforced; but you will have it for
23 your files, a copy of the transcript setting all this
24 forth.

25 MR. EDDLEMAN: Judge one thing did occur to me:

1 Does the Board have any objection to the Joint
2 Intervenors contacting Dr. Goffman and seeing when, you know,
3 if ever, he might be able to appear?

4 JUDGE KELLEY: No.

5 Got an address?

6 MR. EDDLEMAN: Yes, I can find it, Judge.

7 JUDGE KELLEY: Okay.

8 If there's nothing else, we'll say goodbye
9 and we'll be looking forward to a prehearing seven weeks
10 from now.

11 Goodby.

12 (Chorus of "Goodby, thank you.")

13 (Whereupon, at 12:45 p.m., Thursday, March 8,
14 1984, the telephone conference was adjourned.)
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CERTIFICATE OF PROCEEDINGS

This is to certify that the attached proceedings before the
NRC COMMISSION

In the matter of: CP&L AND NCMPS No. 3, SHEARON-HARRIS


Date of Proceeding: Telephone Conference, March 8, 1984

Place of Proceeding: Washington, D. C.

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

JAMES R. BURNS, JR.

Official Reporter - Typed


Official Reporter - Signature