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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the Matter of: CAROLINA POWER & LIGHT COMPANY and
NORTH CAROLINA MUNICIPAL POWER AGENCY
No 3

Shearon Harris Nuclear Power Plant
Units 1 & 2

Location: Bethesda, Md.

Pages: 1109-1127

Date: June 12, 1984

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of: :
CAROLINA POWER & LIGHT COMPANY and :
NORTH CAROLINA MUNICIPAL POWER AGENCY : Docket No.
No. 3 : 50-400 OL
 : 50-401 OL
Shearon Harris Nuclear Power Plant :
Units 1 & 2 :
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Bethesda, Maryland
Tuesday, June 12, 1984

This prehearing conference convened pursuant
to notice, at 3:00 p.m.

BEFORE:

JAMES L. KELLEY, ESQ. Chairman of the Board
Atomic Safety and Licensing Board
Nuclear Regulatory Commission
Washington, D. C. 20555

DR. HARRY FOREMAN, Member
Atomic Safety and Licensing Board
Nuclear Regulatory Commission
Washington, D. C. 20555

Glenn O. Bright, -Member

1 On Behalf of the Applicant, CP&L Company:

2 SAMANTHA FRANCIS FLYNN, ESQ.
3 Carolina Power & Light Company
4 P. O. Box 1551
Raleigh, North Carolina 27602

5 THOMAS A. BAXTER, ESQ.
6 DEBBIE BAUSER
7 Shaw, Pittman, Potts & Trowbridge
1800 M St., N. W.
Washington, D. C. 20036

8 On Behalf of the NRC:

9 JANICE MOORE, ESQ.
10 U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

11 For the Intervenors:

12 WELLS EDDLEMAN
13 718-A Iredell St.
Durham, North Carolina 27705

14 M. TRAVIS PAYNE, ESQ.
15 Representing Kudzu Alliance
723 W. Johnson St.
Raleigh, North Carolina 27605

16
17 On the line:

18 DANIEL READ
19
20
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1 MR. KELLEY: Let's go through the names of
2 people once again. We have the reporter taking them down
3 now. For the Applicants.

4 MR. BAXTER: Thomas A. Baxter and Debra B.
5 Bauser in Washington.

6 MS. FLYNN: Samantha Flynn

7 MR. KELLEY: For the Staff:

8 MS. MOORE: Janice Moore and Charles Barth.

9
10 MR. KELLEY: We have Mr. Wells Eddleman, right?

11 MR. EDDLEMAN: E-D-D-L-E-M-A-N.

12 MR. READ: Daniel Read, R-E-A-D, like read a
13 book.

14 MR. PAYNE: M. Travis Payne.

15 MR. KELLEY: I'm Judge Kelley and Judge White
16 is here with me and Judge Harry Foreman is on the line
17 from Minneapolis and before Mr. Read and Mr. Payne got
18 patched in I'd briefly described our situation with Dr.
19 Foreman coming on the coming on the board, but let me just
20 state that again.

21 Dr. Carpenter is ill and will undoubtedly
22 be ill for several days and it's just not practical for
23 him to be in the hearing coming up starting the day
24 after tomorrow. You'll recall we previously put out
25 pleading dated June June 4, appointing Dr. Foreman as a

1 Technical Interrogator and Informal Assistant in the
2 case and Dr. Foreman does bring a special background
3 and knowledge to this precise area, and having done
4 that and now with Dr. Carpenter not available for this
5 upcoming hearing, the most sensible thing for us to do,
6 it seemed, was to take the next step and make Dr.
7 Foreman a member of the Board for the purpose of these
8 upcoming hearings on the health effects contentions.

9 Our contemplation would be that he would be
10 serving as an alternate member and that he would be
11 available to serve when one of us, when one of the
12 Technical members was unavailable as in the general
13 proposition and in particular now since Dr. Carpenter
14 is sick, he would be participating on these contentions.
15 I think the practical difference between his being a
16 Technical Interrogator on the one hand and his being a
17 Board Member on the othr, is he would have a vote as a
18 full Board Member and would be participating with us not
19 just in the hearing but in the decision part of the
20 process on the Health Effects Contention.

21 I did serve on the parties a copy of Dr.
22 Foreman's resume and asked if anyone had any objection to
23 Dr. Foreman serving in that capacity that they let the
24 Board know by tomorrow or appointing him as member of
25 board has not superceded that, but the same concept

3
1 might be deemed applicable when one is simply asked
2 whether having had this material in hand for a few days
3 any party has an objection that he wishes to voice
4 to Dr. Foreman's serving as an alternate member of the
5 Board and as a Member on the Health Effects Contention.

6 MR. EDDLEMAN: This is not an objection,
7 but I notice that Dr. Foreman's resume only goes up
8 to 1975, is this correct that there has been no change
9 in his position since that date.

10 MR. PAYNE: This is Thomas Payne. I have no
11 objection.

12 MR. READ: I have no objection either, Daniel
13 Read.

14 MR. KELLEY: Applicants?

15 No objection.

16 MR. KELLEY: Staff?

17 MS. BAUSER: Staff has no objection.

18 MR. KELLEY: Thank you. Dr. Foreman, we had
19 sent him previously copies of testimony so he's had
20 those in hand for awhile and had a chance to read them
21 over. I would ask that you -- add them to your service
22 list certainly with respect to papers associated with
23 the Health Effects Issue at least and we'll be meeting
24 him the day after to-morrow.

25 Now the immediate reason for this telephone call

1 suggested by the Applicants, they filed last week, two
2 Motions. One for next -- ruling and the main Motion for
3 a determination that the joint intervenors propose
4 testimony from Dr. Carl Johnson is inadmissible and that's
5 why it's dated June 5.

6 We have since received also a Pleading from
7 the Staff which essentially supports the Applicant's
8 Motion and received yesterday a Pleading from Mr. Read
9 on behalf of the Joint Intervenors opposing the Motion.

10 I say we have these papers, that's myself and
11 Judge Bright. There was no way for you to know that Dr.
12 Foreman was going to be a Board Member today.

13 By the way there is a letter to Dr. Foreman from
14 Judge Cotter stating his appointment in the Board Member
15 which he'll get in the ordinary course by service. But,
16 although we've talked with Dr. Foreman a bit about the
17 Motion, he doesn't have the papers, the Motion papers in
18 front of him.

19 We think what we'd like to hear a bit from the
20 Parties on the line, the first order of business, let me
21 say preliminarily that we find this proposed testimony
22 rather disbursive, hard to follow, it doesn't refer to
23 the particular contentions that are involved and it's not
24 in all cases apparent what the relationship is between
25 parts of the testimony and the contentions in question.

1 We can say in general proposition that in any
2 pre-filed testimony, the parties preferring testimony
3 should sit right up front, what the witness is going to
4 talk about and how it's related to the contention. That
5 is not true of the proffered from Dr. Johnson.

6 Having said that, that's just a general
7 observation, not a ruling. There were other portions of
8 the testimony where it was less clear what whether it
9 was sufficiently related to the contention or not.

10 Beyond that, really the merits of the Motion
11 on Relevancy,--

12 MR. BAXTER: -- Judge Kelley?

13 JUDGE KELLEY: Yes?

14 MR. BAXTER: Tom Baxter, I'm sorry. There's
15 something electronically cutting your voice in and out
16 just a little bit. Could you back up to after you gave
17 your preliminary observations?

18 JUDGE KELLEY: I'll try. The problem is, this
19 is a cheap voice activated recorder and it sort of kicks
20 on and off in response to voices and there's a lag
21 factor I think. But, to restate it briefly, we did feel
22 that the proposed testimony was disbursive and hard to
23 tell just how everybody would do the contentions and we
24 think that in the future any pre-filed prepared testimony
25

1 should show--should clearly show what the relationship is
2 between the points being made and the contention that's
3 in issue. Again, it's an observation. It's certainly
4 not a ruling.

5 We'd like the parties to speak to really a
6 practical point and that is this. What strong reason
7 if any, is there for this Board to rule on this MOTION
8 as distinguished from hearing further and more directly
9 from the parties when we get down to Raleigh.

10 In the normal course, when we get a motion like
11 this, one, the testimony was offered, which would be
12 I assume after the Applicants direct case was on, and
13 at a time in which the parameters of these contentions
14 would begin to become somewhat further than they are now.
15 What would be lost by our saying that we've read the
16 Motion and we've thought about it, but we're going to
17 defer the ruling until the time that such Motions are
18 offered. Mr. Baxter do you want to--I realize your
19 Pleading speaks to that to some extent, but do you want
20 to re-state your point on that?

21 MR. BAXTER: Yes. Basically the problem is that
22 we have filed simultaneous testimony here, all three
23 of the parties. We did not anticipate, and I don't think
24 we could have reasonably anticipated most of the subject
25 matter that encompassed Dr. Johnson's proposed testimony

1 because in our view it doesn't address the issues
2 specified by the Board.

3 So to a large extent right now, our direct,
4 and Dr. Johnson's direct pass in the night, if you will.
5 We have the Burden of Proof in the case as the
6 Applicants, so therefore, if Dr. Johnson's testimony
7 were to be received, we have the means to prepare an offer
8 to the Board, written rebuttal testimony, because in this
9 situation I think we could not reasonably have been
10 held to anticipate in our direct the points which he is
11 making in his direct testimony.

12 We have a very short hearing, which I'm not
13 complaining about, but a relatively short hearing
14 scheduled here. We are working now on draft rebuttal
15 testimony, and if the testimony of Dr. Johnson were
16 received we would try and have it available and put on
17 during this set of hearings.

18 It's very hard to do that and still give the
19 other parties and the Board an opportunity to examine
20 that rebuttal testimony. So we are having to work now
21 and we are working every day. We're trying to rebut
22 what our -- a large number of subjects which are just
23 very lightly touched upon, but which I as the party with the
24 Burden of Proof cannot afford to take lightly and the
25 rebuttal effort is a very major one. Two days hearing

1 hearing today, rather than Thursday makes a big difference
2 to us in the effort that we're going through every day
3 right now to prepare for the contingency of meeting this
4 surprise testimony. Those are my remarks.

5 JUDGE KELLEY: Okay. I understand the thrust
6 of your point.

7 MR. EDDLEMAN: Judge, Wells Eddleman, I'm
8 sorry to interrupt, but I am getting only about one
9 syllable out of every few seconds of your statement here.

10 JUDGE KELLEY: Mine or Mr. Baxter's?

11 MR. EDDLEMAN: Baxter's I got fine, but when
12 you started in, it was like a piece of a syllable and
13 then cut off, and then a piece of a syllable again after
14 a little while, and so on. And when you said mine or
15 Baxter's, I heard you fine. It seems to be coming in and
16 out. I don't know what it is.

17 JUDGE KELLEY: Well, I'll see if I can't get
18 closer to the machine. Maybe that will help. I gather
19 Mr. Baxter, just to follow up with you on one point,
20 the Board might say well, we understand your problem and
21 if we determine that there was legitimate surprise
22 so far as the content of the intervenors case was concerned,
23 then we'll allow you to file a rebuttal a month from
24 now, that you'll just see a delay in the whole process,
25 is that the problem.

1 MR. BAXTER: Yes. As you know, Judge Kelley
2 we had originally all planned to have this hearing five
3 months ago, and to no one's fault, it's gotten extended
4 a great deal. But it's quickly going to bump up
5 against the testimony filing date of August 9 for the
6 Management and Safety Hearings and everything from now
7 on is really very tightly scheduled leading up to a
8 licensee Board initial decision.

9 JUDGE KELLEY: When is the Management hearing,
10 just to remind us? What's that schedule--when's that
11 scheduled to start?

12 MR. BAXTER: September 5.

13 JUDGE KELLEY: Okay. Let me ask for the Staff
14 next and then the intervenors can respond. Ms. Moore or
15 Mr. Barth, what's your--or what are your views on what's
16 to be gained or lost by us ruling this afternoon or
17 after we get down to Raleigh?

18 MS. MOORE: I think that -- this is Janice
19 Moore, the -- one of the main problems we would have is
20 similar to Mr. Baxter's and that is if the Board allows
21 rebuttal testimony, the Staff has to prepare that
22 testimony and have to arrange for the appropriate person
23 to be in Raleigh on Monday or Tuesday of next week to
24 prevent either or to prevent that testimony. It may be
25 difficult for us to file written rebuttal by Friday. The

1 problem would be the logistics of getting that person
2 prepared to be in Raleigh and to be on the stand some
3 time the first of next week. We are working on that --
4 if the testimony is unstricken, we will have to reach
5 that person very quickly and tell him not to appear.
6 It's a logistics problem. It makes it much easier. I
7 think, for all parties, if we know in advance whether
8 the testimony is in or out.

9 JUDGE KELLEY: Okay. Now, Mr. Read?

10 MR. READ: Yes sir. It seems to me that
11 as you pointed out, if they are required to file rebuttal
12 testimony that, I don't see that we'd have any objection
13 to them filing at some later date. I think it's clear
14 that some of the matters in Dr. Johnson's testimony
15 really don't address the issues under this contention and
16 I think we're willing to concede that.

17 JUDGE KELLEY: When you say this contention,

18 MR. READ: These contentions, excuse me.

19 JUDGE KELLEY: You're talking about Roman 2, C
20 and E?

21 MR. Read: I'm sorry, I didn't hear that part
22 of your--

23 JUDGE KELLEY: Well, I want to get one part
24 clear here. There's this 8F1 contention, correct?
25 We've got three contentions in all, 8F1, Roman 2 and then

1 there's a little c in parens and a little e in parens.
2 Now you have offered the Johnson testimony for Roman 2
3 c and e as I understand it. It's got nothing to do with
4 8F1, correct?

5 MR. READ: Mr. Eddleman's done most of the
6 negotiating with Dr. Johnson, and as I understand it that
7 is correct, yes.

8 MR. EDDLEMAN: That is correct, Judge. This
9 is Wells Eddleman, and 8F1 is my contention and his
10 testimony does not address that.

11 JUDGE KELLEY: Okay. Thank you. You said
12 though, Mr. Read, that you would concede that portions of
13 the testimony from Dr. Johnson are not relevant to either
14 2c or 2e, right?

15 MR. READ: I think so, Your Honor and that
16 could probably be disposed orally from the bench at the
17 hearing. I don't see any problem with that.

18 JUDGE KELLEY: Well can you dispose of it before
19 doesn't necessarily have to be involved, but can you
20 dispose of it with the Staff and the Applicants this
21 afternoon so that they can forget about those parts?

22 MR. READ: I don't know. I'd have to talk to
23 the other--what do you feel about that Travis and Wells?

24 MR. PAYNE: Well, it turns out that Dr.
25 Johnson might be available himself for us to consult

1 and so I think we can carry on some negotiatons this
2 afternoon.

3 JUDGE KELLEY: I obviously not making any
4 rulings, I'm just trying to explore what some possibili-
5 ties might be. If you feel the dispute can be narrowed
6 somewhat, if the Board doesn't want to go through this
7 this afternoon paragraph by paragraph and rule on it one
8 way or the other, if you can voluntarily eliminate
9 some areas, that seems to me to be a plus.

10 MR. BAXTER: Judge, Tom Baxter again. We can
11 live with a Board ruling on Thursday morning if that's
12 necessary for the Board to adequately consider the Motion
13 especially in light of Dr. Foreman's late addition.
14 It is difficult for us, but we could live with it. I
15 don't want to say now that we have to extend this
16 proceeding because of a two day delay.

17 I would like to suggest that if the intervenors
18 are ready today to say that our Motion has merit with
19 respect to part of the testimony, I think they owe it to
20 the Board to identify what they're not contesting. It's
21 really not a matter of negotiation among the parties.
22 We think it's all irrelevant. But, if they're conceding
23 parts of it, I think they ought to save the Board that
24 effort.

25 JUDGE KELLEY: I was just uncertain. Mr. Read

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1 when you say that you think portions of the testimony
2 are not relevant, are you speaking as -- are you prepared
3 to speak as counsel for everybody and say which
4 paragraph or is this something that you feel--

5 MR. READ: You are talking to me, Judge
6 Kelley? I didn't hear my name there.

7 JUDGE KELLEY: Yes, Mr. Read.

8 MR. READ: I've looked over the testimony
9 preliminarily and I have an idea but I haven't run it by
10 the other intervenors yet.

11 JUDGE KELLEY: That's really what I'm asking
12 you.

13 MR. PAYNE: Judge, this is Travis Payne. I
14 think what Dan is telling you is correct. I don't know
15 that him and Wells and I have all sat down and agreed
16 as to which specific paragraphs we think are relevant
17 and which we're willing to concede probably are not
18 relevant. I think right now I think the three of us
19 would come up with perhaps different list of paragraphs .
20 I would presume that we may be able to make the three of
21 us anyway, and hope that we can speak for Mr. Ronkle,
22 reach some agreement as to that and notify you and the
23 applicants I presume tomorrow morning sometime. I agree
24 with Mr. Baxter, that if we're going to concede certain
25 aspects of it, we ought to tell him and tell the Board

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1 that and I think we could probably do that given some
2 meeting of our minds this evening.

3 JUDGE KELLEY: Okay. Glenn, do you have any
4 questions?

5 MR. OBRIGHT: No.

6 JUDGE KELLEY: Gary, any questions or comments?
7 I'm asking Dr. Foreman, are you still there?

8 DR. FOREMAN: I'm still here.

9 JUDGE KELLEY: All right. Any questions or
10 comments?

11 DR. FOREMAN: As with everybody, I'm having a
12 little trouble hearing you Judge Kelley. It's sounds --
13 it's a reasonable approach to the matter is to have the
14 intervenors apprised to the other parties as to which
15 parts of the testimony they believe not pertinent to the
16 contention and I for one as a Board member would probably
17 go along with that, whatever they agreed upon.

18 JUDGE KELLEY: Ladies and gentleman, let us
19 push the new button on this machine although it doesn't
20 seem to be necessary because it hasn't worked all
21 afternoon and the Board then can defer for a minute or
22 so and we will then get back on.

23
24 (off the record)

25 JUDGE KELLEY: This is Judge Kelley again, can

1 you hear me?

2 EVERYONE AT ONCE: Yes.

3 JUDGE KELLEY: Okay, fine. Judge Foreman,
4 are you there?

5 DR. FOREMAN: I'm here.

6 JUDGE KELLEY: Okay, fine. The Board has
7 decided not to rule on the Motion this afternoon with
8 several understandings. First of all, we want all
9 parties to know that we've reviewed the testimony
10 and have looked at the motions and have discussed them
11 to some extent. We do feel disadvantaged in Dr. Foreman
12 not having the Motion papers with him and that's one of
13 the main reasons we're reluctant to make a ruling, but
14 we do feel comfortable in saying it.

15 We think that portions--several portions of
16 the offered testimony, quite likely are irrelevant and
17 quite likely would be stricken when the Motion is ruled
18 on. We think though, under the circumstances, that
19 portions of the testimony may be admissable. We can
20 hear further argument on that Thursday morning as a first
21 order of business and rule shortly thereafter Judge
22 Foreman having had the benefit of the papers by then and
23 also the three of us can confer at greater length.

24 In the meantime, we think that the intervenors
25 should today, get together and go over the testimony

1 and agree on what sections they are willing to strike
2 as not within the scope of the contentions, and then
3 inform Mr. Baxter or some representative of the applicants
4 and Ms. Moore and Mr. Barth tomorrow morning of the
5 results of that review and which portions they're prepared
6 to drop.

7 We think that all things considered that's about
8 the best approach that we can take for this matter this
9 afternoon. Any questions? Panel?

10 Nay.

11 JUDGE KELLEY: Applicants?

12 MR. EDDLEMAN: No.

13 JUDGE KELLEY: Staff?

14 Ms. MOORE: No questions, but I would only say
15 to the intervenors that we are leaving for Raleigh
16 tomorrow morning and so we'll have to be reached at the
17 Madison Hotel.

18 JUDGE KELLEY: Okay. Mr. Eddleman, Mr. Read.

19 AT ONCE: No questions, Judge.

20 No questions, Your Honor.

21 JUDGE KELLEY: Okay, we'll take that approach
22 and we'll be seeing you Thursday morning at 9 at the
23 previously appointed place. the same place we were last
24 time and thank you very much.

25 ALL: Thank you,

(conversation adjourned at 4:10 p.m.)

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CERTIFICATE OF PROCEEDINGS

1
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3 This is to certify that the attached proceedings before
4 the NRC COMMISSION

5 In the matter of: CAROLINA POWER & LIGHT COMPANY and
6 NORTH CAROLINA MUNICIPAL POWER AGENCY
7 No 3 (Shearon Harris)

8 Date of Proceeding: June 12 1984

9 Place of Proceeding: Bethesda, Md.

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

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13
14 Lisa Peck
15 Official Reporter - Typed

16
17 Lisa Peck / D7B
18 Official Reporter - Signature

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