

1 ORIGINAL
2 UNITED STATES OF AMERICA
3 NUCLEAR REGULATORY COMMISSION
4
5

6 In the Matter of:

7 CAROLINA POWER & LIGHT COMPANY
8 and NORTH CAROLINA EASTERN
9 MUNICIPAL POWER AGENCY

Docket No. 50-400 OL
50-401 OL

10 (Shearon Harris Nuclear Power Plant,
11 Units 1 & 2)
12
13
14
15
16
17
18
19

20 Location: Bethesda, Maryland

Pages: 2,164 - 2,204

21 Date: Thursday, July 12, 1984
22
23
24
25

FREE STATE REPORTING INC.

Court Reporting • Depositions
D.C. Area 261-902 • Balt. & Annap. 269-6236

8407160179 840712
PDR ADOCK 05000400
T PDR

TR01
o/i
ORIG TO Eugenia P...

ORIGINAL

UNITED STATES OF AMERICA
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

----- X
:
In the matter of: :
:
CAROLINA POWER & LIGHT COMPANY : Docket Nos.
and NORTH CAROLINA EASTERN : 50-400 OL
MUNICIPAL POWER AGENCY : 50-401 OL
:
Shearon Harris Nuclear Power Plant:
Units 1 and 2 :
:
----- X

Nuclear Regulatory Commission
4350 East West Highway
Bethesda, Maryland

Thursday, July 12, 1984

The hearing in the above-entitled matter
convened, pursuant to recess, at 10:30 a.m.

BEFORE:

JAMES L. KELLEY, ESQUIRE, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

DR. JAMES H. CARPENTER, Member
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

DR. GLENN O. BRIGHT, Member
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

BH
NRC-76
T-1

1 APPEARANCES:

2 On Behalf of the Applicant, Carolina Power and Light
3 Company:4 SAMANTHA FRANCIS FLYNN, ESQUIRE
5 HILL CARROW, ESQUIRE
6 Carolina Power & Light Company
7 Post Office Box 1551
8 Raleigh, North Carolina 276029 JOHN O'NEIL, ESQUIRE
10 THOMAS A BAXTER, ESQUIRE
11 Shaw, Pittman, Potts & Trowbridge
12 1800 M Street, Northwest
13 Washington, D.C. 20036

14 On Behalf of the Nuclear Regulatory Commission Staff:

15 CHARLES A. BARTH, ESQUIRE
16 JANICE E MOORE, ESQUIRE
17 Office of the Executive Legal Director
18 US Nuclear Regulatory Commission
19 Washington, D.C. 20555

20 On Behalf of the Intervenor Wells Eddleman:

21 WELLS EDDLEMAN, Pro Se
22 718-A Iredell Street
23 Durham, North Carolina 27705

24 On Behalf of the Intervenor Kudzu Alliance:

25 M TRAVIS PAYNE, ESQUIRE
723 West Johnson Street
Raleigh, North Carolina 27605

P R O C E E D I N G S

1
2 JUDGE KELLEY: Just repeating briefly, we are
3 now on the record and Mr. Eddleman was expected to be
4 with us at this time. We hope he will join us shortly.
5 We think, with other parties also on, I think we will
6 go ahead. The main reason for our call this morning is
7 to give you the bottom line results that we have been
8 able to reach thus far on the pending summary
9 disposition motions.

10 We thought it would be helpful to everybody
11 in view of the fact that we will have testimony to
12 prepare on motions that aren't granted to know this as
13 soon as possible, and I believe that the last session
14 of the environmental hearing, everyone expressed an
15 interest in getting just bottom lines for planning
16 purposes. So, that's what we propose to do this
17 morning.

18 We also have a few other things, and a couple
19 of questions to ask, but let me go ahead with what we
20 can give you now. There are six pending motions for
21 summary disposition. All of the pleadings on those
22 motions are in with the exception of Mr. Eddleman's and
23 the joint intervener's response on contention
24 forty-five concerning water hammer. Therefore we are not
25 in a position to act on that motion at this time. My

BH
NRC-76
T-1

1 understanding is that Mr. Eddleman's and the joint
2 intervener's response is due tomorrow, due to be
3 served, and on that schedule we would have it early
4 next week and I think we certainly would have a bottom
5 line answer, certainly by the end of the month and
6 hopefully sometime before that.

7 But, we anticipate to have the papers in hand
8 next week and we will give them some priority
9 attention and convey to you at least the results as
10 soon as we can. As to the remaining five motions for
11 summary disposition, we are prepared, by way of quick
12 summary to grant the motions on three of the five, to
13 deny, at least in part the motion on one of them, and
14 we have a couple of questions about the remaining ones
15 which I will get to, and I think I'll pass on the one
16 that we had questions about, That's the low level waste
17 motion, hopefully until Mr. Eddleman can join us. We
18 will at least take the other ones first. We're granting
19 the motions for summary disposition with respect to
20 element eleven concerning cable insulation, Eddleman
21 132 C2 concerning control room design, and we're
22 granting the motion for partial summary disposition on
23 joint contention seven concerning steam generators. The
24 comment on the steam generator contention, the partial
25 motion was filed with respect to all parts, except I

BH
NRC-76
T-1

1 believe, sub part 4.

2 There was a notation in the motion to the
3 effect that, I believe, an owners group was developing
4 a position on that sub part 4 and the applicants were
5 not at that time, at least filing a motion for summary
6 disposition. Now, the deadline that we previously set
7 on summary motions, I believe was 16 May to the
8 applicant to contemplate a motion on that subpart form
9 Mr. Baxter or Mr. O'Neil.

10 MR. O'NEIL: Judge Kelly, this is John O'Neil.
11 We do not contemplate a motion on subpart four. We
12 plant to be prepared to submit testimony August 9th.

13 JUDGE KELLEY: Alright. Fine, thank you. So,
14 that speaks to Eddleman 11, Eddleman 132C in joint
15 seven. Eddleman number 65 pertains to the integrity of
16 the concrete, particularly the base mat. As you will
17 all recall, it was originally stated that it was cast
18 in terms of the, if you will, track record of the
19 Daniel Company and the contention that because of
20 Daniel's defective work elsewhere, this basemat may be
21 defective.

22 Also, we have been through discovery to some
23 length on that contention. And, the upshot is that the
24 board has reviewed the summary disposition papers and
25 our conclusion is that we are going to revise and

BH
NRC-76
T-1

1 narrow that contention along the following lines.

2 Excuse me just a moment.

3 Alright, I'll read this slowly. We are going
4 to substitute the following language, the following two
5 sentences for present contention 65, Eddleman 65.

6 "Inspection of CP&L concrete core packages has shown
7 that numerous instances of improper concrete placement
8 in the base mat and containment structure. In view of
9 this, a complete examination of the base mat and
10 containment structure for unacceptable voids must be
11 conducted using ultrasonic techniques or, where use of
12 such techniques are not feasible, other appropriate
13 tests."

14 As I think you will, and that is the end of
15 the revised contention. What this revision does
16 essentially is focus the board and parties attention on
17 the issues that really became disputed ones in the
18 summary disposition motion papers. Namely, the core
19 package papers that were delivered in discovery, and
20 the affidavits that Mr. Eddlemen produced which his
21 experts believed showed defects in the concrete. By the
22 same token, we are doing at least two things with this
23 revision. We would eliminate from the case, the track
24 record aspect of the contention as it was formally
25 worded. There has been no proof produced within that

BH
NRC-76
T-1

1 regard, and I think we know in admitting it got us into
2 pretty collateral issues anyway.

3 So, in a sense I suppose, we are granting
4 summary disposition as to the aspect of the contention
5 that goes into Daniels track record.

6 Secondly, the revised contention that I read
7 had two sentences. And, the approach that the board
8 wants to take is to litigate the first sentence, which
9 has to do with whether there are actual defects in the
10 concrete. But, deferral litigation of the second
11 sentence, which has to do with various kinds of
12 examination until we have heard the proof on the first
13 sentence and decided whether any such ex-ray
14 examination is warranted.

15 You can call it a bifurcated contention in
16 that sense, although we didn't phrase it that way, we
17 are giving you this editorial comment following the
18 contention to explain that we think it is more
19 efficient to first look at whether there are defects
20 before we get into questions of relative efficacy of
21 various kinds of test.

22 So, that I think states our position on
23 number 65. We will expect the testimony to be filed
24 with regard to the first sentence of the revised
25 contention on August 9.

BH
NRC-76
T-1

1 Excuse me a moment.

2 MR. BARTH: Mr. Chairman.

3 JUDGE KELLEY: Yes.

4 MR. BARTH: This is Charles Barth. In spite of
5 the fact that you read slowly, I write slower than you
6 speak. I wonder if you could repeat the two sentences
7 your honor.

8 JUDGE KELLEY: Well, I. Alright. "Inspection
9 of CP&L concrete core packages has shown that numerous
10 instances of improper concrete placement have occurred
11 in the basemat and containment structures. In view of
12 this, a complete examination of the basemat and
13 containment structure for unacceptable void must be
14 conducted using ultrasonic techniques or, where use of
15 such techniques is not feasible, other appropriate
16 tests."

17 MR. BARTH: I have two questions, your honor.
18 The first one is that I thought by base mat you would
19 include the floor of the containment building as well.
20 The base mat is for any membrane and then you have the
21 floor. I thought you meant all of it. The concrete
22 below the reactor building.

23 JUDGE KELLEY: Yes.

24 MR. BARTH: The second question. Are you
25 limiting this to the core packages identified by Mr.

BH
NRC-76
T-1

1 Eddleman?

2 JUDGE KELLEY: That, I stand corrected by my
3 colleagues, or modified by my colleagues if I misspeak.
4 That is the contention as revised, yes. Beyond that, we
5 would have anticipated that the interveners would have
6 brought forward any evidence that they had as of the
7 time that they filed their oposition to the motion. The
8 only thing we found in the motion papers was, were
9 those papers, the core package papers.

10 Just to give an example, if the interveners
11 tomorrow or next week found some witness who knew
12 something about this that they didn't know about
13 before. Then, it may be open to them to bring in such a
14 person. But, the thrust of it is toward the core
15 packages.

16 MR. BARTH: Thank you, Mr. Chairman.

17 MR. O'NEIL: Judge Kelly.

18 JUDGE KELLEY: Yes.

19 MR. O'NEIL: This is John O'Neil. The record
20 should show that Mr. Eddleman arrived while you were
21 rereading the new contention 65 language.

22 JUDGE KELLEY: Oh. Good. Good morning Mr.
23 Eddleman.

24 MR. EDDLEMAN: Good morning, Judge.

25 JUDGE KELLEY: We have not done, well we have

BH
NRC-76
T-1

1 given some bottom line rulings on the disposition
2 motions. I think that you can get them from your
3 colleagues. I won't restate everything. We did,
4 perhaps, of most immediate interest do a restatement of
5 the wording of 65 on the concrete cores in the
6 containment. I gather that you came in while we were in
7 the process of rereading the text.

8 MR. EDDLEMAN: That's right Judge.

9 JUDGE KELLEY: Ok. Why don't we. I am glad you
10 are here now. I would like to pass on to a couple of
11 questions that we have got about the low level waste
12 contention. That's 67, I believe?

13 MR. EDDLEMAN: That's correct.

14 MR. BAXTER: Judge Kelley. This is Tom Baxter.
15 Could I ask one more concrete question?

16 JUDGE KELLEY: How can I refuse? Go ahead.

17 MR. BAXTER: As the board ruled on Mr.
18 Eddleman's new proposed contention 65A and 65B which
19 are variations to some extent of the thing issued.

20 JUDGE KELLEY: That's about three more items
21 down my outline.

22 MR. BAXTER: Sorry.

23 JUDGE KELLEY: We intend to. Yes. That is a
24 perfectly reasonable question. Maybe it is a good idea
25 to skip to that, as a matter of fact, and keep the

BH
NRC-76
T-1

1 subjects together. We did receive from Mr. Eddleman
2 contentions 65 cad A and 65 cad B, also on the subject
3 of the containment concrete based on the affidavit that
4 Mr. Eddleman had filed in his opposition to the motion
5 65.

6 And, we are ruling as follows on those two
7 contentions. Sixty-five A is very close to being, well
8 it is almost a paraphrase of the revised contention of
9 65 that we just made. We are going to reject 65A as a
10 separate contention because we think that the substance
11 of it can be litigated under the revised ordinance 65.
12 We are rejecting it just because it has become
13 redundant.

14 Sixty-five B speaks to a somewhat different
15 subject. It has to do, again with the containment, but
16 the focus is on alleged damage to the water stop due to
17 cad welding and certain other unnamed factors. And,
18 what we have done, with regard to sixty-five B of
19 course is why the well-known five factors test. Our
20 application of that test leads us to conclude that this
21 contention should not be accepted, that it should be
22 rejeted. The basic reason is this, it is a new issue.
23 It hasn't been in the picture before. It is, we think
24 very late. We agree with the applicants' analysis,
25 essentially on the facts and the law as to the lateness

BH
NRC-76
T-1

1 of the contention and the way that the goods cost
2 factor ought to be applied in this particular context.

3 It seems to us that in this kind of a
4 context, the concept of availability does apply through
5 discovery on the original contention. That is the
6 applicants' argument. If the interveners wanted to put
7 the water stop into issue it seems that that should
8 have been discovered and put forward a long time ago.
9 Again, I think that the timing factors of the
10 applicants' outline are essentially correct.

11 So, we see it as a new issue, a late issue,
12 an issue that may very well delay the proceeding. We
13 don't think that even if one assumes that factors two
14 and four were in favor of the interveners, possibly
15 three also although that is debatable. We think that
16 the controlling factors here were lateness, and not
17 excusable lateness and should be rejected on that
18 basis. So, that is the way that we apply the factors
19 and that is the result that we have reached on 65 B.

20 Let me move then to number 67, which has to
21 do with storage of low-level waste. There are
22 essentially two aspects to low-level waste storage. One
23 is where there is a reasonable assurance, where waste
24 can be stored off-site. In that regard, there has been
25 considerable discussion of the progress of an

BH
NRC-76
T-1

1 inter-state compact and actions in the state of North
2 Carolina and the likelihood of the state being able to
3 either store it in state or store it pursuant to
4 compact. That is one part, the off-site part. Then,
5 separately, there is the prospect of the applicants
6 being able to store low level waste on site for some
7 extended period of time.

8 Now, as to the first aspect of the off-site
9 storage, we are satisfied that there is a reasonable
10 assurance with respect to off-site storage. Assuming
11 that we are also able to clarify in our own minds, a
12 couple of questions about on-site storage. Because, the
13 two are really interrelated. But, just one further word
14 on off-site. It doesn't seem to us that one has to
15 demonstrate a certainty or an iron-clad guarantee. We
16 are talking reasonable assurance. We think that when
17 all of those factors are assessed in the present
18 posture of the interstate compact is assessed, its
19 actions that the state has taken, that reasonable
20 assurance has been shown. Again, subject to our being
21 satisfied about the on-site capabilities considered in
22 relation to off-site.

23 Now, in that regard, we reviewed the numbers
24 showing the anticipated quantities of low-level weight
25 from the facility and let me just state a little

BH
NRC-76
T-1

1 background here, and then we can have some questions
2 about it and perhaps clear up our questions. Mr.
3 Eddleman in his opposition of June 5, 1984, referred on
4 the second page to the FSAR at the amendment number 5
5 stage. And, that included the table showing five
6 different kinds of anticipated low level waste and
7 quantities also shown in the far right column.

8 Now, it also says at the top of that chart in
9 parentheticals, two unit. Then we move next to the
10 affidavit of Mr. Warner in the motion for summary
11 disposition. He gives a different set of numbers, I'm
12 looking at page 5 of the Warner affidavits. These are
13 numbers, Mr. Warner tells us, for one unit. Then we
14 move to what we understand to be amendment 15 of the
15 FSAR, which I believe is quite recent and that gives
16 some numbers that are similiar or the same as Mr.
17 Warners, but some that are not.

18 We then, are left wondering what the
19 explanation is. We do note that at least roughly, the
20 numbers. Well, more than roughly. Most of the numbers
21 in both the Warner affidavit and Amendment 15 are one
22 half of the numbers in Amendment 5. One is led to
23 speculate that it was just a matter of dividing those
24 numbers by two and putting them in. But, we would like
25 to find about if that's the case, also what the

BH
NRC-76
T-1

1 explanation is for the differences between Mr. Warner's
2 affidavit and Amendment 15. I should add that I called
3 Mr. O'Neil yesterday about setting up this discussion,
4 and I said to him that we were interested in what
5 appeared to us to be a discrepancies between Warner in
6 Amendment 15 in Mr. Eddleman's filing, and that I would
7 be asking him this question. With that as his
8 background, Mr. O'Neil, the fact that the Warner
9 Amendment 15 numbers are about half of Amendment 5, is
10 that because there is one year instead of two?

11 MR. O'NEIL: Let me address this question,
12 because I can understand why there is some confusion,
13 having gone through it with Mr. Warner. If we begin
14 with Amendment No. 5 and the numbers there are the
15 estimates for low-level waste generation for the two
16 units. You will note, footnote 3** indicates what the
17 output would be for evaporator bottom and for filter
18 particulates for two units if volume reduction
19 subsystems are used.

20 Indeed, if the FSAR were more clear, it would
21 have had a double star next to the numbers for
22 evaporator bottoms as well as a double star next to the
23 numbers for filter particulates. If you look at Mr.
24 Warner's affidavit when he was calculating the estimate
25 of the number of drums from one unit, he indeed

BH
NRC-76
T-1

1 forespent, rather than did take one half of the number
2 that appears in the cable, which would be 425. For
3 evaporator bottom, he is aware, in fact applicants'
4 plan, to use the arrow jet fluid bed dryer for
5 evaporator bottoms. So, since that is there present
6 plan to come up with the most realistic estimate, he
7 did use one half of the 508 drums per year, which is
8 shown in the footnote, to come up with 254 drums. With
9 respect to filter particulates, it is not yet been
10 determined with assurity that they will be used in the
11 arrow jet fluid bed dryer for filter particulates,
12 although they may, and it has been designed for filter
13 particulates. But, for conservatism used the one half
14 of the number that was in the table, which was 540
15 drums.

16 With respect to compressed dry solids, again
17 it is one half of approximately 1,000 drums per year.
18 Similarly, with chemical drains it is approximately one
19 half of the seventy five drums per year.

20 Amendment 15, which was, I guess promulgated
21 late June of this year, what, as you might guess was
22 produced by another person in the company whose task it
23 was to go through the FSAR and to update it from two to
24 one unit. There, the evaluation that was done was
25 independent, and perhaps slightly more sophisticated

BH
NRC-76
T-1

1 than instead of just having the number of drums, there
2 was an analysis of some additional factor because of
3 the spent fuel pool weight would not be precisely one
4 half. And, that analysis shows approximately 5% more
5 than 50% of the original two-unit numbers. Again, if we
6 look at each one, we'd see 485 as opposed to the 425
7 estimated by Mr. Warner. With respect to evaporator
8 bottoms. They, in the table continue to list 50% of the
9 original number while in the footnote showed 254 drums
10 which is the same number used by Mr. Warner. With
11 respect to filter particulates, the 560 drum number is
12 again slightly more than 540 used by Mr. Warner.

13 Unfortunately, the drafters of Amendment 15
14 neglected to estimate dry solids for one unit and
15 inadvertently kept the two-unit dry solid number, which
16 explains the 1,000 drums per year. A change to the FSAR
17 to reflect the correct number has already been
18 initiated. That will be 500, and not 1,000. The
19 chemical drain number is 38, as in Mr. Warner's
20 affidavit. If Mr. Warner were, today, based on this
21 further analysis to update his affidavit, he would say
22 that the total number of drums would be 1,837 instead
23 of 1,757. That would give approximately 4.1 years
24 storage instead of 4.3 years. Indeed, Mr. Warner is
25 sitting in the room if there are any further questions

BH
NRC-76
T-1

1 on that.

2 JUDGE KELLEY: I think that is a very helpful
3 summary, Mr. O'Neil. Let me see if my, let me ask Mr.
4 Eddleman what his reaction is to the explanation that
5 Mr. O'Neil just gave.

6 MR. EDDLEMAN: If you will just bear with me I
7 want to just look at the information here.

8 JUDGE KELLEY: Take your time. That's a lot of
9 numbers at once. If you want to just take a few minutes
10 we can stand up and walk around in the room.

11 MR. EDDLEMAN: Okay. Thanks.

12 JUDGE KELLEY: Ok. Go ahead. Let us know when
13 you have had a chance to look at it or let us know if
14 you conclude that you need more time to look at it.

15 (Brief recess.)

16 MR. EDDLEMAN: I can add them up.

17 JUDGE KELLEY: Let me just ask you this Mr.
18 Eddlemen, I know in your opposition, and I'm
19 paraphrasing, but one of the points that you made was
20 that it looked that they had cut the numbers in half
21 and there wasn't any explanation of that. If it is
22 brought out now that the numbers, the differences
23 between Amendment 5, on the one hand, and then Warner
24 and Amendment 15 on the other is essentially a one unit
25 difference.

BH
NRC-76
T-1

1 And if you factor into the equation that
2 precision on these numbers is not required, it seems to
3 us we are talking about one, estimates of amounts of
4 waste. If it is a drum off it doesn't matter. Beyond
5 that, we are talking about a reasonable assurance of
6 handling the estimates. Do you feel that your
7 opposition stands, if you are willing to take those two
8 assumptions, does your opposition stand to these
9 numbers?

10 MR. EDDLEMAN: If you make those assumptions
11 and you further assume that all the underlying
12 information is correct, then obviously it doesn't
13 stand.

14 JUDGE KELLEY: That. Sure. By underlying
15 information just, how to, underlying information goes
16 to the amounts, right? They just tell you how to guess
17 what they are going to be. Is that what you mean by
18 underlying information?

19 MR. EDDLEMAN: That's right. How you figure
20 out how much there is here. The opposition in the
21 response, okay.

22 JUDGE KELLEY: Okay. Yes.

23 MR. EDDLEMAN: Is based on these
24 discrepancies.

25 JUDGE KELLEY: Right. So then my point was if

BH
NRC-76
T-1

1 the explanation satisfies you, are you still opposed.
2 So you were going to answer that. Go ahead.

3 MR. EDDLEMAN: I don't think that there is
4 that much assurance, no. But, what you are asking me is
5 does this reason stand if those numbers don't stand.
6 The reason does not stand, if the numbers don't.

7 JUDGE KELLEY: Yes.

8 MR. EDDLEMAN: Okay.

9 JUDGE KELLEY: Okay. Well, in light of the
10 explanation in the changes in the numbers, what do you
11 think that the board ought to do at this point?

12 MR. EDDLEMAN: Judge, that is up to you. I'm
13 not trying to presume what the board is going to do.
14 You seem to have a different view of reasonable
15 assurance than I have, so I'm no good as an advisor
16 from our viewpoint.

17 JUDGE KELLEY: Okay. What I'm trying to get
18 at is, I'll put it to you this way. And, I'm groping a
19 little myself. The applicants filed a set of numbers
20 and you filed an opposition based pretty much on teh
21 differences of numbers. The differences in numbers have
22 now been explained. Apart from ones almost
23 philosophical view of what reasonable assurance is, is
24 there something else that you would want to say in
25 opposition, something specific other than what has

BH
NRC-76
T-1

1 already been said?

2 MR. EDDLEMAN: Okay Judge. I don't have
3 anything else.

4 JUDGE KELLEY: Let me see if my colleagues
5 have any questions. Okay, I think that we should talk
6 about this and take a look at the transcript that we
7 get tomorrow. I don't think that it will be necessary
8 for us to set up another elaborate telephone conference
9 call, but I think we can proceed to decide this the
10 first part of the week, and we will just call you up
11 with the results, probably Monday or Tuesday. Okay, on
12 that particular point. We have got some other things
13 to cover.

14 Okay, just a moment. We would like to,
15 switching the subject matter, the upcoming hearing
16 matter in just what is coming up before the house. We
17 would like to just clarify on the record what exactly
18 what we can expect from you come August 9. Here is our
19 understanding of what is in the case as far as safety
20 issues are concerned. We would like you to correct us
21 or add if we don't have it all correct. The first
22 hearing, of course, is on the management issue of joint
23 contention one. That is all that we will be hearing
24 then.

25 The second session, beginning some three

BH
NRC-76
T-1

1 weeks after the end of the first what we have is as
2 follows. There will be a joint contention 7 part 4 on
3 steam generator tubes. There will be joint contention 4
4 on thermo luminescence of those cylinders. There will
5 be Eddleman 41 on pipe hangar wells, on which we didn't
6 have a motion for summary disposition.

7 There will be Eddleman 65, is now revised by
8 the board. Now, the question part. Mr. Baxter, you
9 wrote a letter to us on the 16th of May on the subject
10 of Eddleman 9, and you described some negotiations that
11 were going on in that regard at that time and indicated
12 that the negotiations didn't produce some kind of
13 settlement, that you would be back to the board on this
14 subject. Could you tell us where that stands.

15 MR. BAXTER: Yes sir. As a matter of fact, we
16 are filing with the board today a motion to substitute
17 for the existing Eddleman contention 9 a new list of
18 seven more specific concerns that Mr. Eddleman has with
19 respect to the qualification of our safety related
20 electrical equipment. This consultation has gone on in
21 several meetings and we have agreed, the applicants
22 have agreed to the list of the seven issues, as I
23 believe that the staff has in principle. There is a
24 dispute over the preamble to the contention which the
25 parties will ask the board to rule on. In light of the

BH
NRC-76
T-1

1 lateness of the seven issues coming to the proceeding,
2 the parties, staff, applicants and Mr. Eddleman are
3 asking that that testimony and exhibit allowed to be
4 filed on August 31 in substitution rather than on
5 August 9.

6 JUDGE KELLEY: It is it contemplated as a
7 discovery?

8 MR. BAXTER: No. Because of the formal
9 exchange of information has already taken place on
10 these issues. There will not be any formal discovery by
11 agreement of the parties so long as we make available
12 to Mr. Eddleman the principal documents upon which our
13 testimony will rely.

14 JUDGE KELLEY: Okay. Mr. Eddleman, are there
15 any further comment on that subject? Hello.

16 MR. EDDLEMAN: Yes, Judge. I'm here, can you
17 hear me.

18 JUDGE KELLEY: Yeah.

19 MR. EDDLEMAN: I understood and agree with Mr.
20 Baxter's gripe. What we were doing, we were agreeing to
21 weigh the formal discovery and to have an informal
22 discovery that I should promptly get copies of the
23 docuemnts on which the applicants based their
24 testimony. If historic preamble goes, if the board goes
25 with my view of it, there might have to be some

BH
NRC-76
T-1

1 dicovery. Because, when the applicants filed their
2 amendment, it would be possible to look at that as was
3 set up in the original contingent 9 for other problems.
4 But, that is an issue that will be laid out, I think,
5 in Mr. Baxter's motion and we have agreed that I am
6 going to respond to it and the staff is going to
7 respond to it.

8 JUDGE KELLEY: Okay. Mr. Barth or Ms. Moore
9 any comment?

10 MS. MOORE: I have the same understanding of
11 the agreement as Mr. Baxter. As Mr. Eddleman stated, we
12 intend to respond to Mr. Baxter's motion concerning the
13 preamble because we thing that that would have a
14 significat effect on whether the contention can
15 actually be heard in October.

16 JUDGE KELLEY: Okay. You said you are filing
17 this when, Mr. Baxter?

18 JUDGE KELLEY: Oh. Fine. Well, I think it is
19 very useful that you parties have worked together and
20 moved this thing along to the point that you have. We
21 will just focus on it as promptly as we can when all of
22 the papers are in and we will give you a ruling on teh
23 preamble aspect of it.

24 MS. MOORE: Judge, this is Janice Moore. Do
25 you have any particular preference as to how long the

BH
NRC-76
T-1

1 parties take to respond to that. We did not, as far as
2 I know, come to an agreement for response date to that
3 motion.

4 JUDGE KELLEY: What would you suggest?

5 MS. MOORE: I would suggest that it be fairly
6 abbreviated within 10 days of filing if we could.

7 JUDGE KELLEY: Ten days of filing you would
8 then put yours in the mail?

9 MS. MOORE: Yes.

10 JUDGE KELLEY: Mr. Eddleman.

11 MR. EDDLEMAN: That's fine with me, as long as
12 I get a copy reasonably promptly.

13 JUDGE KELLEY: I think that the applicants can
14 see to that. Shall we say, you said 10 days from
15 receipt?

16 MS. MOORE: I would say from today or even
17 less, because it does affect whether and when testimony
18 will be prepared. I just picked 10 days as an outline
19 date.

20 JUDGE KELLEY: Just a minute. Let me look at
21 the calendar. This is Friday the 13th, right? No, it's
22 Thursday the 12th. Well, Mr. Eddleman, let me ask you.
23 Mr. Baxter, could you serve Mr. Eddleman or get him
24 copy by how soon?

25 (Brief recess. Conference call cut off.)

BH
NRC-76
T-1

1 JUDGE KELLEY: I guess that was just
2 accidental, this is Judge Kelley back on. We were
3 talking about setting a date for the response to the
4 Baxter motion that was going to be filed today. Mr.
5 Baxter, how soon could you get one in the hands of Mr.
6 Eddleman?

7 MR. BAXTER: I could express mail it to him,
8 although he usually prefers, he doesn't like it,
9 because he has to be there to get it. Is that
10 acceptable, can I express mail it Mr. Eddleman?

11 MR. EDDLEMAN: Sure. I'll be in tomorrow
12 morning. You have express mail, is that right?

13 MR. BAXTER: That's right.

14 MR. EDDLEMAN: Ok. That won't cause any real
15 problem.

16 MR. BAXTER: I should say that I would think
17 that a short response time would be particular feasible
18 here since we have all discussed this issue and would
19 know, that there is not going to be a big surprise.

20 MR. EDDLEMAN: No argument on that. I am
21 perfectly willing to go ten days from today, provided I
22 get the thing promptly.

23 JUDGE KELLEY: If you get it tomorrow, could
24 you file by next Friday?

25 MR. EDDLEMAN: That is when the proposed

BH
NRC-76
T-1

1 findings are due anyway, so it will save me some on
2 mailing.

3 JUDGE KELLEY: Is that okay then?

4 MR. EDDLEMAN: Fine.

5 JUDGE KELLEY: Okay. For the staff and, that's
6 okay with you Ms. Moore, right?

7 MS. MOORE: That's fine.

8 JUDGE KELLEY: The answer to the Baxter motion
9 will be filed today, concerning contention nine, will
10 be due to be served in the mail presumably by a week
11 from tomorrow. We will focus on that quickly and try to
12 give you a quick response.

13 MR. BAXTER: Mr. Chairman, there is one more
14 contention.

15 JUDGE KELLEY: Yes. I was just going to pick
16 up on that. I had a question about, what about 116?

17 MR. BAXTER: That's right.

18 JUDGE KELLEY: That's Mr. Baxter, right. I'm
19 just getting the name straight.

20 MR. BAXTER: That's right.

21 JUDGE KELLEY: In 116 the subject is what?

22 MR. BAXTER: Fire protection.

23 JUDGE KELLEY: Okay. Testimony will be filed
24 on the 9th for that?

25 MR. BAXTER: Right.

BH
NRC-76
T-1

1 JUDGE KELLEY: Now, I had just a question
2 about, you had a footnote for filing on 65 A & B Mr.
3 Baxter, where you talked about pending but deferred
4 contentions. Which ones were you referring to page 9,
5 note 9?

6 MR. BAXTER: Mr. O'Neil can give you numbers,
7 but it is the PDIE generators.

8 MR. O'NEIL: 178/9.

9 JUDGE KELLEY: And it is about TDI diesels?

10 MR. O'NEIL: Yes.

11 JUDGE KELLEY: Frankly, I didn't remember it.
12 When was that filed?

13 MR. BAXTER: January, and the board ruled in a
14 telephone conference in March, is that right, Mr.
15 O'Neil?

16 MR. O'NEIL: That's correct. The board
17 indicated that on its own motion that it would take it
18 up again.

19 JUDGE KELLEY: Well, okay. Did we reference,
20 now we have all been following this TDI matter to some
21 extent I dare say. The staff was going to be filing
22 individual SER's on every plant with TDI diesels as I
23 recall. Does the staff have a projected date when there
24 may be an projected date on SER on the TDI diesel to
25 share here?

BH
NRC-76
T-1

1 MS. MOORE: No. We don't have that at this
2 time.

3 JUDGE KELLEY: Could you look into it and
4 maybe drop us a note to us on the party. It seems to
5 me, well, that we are coming at this kind of cold,
6 frankly. Because, at least I am. It would be useful to
7 know that anyway Ms. Moore. I think that we are just
8 going to have to go back and look at these papers. It
9 may be that it is time for the board to rule on that
10 contention.

11 MR. BAXTER: I would note. This is Mr. Baxter
12 again. I would note that at the time of your deferral,
13 the catana for had pending a referral to the appeal
14 board on generic and case treatment. That has yet not
15 been decided by the board.

16 JUDGE KELLEY: That has been decided.

17 MR. BAXTER: It has been since, but it wasn't
18 decided.

19 JUDGE KELLEY: Has not been decided, was not
20 been decided, you're right. And, it was subsequently
21 decided by the appeal board, and the essentially sided,
22 we don't make this generic. But, they didn't take the
23 referral. So, it didn't really cast a lot of light on
24 the whole subject. I might just add that the commission
25 keeps extending the time for the reviewing that appeal

BH
NRC-76
T-1

1 board decision. One wonders when the other shoe is
2 going to drop. But, that is still, I think that the
3 board ought to revisit this whole question and we will
4 get back to you on it.

5 MR. EDDLEMAN: Could I comment a little bit on
6 that?

7 JUDGE KELLEY: Yes.

8 MR. EDDLEMAN: They have some people pursuing
9 a pre-moveavation act request on these diesels, and I
10 am trying to dig up some other information. I am not
11 sure what I am going to get, but I am trying to find
12 the kind of information that Ms. Moore indicated in
13 that March 8th conference with the specifics of Sharon
14 Harris. If I can get to them, I will be sure to send it
15 along to the board as soon as I do.

16 JUDGE KELLEY: Okay. Have you been getting
17 these voluminous board notifications, Mr. Eddleman?

18 MR. EDDLEMAN: Judge, I have gotten some of
19 them, but I'm not sure that I am getting all of them.
20 There is a problem with that.

21 JUDGE KELLEY: Well, I'm referring to these
22 inch thick things that come out about once every two
23 weeks on the whole subject?

24 MR. EDDLEMAN: Judge, I don't have one
25 incident thing on diesels for every two weeks. I do

1 have one.

2 JUDGE KELLEY: That's a little hyperbolie
3 there. It is an awful lot of paper though. But, you are
4 geting some of the board notifications on diesels,
5 right?

6 MR. EDDLEMAN: I have gotten one, I believe, I
7 don't have the paper with me. I am overseek in the
8 headquarters, of course, and my files are acceptable.

9 JUDGE KELLEY: Okay. Well, I don't think that
10 we can usefully say a lot more this morning on the
11 subject. I am glad that we raised it, and we will take
12 another look at it if the board refered it, then the
13 board either has to do something or decide if it is
14 still untimely to do something and have some basis for
15 that.

16 So, we will look at it and we will just have
17 to get back to you. So, we now have a summary of
18 everyting that is before the board in the safety
19 hearings, correct? We have referenced all of these
20 contentions and I think that that covers it, does it
21 not, anything else Mr. Baxter?

22 MR. BAXTER: No.

23 JUDGE KELLEY: Ms. Moore?

24 MS. MOORE: Just one thing, briefly in that
25 you didn't mention 45. That is still at present an

BH
NRC-76
T-1

1 issue. It may not be, but it still is right now as of
2 this date an issue.

3 JUDGE KELLEY: Could you tell us what 45 is?

4 MS. MOORE: You're going to get that?

5 JUDGE KELLEY: Oh. Right. We know about that.
6 Okay that is as soon as we can, we haven't got the
7 pleadings in yet.

8 MS. MOORE: There is also something else that
9 I would just like to mention. I really can't say very
10 much about it at this point. The staff may have
11 difficulty with meeting the August 9th testimony date
12 of joint contention seven part four. It is the last
13 remaining part of the steam generator contention. I
14 just don't know the answer to that yet, whether we will
15 be able to file anything on the 9th or not.

16 JUDGE KELLEY: Difficulty of a day or two, or
17 a month or two.

18 MS. MOORE: No. It would be a difficulty of
19 several weeks to several months.

20 JUDGE KELLEY: Several months. Well, why
21 don't you let us know when you do know then..

22 MS. MOORE: I will. I just wanted to alert the
23 board to this problem as soon as possible. I will send
24 some written pleading when I find out more definitely.

25 JUDGE KELLEY: Thank you.

BH
NRC-76
T-1

1 MR. BARTH: This is Charles Barth. I would
2 like to clarify one of mine. The second set for the
3 board's framing of contention 65, I assume that you are
4 not wanting to file testimony on August 9 on that
5 second set?

6 JUDGE KELLEY: That's correct. The, maybe I
7 didn't spell it out clearly enough. I just seems to
8 wash that if indeed the hearing shows that there are
9 defects in the containment basemat, it will be time
10 enough to consider what ought to be done about it in
11 the way of checking. We don't want to hear a long
12 presentation on ultra sonic testing until we know that
13 there is a defect to go test for. And, that is our
14 approach.

15 MR. BARTH: Thank you. There is one thing that
16 I would like to mention. The staff always holds its
17 conversations to remind you that 2.758 is still hanging
18 out somewhere.

19 JUDGE KELLEY: Yes. We are aware of that. We
20 have a few other things here, miscellaneous nature.

21 There is a pending motion to compel between
22 the staff and Mr. Eddleman on the Management Contention
23 No. 1. We have done some work on that and we are about
24 ready to make rulings on them, but we don't quite have
25 it together this morning. Let me ask the staff and Mr.

BH
NRC-76
T-1

1 Eddleman when we could get you back on the phone for
2 that purpose? Could you do it Monday morning?

3 MR. BARTH: That is agreeable with us, your
4 honor. We will be here Monday morning.

5 MR. EDDLEMAN: I don't know what my schedule
6 is going to be on Monday. I might have a little easier
7 time if it were Tuesday or Wednesday of next week.

8 JUDGE KELLEY: Why don't you state a good time
9 for you. Tuesday morning?

10 MR. EDDLEMAN: Well, I want to say that my
11 best time would be about 10:00 Wednesday morning.

12 MR. BARTH: I will be in Atlanta on Wednesday,
13 your honor.

14 MR. EDDLEMAN: Tuesday afternoon, perhaps?

15 JUDGE KELLEY: Alright. Tuesday afternoon?
16 This is really, I think just for Mr. Eddleman and one
17 or more of the staff lawyers is really all we need
18 Tuesday afternoon at 2:00.

19 MR. BARTH: That's fine your honor.

20 JUDGE KELLEY: Is that okay, Mr. Eddleman?

21 MR. EDDLEMAN: What time was that Judge?

22 JUDGE KELLEY: Two.

23 MR. EDDLEMAN: That's fine. Also, I'm not sure
24 but when we notified the board that we did make some
25 progress to produce the docuemnt that they used to set

1 up management, because they do not use docuemnts for a
2 complete assessment, as I understand it, Mr. Barth may
3 correct me on that. But, we did make some progress
4 there, and I wanted to make sure that the board was
5 advised of that.

6 JUDGE KELLEY: Okay. Thanks. I think, lets
7 not go into it now. I'd say that we have pretty much
8 been over these. There aren't that many. We can sort
9 out just what has been done. Tuesday afternoon at two
10 o'clock. It doesn't have to be a big conference call.
11 I will call Mr. Eddleman and call Mr. Barth or Ms.
12 Moore or both.

13 MS. MOORE: Judge you could use this number
14 because we have a speaker phone on it.

15 JUDGE KELLEY: Okay. Anybody else feel that
16 they need to be in on that. It is just some rulings on
17 discovery between those two parties. Okay.

18 Let us switch the topic for just a few
19 minutes from where we have been on safety to the
20 emergency planning area. This is mostly by way of
21 information. We are about through now on tehse
22 emergency planning contentions. This will be the third
23 installment. We expect to get another memorandum in
24 order issued sometime next week.

25 Now, I say three installments. We did some

BH
NRC-76
T-1

1 rulings on the record back in May, and then we had a
2 set of rulings in late June. We did set some hearing,
3 not hearing, some discovery dates on emergency planning
4 back at the May hearing. And, if my memory serves,
5 discovery was supposed to be done by August 9 on filing
6 a discovery, and by August 30 for response to summary
7 disposition are supposed to be in along about the first
8 part of November.

9 Now, those dates are obviously unrealistic
10 for contentions that we are, at least for contentions
11 that we aren't getting out till the next week of July.
12 We had anticipated at the time that we would have all
13 these rulings out, well sooner than that at least. And,
14 we're open minded on this point. But, we think that we
15 ought to establish some specific dates for discovery on
16 the emergency plan contentions that are just about to
17 come out.

18 What we would like to do this morning is give
19 you some tentative dates that you could react to. And,
20 by that I mean that you have received the contentions
21 next week, take a look at them, assess what kind of
22 time you are likely to need to do discovery on those
23 contentions and then see if the board tentative dates
24 are okay. If they are not, suggest an alternative. BUT,
25 rather than just issue these contentions into a vacuum

BH
NRC-76
T-1

1 in that regard, we thought it would be better to give
2 you something to shoot at.

3 Therefore, what we are going to suggest is
4 this, as the the contentions that will be coming out
5 next week and subject to the possibility of some later
6 contentions, that would be all of them. We will give
7 you the following tentative dates. Discovery request
8 would be open to soon as the contention issues are
9 issued. We would set September 28 as the last day for
10 filing discovery. We have said that October 22nd was
11 the last day to respond, and we set December 10 as the
12 date for summary disposition motions.

13 Now, we also thing in setting these dates
14 that the understandings about holding the time for
15 discovery womuld not apply with respect to this last
16 batch of emergency planning contention for a couple of
17 reasons. One, just the need to move these things along
18 and get them into shape for litigation and summary
19 disposiion by the end of the year, so that we can, they
20 can hear them in February if hearing is required. The
21 other is that a lot of these contentions coming out
22 here at the end are joint contentions with three or
23 four different interveners involved. It just seems to
24 us that the fact that it is an on-going hearing on
25 safety issues part of the time that discovery would be

BH
NRC-76
T-1

1 Open isn't a good enough reason to toll discovery. We
2 are going to have different lead interveners on
3 different contentions and we just can't see why the
4 burdens can't be distributed in such a way that tolling
5 isn't necessary. But, again we are going to put these
6 dates out as tentative and you are free to come back and
7 suggest others or make contrary arguments. Speaking of
8 lead interveners, we talked about the concept in the
9 May hearing. That is transcript 1102. The idea was that
10 either Mr. Eddleman or Mr. Ronco or Mr. Reid or Mr.
11 Payne or someone else would be the lead person. When we
12 issued these joint contentions next week, where we are
13 going to have two or three or four participating
14 parties, we will be asking you to nominate a lead soon
15 thereafter.

16 Now, we can take comments on this general
17 subject of upcoming contentions in discovery. Mr.
18 Baxter?

19 MR. BAXTER: I have no comment.

20 JUDGE KELLEY: Okay. Mr. Eddleman

21 MR. EDDLEMAN: The only comment that I have is
22 that I hope that I am not a lead intervener on
23 anything, because with the boards rationale of these
24 on-going hearings, say could you distribute the load. I
25 haven't had anything to distribute because I am

1 involved in every one of these issues.

2 JUDGE KELLEY: Well. We can keep that in mind.
3 would think where it may well be that you shouldn't be
4 lead intervener on these joint contentions for
5 emergency planning. In view of the fact that you have
6 such a prominent, almost exclusive role in the safety
7 hearings. We can consider that, but we still think that
8 there are enough people, enough parties and enough
9 players involved that we shouldn't have to freeze
10 discovery for maybe as long as a month while the
11 hearings are going on. Mr. Payne?

12 MR. PAYNE: No comment, Judge.

13 JUDGE KELLEY: Okay. Staff.

14 MR. BARTH: Your proposed schedule is
15 acceptable to us, your honor.

16 JUDGE KELLEY: Okay. I have got one other
17 point on my list. We received in the mail in the last
18 day or two, a letter from, excuse me, from Mr. Carroll
19 if I can find it. No it isn't. It is from Mr. Hollar
20 dated July 9, 1984 addressed to the board with copies
21 of the service list. It encloses a draft copy of the
22 public information brochure. You will recall in the May
23 1 and 2 pre-hearing, there was some discussion of this
24 and the board ruled that the interveners should be
25 entitled to have a copy of the brochure, and should be

BH
NRC-76
T-2

1 entitled to file contentions on it.

2 Now, my cover letter is dated July 9, and I
3 got it, I guess, Tuesday. Without this 30-day rule of
4 thumb, it might just be useful to set a specific date
5 by which contentions, if there are going to be any, on
6 these, on the brochure have to be filed.

7 Looking at my calendar, let me ask first
8 whether Mr. Eddleman, have you got a copy of this yet?

9 MR. EDDLEMAN: Yes. I received mine yesterday,
10 Judge.

11 JUDGE KELLEY: Mr. Payne?

12 MR. PAYNE: Yes. I received mine.

13 JUDGE KELLEY: Okay. August 10th is a Friday.
14 That is about 30 days after we would have gotten it. I
15 would suggest that that might be good enough date. Any
16 problem with that anybody? Mr. Eddleman?

17 MR. EDDLEMAN: That is fine with me Judge. I
18 would like to know one thing. This filing still says
19 that there is missing information. And, we get back to
20 the good old catch 22, the file of the contention that
21 says that the information is missing.

22 JUDGE KELLEY: No. Don't do that. I would say
23 file contentions on whatever you think is deficient and
24 what you've got and if pieces come later then they will
25 just have to be reviewed later.

BH
NRC-76
T-2

1 Anybody else have any problem with August
2 10th for a contention due date on such information as
3 is contained in the draft? Okay.

4 That is all I have. Just a moment.

5 Ms. Moore, just running the program back a
6 bit to the TLD'S. Mr. Barth are you trying to file
7 testimony on the TLD's on the due date?

8 MS. MOORE: Yes. We are your honor.

9 JUDGE KELLEY: That takes care of the board's
10 questions. We owe you a ruling on water hammer as soon
11 as we have all of the pleadings in and have had a
12 chance to review it. We owe you a ruling next week on
13 low-level waste, and we will be calling the staff and
14 Mr. Eddleman on the discovery disputes next Tuesday
15 afternoon.

16 Mr. Baxter, anything else.

17 MR. BAXTER: No sir.

18 JUDGE KELLEY: Mr. Eddleman?

19 MR. EDDLEMAN: No sir.

20 JUDGE KELLEY: Nothing else. Mr. Payne?

21 MR. PAYNE: No sir.

22 JUDGE KELLEY: Staff?

23 MS. MOORE: Nothing your honor.

24 JUDGE KELLEY: Okay. Well thank you very much,
25 and we will be back in touch. Bye.

(Conference ended at 11:33 a.m.)

