

ORIGINAL

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of:

CAROLINA POWER & LIGHT COMPANY
and NORTH CAROLINA EASTERN
MUNICIPAL POWER AGENCY

Docket Nos.
50-400 OL
50-401 OL

Shearon Harris Nuclear Power Plant
Units 1 and 2

TELEPHONE CONFERENCE

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

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CAROLINA POWER & LIGHT COMPANY:	Docket Nos.
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	:
Shearon Harris Nuclear Power	:
Plant, Units 1 and 2	:
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Bethesda, MD.
Friday August 10, 1984

The hearing in the above-entitled matter
convened, pursuant to recess, at 11:05 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

1 APPEARANCES:

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723 West Johnson Street
Raleigh, North Carolina 27605On Behalf of the Intervenor, CHANGE:DAN F. READ, ESQUIRE
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RICHARD WILSON

1 JUDGE KELLEY: Good morning. This is Judge
2 Kelley speaking and Judges Bright and Carpen^{er} are
3 here with me. We are on the record. This morning
4 we have, this is being recorded and there will be a
5 transcript of it. Could we just run through the
6 role and just who represents whom, maybe starting
7 with the Applicants.

8 MS. FLYNN: Okay, this is Samantha Flynn at
9 CP&L for Applicants. With me is Hill Carrow. Also
10 counsel for Applicants.

11 MR. BAXTER: Thomas Baxter at Shaw, Pittman
12 in Washington, also representing Applicants. Mr.
13 O'Neill is in our satellite office today.

14 JUDGE KELLEY: Is Mr. O'Neill on?

15 MR. O'NEILL: I'm on, sir.

16 JUDGE KELLEY: Fine, thank you. And then
17 Intervenors.

18 MR. READ: Daniel Read for Change.

19 MR. RUNKLE: John Runkle for the Conserva-
20 tion Council.

21 MR. PAYNE: Travis Payne for Kudzu Alliance.

22 MR. EDDLEMAN: Wells Eddleman representing
23 myself.

24 JUDGE KELLEY: Is Dr. Wilson there?

25 Is Dr. Wilson there? Hello?

1 MR. EDDLEMAN: He said yes.

2 JUDGE KELLEY: Oh, I'm sorry, I didn't, Dr.
3 Wilson, could you say it again, I didn't hear you.

4 DR. WILSON: (inaudible)

5 JUDGE KELLEY: It is an awfully dim connection.

6 MR. BAXTER: Judge, I can't hear him either.

7 JUDGE KELLEY: Well I think we are going to
8 have to tell our operator to try again and see if we
9 can't get Dr. Wilson on a clearer wire than the one
10 we've got now. Hold just a moment please. Would you
11 tell Barbara to tell the operator that the Wilson
12 connection is no good.

13 Judge Carpenter is arranging to have Dr.
14 Wilson put on a better wire. Dr. Wilson, I hope,
15 can you hear me? I can't tell if he can or not.

16 MS. FLYNN: Yes, he said yes.

17 JUDGE KELLEY: Okay fine. The operator is
18 going to call you back and put you on a clearer line,
19 hopefully.

20 DR. WILSON: Should I hang up?

21 JUDGE KELLEY: Yes, I think so.

22 DR. WILSON: Okay.

23 JUDGE KELLEY: Oh oh. Did that cut everybody
24 else off?

25 MS. FLYNN: No.

1 MR. BAXTER: We're all here.

2 JUDGE KELLEY: I've seen that happen. Well,
3 okay, fine. I think we can go ahead with, at least
4 some of our business here and I think Dr. Wilson will
5 be back with us in hopefully a minute or two.

6 When you speak today individually, would
7 you identify, hello?

8 UNIDENTIFIED SPEAKER: Yes?

9 JUDGE KELLEY: I'm hearing a peculiar elec-
10 tronic noise but I guess you are all still there. I
11 will assume that for the moment. When you speak
12 individually, could you simply identify yourself first
13 for the recorder's benefit?

14 First I can run over the list of things
15 that we have on our agenda and then you will know
16 where we are headed and you can think about what else
17 if anything you want to add.

18 Most of these things are listed on the last
19 page of last Friday's order. First we have a couple
20 of items about these emergency planning joint con-
21 tentions that mainly who would be the lead for
22 individual ones and secondly, whether anybody wants to
23 propose a revision of the schedule that we proposed,
24 that we adopted tentatively in the order. We made
25 those items due on different dates and that was just a

1 mistake and I think it is best if we can to speak to both
2 items today and get them resolved. The second thing
3 would be a ruling on the Motion for Reconsideration and
4 joint contention 4.

5 And the third thing, these are in no particular
6 order, by the way. Not in any order of importance or
7 seniority or alphabet or anything else. Sort of a
8 random order.

9 The third thing I have is some discussion of
10 the Motion from Applicants with respect to ex parte,
11 ex parte contentions.

12 Hello, Dr. Wilson?

13 DR. WILSON: Hello.

14 JUDGE KELLEY: Oh, that's better. Can you
15 hear me?

16 DR. WILSON: I can.

17 JUDGE KELLEY: Okay, I was just checking off
18 the things on our agenda quickly. We are going to
19 talk for about a couple of emergency planning matters,
20 then we have a ruling on a Motion for Reconsideration
21 of the terminal luminescent dosimeter (phonetic) question.
22 We will have some discussion of the Applicant's Motion
23 about ex parte extensions.

24 We want to have some discussion about the
25 previously deferred diesel generator contentions. And

1 talk briefly about a place for hearing. Hopefully.
2 I am not sure that we have a place as of now. We
3 have an, not individual but we have a disagreement
4 between Mrs. Flynn for the Applicants and Mr. Read that
5 I get a copy of a letter from. I got Mrs. Flynn's
6 letter last night about it and indicated that perhaps
7 towards the end of today's discussion we could take
8 that up and it wouldn't be necessary for everybody to
9 participate but at least the Board and Mrs. Flynn and
10 Mr. Read could speak to it.

11 And then also we'd be pleased to add other
12 matters that need to be taken up now that aren't on
13 our agenda for one reason or another. I think I
14 mentioned, we mentioned in our order of last week that
15 there isn't going to be any Board to deal with during
16 the coming week and in view of the fact that we are
17 heading up for a hearing pretty soon and things may be
18 coming up, if you could anticipate anything that you
19 thought needed discussion now, that would be good.
20 Bear in mind that we really can't do any further
21 business with the Board for about 10 days.

22 Are there other things, let me ask now that
23 we should add to today's telephone agenda? Start with
24 the Applicants. Mr. Baxter, anything else?

25 MR. BAXTER: No, I don't have anything else.

1 JUDGE KELLEY: Okay, I will just say Inter-
2 venors and well, Mr. Read?

3 MR. READ: No sir.

4 JUDGE KELLEY: No sir.

5 MR. RUNKLE: No.

6 JUDGE KELLEY: Mr. Payne?

7 MR. PAYNE: No.

8 JUDGE KELLEY: Mr. Eddleman?

9 MR. EDDLEMAN: Judge, I have that one matter
10 about the service of --

11 JUDGE KELLEY: Yeah, okay, let's put that at
12 the end, too. I know what you mean and this is
13 something primarily I guess between Mr. Eddleman and
14 the Applicants. Maybe the Staff too. But I think we
15 can resolve that towards the end also.

16 Dr. Wilson? Anything else that you want to
17 bring up?

18 DR. WILSON: No.

19 JUDGE KELLEY: Okay and Staff?

20 MS. MOORE: Aren you going to discuss at some
21 later date the question of whether more than one
22 Intervenor can cross examine a given witness?

23 JUDGE KELLEY: Uh, well maybe we can touch
24 on it at least today. Could you remind me of that
25 towards the end of the list of matters?

1 MS. MOORE: Certainly.

2 JUDGE KELLEY: Okay. Okay. Well going in the
3 order that I read these off. Last week's order on
4 emergency planning contentions added the text of
5 three new joint contentions. Numbers 3, 4 and 5.
6 Numbers 1 and 2 were let in back in May. And we had
7 said in May I think that we would take volunteers for
8 contentions. We have not gotten any on the first two
9 and it just seemed to us it might expedite things to
10 go ahead and make a tentative designation, at least
11 somebody then would have the baton to carry. So we
12 did that but we are perfectly willing to listen to
13 alternate suggestions if the people that we designated
14 at least tentatively at one reason or another
15 shouldn't have that function.

16 Let me ask the Intervenors that are
17 participating that are co-sponsors of these joint
18 contentions whether they have proposed changes for the
19 leader of Intervenors we designated. Just any of
20 you can speak up if you do.

21 Okay, Dr. Wilson, you're still there, right?

22 DR. WILSON: Yes, I am.

23 JUDGE KELLEY: Okay. And I think we designated
24 you as lead on that transportation of patients, for
25 example, that seemed to be a certain logic in that.

1 And the other thing we noted in the quarter,
2 we hadn't designated Mr. Eddleman as lead although he
3 was a sponsor of a contention encompassed under those
4 subjects in some cases. Just because we saw him as
5 pretty well tied up in the next couple of months but
6 we didn't mean to necessarily preclude him from some
7 lead role later on. Mr. Eddleman, is that satisfactory
8 with you?

9 MR. EDDLEMAN: Yes, Judge, as far as I can
10 tell.

11 JUDGE KELLEY: Okay. Well in the second
12 thing that we did was to propose a schedule right there
13 near the end of the order. Setting out a time for
14 discovery to close and summary dispositions to be
15 filed and the like. Applicants have any proposed
16 amendments?

17 MR. BAXTER: None here.

18 JUDGE KELLEY: Intervenors?

19 MR. RUNKLE: This is John Runkle.

20 JUDGE KELLEY: Okay.

21 MR. RUNKLE: I would just like a clarification
22 when it says Motions for Summary Disposition, there is
23 a deadline for that. Does that mean that there can't
24 be any after that time?

25 JUDGE KELLEY: Let me put it this way. This

1 is a question that arose last time with respect to one
2 motion in particular as I recall.

3 There was a motion that was due last summer
4 and there was a motion filed as I recall and there
5 were some other developments and so there was a second
6 motion filed. And there was some debate about
7 whether the second motion was timely and I believe that
8 the Board held that it was. There is a general
9 doctrine in the NRC and this I think is to some extent
10 reflected in the rule that you can file a motion for
11 summary disposition anytime after discover up to hearing
12 and there are some provisions in the rule that allow a
13 Board to not rule on motions for summary dispositions
14 if it comes in such a way as to disrupt the hearing.

15 On the other hand, generally speaking Boards
16 can set deadlines for filing of various papers including
17 summary dispositions motions. So I would like to
18 comment to the parties and I don't mean to be expressing
19 a, not necessarily a ruling on your question, Mr. Runkle
20 but I would see the deadline that we set in here is the
21 deadline that we would normally expect papers to come in
22 in order for this case to get to a hearing in a timely
23 manner. But it wouldn't necessarily rule out a motion
24 at some other time if under the circumstances that was
25 appropriate.

1 If chat sounds a little mushy I guess it
2 is but that's an indication at least from me. Let
3 me ask, Mr. Baxter, how does that strike you?

4 MR. BAXTER: I agree with Dewey Marks. I
5 think the reason why motions that came in later the last
6 time was because of a six month postponement in the
7 evidentiary hearing. I view the schedule somewhat as
8 a whole they fit together. I think the schedule the
9 Board has set here is obviously geared toward February
10 commencement of the Emergency Planning. And given
11 this (inaudible) I think the schedule should be
12 adhered to.

13 JUDGE KELLEY: Any comments from, Mr.
14 Runkle?

15 MR. RUNKLE: I would just, I was just
16 curious that if that was the deadline and all parties
17 were, we could work around that. But if there, I
18 mean if it is possible to go past that date with some
19 special, that's all right too and work from there.

20 JUDGE KELLEY: Okay. Staff, any comment?

21 MS. MOORE: Staff has no comments, Your
22 Honor.

23 JUDGE KELLEY: Intervenors have any
24 comments on that point?

25 Okay, fine, thank you. Okay, the second

1 subject we have here is the pending motion from the
2 Applicants on joint contention 4, thermal luminescent
3 dosimeters. On July 18th, the Applicants filed a rather
4 extensive Motion for Reconsideration or clarification
5 on the Board's ruling on their Summary Disposition
6 Motion pertaining to joint contention 4.

7 And the NRC Staff filed in support of the
8 Applicant's Motion on July 31st. Joint Intervenors
9 responded on July 30 in that filing by Mr.
10 Eddleman.

11 We've considered these filings and we are
12 going to grant that motion in part and we are going
13 to deny that motion in part. As to the part that we
14 are granting the motion on, we said in our original
15 ruling at page 20 and I am quoting:

16 "The Board finds an issue of material
17 fact, mainly does compliance with the 1983 ANSI
18 standard. In short, compliance with the NRC
19 regulations."

20 That issue is going to be considered and
21 resolved in the pending rule making proceeding that
22 has been referred to in the various proceedings. We
23 are reconsidering our admission of that issue and con-
24 sistent with the principal that has been stated in
25 the Douglas Point case and elsewhere, we will not

1 litigate this issue in this individual rule making
2 proceeding. Rather, it will be resolved, strike that,
3 in this individual licensing proceeding. Rather, we
4 will look to the rule making to resolve that and this
5 plant and other plants will be subject to the outcome
6 of the rule making.

7 So that's the part that we are granting the
8 motion. Now that leaves a single issue for litigation.
9 And this is the issue with respect to which we are
10 denying the Motion for Reconsideration. And we will
11 now restate to clarify that issue as follows:

12 Whether the TLD's and measuring equipment
13 and processes to be used at the Harris facility can
14 measure occupational doses with sufficient accuracy
15 to comply with the NRC regulations. We ask the
16 Applicants and Staff as well as joint Intervenors if
17 they choose to prepare testimony on this issue. We
18 think the record will benefit from cross examination
19 at the hearing. So Summary Disposition on this
20 issue is denied.

21 The issue that we are leaving in reflects
22 our view that the existing regulations do embody a
23 standard of accuracy. They require that the Applicant's
24 dosimetry program reliably distinguish between doses
25 of two and three REM's and between doses of between

1 three and four REM. That is to say errors of larger than
2 half a REM are not permitted.

3 We are rejecting the arguments of the
4 Applicants and the staff to the contrary. We also
5 reject the Applicant's argument that the Board is
6 raising an infermessable (phonetic) suispodic (phonetic)
7 intention. The issue as we have framed it is within
8 joint contention 4. It is also raised in the Inter-
9 venor's pleadings.

10 Judge Carpenter will now list some
11 specific respects in which we are going to ask the
12 parties, on which we are going to ask you to focus in
13 your testimony. Judge Carpenter?

14 JUDGE CARPENTER: Mr. Baxter, I would like
15 to start by asking if Pamela Anderson is available
16 since she is the author of the original Motion for
17 Summary Disposition. If she is available and has any
18 questions --

19 MR. BAXTER: She's in the room with me,
20 yes.

21 JUDGE CARPENTER: Fine. I start by
22 observing that the original Motion for Summary
23 Disposition covered 4 issues, 3 of those issues have
24 been resolved. So the fact that we are focusing on
25 that original motion and some details of it is not to be

1 construed as being overly critical. It spoke to 4
2 issues and we find some deficiencies with respect to
3 only 1.

4 I'd like to turn then in the context of the
5 original motion and the supporting affidavit by
6 Stephen A. Brown dated January 4, 1984. And direct
7 your attention to paragraph 11 of Mr. Brown's
8 affidavit which states that "TLD's manufactured by
9 Panasonic Company will be used."

10 We ask that you consider testifying as to
11 the technical specifications of these TLD's or
12 put into evidence the manufacturer's specifications.
13 As a comment, that single sentence standing by itself
14 isn't a basis for any finding of fact by the Board
15 with respect to the accuracy of these devices.

16 Further, in paragraph 11 the statement
17 is made, "These TLD's have been tested."

18 Well we look at that statement. It's in
19 reference, it references material in NuReg CR 2891.
20 We ask for a testimony as to the page numbers in that
21 NuReg that describe the alleged testing of Panasonic
22 TLD's so that we could use that testimony as a finding
23 of fact if in fact it can be found that there was
24 testing of Panasonic TLD's explicitly as shown in that
25 NuReg.

1 The other, the second area that we think is
2 useful relates to Mr. Brown's affidavit at paragraph
3 5. Mr. Brown references quality control measures. We
4 suggest that it would be useful to testify as to the
5 accuracy and precision of the semi-annual calibration
6 of the TLD's and associated processing equipment. And
7 further we think it would be useful to testify as to
8 the accuracy and precision of the daily calibration
9 of equipment.

10 And the third area that we think would be
11 useful might be based on consideration of the statement
12 in NuReg CR 2891 on pages 33 and 34. Which speak to,
13 the caption is, "Reasons for Poor Performance". The
14 NuReg is not in evidence at the moment and we are
15 putting a little bit of burden on the joint Intervenors
16 by referencing it. Let me go as far to simply inform
17 everybody of what, of what the stated reasons for
18 poor performance are.

19 Number 1 is incorrect calibration factors,
20 number 2 is dosimeter variability. Number 3 is clerical
21 errors and number 4 is poor calibration for accident
22 doses. So I'm not, the Board's not pointing everybody
23 to the precise words in each of the paragraphs. In
24 the NuReg reference but to those 4 items.

25 Calibrate, incorrect calibration factors,

1 dosimeter variability, clerical errors and poor
2 calibration for accident doses. We think testimony
3 that uses that as a framework and specifically
4 addresses the question, in what way does Applicant's
5 program of dosimetry, of personnel workers mitigate
6 against these four kinds of errors which have been
7 identified as the major sources of errors on a
8 national basis.
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13 That is about as far as we go today in
14 providing clarification and we would be glad to
15 respond to any questions.
16

17 JUDGE KELLEY: Any questions from the
18 Applicants?
19

20 MR. BAXTER: No, thank you.
21

22 JUDGE KELLEY: Okay. Intervenors?
23

24 MR. EDDLEMAN: Wells Eddleman, Judge. Just
25 one question. I don't recall whether we discussed

1 filing deadline for this contention.

2

JUDGE KELLEY: Yeah, we need to get on that.

3

4 That's still open, okay. Staff?

5

MS. MOORE: I have no comment.

6

7

JUDGE KELLEY: I believe we had in the

8

Applicant's Motion, am I correct a suggested date of

9

10 the 31st, is that right, Mr. Baxter?

11

MR. BAXTER: I'm not sure we had one there.

12

13 We had a suggestion in that for contention 9, that is

14

the date adopted by the Board.

15

16

JUDGE KELLEY: Okay, that is probably what

17

I'm thinking of. Well let's take it to day novo. Here

18

19

we are on the 10th of August. Let's just hear from

20

Mr. Baxter and Mr. Eddleman and the Staff about what

21

22

they regard as a reasonable date for testimony.

23

MR. BAXTER: This is Tom Baxter. We think

24

25

the 31st will be reasonable, of August.

1 JUDGE KELLEY: Mr. Eddleman?

2 MR. EDDLEMAN: Yes, we will try to meet it.
3 I, not having seen this layout of specifics for the
4 first time, it depends somewhat on whether the
5 Staff would make available the offers of hearing
6 CR 2891.

7 JUDGE KELLEY: Okay and let's ask the Staff.
8 What does the Staff think of the 31st or some other
9 date?

10 MS. MOORE: Off the top of my head I don't
11 see any reason why we couldn't meet the 31st but that
12 would not include making available the CR 2891. I
13 don't have it in front of me. I don't even know who
14 those authors are at present but I can guarantee you
15 that we couldn't meet that date making them available
16 because it is obviously a contracted report.

17 JUDGE KELLEY: Isn't this issue to be tried
18 starting October 10th?

19 MS. MOORE: That's correct.

20 JUDGE KELLEY: And I realize that we are
21 going into hearing on the 5th on the management capability
22 question and will be tied up in that but let me
23 ask my colleagues for a moment.

24 Well since in this particular case the
25 Board thinks it can go on a somewhat more leisurely

1 schedule since we are not actually taking this up
2 before the 10th of October under the current schedule,
3 21st of September, 21st of September for testimony on
4 this issue.

5 Okay, that brings us to the question of what
6 I call ex parte contention and there had indeed been
7 some. The immediate, let me just say I have a motion
8 from the Applicants dated the 27th of July and just
9 received this morning, Mr. Runkle's response. Let me
10 make a couple of comments about that particular
11 extension to Mr. Runkle.

12 He did, and I think that was the trigger for
13 the motion, Mr. Runkle called me and asked for the
14 time that I gave him and it was an ex parte grant.
15 At that time, quite frankly, I was not focusing on
16 the fact that there were going to be follow-up replied
17 findings. And I am sure that if I had we would have
18 handled that differently and then sent out some
19 notice to the other parties. But I just frankly did
20 not and under the circumstances granted the extension
21 ex parte. In retrospect I think I made a mistake and
22 in it was a situation in granting that extension it
23 could have compromised your simultaneous filing
24 arrangement. It could have thrown the schedule off
25 for people filing replies and therefore, as I say it

1 was a mistake on my part. I don't think that for
2 purposes of deciding where we go from here and how we
3 handle such things we need to get into a detailed
4 discussion of what actually happened there. It seems
5 to me that's water over the dam. We have in the
6 record the parties' positions on it. The real issue
7 is whether we should adopt some guidelines for future
8 requests for extensions. And as this particular matter,
9 in this particular instance it illustrates that there
10 are time when extensions ought to be granted only on
11 notice to the other parties and then with notification
12 to the parties or whatever the Board does. I guess
13 our concern is making the guidelines for brief extensions
14 too tight will be adopting something that will be
15 more trouble than its worth.

16 I am also somewhat concerned about our
17 regime which is likely to run up significant long
18 distance telephone calls for a short extension. Now
19 when I say short, I'm talking really about 24 hours,
20 when the Xerox machine breaks or whatever. It seems
21 to me that in that kind of a case you are very unlikely
22 to throw people off much by getting a 24 hour extension
23 for a good reason.

24 And there are just some reasons I've already
25 alluded to for not formalizing to that extent. If the

1 parties, well let me just ask this. Those are generous
2 and general Board observations. Let me ask the other
3 parties what their position is on Mr. Baxter's motion
4 as worded. Do you have any comment on the guidelines
5 that Mr. Baxter proposes, Mr. Runkle?

6 MR. RUNKLE: I just felt that it was over
7 the (inaudible) I don't think it will happen again.
8 I also forgot that there were all these replies, that
9 we had replies on replies that was based on that. I
10 don't feel that we should lock ourselves into that kind
11 of back up thing. I don't think --

12 JUDGE KELLEY: Other Intervenor comment? Mr.
13 Eddleman?

14 MR. EDDLEMAN: Yes, Judge. I've lived with
15 this informal system ever since I was introduced to it
16 by one of Applicant's field employees and when I asked
17 him why he had to file something on time he said well
18 I just called Judge Tilley and got an extension and I
19 think that was goodness somewhere in the range of two
20 years ago. And I recall being told by the Judge at that
21 time it was an informal thing. That Judge Tilley
22 didn't think it was necessary to put out a piece of
23 paper for granting a short extension. And obviously
24 I think that system has worked pretty well. I normally
25 try to notify people when I've gotten an extension or

1 when I am going to try to get an extension but on these
2 Board's extensions of time I think filing paper or
3 making phone calls is just a tremendous waste of time
4 and energy. It even runs up the legal bills for the
5 Applicants.

6 JUDGE KELLEY: Okay, Mr. Payne?

7 MR. PAYNE: I really don't have anything
8 further to add to that, Judge.

9 JUDGE KELLEY: Okay, Mr. Read?

10 MR. READ: I'm with Mr. Runkle, Judge Kelley.

11 JUDGE KELLEY: Staff?

12 MS. MOORE: I only add that I think the
13 critical, the critical thing here is that the other
14 parties in an extension is glad, I think that is
15 important because this particular situation is a
16 problem. Most of them aren't and in general the
17 procedure is followed. But I think there has to be
18 something for people to know that an extension has been
19 granted.

20 JUDGE KELLEY: Do you think that is the
21 reason for the 24 hour extension?

22 MS. MOORE: No, I don't think an 24 hour ex-
23 tension is critical. I think when it goes beyond that
24 though, when there are several days involved, that's
25 when it becomes important.

1 JUDGE KELLEY: I agree with that, okay. Mr.
2 Baxter, any further comments?

3 MR. BAXTER: First I would note that some
4 of the long distance phone bills that are equally
5 acceptable to us have contact (inaudible)
6 made in Raleigh. That's, if that's a problem, it is
7 sure hard to argue the fact that 24 hours is critical.
8 It all depends whether it is a document on which we
9 have to act from. For instance, this testimony being
10 filed 14 days in advance of a hearing and we've got a
11 conference room full of experts ready to look at it
12 that day, would make a difference to know about.
13 (inaudible)

14 JUDGE KELLEY: Okay. Ladies and gentlemen,
15 why don't we stand up and stretch a minute and maybe
16 my colleagues and I can confer briefly. A couple of
17 minute break, don't hang the phone up.

18 (There was a short break.)

19 JUDGE KELLEY: We've conferred and looked over
20 the motion and we are going to modify the proposed
21 deadlines in one respect and then we are going to
22 grant the motion. And here's what we are going to do.

23 Paragraphs 1 and 2 are left unchanged. Para-
24 graph 3 which says, "Prior to a written or oral request
25 for extension of time, the requesting party and so on".

1 We're going to insert the phrase, "of more
2 than 1 day" so that it reads, "Prior to a written or
3 oral request for extension of time of more than one
4 day, the requesting parties should consult ..." and so
5 forth.

6 We're going to add at the very end of
7 paragraph 5 the phrase "of more than one day" which is
8 really a corresponding change. And in paragraph 4 we
9 are going to strike out the phrase in extreme circumstances
10 and so that it reads, number 4 reads, "The Board will
11 entertain a request for extension of time without
12 compliance with step 3 above only upon a showing by the
13 requesting party a good cause for failure to communicate
14 with other affected parties."

15 And I think that those guidelines coupled
16 with Mr. Baxter's helpful suggestion that the Intervenors
17 can Mrs. Flynn's office in terms of notification should
18 provide a reasonable regime and not burden requesters
19 too much and at the same time keep the other parties
20 informed.

21 So the motion is granted as modified.

22 MS. FLYNN: Judge Kelley, this is Samantha
23 Flynn.

24 JUDGE KELLEY: Yes.

25 MS. FLYNN: May I ask that when such phone

1 calls are made to our office, I'm not in personally,
2 either Hill Carrow or Dale Howard who are working in
3 this matter, one of them would be available if I'm not
4 and I just ask that somebody try to get the next
5 person so that he could speak with the lawyer
6 personally about it. And if that fails, then leave the
7 message with the secretary or have us call back. But
8 try the three of us. We're all here.

9 JUDGE KELLEY: I think that's fine. And the
10 part about notifying you or your office was simply a
11 marginal note on the motion, the formal motion but we
12 are aware that your office can be a contact point and
13 save a long distance call bill. Okay.

14 We'd like to turn next to some discussion of
15 the diesel generator area of concern. Just by way of
16 background Mr. Eddleman proposed two contentions back
17 in January of this year. Numbers 178 and 179. And
18 the Applicants opposed their admission on a 5 factors
19 basis, particularly the factor of timeliness and good
20 cause and the Staff supported their admission in
21 pleadings filed in February of 84. We then had a
22 telephone conference on March 8th and we said some
23 things about this subject at transcript page 770 and 771
24 and we did two things. We ruled that the contentions
25 were not untimely but apart from that we declined to

1 rule further and we deferred the contentions essentially
2 for two reasons.

3 It appeared at that time that there might
4 be some clarification of the legal status of these
5 contentions. I had in mind particularly some Catawba
6 litigation in this area. And secondly we were aware
7 that both Staff and owner's group, technical work was
8 then getting underway and it wasn't clear just where it
9 was going to go or when it was going to get there.
10 So we thought it might be better to view these
11 matters when the technical work was a little further
12 developed.

13 I think it's fair to say that in the five
14 months or so that have since elapsed the legal
15 situation is not very much clearer than it was at that
16 time. For example, as far as Catawba was concerned,
17 that Board had certified some questions to the Appeal
18 Board expressing the view that they were generic in
19 the sense that they weren't appropriate for an
20 individual case. The Appeal Board in due course
21 declined to take the certification. It did indicate that
22 the contentions certified there were not generic in
23 the sense in which that Board had viewed them. The
24 Commission after various extensions of time decided not
25 to review the Appeal Board's determination so not very

1 rule further and we deferred the contentions essentially
2 for two reasons.

3 It appeared at that time that there might
4 be some clarification of the legal status of these
5 contentions. I had in mind particularly some Catawba
6 litigation in this area. And secondly we were aware
7 that both Staff and owner's group, technical work was
8 then getting underway and it wasn't clear just where it
9 was going to go or when it was going to get there.
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11 matters when the technical work was a little further
12 developed.

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14 months or so that have since elapsed the legal
15 situation is not very much clearer than it was at that
16 time. For example, as far as Catawba was concerned,
17 that Board had certified some questions to the Appeal
18 Board expressing the view that they were generic in
19 the sense that they weren't appropriate for an
20 individual case. The Appeal Board in due course
21 declined to take the certification. It did indicate that
22 the contentions certified there were not generic in
23 the sense in which that Board had viewed them. The
24 Commission after various extensions of time decided not
25 to review the Appeal Board's determination so not very

1 much came out of all that over a period of several
2 months. I am just speaking to the case I know best.
3 There may be other areas where there is more guidance
4 that I am not that aware of.

5 On the technical side, it appears that the
6 TDI owner's group and the Staff had made some fairly
7 substantial progress and have a pretty well mapped
8 out program for addressing the problems that have
9 arisen with TDI diesels. We asked awhile back for the
10 Applicants to give us some information about what they
11 were doing at Shearon Harris and what their time
12 frame was and we received a very helpful letter from
13 Mr. O'Neill dated the 31st which sets out a number of
14 things that are going on and gives some indications of
15 time.

16 We're aware of the fact that the NRC Staff
17 for its part is, has been gearing up to prepare
18 technical analyses of particular plants. Mr. O'Neill
19 referred to one in Grand Gulf of a few weeks ago.
20 The Supplemental SER apparently in that case was
21 developed.

22 I know from Catawba that the Staff just two
23 or three days ago issued a technical evaluation based
24 on a contracted report from Batel Northwest (phonetic)
25 focusing on those diesels.

1 Let me ask Miss Moore whether you know at
2 this point what the Staff's schedule is for preparing
3 a Staff analysis of the Shearon Harris diesels.

4 MS. MOORE: The Staff does not have a
5 specific time in mind for the preparation of the
6 Harris. The reason that the SER's have come out in
7 other plants is that (inaudible)
8 and the Staff has been doing most cases but there
9 have been some contentions that are bearing on them
10 first.

11 JUDGE KELLEY: I understand. So there is
12 no target date right now?

13 MS. MOORE: No, there isn't.

14 JUDGE KELLEY: Okay. Mr. O'Neill, you are
15 with us still?

16 MR. O'NEILL: Yes.

17 JUDGE KELLEY: Can you hear us okay?

18 MR. O'NEILL: Fine.

19 JUDGE KELLEY: Okay. I wanted to ask you
20 one question about a statement in your letter looking
21 at page 2 of your letter of the 31st towards the
22 bottom. Maybe I had better read the whole paragraph.
23 It's a, third paragraph on page two.

24 The TDI owner's group is continuing its efforts
25 on the design review, quality revalidation program

1 (phase 2). A Phase 2 report is due to be submitted to
2 the Applicants at the end of October. Thereafter,
3 each individual utility will submit to the NRC a
4 phase 2 report applicable to its specific diesel
5 generators.

6 And this is the sentence I wanted to ask you
7 about. It is not anticipated that completion of
8 phase 2 design review and quality revalidation will
9 be required prior to licensing plants for operation
10 through at least one fuel cycle.

11 And that's in the quote from your letter.
12 Could you elaborate a little bit on that?

13 MR. O'NEILL: If I understand it, Judge
14 Kelley, that (inaudible) Staff has found acceptable
15 in individual cases then Grand Gulf in the first I
16 guess (inaudible) Catawba, that it has been able to
17 demonstrate through the identification of resolution
18 of this, 16 potential generic problems that have been
19 identified in the testing program. That's the entire
20 phase 2 of quality and revalidation program would not
21 have to be completed prior to, or through at least
22 one fuel cycle and I believe that was the decision
23 at Grand Gulf and that was the basis of that statement.

24 JUDGE KELLEY: Okay. In Grand Gulf, was that
25 a Staff decision? I'll ask it differently. Is Grand

1 Gulf a contested case?

2 MR. O'NEILL: I'm not sure. I'm not sure.
3 I don't think that they have had litigation on the
4 diesel generator issue.

5 JUDGE KELLEY: Okay, thank you. I think I
6 understand what you're saying.

7 MR. O'NEILL: But I believe they had in
8 effect it would be a Staff decision.

9 JUDGE KELLEY: Okay, thank you. I want to
10 ask you too, if you're the right one, Mr. O'Neill.
11 A few of those dates that we have heard referred to
12 in the past has been June of 85, sometime in June,
13 is that correct?

14 MR. O'NEILL: That's correct.

15 JUDGE KELLEY: I believe I saw a reference
16 not long ago to an application by the Staff for an
17 extension of time on the construction permit for
18 Shearon Harris. Am I right about that and if so, does
19 that have any bearing on fuel load date?

20 MS. MOORE: By the way it does not have any
21 bearing on the fuel load date.

22 JUDGE KELLEY: Excuse me?

23 MS. MOORE: It does not, there was such an
24 application which was granted but it did not have any
25 bearing on fuel load date. The area of time that was in

1 the original construction permit needed to be extended
2 in order to meet our current schedule.

3 JUDGE KELLEY: Okay, doesn't affect fuel load,
4 does it affect criticality?

5 MS. MOORE: No.

6 JUDGE KELLEY: Okay, well what we've said
7 so far is really background and some relatively current
8 developments. It just seems to us that under these
9 circumstances it might be timely to revisit these
10 pending contentions on TDI diesels and I suppose the
11 Board could take one of several postures.

12 We could rule on those contentions and either
13 rule them in or rule them out. We could take some
14 other course of action, at least for now. It seems
15 fair to say that if we let them in it would be a safety
16 issue that would fall outside the present schedule for
17 safety hearings.

18 It seems to us furthermore that with some
19 additional information upcoming there is at least some
20 potential for additional late contentions in this
21 area as more, more information becomes available.
22 For example your testing and inspection program at
23 Shearon Harris, Mr. O'Neill. I gather you are going to,
24 you're in the process of doing that right now, are you
25 not?

1 MR. O'NEILL: That's correct.

2 JUDGE KELLEY: Okay and there will come a time
3 when you will make a filing with the NRC Staff with
4 reference to that program, right?

5 MR. O'NEILL: At some point. There is not
6 a schedule for that as of now.

7 JUDGE KELLEY: But at some point that will
8 happen.

9 MR. O'NEILL: I might mention, Judge Kelley,
10 in that first paragraph on page 2 indicated that a
11 marked second, in order to be considered a full
12 program plan.

13 JUDGE KELLEY: Yes.

14 MR. O'NEILL: The Staff has for some time
15 now started a test on that plant. The plant fuel
16 for that aspect of (inaudible)
17 and we are looking forward to repeating that SER
18 which I understand would be dated the 5th (inaudible)

19 JUDGE KELLEY: I'm having a little trouble
20 hearing you. I don't know how the other people
21 are doing. Is Mr. O'Neill coming through clearly to
22 other people?

23 MR. BAXTER: Yes.

24 MS. MOORE: Yes.

25 JUDGE KELLEY: Well go ahead, we will do our

1 best.

2 MR. O'NEILL: I think we (inaudible)
3 We had done a few and I understand it, I talked to
4 Mrs. Fuller (phonetic) yesterday that SER is issued
5 shortly. So it might be even issued before the
6 conference call. But it wasn't, in any event, we
7 may be in a position once the SER has been issued to
8 indicate precisely what, what the Applicant planned
9 to do. In response to that SER and if necessary what
10 is required for certain operations.

11 And in that respect, phase 1 reports that
12 haven't been issued that left the thoughts to the SER
13 commitment by Applicant will put in one place or a
14 series of documents (telephone noise)
15 what the Applicant's plan for resolving the identified
16 problems.

17 At that point it may make sense to draft
18 a contention that have Intervenor either adopt them or
19 revise them or file what they thought was the specific
20 information rather than the rather general contention
21 that were originally pleaded.

22 JUDGE KELLEY: I think you're making the same
23 general point that we were going to make here and that
24 is that it is an unfolding story as far as these
25 machines go. There is more information forthcoming.

1 I would say that without meaning in any sense
2 to indicate rulings on our part one way or another on
3 the pending contentions, this Board would very much
4 prefer if we are going to litigate TDI diesels to have
5 a more site specific approach that focuses on machines
6 that are actually at the facility as opposed to just to
7 pick an example the quality assurance at some manu-
8 facturing plant in California. We just think that more
9 site specific approach would be closer to everybody's
10 interest and a lot more practical for us to litigate.

11 So, as you say, Mr. O'Neill, as this informa-
12 tion, perhaps other information surfaces hopefully in the
13 not too distant future, that could provide a basis
14 for having a somewhat more site specific focus in this
15 area.

16 We are not, the Board isn't, we feel in any
17 posture today where we want to proceed to rulings on
18 contentions. We think frankly it's premature for the
19 reasons I think both Mr. O'Neill and I have just been
20 talking about. But we would urge you to, the Inter-
21 venors who are interested in pursuing this subject that
22 you get together, that you discuss these matters, that
23 frankly you negotiate something. If there are going to
24 be contentions that you get contentions that people can
25 agree upon, just as you have been able to do in certain

1 areas in the past and I think really that's the main
2 message we want to leave with you today. I want to
3 say a couple of things about experts for the Intervenors
4 also but let me ask my colleagues if that, if they
5 think I've conveyed our thoughts for today on diesel
6 contention.

7 Yes, I'm getting nods of ascent. Let me, the
8 point I want to make is this. I want the Intervenors,
9 Mr. Eddleman I guess these are actually your contentions
10 but let me just speak to all of the Intervenors here.

11 These are late contentions, if they are to be
12 contentions at this point on TDI diesel. They are
13 late in the sense that they are coming forward after
14 the time when contentions were originally due and that
15 puts the matter in a somewhat different posture than
16 we would be in were this an original contention so to
17 speak.

18 And what I am referring to is on the original
19 contention, take for example the health effects con-
20 tentions that we litigated back in June. It's a well
21 established principle in the NRC that an Intervenor
22 can come in, litigate an issue and make their case on
23 the basis of cross examination. They don't necessarily
24 have to put in an affirmative case with witnesses and
25 exhibits and the like.

1 The situation is somewhat different with
2 regard to a so-called late contention. There are
3 several cases on the point. The most recent one that
4 I think that we referred to in the past is an Appeal
5 Board decision called A Lab 747 (phonetic) and it was
6 in the November issue of the NRC Yellow Book. It is
7 about the Woops Facility in Washington. And to go
8 just right to the point, under that decision the
9 Board has discretion at least to require that an
10 Intervenor by way of making his substantial contribution
11 on the issue, that an Intervenor have an expert.
12 Either have an expert witness who will come and testify,
13 have an expert who will be there at the hearing to
14 assist in cross but have experts involved in a meaning-
15 ful way in the litigation. And I am simply saying
16 this to point out that Intervenors in other cases,
17 some have gotten experts. There is a lot of expert
18 testimony from the Intervenors in Shoreham, I'm aware
19 of that. The Catawba Intervenors have experienced
20 some difficulty, they report, in finding experts and
21 you would be in a position where this Board would
22 quite likely view the contention as dealing with such
23 a technical nature that expert assistance would be
24 necessary.

25 So, you should be bearing that in mind in

1 connection with the subject.

2 I think that's all I wanted to say but having
3 said quite a bit already, let me see if the Applicants
4 or Intervenors or Staff have further comments on this
5 subject of diesels. Mr. Baxter or Mr. O'Neill, anything
6 else?

7 MR. O'NEILL: I have nothing.

8 JUDGE KELLEY: Mr. Baxter?

9 MR. BAXTER: No, thank you.

10 JUDGE KELLEY: Okay, Mr. Eddleman?

11 MR. EDDLEMAN: Judge, I couldn't hear whether
12 the Staff or Mr. O'Neill said anything. I gather they
13 didn't.

14 JUDGE KELLEY: I think not. Mr. Baxter
15 did not have anything. Mr. O'Neill, you did not have
16 anything to add?

17 MR. O'NEILL: No sir.

18 JUDGE KELLEY: He does not. And I haven't
19 gotten to the Staff yet.

20 MR. EDDLEMAN: Okay. Well I understand this
21 business about experts there. I have talked to some
22 people about it. I don't know what kind of availability
23 or costs I might be getting into but I at least, I know
24 the subject is out there. I know that there are a few
25 people who are available. I am perfectly willing to

1 negotiate with the Applicants over this . try to make
2 it site specific as much as possible although I would
3 say just as my understanding of the matter is that the
4 Applicants are ultimately responsible for the quality
5 assurance of everything that they install at their
6 plant. And whether somebody else screwed it up or
7 they did.

8 JUDGE KELLEY: Well I thank your, appreciate
9 your willingness to go forward and negotiate it. As
10 far as, you know, you may well have a different view on
11 the contention between yourself and them and if you can
12 negotiate them, that's fine, and if you want to press
13 for another contention that they won't agree to, then
14 we will rule when the time comes.

15 MR. EDDLEMAN: Okay.

16 JUDGE KELLEY: Okay. Staff?

17 MS. MOORE: I'd only add that since the Staff
18 is so deeply involved in the diesel question, that if
19 there are any negotiations that take place, the Staff
20 ought to participate in them.

21 JUDGE KELLEY: By all means. I didn't, in
22 referring to the Applicants mean in any sense to exclude
23 you and we think it would be extremely important that you
24 do participate and be kept apprised.

25 MS. MOORE: Okay.

1 JUDGE KELLEY: Okay.

2 MR. EDDLEMAN: Judge, I certainly agree with
3 that too. The reason I was talking about the Applicants
4 was that the Staff had projected to these that they had
5 supported them. But certainly I would be more than
6 willing to involve the Staff in any discussions.

7 JUDGE KELLEY: They did not object to the
8 admission of your 178 and 179 but I am sure that they
9 would have a view, pro or con, on anything else that
10 would have come up. Particularly if you point more to
11 site specific things I am sure that they would have a
12 very helpful participation. They may not agree with
13 some of the things that you would want.

14 MR. EDDLEMAN: That's right, Judge.

15 JUDGE KELLEY: Right, so they should be
16 included.

17 MR. EDDLEMAN: Yes, I quite agree.

18 JUDGE KELLEY: A comment on the passing
19 diesel generators now and the place of hearing, question.
20 We initially attempted to line up a suitable place down
21 in Raleigh for the 5th of September and thereafter.
22 And we did not have much success. The Federal Court
23 Building on New Bern Street that we have spent some
24 uncomfortable hours in on the second floor, I think
25 that's available although we thought that was sort of a

1 last resort. And we would rather not use it for
2 reasons obvious to everyone.

3 The Bankruptcy Court which was fine, it's
4 status is extremely questionable. There is some
5 recent litigation involving Bankruptcy Courts and
6 Judges and without getting into that, they simply
7 can't give us any commitment down there. They were
8 very cooperative and wanted to help but they can't
9 promise a thing. So that's not an option.

10 And having gotten nowhere on that, I did have
11 a discussion with Mrs. Flynn awhile back and took her
12 up on her offer to help us out on this problem and we
13 haven't talked since. Do you have any good news this
14 morning, Mrs. Flynn?

15 MRS. FLYNN: We think so. One of the para-
16 legals who works with us, Edie McCrae, did a survey of
17 the city hearing rooms, administrative hearing rooms,
18 court rooms and public, other public buildings. And
19 none of the agencies of the court was able to give us
20 any time at all beyond a day here and a day there in
21 their schedules but the Raleigh Civic Center has a room
22 that they say is available. They can give us a block of
23 time and Miss McCrae has seen it and thinks that it is
24 satisfactory. I was anxious to go myself and look at it
25 and I am going to do that today. And (inaudible)

1 we think that it is going to be workable. They can
2 set it up for a hearing contract. So that's the best
3 thing that we've found. And it's very close to the
4 Bradford Motel.

5 JUDGE KELLEY: Just across the street, right?

6 MS. FLYNN: Right. So that if it works that
7 would be probably as convenient a place as any to the
8 Board and I think that they would make, I think that is
9 going to be the best thing that we can find. But
10 she was pleased enough with it.

11 JUDGE KELLEY: Well given our alternative
12 of the second floor on New Bern Street, we don't have a
13 very high standard. I very much appreciate all of the
14 work that you have done and that sounds promising. I
15 am sure that the Board would be happy, if you don't
16 mind, to delegate the judgment to you. You can take
17 a look and if it looks good and we can have it, we could
18 confirm by letter up here if that's necessary but we'd
19 I think just be smart just to take it.

20 MS. FLYNN: Right.

21 JUDGE KELLEY: Can we get it as of the 5th?

22 MS. FLYNN: Yes.

23 JUDGE KELLEY: That's fine and for about how
24 long, do we have a notion as to how long we can have it?

25 MS. FLYNN: That's through the 21st.

1 JUDGE KELLEY: That's pretty good. Well other
2 comments from other parties, that sounds promising.
3 Any thoughts from the Intervenors?

4 MR. RUNKLE: Yes, this is Don Runkle.

5 JUDGE KELLEY: Yes.

6 MR. RUNKLE: I have a question for Mrs. Flynn.
7 Is that one of the rooms downstairs?

8 MS. FLYNN: It's on the first floor.

9 MR. RUNKLE: Yeah, those rooms are pretty
10 nice. We would have no problem with that if it was
11 set up to hold enough people.

12 MS. FLYNN: Okay, we've agreed that it can
13 be.

14 MR. RUNKLE: Okay, that would be fine with
15 that.

16 JUDGE KELLEY: Staff, how does that sound?

17 MS. MOORE: That's fine with us.

18 JUDGE KELLEY: Well if Mrs. Flynn can get that
19 for us, let's just take it.

20 MS. FLYNN: Right, I'll go and look at it
21 today and we will try to confirm all the arrangements
22 this afternoon or Monday at the latest.

23 JUDGE KELLEY: Well thank you very much again
24 for undertaking the search and we appreciate it.

25 MR. EDDLEMAN: Judge, can I raise a question

1 about that?

2 JUDGE KELLEY: Yes.

3 MR. EDDLEMAN: I believe the Civic Center has
4 a very small number of sort of exhibitor parking
5 spaces and most of the other areas around there are
6 either metered or parking garages at greater distances
7 from it. I was wondering if they would reserve 50
8 parking spaces during these hearings or not.

9 MS. FLYNN: I have no idea. I will check on
10 that. We hadn't even thought about it to look at it.

11 JUDGE KELLEY: Okay, why don't you see what
12 they have got if anything. Any other comment on the
13 question of a court room?

14 Okay, now aside from the discovery dispute
15 between Mrs. Flynn and Mr. Read and Mr. Eddleman's
16 filing of yesterday, I guess it involves him and
17 Mr. Baxter, are there, is there anything else grown out
18 of this lengthy discussion that people want to raise for
19 the Applicants?

20 MR. BAXTER: None out of this discussion. I
21 could add one item to the agenda I should have raised
22 earlier. As long as we've got everyone.

23 JUDGE KELLEY: Go ahead.

24 MR. BAXTER: I, you know, either Mr. Eddleman
25 or Mr. Runkle filed any reply findings on the en-

1 vironmental matter? We have not received any. I wanted
2 to ask whether they have filed them?

3 MR. RUNKLE: This is Mr. Runkle. I, in my
4 response to your motion on the ex parte, I notified
5 that we were not planning to on the two points. So
6 we are not planning to, but I do not know about Mr.
7 Eddleman.

8 MR. EDDLEMAN: No, I know about Mr. Eddleman
9 and I haven't filed any either. So I am just notifying
10 the Board that we will not be filing any reply to the
11 Staff reply.

12 We have one last opportunity to file a
13 reply to replies and we will decline.

14 JUDGE KELLEY: Okay, so all the papers are
15 in, right?

16 MR. RUNKLE: Right.

17 JUDGE KELLEY: Okay. Okay. Anything else,
18 Mr. Eddleman, anything else to raise at this point?

19 MR. EDDLEMAN: I can't think of anything,
20 Judge. There might be something slow on my mind but
21 I can't think of anything.

22 MR. PAYNE: Judge Kelley, this is Travis
23 Payne.

24 JUDGE KELLEY: Right.

25 MR. PAYNE: I'm going to have to cut off of

1 this conference call. I have an appointment with a
2 client and I am 15 minutes late already.

3 JUDGE KELLEY: I think we're done. Go ahead.

4 MR. PAYNE: I just wanted to notify you,
5 that's all.

6 JUDGE KELLEY: That's fine. Thank you.
7 Okay. Anybody else have anything? Let's see, Dr.
8 Wilson?

9 DR. WILSON: Yes sir.

10 JUDGE KELLEY: Anything else?

11 DR. WILSON: No, nothing else.

12 JUDGE KELLEY: Okay and let's see, Mr.
13 Read?

14 MR. READ: No sir. But there is the
15 other matter.

16 JUDGE KELLEY: Yeah we will get to that, right.

17 MR. READ: The response.

18 JUDGE KELLEY: Right. And Staff, more?

19 MS. MOORE: I raised the point about whether
20 we even wanted to consider at this point the number of
21 people who can cross examine a witness but we could
22 put that off until later if it's more convenient.

23 JUDGE KELLEY: Well we can take a minute
24 anyway. I'm

25 MR. EDDLEMAN: Judge, this is Wells Eddleman.

1 I hate to mention this but I think I'd better at the
2 outset that Travis Payne was the joint Intervenor was
3 making more or less charge of that last.

4 JUDGE KELLEY: Okay. I think, well let me
5 make a suggestion. I gather that, have there been
6 discussions Mrs. Moore between yourself and Interwenors
7 or Staff that there appear to be disagreements on the
8 point?

9 MS. MOORE: There really haven't been anything
10 discussed on the matter.

11 JUDGE KELLEY: Let me make a suggestion. I've
12 indicated already the Board is not even going to be
13 around next week. Could you see if you could talk
14 to Mr. Payl. at least for openers and the Applicants
15 and find out if there is any disagreement on the
16 subject. If there is not we will just cruise on and if
17 there are disagreements maybe we could arrange to get
18 back on the phone the week after next and look into
19 it.

20 MS. MOORE: Certainly.

21 JUDGE KELLEY: Okay.

22 MR. BAXTER: Judge Kelley, Tom Baxter.

23 JUDGE KELLEY: Right.

24 MR. BAXTER: I add to that since the testimony
25 was just mailed yesterday, once the Intervenor's have

1 received the joint contention and testimony and see
2 how the testimony is organized, maybe they could confer
3 among themselves and get some vision into what they
4 would like.

5 JUDGE KELLEY: That seems reasonable. And
6 you will be looking at actual testimony instead of
7 discussing an abstract question.

8 Why don't we just put over. But in the
9 meantime, Ms. Moore, you might also just explore the
10 questions, at least with Mr. Payne if he was the lead
11 speaker on it and see if there are going to be some
12 obvious problems surfacing or not and if there are,
13 let's do talk about it a week after next.

14 Could I leave it to you, Mrs. Moore, to get
15 in touch with me the week after next if we need to have
16 a talk about it?

17 MS. MOORE: Yes.

18 JUDGE KELLEY: Okay, fine. Anything else
19 from anybody other than these two matters that I have
20 already referred to?

21 Okay, well again there is Mrs. Flynn and
22 Mr. Read have a dispute and Mr. Eddleman and Mr.
23 Baxter may have one. I'm not sure. Others are free
24 to go if they wish and we can get into these two
25 remaining matters with those directly involved.

1 MR. READ: I think the Staff would be
2 interested in the Eddleman-Baxter case.

3 JUDGE KELLEY: Okay, fine. Anybody can hang
4 on that wants to. Let's take the Eddleman-Baxter
5 question first and just by way of background in terms
6 of what I know, Mr. Eddleman called me yesterday and
7 was in the process of trying to get a number of exhibits
8 xeroxed so he could file them and he said he was
9 having difficulty with the Xerox machine breaking down
10 or the copy center. And I gather that he had had
11 a prior conversation with you, Mr. Baxter and so he
12 put it to me and I said well, for today you will not,
13 if you can file today, that's fine. You will not be
14 prejudiced at least between yesterday and today when
15 we can talk about it. So it's a matter now of I guess
16 of finding out where things now stand and where we need
17 to go in the way of Mr. Eddleman getting his exhibits
18 filed.

19 Mr. Eddleman, did I restate that reasonably
20 enough?

21 MR. EDDLEMAN: Yes, Judge, as I recall what
22 you told me to do was to file as much as I could and
23 then we'd talk about the rest of it today.

24 JUDGE KELLEY: Correct.

25 MR. EDDLEMAN: What I did manage to get filed

1 were, well there are three exhibits which have been
2 filed last night. They were very kind to put me ahead
3 of some of the other jobs in order to get that out.

4 This big machine I am not even sure if it's
5 operating again today. However, I wanted to propose a
6 deal on that to the Applicants and Staff anyway because
7 of the nature of what the rest of the stuff is.

8 The things that have been filed are the
9 pieces out of the Will Data Report Notebooks (phonetic)
10 which are probably the hardest things to find.
11 Everything else that I want to file is discovery in-
12 formation and it is like the Q-A procedures and
13 certain reports. Anyway all of these things have numbers
14 on them that were signed by the Applicant's paralegals.

15 JUDGE KELLEY: Can I ask whether any of the
16 papers that you are talking about now pertain to
17 management capability?

18 MR. EDDLEMAN: No, this is all 041, Judge, it
19 is all on the welders, welding.

20 JUDGE KELLEY: Okay, go ahead.

21 MR. EDDLEMAN: Welding, Q-A. So anyway it
22 turns out that is an extensive amount of stuff. It is
23 more than I had thought when I went talking to you
24 because I hadn't actually gone through the, some of it
25 turned out to be more extensive than I recalled it to be.

1 So it looks like, so the part that has
2 been served is harder to identify. What I would like
3 to propose since I have about 400 pages of the
4 other stuff and it would be pretty burdensome on me
5 to put out 14 copies of it, is that I could give the
6 Applicants a list of all the documents that are
7 involved and you know make the same offer that I made
8 to everybody else that has been filed previously, that
9 is if you can't find a copy of something, come ask me
10 and I will give you a copy. And serve one copy on the
11 Board and one on the Staff and I guess I have to
12 serve the three docketing service because that all
13 ready is 2 or 3,000 pages of copy and then also the
14 other parties, if they want copies they can ask me
15 for them and I'll get them to them but have the other
16 5 copies or so that are necessary to make the standard
17 10 available at the time of the hearing. Now that is
18 simply a matter of burdensome for copying it all off.
19 Because all the other documents are discovery documents
20 I got from the Applicants or Staff. I think from the
21 Staff and the Applicants.

22 JUDGE KELLEY: Let me make one observation.
23 I know in cases where I have been involved, it's true
24 that under the rules you have some large number of
25 copies to be filed and I guess when you add up this

1 service list it comes to 14, is that right?

2 MR. EDDLEMAN: Something in that range.

3 JUDGE KELLEY: Yeah, well, that requirement
4 adhere to, has been at least on pleadings and
5 reasonable sized papers. When you get up into great
6 big things, I have never seen an applicant file 14
7 copies of an FSAR for example. But on much shorter
8 documents some running some 50, 100 pages or more, the
9 Board has cut back on a number of required. Exactly
10 how many I don't know if I could say. But certainly
11 the Board doesn't need three copies of something that
12 is a foot high. I think you can assume that something
13 this voluminous, we don't need 14 of. Whatever we
14 need it isn't going to be 14.

15 Are you through, Mr. Eddleman, with your
16 proposal?

17 MR. EDDLEMAN: Yeah. Let me say, I've got
18 the stuff over there and if I give the word they will
19 make you as many copies as I tell them to provided the
20 machine is working today.

21 JUDGE KELLEY: Mr. Baxter?

22 MR. BAXTER: Well I have no problem with
23 skipping some of the other parties on the service list
24 who aren't interested in this contention. It doesn't
25 bother me. I would like to have today though Mr.

1 Eddleman's list of documents which he is unable to
2 get the reproduction accomplished today simply because
3 I don't think it would be fair for him to receive our
4 testimony which is now in the mail and on its way to
5 him. And then have him be able to decide what he
6 should have.

7 MR. EDDLEMAN: I absolutely won't do that.
8 The stuff is actually sitting in a box down at the
9 Copy Center and I can go down there and make you a
10 list right out of the box and he will call you up and
11 tell it to you today.

12 MR. BAXTER: Well I will get it to the people
13 in Raleigh. If you can't get that, if you can't get
14 those documents in the mail tonight, I would like that
15 today.

16 MR. EDDLEMAN: That's fine. No problems.

17 JUDGE KELLEY: So the list can be served
18 today.

19 MR. EDDLEMAN: Well it will be mailed today
20 but also I probably will try to verbally relay it to
21 the people in Raleigh if that's all right. The people
22 in Raleigh.

23 MR. BAXTER: That's fine.

24 JUDGE KELLEY: Okay, so the main concern is
25 that you have in your hand today the actual list of

1 papers that will be used. Staff? Comment on what's
2 been said?

3 MS. MOORE: Well, Mr. Eddleman has offered,
4 has agreed to provide us with a copy of the documents
5 that I think we would need because a list wouldn't
6 even help us because we don't have them.

7 MR. EDDLEMAN: That's right. That's why I
8 offered to give you a copy.

9 MS. MOORE: And that would be fine with us.

10 JUDGE KELLEY: Okay.

11 MS. MOORE: I would ask, these are again
12 related to 41, not to anything that is coming up in
13 September?

14 MR. EDDLEMAN: The only thing that I was doing
15 on joint 1 is explained in a paper that has been filed.
16 It is a thing that has already, been come under
17 discovery.

18 MS. MOORE: Okay.

19 MR. EDDLEMAN: I didn't want to rely on it.
20 I just told everybody this is what it is. This is the
21 date that it was filed, if you want an extra copy if
22 you can't find it, just call me and I will give you
23 one. It's a much shorter document.

24 Everything else that I have filed on, all the
25 other extensions, joint one, 116, everything else is, 165,

1 everything else is in the mail already. The only thing
2 that is missing is this part of 41. Part of 41 is
3 also in the mail. You're going to get a big stack of
4 stuff from me.

5 MS. MOORE: Okay. And the other one will come
6 in a reasonable amount of time, is that?

7 MR. EDDLEMAN: Yeah, if they can, now what we
8 are talking about is 3 or 4 copies of this, rather than
9 14, then the reproduction time is such that they might
10 even be able to make it on their smaller machine.

11 MS. MOORE: Okay, fine, I have no problem.

12 MS. FLYNN: Okay, this is Samantha Flynn.
13 May I ask Mr. Eddleman what pleadings he's talking about
14 when he designated crossing about management capabilities?

15 MR. EDDLEMAN: It's, it is on the affidavit that
16 was on 15AA and its supporting papers and it is referenced
17 to an actual document in the stuff that has been mailed
18 to you.

19 MS. FLYNN: Oh, oh. It was mailed today,
20 yesterday.

21 MR. EDDLEMAN: What was mailed yesterday.
22 Now that went to Shaw, Pittman. Dale Hall asked me to
23 send him the emergency planning second round inter-
24 rogatories and I sent them to him and I have also sent
25 my copy to Spence Terry at Fima. (phonetic)

1 But I only sent the stuff he requested to
2 Raleigh. I didn't send him the other stuff.

3 MS. FLYNN: At the very front in that
4 package, that refers to where it says contention
5 (inaudible)

6 MR. EDDLEMAN: That's right. You will see,
7 I don't have it here right in front of me but it says
8 something like notice of documental on joint contention
9 one and contention 65 and it tells you what those
10 documents are that have already been filed and then
11 it declares if you can't find it and if you want a
12 copy just ask me and I will give you a copy, give you
13 another copy that is. And it says that there is going
14 to be separate stuff on 116 and 41. Now the 116 stuff
15 has been filed last night and the 41 stuff, the parts
16 out of the Will Data Reports and the kind of reference
17 system that shows what stuff I got and the reference
18 system looks like. That was filed last night.

19 What's remaining is a great big stack of
20 stuff that is discovery documents which as far as I
21 recall are all numbered. But if they are not
22 numbered then when I make the list I will be putting
23 the title and date of the document.

24 JUDGE KELLEY: Okay. Have we, I think, it
25 sounds like we've worked this out, have we not?

1 MR. BAXTER: I just thought of asking, I
2 would just comment that we had, those pages are
3 numbered we hope to get those numbers. Not have to
4 look through the 14,000 pages of the Wills Data
5 Report.

6 MR. EDDLEMAN: That's what I'm telling you.
7 What has been served on you out of the Wills Data
8 Report are the actual reports. That I want to give
9 you. I actually made copies. They are not all of
10 the ones I got by any means but if I can cite an
11 example out of two particular volumes which have those
12 actual reports. I've reproduced those and they are
13 actually in the mail to you.

14 Then the other stuff is the stuff with
15 numbers and that's what I am going to give you a list
16 of today.

17 JUDGE KELLEY: Okay, well that seems to be
18 straightened out then between the Applicants and
19 Staff and you, Mr. Eddleman. Again one copy will
20 suffice for the Board. I wouldn't see why you would
21 have to serve the other Intervenors with those
22 documents. I mean serve the other parties but certainly
23 if you check with them and if they waive their right
24 as I expect they would, that would save you some money
25 and some trouble.

1 I'd also suggest if you are interested in
2 cutting back a little further that you put the question
3 to docketing and services here at the NRC and the
4 person to ask is William Clements. That is a D.C.
5 number and he is on 634-1437.

6 MR. EDDLEMAN: Okay.

7 JUDGE KELLEY: He may say he needs all three
8 and if he does, he does. But you can tell him that as
9 far as the Board's concerned, less will do.

10 MR. EDDLEMAN: Okay, I will ask him, thank you
11 Judge.

12 JUDGE KELLEY: Okay. Now does that, that
13 takes care of that, does it not?

14 MR. EDDLEMAN: I believe so.

15 JUDGE KELLEY: Okay.

16 MR. EDDLEMAN: Let me make clear now that
17 unless something breaks down, all the rest of the stuff
18 is going in the mail tonight, as soon as possible.

19 JUDGE KELLEY: Fine. Good. Mrs. Flynn, we
20 have in, and Mr. Read, we have got Mrs. Flynn's letter
21 to Mr. Read dated August 9 with respect to a dispute
22 over access to some documents. Mrs. Flynn, could you
23 just give us a brief paraphrase of what this involves
24 and where things stand?

25 MS. FLYNN: Yes. I don't have much to add.

1 The most of it is in the letter. It is that, I believe
2 it said it was Monday. I think there is a typographical
3 error in the letter on the date. On Monday, it was
4 Monday I believe that Mr. Read telephoned Mr.
5 Carrow who expressed an interest in seeing a document.
6 And Mr. Carrow told me that given that we had made
7 those available expressly for 30 days and had advised
8 them they would not be available after that, we would
9 not in a position to give them and we had had the Board
10 direct us to do so.

11 My letter was an effort to explain after
12 that the difference. (inaudible)
13 been advised that request (inaudible)
14 on types of files that are used in the company's
15 business and they have to be returned after a
16 reasonable time to the people who work with those
17 documents. And in this case there are some of those
18 and some have been returned.

19 Secondly, as as important, is that many of
20 the documents are necessary to us in preparing for
21 our case. We reviewed them for testimony and now we
22 will use them for witnesses for cross examination. The
23 hearing is less than a month away and we feel it will
24 seriously effect our ability to adequately prepare if
25 we now are involved in a massive document production.

1 The interrogatories that were filed were
2 numbered at 117 but most of those that are specific
3 have subparts and we just looked at two of them. At
4 least have subparts of 75 or more. Some have subparts
5 of 100 or more.

6 So we are talking about an enormous amount of
7 documents here.

8 MR. READ: Judge Kelley, if I might interrupt
9 and nip this in the bud. I don't think we are
10 interested in looking at all the documents that were
11 identified in response to those interrogatories and

12 --

13 JUDGE KELLEY: This is Mr. Read speaking,
14 right?

15 MR. READ: Yes sir.

16 JUDGE KELLEY: All right, thank you.

17 MR. READ: I think that basically only about
18 5 categories of documents we would like to look at.
19 Most of the other ones are in the public record or
20 documents we already have. So that, I don't foresee
21 that the burden will be as great as Mrs. Flynn anticipates,
22 makes out being. I guess I had anticipated calling
23 you yesterday and was waiting to get this letter from
24 them and didn't have a chance to because the letter
25 arrived rather late and as a result I didn't have a chance

1 to make my position clear in advance. I realize that
2 we didn't take advantage of the availability that was
3 set forth in that response to request for production but
4 I think the pressure of other matters and our usual
5 lack of resources made that difficult at the time and
6 the document by itself I don't think excludes the
7 possibility that the document has been dragged out of
8 some box somewhere, it could still be looked at
9 after that period has expired.

10 If you want me to list the documents we
11 are interested in looking at and see what Mrs.
12 Flynn says or make a ruling based on that, I would
13 be happy to.

14 JUDGE KELLEY: I guess so far I am not
15 satisfied that you have shown, it would take some
16 kind of good cause showing to in effect reopen
17 discovery at this point and I don't find myself
18 persuaded by what has been said. Now you did, these
19 documents were put in a repository for inspection for
20 a period of time, couldn't get to it then, seems to
21 me you could have complained at the time that the
22 time was too short and sought relief from the Board but
23 now we are sometime after the time when they have been
24 withdrawn for apparently good reason and you are
25 asking that they be dug back out and I need something

1 more than just the press of business as the justification
2 for doing that.

3 MR. RUNKLE: Judge Kelley, this is Mr. Runkle.
4 I would like to ask about that just a little.

5 JUDGE KELLEY: Okay.

6 MR. RUNKLE: In their response to inter-
7 rogatories, the Applicant cited entire documents or
8 whatever or a whole series of reports or stuff and in
9 a couple of instances said and other documents which will
10 be defined.

11 I think roughly there was at least a roomful
12 of documents that we could have looked at. Part of the
13 reason we delayed was that I think that after we get
14 their testimony, their pre-trial testimony we may want to
15 look at exact things. It is real hard to go through
16 you know, hundreds, hundred thousand pages of documents
17 and thought that may or may not be relevant to the
18 hearing. I think that the focusing in, and they will
19 certainly be more focused after we get their testimony
20 and be able to get those specific documents.

21 JUDGE KELLEY: Well isn't that an argument
22 that we ought to continue discovery past the filing of
23 testimony? That's not what we normally do.

24 I can see that on an issue like management
25 capability particularly, it is sort of a broad and

1 vague contention, that there may be an awful lot of
2 paper to look at but that is a contention that you
3 chose to litigate.

4 MS. FLYNN: I know of nothing in NRC practice
5 that contemplates discovery occurring after the
6 filing of testimony and these documents have been
7 available for over three months and we would have
8 worked with the Intervenors in any way for us to make
9 available specific documents that they had requested,
10 but there has been no communication about this what-
11 soever.

12 JUDGE KELLEY: All right, anything else
13 from the Intervenors and then the Board will
14 consider it.

15 MR. READ: Just one point, Judge Kelley.
16 Just that the discovery is the making available of the
17 documents and not our actual looking at them. I guess
18 we could have come over there and copied off a million
19 pages of documents and reviewed them at our leisure
20 but we simply don't have the time to do that and I
21 think that now that we have focused our inquiry to
22 a small number of files, I don't think that, that by
23 the rules themselves we ought to be precluded from doing
24 that.

25 MS. FLYNN: Let me just add one thing. I had

1 discussed I believe with Mr. Runkle back, and this was
2 early on, I think in early May when we filed these,
3 that if the Intervenor's that had identified specific
4 interrogatories, answers as the documents that were
5 referenced therein, that if they had an interest in
6 seeing, we would make those, the three files available.
7 So they could have come and looked at what they wanted
8 if they couldn't look at a million documents in three
9 months they could have looked at a part. That doesn't
10 preclude them, that is not logical that they couldn't
11 come and look at some.

12 JUDGE KELLEY: Okay, I think the Board can
13 take this now and if you want to stand up and stretch
14 again for a minute or so we will consider it and we
15 will come back and rule on it.

16 (There was a short break.)

17 JUDGE KELLEY: Okay, the Board is back on.
18 Are the parties there, Mr. Read?

19 MR. READ: Yes sir.

20 JUDGE KELLEY: Mr. Runkle?

21 MR. RUNKLE: Yes sir.

22 JUDGE KELLEY: And Miss Flynn?

23 MS. FLYNN: Yes.

24 JUDGE KELLEY: Well this comes down as we
25 view it as a request to reopen discovery and discovery

1 on this contention has been closed for some time now.
2 We are going to deny this request. I might point out
3 that to the extent that your concern is on documents
4 that are referred to in the testimony, if it is a
5 crucial document I assume the Applicants may offer it
6 as an exhibit and then you will have a chance to read
7 it and cross examine on it and the like.

8 But to other documents, the normal NRC
9 practice is to have discovery for a period of time
10 following the admission of a contention and to close
11 it and then to have a period of time for summary
12 disposition and then to move on to preparation for
13 testimony. And the fact that it is burdensome to go
14 over lots of paper during the discovery period on a
15 broad contention is a fact and that is something
16 though that the Intervenor that raises that con-
17 tention has to live with. We do not believe that
18 we have any good reason, any sufficient reason to
19 reopen that process now. This could have been done
20 earlier. It can be some, perhaps some work on your
21 part, but that's the way the system was supposed to
22 run. There are legitimate reasons that the Applicants
23 have enumerated why they shouldn't be put into the
24 position of reopening their, their repository at this
25 stage of the game. And so that is our ruling and the

1 request is denied.

2 Now I don't have anything else. Anything
3 else from the Applicants?

4 MR. BAXTER: No, I don't have anything else.

5 JUDGE KELLEY: Okay, Mr. Read? Mr. Runkle?

6 MR. RUNKLE: No sir.

7 JUDGE KELLEY: Dr. Wilson? He may have
8 left us. And Mr. Eddleman?

9 MR. EDDLEMAN: Judge?

10 JUDGE KELLEY: Yeah.

11 MR. EDDLEMAN: I'm still here because I can't
12 release this phone. I hang it up and it stays so I
13 am going to have to wait until everybody gets off to get
14 off. I don't have anything further.

15 JUDGE KELLEY: Okay, we are about to quit.
16 Ms. Moore?

17 MS. MOORE: I don't have anything.

18 JUDGE CARPENTER: This is Judge Carpenter. I
19 would just like to make comment with respect to our
20 discussion of the thermal luminescent dosimeter accuracy
21 contention. Everybody was so agreeable it makes me
22 develop a sense of caution. Particularly, Mr. Baxter,
23 in the past, the Board has suggested for example with
24 respect to one of the environmental contentions that a
25 conference be held and outlined some points that might

1 be considered. 1, 2, 3, 4, 5 and 6. And then we
2 learned that the conference was held but an issue
3 that wasn't on the list wasn't discussed. I ask that
4 we not be simplistic.

5 I am very hesitant on making a list of
6 things this morning to clarify. We do that to be
7 helpful but do not indicate that the list is all
8 inclusive in any way. I just want you not to look at
9 that brief statement as being comprehensive.

10 MR. BAXTER: I appreciate that, thank you.

11 JUDGE KELLEY: Okay, ladies and gentlemen,
12 I think we can quit at this point. As we are headed
13 up toward hearing, feel free to contact the Board if you
14 think further phone conferences or communications of
15 one kind or the other are needed or might be helpful.
16 Thank you for today. Good bye.

17 (Telephone conference over at 12:43 P.M.)
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CERTIFICATE OF PROCEEDINGS

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

In the matter of: Carolina Power & Light
Company and North Carolina
Eastern Municipal Power
Agency

Shearon Harris Nuclear
Power Plant
Units 1 and 2

Date of Proceeding: August 10, 1984

Place of Proceeding: Bethesda, MD.

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

Melba Reeder/878
Official Reporter
MELBA REEDER

Karin Wooters/878
Karin Wooters
Official Transcriber