

ORIGINAL

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of:

CAROLINA POWER AND LIGHT COMPANY  
AND NORTH CAROLINA EASTERN  
AND MUNICIPAL POWER AGENCY

SHEARON HARRIS NUCLEAR POWER PLANT  
UNITS 1 AND 2

Location: Bethesda, Maryland

Pages: 2278 - 2345

Date: August 27, 1984

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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 5 In the Matter of: :  
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 6 CAROLINA POWER & LIGHT COMPANY : Docket Nos.  
 and NORTH CAROLINA EASTERN : 50-400 OL  
 7 MUNICIPAL POWER AGENCY : 50-401 OL  
 :  
 8 Shearon Harris Nuclear Power Plant, :  
 Units 1 and 2 :  
 9 :  
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Room 453  
 4350 East West Highway  
 Bethesda, Maryland

Monday, August 27, 1984

The hearing in the above-entitled matter  
 convened, pursuant to recess, at 9:00 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:

2 On Behalf of the Applicant, Carolina Power and Light  
3 Company:4 SAMANTHA FRANCIS FLYNN, ESQUIRE  
5 Carolina Power and Light Company  
6 Post Office Box 1551  
7 Raleigh, North Carolina 276028 THOMAS A. BAXTER, ESQUIRE  
9 Shaw, Pittman, Potts & Trowbridge  
10 1800 M Street, Northwest  
11 Washington, D. C. 2003612 On Behalf of the Nuclear Regulatory Commission Staff:13 CHARLES A. BARTH, ESQUIRE  
14 JANICE E. MOORE, ESQUIRE  
15 BRADLEY JONES  
16 Office of the Executive Legal Director  
17 U.S. Nuclear Regulatory Commission  
18 Washington, D. C. 2055519 On Behalf of the Intervenor Conservation Council  
20 of North Carolina:21 JOHN D. RUNKLE, ESQUIRE  
22 307 Granville Road  
23 Chapel Hill, North Carolina 27514  
24  
25

P R O C E E D I N G S

1  
2 MR. BAXTER: For the applicants, Thomas A. Baxter,  
3 Shaw, Pittman, Potts and Trowbridge in Washington.

4 MS. FLYNN: For the applicant, Samantha Flynn  
5 and Hill Carrow, counsel for applicant in Raleigh.

6 MR. KELLY: Okay, and staff?

7 MR. BARTH: I'm Charles A. Barth, B-a-r-t-h.  
8 I'm counsel for the NRC Staff.

9 MR. KELLY: Okay, and Mr. Runkle for the  
10 intervenors?

11 MR. RUNKLE: John Runkle, counsel for the  
12 intervenors.

13 MR. KELLY: All right. And Bradley Jones is  
14 with us, too, right?

15 MR. JONES: Yes, sir.

16 MR. KELLY: All right, with the NRC Staff?

17 MR. JONES: That's correct.

18 MR. BARTH: Mr. Jones is the regional counsel  
19 in Atlanta.

20 MR. KELLY: Right. Okay, Judge Bright just  
21 joined us. We just got the roll call and that was about  
22 it. Okay. The subject of the call today, as I think you  
23 all know, is about requests for subpoenas.

24 We received two requests, one from Mr. Runkle  
25 on behalf of the joint intervenors dated the 17th about

1 Joint Contention 1, the management contention. The second  
2 one was from Mr. Edelman also dated the 17th, and that's  
3 about his contentions 41 and 65.

4 We don't intend to talk about Mr. Edelman's  
5 request today. I did talk with him on Friday and, about  
6 how and when it ought to be taken up. I indicated to him  
7 that I had an informal indication from applicants and  
8 Staff that there may be objections to at least some of his  
9 requests and we thought, subject to agreement of all of  
10 you, that we should bring that matter up on the first day  
11 of the hearing next week, along with other procedural  
12 matters that I'm sure we'll have to speak to first.

13 And we could either then go ahead and hear the  
14 merits of the individual requests then or we could agree  
15 on a time not long thereafter to do it, but that's where  
16 it stands as of now. Is that, Mr. Baxter, from your  
17 standpoint, a satisfactory approach?

18 MR. BAXTER: Yes, that's fine.

19 MR. KELLY: And, Mr. Barth?

20 MR. BARTH: Yes.

21 MR. KELLY: I think there's just one name in  
22 the case of the Staff. Okay. Of course, those, the  
23 latter set, the Edelman requests, pertain to the hearing  
24 that's now set for the 10th of October, so we've got a  
25 little more time in that regard.

1 Last week in the course of the week, after I  
2 received these requests, I talked briefly to several  
3 people. I talked with Mr. O'Neil and Mrs. Flynn for the  
4 applicants and Mr. Barth and Miss Moore at different times,  
5 and Mr. Edelman, as I just indicated.

6 I attempted to reach you, Mr. Runkle, but I just  
7 wasn't able to, and likewise, Mr. Payne was out of, I  
8 believe out on vacation last week. But the only purpose  
9 of those calls was to indicate to the parties our preference  
10 in the way of procedure on these subpoena requests.

11 As you all know from reading the rule on  
12 subpoenas, that's 10 CFR 2.720, the rule contemplates,  
13 oh, about a three-step procedure. The Board, upon a  
14 request for a subpoena, is to go ahead and issue it.

15 I'll just quote the last sentence of 720-A.  
16 "The officer to whom application is made," meaning the  
17 Board, "may require a showing of general relevance of  
18 the testimony or evidence sought and may withhold the  
19 subpoena if such a showing is not made, but he shall not  
20 attempt to determine the admissibility of evidence. Any  
21 objections on an evidentiary round are held over to the  
22 hearing."

23 Then the scheme under the rule is that there'll  
24 be a motion to quash (ph) filed in the case of a witness  
25 who objects to coming, and typically that means that

1 counsel for the Staff or the applicant, as it happens to be  
2 here, would file a formal motion to quash which then would  
3 be filed by, presumably, a response to the motion to  
4 quash, and that's a fair amount of time and a fair amount  
5 of paper and we just prefer, in the interest of practicality  
6 and timesaving, to follow a procedure such as the one we're  
7 suggesting for today, namely this: Now that we have in  
8 hand these requests for subpoenas and we've alerted  
9 people in advance, we would like to simply hear on the  
10 record any objections that parties may have to the  
11 appearance of the people involved, followed by any response  
12 that the requester of the subpoena wants to make.

13 And then we would take that under advisement  
14 and, I would think, get a ruling out on it to you in the  
15 next couple of days, sometime this week at least, so that  
16 you would know where you stand on those issues.

17 I'll just note one other thing. The Staff has  
18 a somewhat different status than other parties in the case  
19 when it comes to issuance of subpoenas. That is to say  
20 subpoenas for the appearance of Staff employees beyond  
21 showings of reasonableness and irrelevance, it is required  
22 if the Staff objects to a particular subpoena that the  
23 applicant show special circumstances, and that's spelled  
24 out, as I'm sure you know, in the last sentence of  
25 720-H2, small i.

1 But with that as background, let me just go  
2 around to the three parties involved this morning.

3 MR. BARTH: Mr. Chairman, Charles Barth.

4 MR. KELLY: Yes?

5 MR. BARTH: Would you have any objection if I  
6 lead off?

7 MR. KELLY: I don't think I do if anybody else  
8 doesn't. Is that all right with the applicants?

9 MS. FLYNN: Yes.

10 MR. KELLY: Okay. I think that's okay. I was  
11 just going to ask whether, just for the record, anyone  
12 objects to this procedure we're taking as opposed to the  
13 more formal approach apparently contemplated under the  
14 rule. Any objections?

15 MR. BAXTER: I have no objection, Your Honor.

16 MR. KELLY: Okay.

17 MS. FLYNN: Applicants have no objection.

18 MR. KELLY: This is John Runkle for the  
19 intervenors. I'm prepared to answer orally, depending  
20 on what the objections are to these. I may have to  
21 request an opportunity of responding at a later date.

22 MR. KELLY: Well, why don't we take this  
23 approach then? Let's begin this morning and see where  
24 we get. Hopefully, you can say whatever you want to say.  
25 If in a particular case you get an objection from let's

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1 say the applicants or the Staff on a point that you didn't  
2 really have in mind and you feel you need to think about  
3 it or look something up, then perhaps we could arrange  
4 to have a follow-up paper on that. But I hear you saying,  
5 Mr. Runkle, you're willing to give it a try.

6 MR. RUNKLE: Oh, yeah. Yeah, I think we can  
7 carry through, but I don't want to give up my opportunity  
8 in case something surprising comes up.

9 MR. KELLY: Well, okay. Mr. Runkle wants that  
10 reservation, and I think, subject to whatever fairly  
11 tight time limit we might set, and we can cross that  
12 bridge when we come to it, I'd suggest we go ahead and  
13 see how far we can get.

14 I would just note one thing, Mr. Runkle. In  
15 the case of the four people on the Staff with respect to  
16 whom you asked for a subpoena, you give a paragraph apiece  
17 indicating why you're calling them and what you expect  
18 them to testify to.

19 MR. RUNKLE: Yes.

20 MR. KELLY: And you did not do that, however,  
21 in your paper on the four people from the CP&L, and the  
22 Board... The way the rule is drafted, you don't have to  
23 do that initially if the Board doesn't require it, but  
24 I think it would be helpful and we are going to ask you  
25 to, when we get to the applicants, to give us first some

1 brief indication of why you want this particular person  
2 and what you expect them to speak to. Perhaps between  
3 you and Mrs. Flynn you know that already, but we'd just  
4 like to hear it as an opening line.

5 MR. RUNKLE: Okay.

6 MR. KELLY: Okay. Well, I think then we can  
7 go to the individual requests and we would begin with  
8 Mr. Barth. Let me just say one further thing. It's a  
9 lot simpler to read a record if you had everything that's  
10 said about any one person in the same place, so with that  
11 in mind, could you, Mr. Barth, speak to the first Staff  
12 request and we'll hear Mr. Runkle? Did applicants  
13 contemplate commenting on these requests for Staff  
14 subpoena?

15 MS. FLYNN: I'm sorry, I didn't hear that.

16 MR. KELLY: Do you contemplate having any  
17 comment on the request for subpoenas with respect to  
18 Staff personnel?

19 MS. FLYNN: No, we don't.

20 MR. KELLY: Okay. So it's just between  
21 Mr. Barth and Mr. Runkle, and we can take both Mr. Barth  
22 and Mr. Runkle on Cantrell (ph) and then on O'Reilly  
23 and then on Maxwell and on Lewis in that sequence.  
24 Okay, Mr. Barth, why don't you go ahead?

25 MR. BARTH: First of all, Your Honor, I think

1 we can omit Mr. Maxwell. Mr. Runkle and I have had some  
2 negotiations last week and we will put on... We've agreed  
3 to put on Mr. Maxwell as, with Mr. Bemis (ph) as part of  
4 our direct case to assuage the consideration raised by  
5 Mr. Runkle in the second full paragraph on page 3 of  
6 his August 17, 1982 filing. Mr. Maxwell is eliminated  
7 from our discussion.

8 MR. KELLY: Okay.

9 MR. BARTH: And second, I would like to mention  
10 that this has come up before, that is this opinion of  
11 witnesses, and if I have your indulgence, I would like  
12 very quickly to run through how this has been previously  
13 handled.

14 In a similar proceeding the intervenors wanted  
15 witnesses who had not voluntarily appeared. They filed  
16 subpoena requests with the Board chairman. The sub-  
17 poenaes were in the form that Mr. Runkle's subpoenaes are.

18 That is they wanted these witnesses for their  
19 direct case. This creates a problem because in 2.743B  
20 it says the rule that requires the prefiling of testimony.

21 And, of course, in our case prefiled testimony  
22 was due on August 9. If these subpoenaes would be granted,  
23 we would have no prefiled testimony by these people by  
24 August 9.

25 That was approached and solved in Zimmer that

1 when the subpoena request was made of the Board chairman,  
2 the intevenor proffered a summary of what he expected  
3 that subpoenaed person to testify to.

4 Here we do not have that. We have... This  
5 applies to the Power Company and the NRC witness. We  
6 have no proffer as to what Mr. Smith or the power company  
7 or Mr. O'Reilly for NRC would testify to that would  
8 support the intervenor's direct case.

9 And I think you have a substantial difference  
10 here between the procedure we have and Rule 45E1, the  
11 Federal Rules of Civil Procedure. There there is no  
12 kind of prefiled testimony.

13 It's simply walk in and testify off the cuff  
14 with training by your counsel. Here there are no  
15 surprises. If we have a direct case by intervenor of  
16 which Mr. O'Reilly for the NRC and Mr. Smith are a part,  
17 it is required that the intervenors prefile their  
18 testimony, which you know we can't do.

19 The only possible substitute is to prefile  
20 the (inaudible) files as requests for subpoena a summary  
21 or synopsis of what he expects to develop on an affirmative  
22 case by these people.

23 We don't have that. We object to all of the  
24 subpoenas on the basis that they would, issuance would  
25 thoroughly transgress 2.743B, which is the prefiled

1 testimony rule. There's no way that I or anyone else  
2 could prepare cross examination on these people from  
3 Mr. Runkle's affirmative case.

4 That is a major objection which we have to all  
5 the subpoenas and to the structure of the NRC hearing  
6 procedure. I would then add objections...

7 MR. KELLY: Let me ask you a question about  
8 that, Mr. Barth.

9 MR. BARTH: Yes, sir.

10 MR. KELLY: I think we can stipulate that  
11 there'd be no prefiled testimony from these witnesses,  
12 who would be, presumably, adverse or treated as adverse --

13 MR. BARTH: Yes, sir.

14 MR. KELLY: -- to the people who are subpoenaing  
15 them or asking to. And they didn't file a summary or  
16 outline of what they were expected to testify to so far,  
17 that's true. And then again, the rule doesn't ask for  
18 that.

19 It just asks for a general showing of relevance.  
20 What if the Board takes note of the thrust of your point  
21 and says, well, we'll issue the subpoena but we'll  
22 condition it upon the filing by some certain date of an  
23 outline of what you expect the person to testify to?

24 MR. BARTH: I would think that would... At this  
25 late stage I'm trying to be practical, not trying to be

1 a hard-nose. I think that would be a practical solution  
2 to the situation, Your Honor, with the further caveat that  
3 the Board would also rule to the relevance of that kind  
4 of testimony at that time as to the proffer.

5 MR. KELLY: Uh, ruling on relevance in advance?

6 MR. BARTH: Yes.

7 MR. KELLY: Well, we can think about it, I  
8 guess. If what a person is being subpoenaed for is, in  
9 the Board's view, clearly irrelevant, there's not much  
10 point in subpoenaing him. But, you know, if it's sort  
11 of murky, that may be a little bit hard to do. But I  
12 understand your point.

13 MR. BARTH: May I take up Mr. O'Reilly who is  
14 our Administrator of Regional 2, discuss a subpoena for  
15 him and also make a reference to your last note,  
16 Your Honor?

17 If that subpoena were issued for Mr. O'Reilly  
18 and Mr. O'Reilly would appear and testify for Mr. Runkle,  
19 there's no question but the Staff would waive all pre-  
20 liminary and foundational questions for the ultimate  
21 (inaudible) of Mr. O'Reilly, do you think that Carolina  
22 Power and Light is technically qualified to operate  
23 the plant, there's no question Mr. O'Reilly's going to  
24 say yes.

25 As soon as he says yes, the contention's gone

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1 because there is no issue of law under dispute. There's  
2 no indication that Mr. O'Reilly would contradict or  
3 impeach the testimony submitted by Paul Bemis, but at  
4 that point he went to Mr. O'Reilly and had his approval.

5 For Mr. O'Reilly's case it would really be  
6 helpful if we had some idea of what it is that Mr. Runkle  
7 expects these people, the power company and the NRC people,  
8 to testify to so we can prepare for cross.

9 I think that your suggestion that to consider  
10 the subpoenas and to consider requiring a detailed  
11 proffer to be an acceptable solution, Your Honor. They  
12 start (inaudible) with Roy Cantrell, which appears upon  
13 page 2 of Mr. Runkle's filing.

14 MR. KELLY: And I'm a little concerned about  
15 format here. Are you saying that, that, that Cantrell,  
16 we should reach Cantrell and then come back to Riley  
17 or have you finished...

18 MR. PARTH: I would like to pick up on your  
19 suggestion and run through these one by one.

20 MR. KELLY: Yeah, but when I said that what  
21 I meant was when you finished what you've got to say  
22 about O'Reilly, we'd then hear from Runkle. And then  
23 you'd go on to Cantrell and then we'd hear from Runkle  
24 on Cantrell, and so on, so that we don't have to look  
25 all over the transcript for different arguments on the

1 same person is what I meant by that.

2 MR. BARTH: Yes, sir. When I refer to O'Reilly,  
3 I was referring to the general objection to the lack of  
4 having testimony by these people, the general objection  
5 to the whole structure.

6 MR. KELLY: Okay, but I wonder if, apart from  
7 that point which we understand, is there something...  
8 I must say Mr. O'Reilly's name is not unfamiliar to me.  
9 I had a request for Mr. O'Reilly in the Catawba Case  
10 which we turned down on the ground that he was a  
11 managerial levels person in Atlanta and didn't have any  
12 unique knowledge of the case and was too busy to come  
13 talk in our case.

14 MR. BARTH: I see your point, Your Honor. Let  
15 me continue with what I...

16 MR. KELLY: What about O'Reilly?

17 MR. BARTH: I think your suggestion appropriate  
18 and I'm sorry I transgressed and then Mr. Runkle has  
19 something to comment.

20 MR. KELLY: Let me just add, too, that I don't  
21 necessarily see that as foreclosing our request here.  
22 It's a matter of NRC record that I at least have been in  
23 a case where Mr. O'Reilly was requested and we found no  
24 exceptional circumstances, but what I wanted you to focus  
25 on is there anything exceptional about Mr. O'Reilly in



1 your view or not? What's his situation and why should he  
2 or shouldn't he come and testify?

3 MR. BARTH: Your Honor, Mr. O'Reilly is the  
4 Administrator of NRC's Region 2. Two point seven two on  
5 H2-i requires that a main NRC employee may not be sub-  
6 poenaed unless he has direct personal knowledge of a  
7 material fact not known to the witness made available by  
8 the Director for Operations.

9 The witness to be made available is Mr. Paul  
10 Bemis. Mr. O'Reilly is Mr. Bemis' supervisor. There  
11 is no information Mr. O'Reilly has which did not come  
12 to him regarding CP&L's management except through  
13 Mr. Bemis.

14 Clearly, he has no personal knowledge of a  
15 material fact which is also not known to Mr. Bemis.  
16 Second of all, we would object to Mr. O'Reilly on the  
17 basis that from the legislative history of the section  
18 providing for subpoenas, Mr. O'Reilly is the type of  
19 person who is not to be subpoenaed.

20 It is clear from the legislative history that  
21 not everybody who knows because of their supervisory  
22 capacity of some fact known by a subordinate should the  
23 supervisor be called.

24 The primary flood of all information to  
25 Mr. O'Reilly about Carolina Power and Light comes from

1 Mr. Bemis and he does not have any particular knowledge  
2 not known to Mr. Bemis. I additionally would point out  
3 that Mr. O'Reilly has to run that regional office.

4 He is a high executive with many responsibilities  
5 and can provide no detailed personal knowledge beyond that  
6 provided by Mr. Bemis, so we'd object to Mr. O'Reilly on  
7 those grounds. At this time I think it would be  
8 appropriate if Mr. Runkle made his comment.

9 MR. KELLY: Okay, Mr. Runkle, could you speak  
10 to Mr. O'Reilly?

11 MR. RUNKLE: The one problem that we have with  
12 Mr. Bemis is that he's only been involved with Carolina  
13 Power and Light for the last year and a half to two years.  
14 Mr. O'Reilly has been involved as, perhaps as Administrator  
15 of Region 2 for many years back.

16 The key date that we see in this matter is  
17 1979.

18 MR. KELLY: Let me just interrupt to ask you  
19 is Bemis, I know he's going to testify and I just don't  
20 recall clearly, is he the resident inspector now?

21 MR. RUNKLE: No, he's not, sir.

22 MR. KELLY: He's not? Where's Bemis? Is he  
23 in Atlanta?

24 MR. RUNKLE: Bemis is the resident inspector  
25 supervisor in Atlanta, Georgia.

1 MR. KELLY: Thank you. Go ahead, Mr. Runkle.

2 MR. RUNKLE: We see it as '79. That's when  
3 there was the remand case on the construction permit.  
4 You have to look at some of the problems of CP&L  
5 management, and I think, rightly so, suggested that there  
6 be all assortment made up of the management of the  
7 company.

8 The time period from 1979 to 1982 is now very  
9 important, and that's the time before Mr. Bemis has any  
10 personal knowledge. Mr. O'Reilly's sitting as the  
11 Administrator of Region 2 got reports from not only  
12 Mr. Bemis, but several other inspectors and the NRC  
13 Staff, sat on the (inaudible) Board at the LP.

14 Also signed off on all violations at that time.  
15 So we think that his personal knowledge of the entire  
16 operation and management of CP&L from '79 to the present  
17 date is real important.

18 The difference between this and Catawba is  
19 that in Catawba none of the (inaudible) was directed to  
20 management, per se. They were different parts of  
21 quality assurance.

22 But this contention is simply broader than that.  
23 It looks at the overall management, and somebody in  
24 O'Reilly's position I think would have the kind of over-  
25 view that would be real important to this case.

1 MR. KELLY: Okay.

2 MR. RUNKLE: One other point. I don't, I  
3 don't really put any weight on the argument that he's a  
4 busy man with responsibilities. I think everybody in  
5 this case are busy people with responsibilities and I  
6 don't put much weight on that.

7 MR. KELLY: Okay, fine. Thank you.

8 MR. BARTH: May we have a two-line reply to  
9 that, Mr. Chairman, on behalf of the Staff?

10 MR. KELLY: Okay, yeah.

11 MR. BARTH: There was, a Mr. Runkle pointed out,  
12 a remand hearing on the qualifications that ended up with  
13 a decision, initial decision, by the Licensing Board  
14 Chairman, by Mr. Smith, which found they were technically  
15 qualified in 1979. That's a dead issue today.

16 The contention is can these people operate  
17 that plant when it goes on line, which will be sometime,  
18 hopefully, next year or very soon.

19 MR. KELLY: Okay. Let's shift the focus then.  
20 You want to take Mr. Cantrell next, Mr. Barth?

21 MR. BARTH: Your Honor, Floyd Cantrell has  
22 not inspected a Carolina Power and Light nuclear facility  
23 since 1977, almost before anyone's ever heard of nuclear  
24 power.

25 Mr. Cantrell did make on inspection at

1 Brunswick in response to interrogatories by Mr. Edelman  
2 with the feeling the Staff did not adequately answer  
3 these and the Licensing Board ordered the Staff to  
4 answer the interrogatory of Mr. Edelman in regard to  
5 Cantrell's view.

6 As a result of that, Mr. Cantrell did go to  
7 Brunswick, took a look around and came back with his  
8 concerns assauged.

9 MR. KELLY: Well, for context, Mr. Barth, could  
10 you tell us where is Mr. Cantrell now and what's his job  
11 and what...

12 MR. BARTH: Cantrell is a section chief in  
13 Atlanta, Georgia. As I say, he's not inspected a CP&L  
14 plant since 1977 with this one exception, when he did  
15 take a look, as a result of your orders, for the Staff  
16 to give a more adequate response.

17 He has participated in no inspections or  
18 management conferences regarding CP&L since 1977. He  
19 has no personel... Going back to the regulation, he has  
20 no direct personal knowledge of a material fact not  
21 known to Mr. Bemis regarding whether or not Carolina  
22 Power and Light was qualified to operate that plant in  
23 1985.

24 MR. KELLY: Where is he in the heirarchy in  
25 Region 2? Is he, is Mr. O'Reilly his boss?

1 MR. BARTH: Yes, sir.

2 MR. KELLY: Is he immediately under O'Reilly  
3 or...

4 MR. BARTH: I would have to look at a manage-  
5 ment chart. He is a section chief so he's not. There  
6 are directors and assistant directors at least above him.

7 MR. KELLY: Okay.

8 MR. JONES: Mr. Chairman, this is Brad Jones.  
9 Perhaps I can help.

10 MR. KELLY: Yeah, please do.

11 MR. JONES: As a section chief he is the first-  
12 line supervisor that would be coordinating... If he  
13 had CP&L plants, which he does not, he would coordinate  
14 both the regional inspection and resident inspector's  
15 activities there. He would be the person to which all  
16 reports would go. That's what Paul Bemis does for  
17 CP&L.

18 MR. KELLY: When you say he has plants, I  
19 gather that he has assigned to him, he has assigned  
20 responsibility for certain plants?

21 MR. JONES: Yes. The way, the way the section  
22 chiefs are set up they're assigned an entire utility so  
23 in the case, for instance, of Mr. Bemis he has for  
24 several years been assigned responsibility for all  
25 CP&L plants.

1 Mr. Cantrell does not have responsibility for  
2 CP&L plants and I don't believe he has for a number of  
3 years. I think Mr. Barth is talking more recently than  
4 I am and '77 sounds reasonable to me as far as when he  
5 was last directly involved with CP&L.

6 MR. KELLY: Could you tell us which utility  
7 Mr. Cantrell is responsible for now?

8 MR. JONES: Uh, let me take a look. I might  
9 have a chart that says that and... It appears the  
10 plants that are listed under him are GBA plants.

11 MR. KELLY: Okay. Mr. Barth, you want to  
12 pick up again or have you made your point?

13 MR. BARTH: The next one is... O'Reilly  
14 we've...

15 MR. KELLY: No, are you through with...

16 MR. BARTH: Yeah.

17 MR. KELLY: Are you through with Cantrell?

18 MR. BARTH: Yeah.

19 MR. KELLY: Okay, let's go then to Mr. Runkle.

20 MR. BARTH: All right.

21 MR. KELLY: Right.

22 MR. RUNKLE: Mr. Cantrell is crucial to our  
23 case on the management contention since he was the base  
24 mark for (inaudible) the remand hearing in '79 was  
25 because of his many criticisms of the CP&L management.

1           That's sort of our baseline, what was going on  
2 there. We have him saying no problems they had and if  
3 we have somebody now saying that there are no problems,  
4 we want to draw the line between the two.

5           MR. KELLY: How would you... Your burden  
6 really is to show exceptional circumstance and how  
7 would you...

8           MR. RUNKLE: Well, there's no one else.  
9 Bemis has no familiarity with the plant in '79, and  
10 that's one of the, that's the one problem we have when  
11 we were addressing O'Reilly.

12           MR. KELLY: Would you be looking to Cantrell's  
13 knowledge, if he has knowledge, beyond Shearon Harris  
14 to other CP&L plants?

15           MR. RUNKLE: Yeah.

16           MR. KELLY: Have you spoken to that? I'll  
17 ask it differently. In the '79 case was he talking  
18 about Brunswick or other places?

19           MR. RUNKLE: Brunswick, and primarily it would be  
20 what was going on in the Brunswick Plant. And if he's  
21 gone there recently to check back, that's, that's  
22 important also.

23           MR. KELLY: Mr. Barth, didn't you tell us  
24 that Cantrell has had no CP&L work in recent times?

25           MR. BARTH: He has not been in a CP&L Plant



1       except for the response to the discovery, that was only  
2       for a couple hours, since 1977.

3               MR. KELLY: Oh, but that has been recent?

4               MR. BARTH: And since 1977, Your Honor, found  
5       that the initial decision on management two years later  
6       in 1979. So Floyd Cantrell has not had any experience  
7       with CP&L since the last initial decision by  
8       Chairman Smith.

9               MR. KELLY: Mr. Runkle, did you finish your  
10       comments?

11              MR. RUNKLE: Yes, I'll rest on that.

12              MR. KELLY: Okay.

13              MR. BAXTER: Mr. Chairman, this is Tom Baxter.  
14       Could I make one, please?

15              MR. KELLY: Yes.

16              MR. BAXTER: This... One of the main purposes  
17       of Mr. Cantrell's testimony would be because of his  
18       extensive testimony in the remand hearing in 1979. We  
19       do not... The public record of that hearing and the  
20       decision is available to Mr. Runkle. We need not burden  
21       the operating license obtained by repeating the testimony  
22       that was already given at the construction permit stage  
23       it seems to me.

24              MR. KELLY: Okay, Mr. Runkle, any comment on  
25       Mr. Baxter's comment?

1 MR. RUNKLE: If he were talking to, particularly  
2 to the admissibility of it, that'd be fine. That would  
3 probably be one way around that.

4 MR. BAXTER: That's not what I said. I said  
5 it's there. It doesn't need to be... It's available  
6 for people to cite or look at or use in cross examination  
7 or impeachment or what else.

8 MR. KELLY: What about... And I have reviewed  
9 his testimony. I don't mean to be indicating any view,  
10 obviously, but, and I don't know how extensive it is,  
11 but with all those caveats are you... I don't know if  
12 you're prepared to say whether you would object.

13 Suppose in comes Runkle and he says, "I offer  
14 Cantrell's '79 testimony as Exhibit A" in their case.  
15 Is there a possibility you'd object to that?

16 MS. FLYNN: This is Samantha Flynn. Exhibits  
17 that we're going to be offering into evidence are to  
18 have been submitted by August 9th so...

19 MR. KELLY: That's true.

20 MS. FLYNN: It's out of context.

21 MR. KELLY: Okay.

22 MR. BARTH: From the Staff's point, though,  
23 Your Honor, certainly we'd object. There's been an  
24 initial decision on Floyd's testimony by Chairman Smith.  
25 That is, that decision (inaudible) the Commission and

1 I think that the Licensing Board's disposition of  
2 Floyd Cantrell's concerns raised in 1977 and litigated  
3 in 1979 have already been to the Commission and they are  
4 final. They can't be raised again.

5 MR. KELLY: Well, we're not going to rule on  
6 that. I understand the point you're making. We're not  
7 going to make a ruling on that, at least this morning,  
8 maybe not in this context, but I understand the point.  
9 Okay.

10 MR. BARTH: Regarding Mr. O'Reilly, we've  
11 already discussed that, Your Honor.

12 MR. KELLY: Right. And that then takes us, I  
13 believe, to Mr. Lewis.

14 MR. BARTH: Right. Mr. Maxwell's gone from  
15 this proceeding. Mr. Lewis is requested as the Director  
16 and Chairman of the 1982 SALP report which covered 1980  
17 through 1981.

18 Mr. Lewis's position, particularly as a  
19 parliamentarian of that SALP Committee, the input to that  
20 SALP Committee are not originated or derived by  
21 Mr. Lewis.

22 He occupies a position which he did not do the  
23 original inspections and the original evaluations. If  
24 we go back to look at the regulation 2.720 H2i, Mr. Lewis  
25 has no direct personal knowledge of a material fact not

1 known to Mr. Bemis. That's clear. The...

2 MR. KELLY: Did the SALP report...

3 MR. BARTH: Mr. Runkle goes on. "The systematic  
4 assessment reports that look closely at CP&L management,  
5 Mr. Lewis' testimony is crucial in order to look at draft  
6 reports and committee recommendations."

7 To the best of my knowledge, there are no draft  
8 reports of the 1980 through 1981 SALP report which is  
9 a report chaired by Mr. Lewis, requested by Mr. Runkle.  
10 Committee recommendations to that report do not exist.

11 There is no showing that we know of of any  
12 draft report or committee recommendations to which  
13 Mr. Lewis would have particular personal knowledge not  
14 known to other people.

15 I would request that if Mr. Jones has a  
16 critique of this, he may wish to make it. The SALP  
17 Committee reports and the SALP are docketed in the  
18 region, (inaudible) Washington.

19 MR. JONES: Just as a matter of procedure, sir,  
20 it's understood that SALP is coordinated by someone  
21 normally, well, a section chief such as Mr. Bemis.  
22 But it is a collection of input from virtually everyone  
23 that has inspected the plant, and Mr. Lewis's role would  
24 be one where the division directors have a panel meeting,  
25 the input is presented to them and he runs the meeting

1 but has no particular say in the ratings of the  
2 individual, of the individual elements of the SALP and  
3 the Board simply votes but those sheets are secret and  
4 are destroyed afterwards and the appraisal rating is  
5 given, well, as the panel chooses it so that he would not  
6 be in any particular position to be the person to know  
7 what was the basis for any particular area.

8 MR. KELLY: Could you tell us for the record  
9 here what Mr. Lewis's present job is and what he's been  
10 in the last few years, particularly during this SALP  
11 exercise?

12 MR. JONES: To my knowledge, he has been the  
13 division director, it's had various names but I'll call  
14 it the Resident Inspector Division. He's been the  
15 division director of that division for the entire period,  
16 at least since 1979, to my knowledge, and his position  
17 is immediately under Mr. O'Reilly. He is the first  
18 level manager under Mr. O'Reilly.

19 MR. KELLY: I see. Mr. Cantrell, a person  
20 like Mr. Cantrell, would be under Lewis?

21 MR. JONES: That's right. He would report...  
22 I think there's a branch chief level between Mr. Cantrell  
23 and Mr. Lewis, but he would report to Mr. Lewis through  
24 the branch chief.

25 MR. KELLY: Do I understand you correctly that

1 Mr. Lewis functioned as the recording secretary, if you  
2 will, of the SALP group?

3 MR. JONES: He functions in one sense very much  
4 as you do, Mr. Kelly, for running the hearing itself and  
5 as far as procedural kinds of...

6 MR. BARTH: That's really the department of  
7 chairing, is it not?

8 MR. JONES: I don't want to say Judge Kelly's  
9 (inaudible) own parliamentarian. I'll get in trouble.

10 MR. KELLY: That's all right. That's all  
11 right. That's my job.

12 MR. JONES: Probably one part functions as a  
13 parliamentarian to, you know, start the meeting, indicate  
14 who is to speak next. In conclusion, he is a voting  
15 member of the SALP Board, just like the other members  
16 that are there.

17 But as chairman, his only additional duty is  
18 to, is to run the meeting.

19 MR. BARTH: I understand. In Mr. Kelly's  
20 terms, which I'm familiar with, the (inaudible) had the  
21 restatement of reports and they had the reporter, and  
22 this reporter coordinated the presentation. Is that the  
23 kind of function that he, that Mr. Lewis does?

24 MR. JONES: Yes.

25 MR. KELLY: Okay.

1 MR. BARTH: We have nothing further,  
2 Your Honor.

3 MR. KELLY: Did the, did the SALP report that  
4 I think we do have some familiarity with, at least on  
5 other reactors, did the SALP report have some sort of  
6 bottom line conclusion about the criteria of management  
7 capability?

8 I'm not sure it used exactly that term, but  
9 was there any sort of bottom line judgment reached about  
10 management?

11 MR. JONES: What... You mean the recent one,  
12 most recent one or '82 or...

13 MR. KELLY: Eight, eighty-one is the one that  
14 was published that I'm most familiar with. Maybe you  
15 can...

16 MR. JONES: Well, there's usually an overall  
17 utility evaluation.

18 MR. KELLY: Yeah.

19 MR. JONES: Change these over, some of these  
20 categories over a period of time, but there is an overall  
21 utility evaluation. I'm not sure whether there's one  
22 specifically labeled "Management", so I would imagine  
23 there has been an overall one.

24 I don't have a copy of that particular SALP  
25 and I don't know what it was.

1 MR. BARTH: Your Honor, I have the SALP in  
2 front of me to which Mr. Runkle referred. It's the  
3 July 1, 1980, through December 31, 1981.

4 MR. KELLY: Okay.

5 MR. BARTH: On page 2 they have an overall  
6 facility evaluation of Brunswick 1 and 2. I might read  
7 that to you. That's short.

8 MR. KELLY: Okay.

9 MR. BARTH: "During the review period the  
10 licensee underwent a reorganization which included major  
11 personnel changes. The evaluation of those changes is  
12 still in progress, although improved performance is  
13 expected to result.

14 "Major weaknesses were noted in the areas of  
15 plant operations, maintenance, fire protection, (inaudible)  
16 procedures, radiation protection, environmental protection  
17 and quality assurance."

18 That is the whole SALP of the overall facility  
19 evaluation. It is broken down with, you know, all these  
20 categories and 1's, 2's and 3's following in various  
21 functional areas.

22 MR. KELLY: All right. There's no functional  
23 area called "Management" or "Reports Equivalent"?

24 MR. BARTH: No, sir. I'm up to 8; let me  
25 go through 14. No, Your Honor. I'll read the 14



1 categories, if you want, very quick to give you a feel  
2 for it and it'll be on the record for you to look at.

3 MR. KELLY: All right.

4 MR. BARTH: First, there's Plant Operations;  
5 2, Refueling Operations; 3, Maintenance; 4, Surveillance  
6 and In-Service Testing; 5, Personnel, Training, and  
7 Plant Procedures; 6, Fire Protection and Housekeeping;  
8 7, Design Changes and Modifications; 8, Radiation  
9 Protection, Radiactive Waste Management, and Transportation;  
10 9, Environmental Protection; 10, Emergency Preparedness;  
11 11, Security and Safeguards; 12, Audits, Review and  
12 Committee Activities; 13, Administrative, QA, and  
13 Records; 14, Corrective Action and Reporting.

14 That is from page 3 of the July 1, 1980 through  
15 December 31, 1981, SALP, of which Mr. Lewis was the  
16 director of the project and which report was issued in  
17 1982 and is the report discussed on the third full  
18 paragraph on page 3 of Mr. Runkle's memorandum of  
19 17 August 1984.

20 MR. KELLY: Okay. Okay, Mr. Runkle, I don't  
21 believe we've gotten to you yet on the, on Mr. Lewis,  
22 right?

23 MR. RUNKLE: Right.

24 MR. KELLY: Okay, go ahead.

25 MR. RUNKLE: As to the... Mr. Barth, I think

1 it was Mr. Barth's statement that there was no record  
2 made or no draft and that they burned all their notes  
3 afterwards.

4 It is my understanding that there are several  
5 drafts around of each of the SALP reports, committee  
6 minutes and that type of thing. We have a Freedom of  
7 Information Act (inaudible) Region 2 requesting copies  
8 of all these things.

9 I expected that back, long before now, so we'll  
10 just have to see if we can get them in the next two  
11 weeks because it's part of the, of the hearing. And  
12 listing those 14 things of itself I would just jot down  
13 real quick and I've got 11 of them were directly relevant  
14 to the management, you know, operations, maintenance,  
15 testing, training, designs, corrective action and that  
16 kind of thing.

17 The SALP reports are probably a summary of  
18 the NRC Staff review of all areas of the SALP management.  
19 This one that takes the place of 8 to 8/1 takes it  
20 starting from the '79 remand hearing 'til we go to  
21 SALP and that's, that's real important. I was curious  
22 if the, is the one they call the '84 SALP, is that out  
23 yet?

24 MR. BARTH: It came out, the '83 SALP came  
25 out, I sent it out last Thursday or Friday to everybody.

1 MR. RUNKLE: Okay.

2 MR. KELLY: Okay. Let me just ask Mr. Jones  
3 as the person close to the process in Region 2 if a Board  
4 or a party wanted to ask some questions of let's say a  
5 single person who might be most knowledgable about a  
6 particular SALP report about a particular utility, who  
7 would one call. And put a little differently, does  
8 Lewis know as much as anybody or more than most or...

9 MR. JONES: No. The person that would know  
10 the most would be the section chief that coordinated the  
11 gathering of all the input, reviewed the input and in  
12 some cases will write it so that it's at least written  
13 like it's written by one person instead of a committee.

14 And in the case... If you're talking about  
15 the period since we have a change in management at the  
16 utility, that would be Mr. Bemis. I think his  
17 coming on to the process coincided with the changing  
18 management at the site.

19 So as far as the current management, Mr. Bemis  
20 for all those SALP's that have occurred since then is  
21 the one that would have gathered all the input and would  
22 have been knowledgable on all the input for the SALP.

23 MR. KELLY: So if Bemis were testifying about  
24 the recent SALP... There's a SALP every year. Is that  
25 right?

1 MR. JONES: Yeah, since they started it, which  
2 was, I guess, '79, '80, something like that. Now, if  
3 you're talking about back '79, '80, that would be a  
4 different section chief and I, frankly, don't know who  
5 it was back then.

6 If you're talking about that period prior to  
7 the recent, the change in management, back earlier, I'd  
8 have to find out who that section chief was.

9 MR. KELLY: But Bemis has been a participant  
10 in the process for, since when? When did he...

11 MR. JONES: I believe it was during 1982 he  
12 took over his present position. I have a copy of his  
13 testimony right in front of me. Maybe Mr. Barth  
14 remembers what the date was in that testimony.

15 MR. KELLY: Okay.

16 MR. BARTH: Well, approximately December 22,  
17 '82, when they approved the Brunswick improvement and  
18 region I put everything in one person's hands.

19 MR. KELLY: Okay. Does that then cover the  
20 request to the Staff? I believe it does.

21 MR. RUNKLE: This is Mr. Runkle. I'd like  
22 to address just a little more Mr. Lewis.

23 MR. KELLY: Okay, go ahead.

24 MR. RUNKLE: I think what the Staff has just  
25 said is it will go to all points, that before '82

1 Mr. Bemis has no direct knowledge of what has happened at  
2 the plant and, you know, reading over the '82 SALP report  
3 it's got Mr. Lewis's name (inaudible) was in charge of  
4 the whole process and if they would like to suggest  
5 something else, the section chief before that time,  
6 that would be fine.

7 But we want somebody who has participated in  
8 the preparation of SALP reports, and it seems from  
9 reviewing this that the signature is on all that  
10 (inaudible) a leadership role in that it would be one  
11 person that would be ideal for us to do a cross  
12 examination of how that SALP report was done.

13 MR. KELLY: Well, it sounds like there's a  
14 possibility at least that there may be a predecessor to  
15 Bemis who would know more about SALP pre-'82 than would  
16 R. C. Lewis, and I think Mr. Jones indicated he doesn't  
17 know right now who that is. He'd have to find out.  
18 Is that right?

19 MR. JONES: Yeah. I mean if the performance  
20 of management that's no longer there is relevant, I  
21 guess I have to go find out who reviewed that management.

22 MR. BARTH: Mr. Chairman, let me pick up on  
23 several words of Mr. Runkle from my earlier point. If  
24 they put on Mr. Lewis, they're going to have to put him  
25 on to affirm their case that the company's not qualified.

1           If they put him on for rebuttal, they're going  
2 to have to put him on to impeach the witness, the  
3 testimony of Mr. Bemis, and that's the kind of proffer  
4 we need so we know what these people are going to do.  
5 I don't think this is either one, but I think that when  
6 he does... He wants to cross examine and you don't  
7 cross examine your own direct case and your rebuttal case.

8           And Runkle has subpoenaed these people for  
9 help, not bring them here for the power company, and  
10 they are either to make a case for him directly or make  
11 a case on rebuttal that the power company's wrong and  
12 we're wrong and that's a real problem, I think.

13           MR. KELLY: Well, and I agree that it's some-  
14 times difficult to make your direct case with an adverse  
15 witness. That amounts to cross examination, but still,  
16 it's done quite a bit.

17           I think it might be helpful if maybe as a  
18 next step after this call today if Mr. Jones could just  
19 see who Bemis's predecessor is and what he did and maybe  
20 get back in touch with Mr. Barth and Mr. Runkle and just  
21 share that information.

22           And then Mr. Runkle can consider... You know,  
23 one possibility, I suppose, if you find somebody who  
24 upon the information you might get looks more useful to  
25 you than Lewis, maybe that would be a useful step to take.

1 Or at least, you know, we could hear some  
2 argument on whether some other person of that sort ought  
3 to be subpoenaed. And the Staff can tell you who the  
4 Bemis predecessor is without at the same time conceding  
5 that they're willing to bring him in and then we could  
6 hear whatever the argument turns out to be.

7 MR. BARTH: Okay, Your Honor. We'll find the  
8 information and inform Mr. Runkle.

9 MR. KELLY: Thank you. Okay, I think,  
10 Mr. Runkle, can we move on to the, this request to  
11 CP&L?

12 MR. RUNKLE: Yes, sir.

13 MR. KELLY: Okay, fine. Now, in this case,  
14 Mr. Runkle, I wonder if you could begin. I've got these  
15 four people, Sherwood Smith, J. A. Jones, Ronny Coats  
16 and Benny Fur listed, and in the case of each could you  
17 just give a brief sentence or two about the general  
18 areas you expect these people to testify and what you  
19 think you'll, how they fit into your case?

20 And then that would be an intelligible basis  
21 for Mrs. Flynn to state whatever objections she may have  
22 and then you can respond.

23 MR. RUNKLE: Sherwood Smith held the three  
24 highest positions at the CP&L, president, chief executive  
25 officer, chairman of the board. He is responsible for

1 all management. We have letters from him to Mr. Utley  
2 who is being called, the former senior vice president,  
3 that Mr. Smith wanted to be informed of all the day-to-  
4 day operations, all the day-to-day management of the  
5 Brunswick Plant.

6 He wanted to be on top of that situation. He  
7 also has repeatedly brought rate hikes and other  
8 procedures before the North Carolina Utilities Commission  
9 He'll be talking about his responsibility for the  
10 management and what actions he himself has taken to  
11 remedy past problems or violations or whatever. I  
12 was surprised that they didn't call him in the first  
13 place.

14 He seems to be, he is, he is CP&L management.

15 MR. KELLY: Okay, Miss Flynn?

16 MS. FLYNN: Yes. First of all, applicants  
17 would like to address the entire request and in the  
18 context of the Commission's regulations in this proceeding.  
19 The provisions relating to subpoenas deals with not only  
20 the hearing, producing witnesses or testimony at the  
21 hearings, but also in the discovery process.

22 And we believe that when the two different  
23 aspects of the proceedings are involved, i.e., discovery  
24 versus the hearing, that significantly different factors  
25 had to be considered.



1           Where it might be one thing to be enough that  
2 general relevance is the standard when a subpoena for  
3 discovery purposes is at issue, in the progress of the  
4 hearing there is also the necessity and obligation that  
5 the hearing be conducted in an orderly fashion with  
6 evidence that is relevant and not cumulative.

7           The importance of that is that in this case  
8 CP&L has offered and will offer at the hearing on  
9 September 5 12 witnesses, each of whom has extensive  
10 responsibility and key position in managing CP&L's  
11 nuclear program.

12           Mr. Utley is the executive vice president who  
13 has direct responsibility for all of CP&L's nuclear  
14 activities. All of the, many of the people whom we're  
15 offering have been with the company in management positions  
16 for a substantial period of time.

17           What Mr. Runkle has said about Sherwood Smith  
18 here in particular indicates nothing that... It would  
19 not necessarily be cumulative of the testimony that would  
20 be, has already been presented and might be elicited on  
21 cross examination of the witnesses who are already present.

22           We believe that if there is going to be any  
23 orderliness in this hearing and if it's going to be at  
24 all within a manageable time frame and a record of  
25 manageable scope that the           and joint intervenors make

1 specific proffers of specific information that they believe  
2 that these witnesses, these people could possibly present  
3 that would be unique and not merely cumulative of what's  
4 to be testified to by the other witnesses.

5 MR. KELLY: Okay. I'll just agree that in  
6 ruling on a motion quash with respect to a witness for  
7 hearing, we would take into account, among other factors,  
8 likely cumulative nature of testimony.

9 And there can be a case where it seems that  
10 we're just stacking various more or less similar wit-  
11 nesses one on top of the other and we wouldn't want to  
12 do that.

13 I'm not saying that's the case here, but I'm  
14 simply making the general observation that cumulateness  
15 can be a basis for objection in our view.

16 MS. FLYNN: I'd like to make one other point.  
17 Again, in general, there is this very real problem about  
18 what is a direct case and what is not. And it appears  
19 that what the joint intervenors are doing is now that  
20 they have seen the prefiled testimony, are now  
21 fashioning in some way a direct case.

22 They are not proposing these witnesses as  
23 rebuttal witnesses. And this is a, it's a difficulty.  
24 It really is a disruption of the process. It makes it  
25 extremely difficult for applicants to prepare for the

1 hearing and for cross examination. We have about...  
2 There's no specific offer of specific information, no  
3 ability to anticipate and to adequately prepare. That's  
4 a secondary aspect of this.

5 MR. KELLY: But isn't it helpful... If I  
6 understand what you're saying, and I think the Board would  
7 not look favorably on a situation where we had subpoenaed  
8 witnesses coming in without the foggiest idea of what they  
9 were going to talk about.

10 But if we had some reasonable time in advance  
11 of a witness's appearance, a reasonably specific outline  
12 of the points that were to be elicited, wouldn't that  
13 allow you to prepare sufficiently?

14 MS. FLYNN: Yes, that would. That would.  
15 That would be a help. I don't want to recite, though,  
16 the principal argument that there must be, in our opinion,  
17 something more than merely cumula... showing that the  
18 testimony will be something more than merely cumulative.

19 MR. KELLY: Okay. So we... Miss Flynn, had  
20 you concluded your comments on Mr. Smith?

21 MS. FLYNN: Yes.

22 MR. KELLY: Okay. Mr. Runkle, any reply to  
23 Mrs. Flynn's response?

24 MR. RUNKLE: Well, I had a difficulty following  
25 Mrs. Flynn's argument about why Mr. Smith should not be on.

1 I don't know that if the Board wants to subpoena the  
2 matter of relevance. And as being cumulative, I don't  
3 know if anybody else can testify to what Mr. Smith has  
4 done directly on the management of CP&L.

5 We don't think that this would, you know, make  
6 the hearing unruly. I think it's real clear what Mr. Smith  
7 probably will testify to. I think that if the applicants  
8 thought a minute, they would know his role in the manage-  
9 ment, you know, would be the fact that is important.

10 I don't see things getting out of hand with,  
11 you know, an additional eight witnesses being called.

12 MR. KELLY: Can you, based on what you, you  
13 know, at this point, can you point to anything, any  
14 subject with respect to what you think Mr. Smith might  
15 have unique knowledge?

16 MR. RUNKLE: Mr. Smith has unique knowledge  
17 of most of the management changes in CP&L. He was very  
18 instrumental in getting the Brunswick Improvement Plan,  
19 and also the improvement plan for the other two plants.

20 But counsel wanted to set up different  
21 management, you know, restructured the management.  
22 He responded to the ACRS letter and he's the Executive  
23 Managing Officer for Carolina Power and Light.

24 MR. KELLY: Can I just understand? Maybe I  
25 should ask Mrs. Flynn. Mr. Smith is executive vice

1 president. Now, I assume they're...

2 MS. FLYNN: He's not really executive vice  
3 president.

4 MR. KELLY: I'm sorry, I'm sorry. Utley.

5 MS. FLYNN: Right.

6 MR. KELLY: And Smith is what? Give me that  
7 again.

8 MS. FLYNN: He is the president, chairman of  
9 the board, chief executive officer of the company.

10 MR. KELLY: Okay.

11 MS. FLYNN: If I could just add one thing.

12 Mr. Runkle just said that, pointed out my problem.

13 Mr. Smith has responsibility for the total management  
14 of all of this company's operation.

15 Without very specific articulation of the  
16 precise things that he would be asked to testify about,  
17 it could be anything. There is absolutely no boundary  
18 without such a specific articulation and, you know,  
19 testimony was to have been filed, witnesses were to have  
20 been identified on August 9th.

21 We're getting into a week before this hearing  
22 so that it's a difficult thing to prepare for without  
23 such a, an articulation. And one other thing.  
24 Mr. Runkle, we can't go through these things issue by  
25 issue, but Mr. Smith does not have unique knowledge

1 about the reorganizations that have occurred or about  
2 the ACRS meetings or any of the other things he's  
3 mentioned.

4 MR. KELLY: Would you characterize... And  
5 I'm just trying to get a handle on this. Now, Mr. Utley  
6 you say is the chief, chief executive officer?

7 MS. FLYNN: Mr. Smith is the chief executive  
8 officer, president and chairman of the board as Director  
9 of CP&L.

10 MR. KELLY: And what's Utley's title again?

11 MS. FLYNN: He is Executive Vice President  
12 for Power Supply and his responsibility is the entire  
13 nuclear program at CP&L.

14 MR. KELLY: All right, thank you.

15 MR. BAXTER: Judge Kelly, Tom Baxter. Am I  
16 right, Mrs. Flynn, that's the second highest... There  
17 are two executive vice presidents right under Mr. Smith?  
18 Is that...

19 MS. FLYNN: There are three executive vice  
20 presidents.

21 MR. BAXTER: All right.

22 MR. KELLY: Okay.

23 MS. FLYNN: One is a financial officer and the  
24 other is regulatory.

25 MR. KELLY: Can we move to Mr. Jones?

1 Maybe Mr. Runkle can begin by at least generally  
2 identifying the area of their interest. Mr. Jones?

3 MR. JONES: Yeah, he was in charge of nuclear  
4 operations. retired in 1982 and since that time has con-  
5 sulted for them a couple times. He is...

6 MR. KELLY: Now, is he the predecessor of  
7 Utley, so to speak?

8 MR. JONES: Well, they've shifted... Yes,  
9 more or less. They've shifted the upper management  
10 around since '79.

11 MR. KELLY: Okay, go ahead.

12 MR. JONES: He retired in '82 but has consulted  
13 for them since that time so that his testimony will be  
14 relevant in that time period of '79 to '82 and can talk  
15 to some of why they made the changes in the management  
16 up to that time and why the Brunswick Improvement Plant  
17 was needed and why they went ahead and did it.

18 MR. KELLY: Okay. Mrs. Flynn?

19 MS. FLYNN: I have not much to add to the  
20 general observations with respect to Mr. Jones except  
21 that once again, there has been a showing... Indeed,  
22 there can't be any showing that his knowledge of those  
23 matters is unique.

24 Again, without some specific articulation of  
25 specific items of information, this is a wide-open

1 scatter-shot approach.

2 MR. BAXTER: It's not as if the Brunswick  
3 Improvement Program is lost in our direct case. There's  
4 an entire panel of witnesses and prefiled testimony on  
5 that plant.

6 MR. KELLY: All right. Did Mr. Jones retire  
7 in Raleigh or somewhere else?

8 MS. FLYNN: He's in Raleigh. May I add one  
9 other thing? The, part of the reason perhaps that they  
10 can't make a specific showing is they made no effort  
11 to depose any of these people. They could have done  
12 that and in that way they might've isolated some infor-  
13 mation that these people have that was unique or  
14 significant, noncumulative.

15 MR. KELLY: Okay. Mr. Runkle, anything else?

16 MR. RUNKLE: Yeah. I've heard a standard of  
17 uniqueness being suggested as one that the Board ought  
18 to take and I think that we need to address that just  
19 a little further.

20 When we did receive... We got a fairly  
21 extensive discovery process and we got a pretty good  
22 idea of... I had a list of those people that they were  
23 going to call and was surprised that some of the people  
24 weren't on the list.

25 So we got their list of people and added those



1 that we felt would add things to their testimony.

2 Whether somebody's testimony is unique, I don't know if  
3 that's a standard that we should be undertaking here.

4 MR. KELLY: I think that I among others may  
5 have injected that note. It is a standard that one finds  
6 under that subsection relating to subpoenaing Staff  
7 members, where it speaks of what amounts to direct  
8 personal knowledge.

9 MR. RUNKLE: Yeah.

10 MR. KELLY: Well, I'll read it. "That the  
11 presiding officer may appoint a showing of exceptional  
12 circumstances such as a case in which a particular named  
13 NRC employee has direct personal knowledge of a material  
14 fact not known to the witnesses made available by the  
15 executive director" and so on.

16 I didn't... In using that, I think I used  
17 the phrase "unique knowledge" in the context of the  
18 CP&L people. I think maybe it was Mr. Smith. It seems  
19 to me that a showing of unique knowledge might go a long  
20 way toward upholding a request for a subpoena, but I  
21 didn't mean to suggest that that was an exclusive basis.

22 Indeed, I suppose when you're talking about  
23 corporate management and big decisions, there are quite  
24 a few people that know a lot about things that may be  
25 in issue, and it would be rather unusual for an individual

1 to be a person who is the only one that knows about some  
2 matter. I don't think we'd expect to find that. Go  
3 ahead. Or did you finish, Mr. Runkle?

4 MR. BARTH: Mr. Chairman, if possible, I would  
5 like to interject a note on behalf of the Staff.  
6 Mr. Runkle's statement was, "We were surprised that they  
7 did not call these as witnesses."

8 And I think that's another whole problem.  
9 Mr. Runkle wants to dictate who the Staff and the power  
10 company will put on as witnesses for their case. That's  
11 not the purpose of subpoena power.

12 The subpoena power purpose is as it was in  
13 Zimmer. The intervenor needed school people who wouldn't  
14 attend for his direct case, so he went and got a  
15 subpoena and got them.

16 This is not for Mr. Runkle to dictate who  
17 the applicants and the Staff will put on the stand for  
18 their direct case so he can cross examine them for  
19 the purpose of helping him build his direct case for a  
20 a witness who would not otherwise come.

21 MR. KELLY: Right.

22 MR. BARTH: But a lot of people were never  
23 even asked voluntarily to come and appear before...

24 MR. KELLY: Okay.

25 MR. BARTH: And I think that if you will look

1 at this record right after Mrs. Flynn's question and  
2 Mr. Runkle's answer, you will see what I consider the  
3 nub of it.

4 Mr. Runkle is surprised that the power company  
5 did not put on the people that he wants and the NRC  
6 people that he wants. That's not the purpose of the  
7 subpoenas, Your Honor.

8 MR. KELLY: Okay. Did you finish on Mr. Jones,  
9 Mr. Runkle?

10 MR. RUNKLE: Yes, sir.

11 MR. KELLY: Okay, fine. Let's move then to  
12 Ronny Coats, and again, Mr. Runkle, if you could  
13 indicate your answers to him.

14 MR. RUNKLE: Yeah. Responding to several of  
15 the answers on discovery, I want to talk to him about  
16 that. And also...

17 MR. KELLY: In what area? Is this...

18 MR. RUNKLE: I don't have that in front of me.  
19 There was a listing at the major response to discovery  
20 (inaudible) that had names of different places making  
21 the effort and we wanted to talk about those answers  
22 with him.

23 Also, was familiar with what's called the  
24 Jacobson Report that was presented from the North Carolina  
25 Utilities Commission which dealt with...

1 MR. KELLY: Did you say Jacobson?

2 MR. RUNKLE: Jacobstein.

3 MR. KELLY: How do you... Can you spell that  
4 for us?

5 MR. RUNKLE: J-a-c-o-b-s-t-e-i-n.

6 MR. KELLY: One word or two?

7 MR. RUNKLE: One word.

8 MR. KELLY: Thank you.

9 MR. RUNKLE: Report that was presented to the  
10 North Carolina Utilities Commission that listed major  
11 deficiencies of the Brunswick Plant in a time period of,  
12 well, I'd have to guess, it was probably around '81,  
13 '82, in that time period.

14 And Mr. Coats had, was the major rebuttal  
15 witness and that was presented to the North Carolina  
16 Utilities Commission.

17 MR. KELLY: Okay. Miss Flynn?

18 MS. FLYNN: Again, Mr. Runkle can't say that  
19 one of the 12 witnesses that is going to be testifying  
20 at the hearing can't discuss these things. I mean it  
21 just... Again, he can make no showing at this time that  
22 anything that Mr. Coats might say wouldn't be merely  
23 cumulative of what could be a comment either from the  
24 direct testimony filed or through cross examination.

25 MR. KELLY: Can we nail down who Mr. Coats is

1 in terms of his office or job?

2 MS. FLYNN: Mr. Coats' title is an assistant to  
3 a chief executive. He is not a member of CP&L's  
4 corporate management.

5 MR. KELLY: You say chief executive. Now,  
6 which particular person?

7 MS. FLYNN: All right, no, he is an assistant  
8 to and a group executive reader. He is not himself in  
9 a... He's not himself an officer of the company or in  
10 a senior management position.

11 MR. KELLY: I just want to know who he was an  
12 assistant to.

13 MS. FLYNN: His name is Len Mury (ph) who is  
14 the group executive in charge of (inaudible) generation.

15 MR. KELLY: Okay. Go ahead. Did I interrupt  
16 you?

17 MS. FLYNN: No, that, that is all I have to  
18 say.

19 MR. KELLY: Okay. Any other comment,  
20 Mr. Runkle?

21 MR. RUNKLE: Yes. The contention really  
22 doesn't deal with upper management and I think... I  
23 mean if we could... I think line workers or anybody  
24 would be relevant to this contention.

25 I don't think it has to be one of the

1 officers or executive vice presidents for relevance.

2 MS. FLYNN: Mr. Coats is in a staff position.  
3 He's not management at any level in the company.  
4 Further, if, if Mr. Runkle wants to talk about the  
5 Jacobstein report, perhaps he should consider  
6 Mr. Jacobstein himself as a rebuttal witness.

7 MR. KELLY: Okay, anything else, Mr. Runkle?

8 MR. RUNKLE: No.

9 MR. KELLY: All right. What about Benny Fur,  
10 Mr. Runkle?

11 MR. RUNKLE: Yes, sir. Benny Fur, I don't  
12 have much on him. One of the other intervenors has...  
13 As I have it, he was a vice president for Internuclear  
14 Operations, is now in Training but could address  
15 Nuclear Operations before he moved into Training and  
16 also the current status of the training operation.

17 MR. KELLY: Okay. Miss Flynn?

18 MS. FLYNN: I don't have anything to add to  
19 that. Mr. Fur is now in the Technical Services Department  
20 in this company, but I don't have anything to add to my  
21 earlier comments. The same apply to him as well.

22 MR. KELLY: Is he would you say a staff level  
23 employee?

24 MS. FLYNN: He is not. He is an officer in  
25 the company.

1 MR. KELLY: And what is his office?

2 MS. FLYNN: I don't know. He's a Vice President  
3 in charge of Technical Services.

4 MR. KELLY: Mr. Runkle, could you get...

5 MS. FLYNN: Excuse me. He reports to  
6 Mr. James Davis who is testifying in this proceeding.

7 MR. KELLY: Okay. Mr. Runkle, could you get  
8 a little more specific on Mr. Fur and what you expect to  
9 get from him?

10 MR. RUNKLE: Well, again, it's that time frame  
11 from '79 to the middle of 1982 when the nuclear operations  
12 were falling apart, and this is before the management  
13 shake-up and there were certain reasons for the shake-up.

14 Management communication and quality assurance  
15 were pretty well... They were major accomplishments. In  
16 many aspects they were... Well, let's not get into the  
17 case.

18 There are many problems with nuclear operation  
19 and a response to that was the Brunswick Improvement Plan  
20 and that major shake-up of this level and upper management.  
21 As being charged the vice president in the Nuclear  
22 Operations before the Brunswick Improvement Plan,  
23 Mr. Fur will testify as to what was going on and hope-  
24 fully we can get from him those specific problems that  
25 were happening.

1 MR. KELLY: Well, what was his... He was there  
2 in that period of time, I take it, but what was his job  
3 and did he have a vantage point on things such that he's  
4 particularly valuable?

5 MR. RUNKLE: I have him down as the Vice  
6 President for Nuclear Operations and I don't know if  
7 that's his specific title or not.

8 MR. KELLY: It sounds pretty specific. Can  
9 you comment on that, Mrs. Flynn? Whether Mr. Fur was  
10 the Vice President for Nuclear Operations?

11 MS. FLYNN: That's correct.

12 MR. KELLY: '79 to '82?

13 MS. FLYNN: Yes, that's correct.

14 MR. KELLY: Okay. All right, anything else  
15 from either Mr. Runkle or Mrs. Flynn on Mr. Fur?

16 MS. FLYNN: Again, I'd just add that there are  
17 other of the witnesses who have been with the company  
18 in positions of responsibility over Nuclear Operations  
19 for that time period.

20 MR. KELLY: Who you are calling?

21 MS. FLYNN: Yes.

22 MR. RUNKLE: This is Mr. Runkle again.

23 MR. KELLY: Right.

24 MR. RUNKLE: Management is not something that  
25 is a united front. I mean one of the problems of



1 managing a big company is that you have different  
2 individuals with different interests, and it's not always  
3 a smooth thing to present a panel and they all speak to  
4 one board.

5 That's really difficult to do, and especially  
6 on this management where there has been, you know,  
7 problems in the past and we allege problems right now  
8 and there will be problems in the future.

9 We don't see this as one united front. The  
10 individuals in power, in positions of authority are  
11 what's crucial.

12 MR. KELLY: Okay.

13 MS. FLYNN: And I'd just note that we are  
14 offering 12 individuals, each with a... Each person is  
15 a person, an individual who can be cross examined.  
16 Again, I just would like to point out that much of this  
17 information could... Well, all of this information  
18 could have been obtained through depositions and if  
19 this is going to be a manageable hearing at all, we do  
20 think that it has to be carefully structured and a  
21 better showing that any particular evidence is needed  
22 and that it might be cumulative and that there be  
23 specific showing.

24 MR. KELLY: Okay. Well, let me just mention,  
25 first of all, a little while ago Judge Carpenter did

1 join us so we've had a full Board here for maybe a good  
2 portion of this discussion.

3 MS. FLYNN: Chairman Kelly?

4 MR. KELLY: Yes?

5 MS. FLYNN: May I add one thing? In case I  
6 fail to mention it, three of the witnesses testified at  
7 the so-called remand hearing and they have had con-  
8 tinuous responsibilities in the company. Obviously,  
9 they were there at that time and the responsibilities  
10 have continued to the present.

11 MR. KELLY: Okay, three of the witnesses  
12 you're calling?

13 MS. FLYNN: Yes.

14 MR. KELLY: Okay, thank you.

15 MS. FLYNN: They're Mr. Utley, Mr. McDuffy  
16 and Mr. Banks.

17 MR. KELLY: Okay. It appears that the rest  
18 of your objections, Mrs. Flynn, at least in large part,  
19 go to your view that calling these witnesses in addition  
20 to the ones you intend to call would be cumulative and  
21 going over the same ground.

22 We, as a Board, will consider these comments  
23 this morning and we'll get our transcript tomorrow and  
24 I expect we'll be able to make some rulings later on in  
25 the week.

1           Let me just offer a, sort of a caveat on that,  
2           though. You're talking this morning to a Board that  
3           doesn't yet know a great deal about the evidence in this  
4           case.

5           We've read some of your testimony. We'll have  
6           it all read before we sit down next week, but in a case  
7           like this, the complicated factual issue, and I think all  
8           of us are relatively low on the learning curve, and that  
9           does make it sometimes kind of difficult to make a ruling  
10          on an argument about the cumulative nature of somebody's  
11          testimony because, quite frankly, we've heard the parties  
12          this morning but our own grasp of the facts is a good  
13          deal short of what we hope it will be a few weeks from  
14          now and we're not in the best position to make a decision  
15          on that.

16          I know in my own case, and I'm sure my  
17          colleagues have done this, too, you can get a request  
18          for a subpoena and you can get an objection and you  
19          can hear argument, and you come away feeling you're  
20          really not sure whether it's cumulative or not so you  
21          can do one of two things.

22          You can defer ruling on the subpoena and you  
23          can wait and see what you hear in the hearing, and then  
24          maybe a few weeks from now you're in a much better  
25          position to argue, to conclude yes or not on a

1       cumulativeness argument than you would be this morning.  
2       That leaves things up in the air a little bit, but it  
3       also may lead toward a more informed decision.

4               I know, as an example, Mr. O'Reilly in the  
5       Catawba Case, we did that, deferred a subpoena ruling  
6       until the end of the case and then we decided whether  
7       we needed to hear from him or not.

8               We decided that we didn't. But at least we  
9       knew what the case was about by that time. So it may  
10      be that in some of these cases anyway, where the  
11      essential argument is this person doesn't know it but  
12      X knows it or Y knows it, we'll wait and see what X or Y  
13      have to say and then we'll rule on it.

14              Let me ask... My impression is that any one  
15      of these people that we've talked about this morning,  
16      the company people, for example, are down there in  
17      Raleigh and reasonably available, and if they don't get  
18      a definite word this week whether they're going to get  
19      subpoenaed or not, they could in all likelihood be called  
20      two or three weeks from now. Isn't that correct,  
21      Mrs. Flynn?

22              MS. FLYNN: That is correct, barring some  
23      unforeseen business that I can't anticipate.

24              MR. KELLY: And also it might give the inter-  
25      venors a much better basis for describing exactly what

1 they're after than they can give us this morning. So  
2 let me just mention that as one option. Now, we like  
3 to make prompt rulings and get things decided, but there  
4 may be some of these that we would best to sit on for a  
5 little bit and see what develops.

6 Let me ask my colleagues, we got any comment,  
7 questions, gentlemen? Okay. Well, we'll take this  
8 under advisement and we will get in touch with you by  
9 telephone later on in the week, not necessarily in a  
10 conference call and certainly not on the record, but  
11 just to tell you yes, no or deferred on these various  
12 subpoena requests.

13 MR. BARTH: Mr. Kelly, Charles Barth. I would  
14 like to make one closing comment...

15 MR. KELLY: Yes.

16 MR. BARTH: ... if I may when you're ready.

17 MS. FLYNN: Yes, I have one further item to  
18 raise on these subpoenaes.

19 MR. KELLY: Okay, just a minute. I just wanted  
20 to do the administrative things here. We'll get in touch  
21 with you by phone, not necessarily in conference, not  
22 with an opinion but just with a ruling or a decision  
23 not to rule later on in the week, as soon as we can.  
24 Now, okay, Mrs. Flynn, you had another matter?

25 MS. FLYNN: Yes. With respect to the last

1 paragraph of Mr. Runkle's request which talks about  
2 they're negotiating with officials of the North Carolina  
3 Attorney General's Office and the North Carolina Utilities  
4 Commission Public Staff.

5 He says that they won't subpoena these witnesses  
6 without their (inaudible) and that they may add some  
7 requests to subpoena for additional witnesses, especially  
8 for rebuttal.

9 We take strong exception to this. Any witnesses  
10 that they might have wanted to call from those agencies  
11 certainly could have been called before August 9th as  
12 part of their direct case rather than now.

13 There is absolutely no showing whatsoever  
14 that that couldn't have been accomplished. Furthermore,  
15 as a fundamental principle that a party may not present  
16 his direct case under the guise of rebuttal testimony,  
17 there has to be a showing that there was something of  
18 surprise, something that could not have been anticipated  
19 in the direct case that requires rebuttal.

20 And if, if any of these witnesses are being  
21 sought for subpoena now at this late date, it would have  
22 to be as rebuttal witnesses and there would have to be  
23 a showing that this is true rebuttal.

24 MR. KELLY: Well, I think... Mr. Runkle, any  
25 comment?

1 MR. RUNKLE: Well, I know in the Catawba Case  
2 the tried to subpoena governors of both states and that  
3 lead to a lot of problems. It's hard to get a commitment  
4 from...

5 MR. KELLY: Not in the Catawba Case I had any-  
6 thing to do with.

7 MR. RUNKLE: Pardon?

8 MR. KELLY: Not in the Catawba Cases that I was  
9 involved in.

10 MR. RUNKLE: I thought they had, as one of the  
11 things, tried to subpoena the governors.

12 MR. KELLY: Oh, wait a minute. That happened  
13 in emergency planning. You're right, that was in  
14 emergency planning. I wasn't in that part. I'm sorry.

15 MR. RUNKLE: All right. So we don't want to  
16 lead to any problems. Until we get a full commitment  
17 that these people are willing to testify and, you know,  
18 what they're willing to testify, we just pretty much  
19 have to leave it in the air.

20 MR. KELLY: Well, but weren't your names of  
21 witnesses due on the 9th of August?

22 MR. RUNKLE: I don't know, I don't know, I  
23 think one of the basic problems here is I don't know if  
24 these people will be our witnesses or not.

25 MS. FLYNN: Well, that is something that he

1 should have decided by August 9th. He had an obligation  
2 to file prefiled testimony by August 9th.

3 MR. KELLY: Well, let me say this, ladies and  
4 gentlemen. Insofar as that's concerned, we certainly  
5 are on notice from the applicants that they would object  
6 to this.

7 The rules are what the rules are and we don't  
8 have a name in front of us this morning, so I think we'd  
9 like to let that sit with the objection registered.  
10 Also, the rules of rebuttal are the rules of rebuttal  
11 and we'll apply them.

12 There are limitations on what you can do in  
13 rebuttal, but we don't have to cover all that this  
14 morning. But I think your point, Mrs. Flynn, was to  
15 register your objection, is that right?

16 MS. FLYNN: That's right.

17 MR. KELLY: And you did that, okay? Mr. Barth,  
18 you had a point?

19 MR. BARTH: Yeah. I had just...

20 MR. KELLY: Okay, go ahead, Mr. Barth.

21 MR. BARTH: Yes, I do, Your Honor. Regional  
22 Counsel Jones in our Atlanta Office has investigated the  
23 Atlanta records as to who is Mr. Bemis' predecessor.  
24 Paul Kelog, K-e-l-o-g, was the section chief prior to  
25 Mr. Bemis who had charge of the CP&L plants.



1 Mr. Kelog is no longer employed by the NRC and  
2 that means that we're not responsible for the stuff in  
3 subpoenas to him. The second two points I would like  
4 you to...

5 MR. KELLY: Could you tell us where he is these  
6 days? Do you know?

7 MR. BARTH: I think that the NRC knows where  
8 he is.

9 MR. JONES: This is Brad Jones. The individuals  
10 that I went and checked with to find out who was the  
11 section chief during the the '79, '80, '81 type period  
12 knew he was in private industry but at least those  
13 individuals did not know just where he is right now.

14 MR. KELLY: I think, Mr. Runkle, if you're  
15 interested in pursuing that line, we'll just have to  
16 do that after we're through here. I don't think we can  
17 tell you anymore about it this morning.

18 MR. RUNKLE: All right.

19 MR. BARTH: I would like to conclude,  
20 Your Honor, with two very short summary paragraphs.  
21 One, in our view, Mr. Runkle has not made a case that  
22 the NRC employees have direct personal knowledge of a  
23 material fact not known to Mr. Bemis.

24 Second of all, in our view, Mr. Runkle has an  
25 absolute obligation, absolute obligation to file his

1 direct case by August 9 or, in lieu thereof because of  
2 obdurate witnesses where he cannot get statements, to file  
3 a detailed proffer as to what these people have testified  
4 to. He has not done that. In our view, the subpoenas  
5 should be denied, Your Honor.

6 MR. KELLY: Let me make sure I understand. I  
7 hadn't heard this objection earlier in so many words,  
8 Mr. Barth or Mrs. Flynn, and I got the subpoena requests  
9 when I got the subpoena requests, which was the 17th of  
10 August. Are you saying that the subpoena requests are  
11 themselves untimely?

12 MR. BARTH: Yes, Your Honor. I thought I'd  
13 discussed that when I discussed the Zimmer situation  
14 in which you had an intervenor who had to go get wit-  
15 nesses which wouldn't come. They were school officials.

16 And when he filed for a subpoena, he filed  
17 prior to the deadline for filing his direct case and he  
18 filed a proffer of what these people would testify to  
19 because obviously he couldn't get the written testimony.

20 That satisfied the 2.43 rule, 2.43B for direct  
21 testimony, and it solved the subpoenas. And in our  
22 view, to make his direct case if he has a witness which  
23 he cannot get, he files a subpoena in order to solve the  
24 written testimony prefiling which you have in the federal  
25 courts.

1 He must at the time he files a subpoena prior  
2 to the filing of direct testimony date submit a detailed  
3 proffer as to what these witnesses will testify to. He  
4 has not done that.

5 In our view, these are untimely. They are late,  
6 they violate the direct testimony rule and they also make  
7 a mockery of the subpoena rule at this late time.

8 MR. KELLY: Mr. Runkle, let me ask you when  
9 you made your filing, I know you filed Mr. Klewett's  
10 testimony, did you at the same time give us a list of  
11 people you wanted to subpoena?

12 MR. RUNKLE: No, we did not. We did not have  
13 the listing of those people that the Staff or the appli-  
14 cants were putting on for their testimony.

15 MR. KELLY: You wanted to see that first?  
16 I take it you wanted to see that first?

17 MR. RUNKLE: Yes, sir.

18 MR. KELLY: Okay.

19 MR. BAXTER: Mr. Chairman, Tom Baxter. The  
20 Board set a single date for all parties to file their  
21 direct case.

22 MR. KELLY: Right.

23 MR. BAXTER: And no party is entitled to sit  
24 back, wait and see what the direct case of the other  
25 party is and then fashion his own direct case.

1 MR. KELLY: I understand your point.

2 Okay, is there anything else related to this dispute that  
3 should be taken up now?

4 MR. BARTH: Not by the Staff and thank you  
5 kindly, Your Honor.

6 MS. FLYNN: None by applicant. Thank you.

7 MR. KELLY: Okay.

8 MR. RUNKLE: For the intervenor, all the sub-  
9 poenaes we did place the first day of the hearing, and  
10 that was only... had no other date to put on there.

11 MR. KELLY: I understand that. It would be  
12 whenever they would come up. I understand that.

13 MR. RUNKLE: Okay. We have nothing else,  
14 Your Honor.

15 MR. KELLY: All right. Well, I don't think  
16 we do either. I'd just observe that we are then prepared  
17 to begin hearing a week from this Wednesday. Did all of  
18 you get the notice of the location?

19 MS. FLYNN: Yes.

20 MR. BARTH: I didn't, Your Honor.

21 MR. KELLY: Really? You should have.

22 MR. BARTH: Let me know where it is and I'll  
23 show up.

24 MR. KELLY: We put out little one-sentence  
25 notice last week saying it was in the Convention Center

1 in a certain conference room. Again, we thank Mrs. Flynn  
2 for her good offices in lining that up for us. Well, I  
3 don't think we have anything else.

4 We'll expect to see you there at 9:00 in the  
5 morning then next Wednesday. The Board will be around  
6 here, as far as I know, except next Monday. If something  
7 comes up that ought to be spoken to before Wednesday,  
8 don't hesitate to call and we'll see if we can't get  
9 people on the phone and deal with it.

10 MS. FLYNN: Thank you.

11 MR. KELLY: Okay, thank you very much.

12 Goodbye.

13 (Whereupon, the call ended at 10:45 a.m.)  
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1  
2  
3 CERTIFICATE OF PROCEEDINGS

4 This is to certify that the attached proceedings before the  
5 NRC

6 In the matter of: Carolina Power and Light Company  
7 and North Carolina Eastern Municipal  
8 Power Agency, Shearon Harris  
9 Nuclear Power Plant, Units 1 and 2

10 Date of Proceeding: August 27, 1984

11 Place of Proceeding: Bethesda, Maryland

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

14 Georgia Pinkard  
15 Official Reporter - Typed

16 Georgia Pinkard/ld  
17 Official Reporter - Signature

18 Law Sasarow  
19 Transcriber