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In the Matter of:

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

(Shearon Harris Nuclear Power Plant,
Units 1 and 2)

*Exhibit
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25/0/10/1*

Location: Bethesda, Maryland

Pages: 2346-2375

Date: August 31, 1984

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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CAROLINA POWER AND LIGHT COMPANY :
AND NORTH CAROLINA EASTERN :
MUNICIPAL POWER AGENCY :
: Docket No. 50-400 OL
(Shearon Harris Nuclear Power : 50-401 OL
Plant, Units 1 and 2) :
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August 31, 1984
4350 East West Highway
Bethesda, Maryland

Hearing in the above entitled matter convened at
2:30 p.m.

BEFORE:

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

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

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

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APPEARANCES:

On behalf of the Applicants:

SAMANTHA FLYNN
THOMAS BAXTER

On behalf of the NRC Regulatory Staff:

JANICE MOORE
CHARLES BARTH

On behalf of the Intervenor Conservation Counsel of
North Carolina:

JOHN RUNKLE

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P R O C E E D I N G S

1
2 JUDGE KELLEY: The immediate reason for this
3 telephone call is a request made to me yesterday by
4 Miss Moore that the Board hear the parties' different
5 positions on a question that was raised earlier, namely
6 what limits, if any, should there be on the number of
7 counsel or intervenors if they're not counsel in
8 questioning particular witnesses or particular panels,
9 and we have left that to you to try to work out on a
10 negotiated basis.

11 And Miss Moore indicated to me that the
12 negotiation of the question had not borne fruit and that
13 there were differences of opinion on it. So the call was
14 suggested and we thought it was a good idea to go ahead
15 and hear you on that now rather than wait 'til next week.

16 Let's see, Miss Moore, do you, can you state
17 where things stand and what the issues are as you see them,
18 and the others can chime in at the appropriate time?

19 MISS MOORE: Yes, sir. At our conference call
20 of August 10th we had, I had raised the question of how
21 many, how many intervenors should be permitted to cross
22 examine any given witness or panel of witnesses in a
23 given contention, or whether intervenors should be
24 limited to one intervenor per contention.

25 The Board asked me at that time to try to

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1 see if we could negotiate some sort of a solution to this
2 question. And in attempting to do that, I spoke with
3 Mr. Payne, Mr. Runkle and Miss Flynn and we, the positions
4 of the three parties are fairly far apart and were not
5 able to come to an agreement.

6 JUDGE KELLEY: Let me just interject a question.
7 I think I know the answer, but when you say, you phrased
8 it as how many representatives of the intervenor should
9 be able to cross examine.

10 Wouldn't the same rule apply to any party?

11 MISS MOORE: Yes, sir, it would. I'm sorry, I
12 should have stated that. Whatever procedural rule governs
13 the intervenors would, of course, govern the other party.

14 JUDGE KELLEY: Okay.

15 MISS MOORE: I'd like to say that Mr. Barth
16 has arrived here as well, and he will be, in fact, stating
17 the Staff position.

18 JUDGE KELLEY: Okay. Good afternoone, Mr. Barth.

19 MR. BARTH: Good afternoon, Mr. Kelley.

20 JUDGE KELLEY: We just had the preliminary,
21 not preliminary, we just had the issue before us stated
22 by Miss Moore which I think, I hope you heard.

23 MR. BARTH: Yes, sir.

24 JUDGE KELLEY: Okay. Well, do you want to go
25 ahead and state the Staff's view on it?

1 MR. BARTH: The Staff's view, Your Honor, is
2 the same as we discussed at the last prehearing conference.
3 We feel that there should be one person interrogating
4 whoever is on the stand for contention. This is a normal
5 practice in law.

6 Since the last prehearing conference, Mrs. Moore
7 has done some research on this matter, and she finds that
8 in Consolidated Edison, Indian Point, 15 NRC 895 at 912
9 the... Let me read the Chairman's order.

10 "The intervenor may use two cross examiners per
11 witness or group of witnesses. The cross examination must
12 not be duplicative." I think it's... Since it's a
13 reported case, I think it's proper to bring it to every-
14 body's attention.

15 JUDGE KELLEY: Thank you.

16 MR. BARTH: It certainly does not comport with
17 our view. Our view is supported by the great and learned
18 Chairman Smith in Three Mile Island, Your Honor, at which
19 we had the same situation.

20 And there Chairman Smith required that the
21 intervenors be represented by one person when they cross
22 examined either the applicant or the Staff. And of the
23 two views, of course, the Staff is more sympathetic with
24 Mr. Smith's view.

25 I think that if you had a complicated technical

1 issue in which several different technical disciplines were
2 involved, you might well justify using technicians in
3 various areas.

4 The issue coming up in Wednesday, pardon me, I
5 hope I get there, is a rather unitary issue, whether or
6 not the applicants are technically competent to operate
7 the plant.

8 I think this does not present multi-facet
9 disciplines which would provide some modicum of justifi-
10 cation for multiple persons doing the cross examination.
11 Let me check with Mrs. Moore. Mrs. Moore, does that fairly
12 well state our position?

13 MISS MOORE: Yes.

14 MR. BARTH: I have nothing further to add,
15 Your Honor, in this regard.

16 JUDGE KELLEY: Let me just ask you, Mr. Barth,
17 I suppose looking at the spectrum of possible positions,
18 and I know we'll hear others in a minute, but you're
19 advocating one counsel per contention, which, as I under-
20 stand you, would mean that one person would have to do
21 the cross examining for the entire management contention.
22 Is that correct?

23 MR. BARTH: Yes, Your Honor.

24 JUDGE KELLEY: Now, isn't it an alternative
25 possibility to have one counsel per panel, given the fact

1 that looking at the applicant's case at least, they're
2 going to have several different panels?

3 MR. BARTH: That is an alternative, Your Honor,
4 and I've discussed this with Mrs. Moore. She pointed
5 that in spite of the Board's order in Indian Point, this
6 is how it pretty much worked out, that they took them
7 panel-by-panel rather than technically, as the Board's
8 order was, per witness.

9 And your suggestion basically was what was
10 followed in Indian Point, as I understand the case, sir.

11 JUDGE KELLEY: Well, does the Staff... What
12 does the Staff's objection, if you have one, to following
13 a rule here that there be one counsel per panel?

14 MR. BARTH: I feel one contention, and certainly
15 in judicial practice you have one lawyer do the direct
16 case and the cross examination. This is on horrendously
17 complicated case.

18 This is not a horrendously complicated situation.
19 This is a management contention. It's unitary, it does
20 not have many facets. It seems that we can comport to
21 the type of practice which is used in the District Courts
22 and the State Courts, which is one person per issue.

23 JUDGE KELLEY: Well, the thrust of my question
24 is really practical. My question is if you and Mrs. Moore
25 are sitting down there next week and the following week

1 litigating this contention, what difference is it going to
2 make whether you have Mr. Runkle on one panel and
3 Mr. Eddelman on another one and Mr. Payne on a third one,
4 as opposed to having Mr. Runkle do all three? What's
5 the practical difference to you?

6 MR. BARTH: The practical difference is that
7 the hearing will last longer if they bring in fresh
8 questioners. That's a nonlegal, just simply a pragmatic
9 answer, Your Honor.

10 JUDGE KELLEY: We should prefer an exhausted
11 questioner so that he'll ask fewer questions as time goes
12 on?

13 MR. BARTH: I haven't seen or been able to
14 exhaust many of them, bearing in mind limerick, but people
15 wear down. They tend to become more precise and accurate
16 and get this over with.

17 JUDGE KELLEY: Okay, all right. Why don't we
18 hear from the applicants next?

19 MS. FLYNN: This is Samantha Flynn. The
20 applicant's position is that the principle that obviously
21 should be applied here is the principle that was articulated
22 in the Commission's Statement of Policy on Conduct of
23 Licensing Proceedings in 1981 where it was stated that
24 the Board should use their inherent powers to conduct
25 efficient and an expedited hearing, while at the same time

1 preserving the, and ensuring the fairness of the proceeding
2 and ensuring that an adequate record be developed.

3 And applicants believe that the suggestion that
4 the Board has just made, which is that there be one
5 questioner per panel, would be a very fair way of balancing
6 all the competing interests involved.

7 We should make clear that it is our intention
8 to present the testimony of the witnesses in three panels,
9 and let me explain how those would be conducted. The
10 first panel would be the, what we call the Panel on the
11 Corporate Organization and Philosophy of Management.

12 And that consists of four of our senior
13 executives. The second panel will be comprised of the
14 project manager and general plant manager of the
15 Brunswick and Robinson Plants.

16 And the third panel will be comprised of the
17 project manager and general manager of the Harris Plant
18 and the senior vice president and the Manager of Training
19 for the Harris Plant in charge of Training. They're the
20 three panels.

21 JUDGE KELLEY: All right.

22 MS. FLYNN: But we believe, and in summary we
23 believe that that approach would be a fair approach to
24 all concerned.

25 JUDGE KELLEY: Okay. Let me... I'm just

1 anticipating Mr. Runkle may want to advocate a different
2 point, but if that's so, let's hear from Mr. Runkle and
3 we can come back to you, Mrs. Flynn, and to the Staff if
4 they want to speak.

5 In other words, we hear everybody on each
6 variation. But let me go to Mr. Runkle now and see what
7 his preference is?

8 MR. RUNKLE: Well, what Mrs. Flynn just said
9 about the three panels, it was our understanding that
10 there would be four. The different testimony was grouped
11 differently than what she just presented.

12 And that raises a problem I hadn't even
13 considered. In conducting the Harris manager with the
14 QA and Training, it seems to me an awful broad panel,
15 regardless of how many attorneys are on there.

16 MS. FLYNN: I didn't say QA.

17 MR. RUNKLE: Okay.

18 MS. FLYNN: I just said Harris and Training on
19 a single panel.

20 MR. RUNKLE: All right. And what panel is your
21 QA going to be on?

22 MS. FLYNN: That is on the corporate panel,
23 the manager of the Quality Assurance for CP&L, Harold Banks.

24 MR. RUNKLE: Okay, and that's on the Utley Panel?

25 MS. FLYNN: That's right.

1 MR. RUNKLE: Okay. All right, I got a little
2 confused there. So our position is that one, one inter-
3 venor or one counsel per contention would be just an
4 unbelievable burden on us.

5 If we're going, you know, two weeks of hearing
6 and more than likely intervenor cross examination will be
7 80% of that, that seems to be putting an undue burden on
8 the one individual and it will lead to exhaustion, whether
9 that will be clear issues or not is something else.

10 Our position is that... And I think it worked
11 effectively in the environmental hearings, was to have as
12 many intervenors cross examine each witness as they come
13 up. And I think it's up to the panel to decide whether
14 that, the questions are being repeated or it's somehow or
15 another leading to an inefficient hearing.

16 I think our position is totally diametrical
17 to that of the Staff. That's all I have to say.

18 JUDGE KELLEY: Let me ask you, Mr. Runkle, with
19 regard to the panel approach as one possibility, I guess
20 our assumption would be that a given panel would be put
21 forward basically to address fairly similar topics, if
22 not identical topics, and that you'd be going to a
23 different topic or set of topics with a different panel.

24 So I can understand an argument whereby you
25 would want perhaps more than one counsel to cross examine

1 if you had people on a panel that really were on some
2 pretty dissimilar points. But if that's not the case, it
3 seems somewhat more reasonable to, to restrict it to the
4 one lawyer and figure that he can, he or she can cover
5 that particular point.

6 MR. RUNKLE: Well, our strategy in this is what
7 we'll be using in the hearing in the next couple weeks.
8 We are not going to be asking the panel that many questions
9 as a panel, regardless of how applicants wish to put them
10 on.

11 It's our belief that the management is made up
12 of individuals, and each individual is part of that
13 management. We gave a lot of questions specifically to
14 Mr. Utley that we will not seek responses from the other
15 members of that panel. And we may ask each of the members
16 of the panel the exact identical questions.

17 JUDGE KELLEY: Well, I think one thing that we
18 probably ought to get to as our first order of business
19 when we get to the first panel next week, and that will
20 be some groundrules for how counsel does address the
21 panel.

22 And I don't mean to do it now. I just mean to
23 illustrate what I have in mind. I know I've had this
24 experience in cases that it's fine to say put a panel in
25 and then what happens next.

1 And I've seen groundrules whereby, for example,
2 a counsel can address a question in the first instance to
3 a particular member of the panel. They can't all three
4 answer at once, that's clear enough, but then once he's
5 said whatever he's got to say, if some other member of
6 the panel has something to add then he or she will do so.
7 That's just by way of illustration.

8 MR. BAXTER: This is Tom Baxter. It's my memory
9 that that is, in fact, the direction you gave to the
10 participants of the environmental hearing. We did have
11 panels there and I specifically recall you advising the
12 witnesses that after the lead witness who had been named
13 in the question had answered, then they could volunteer.

14 JUDGE KELLEY: I frankly -- thank you,
15 Mr. Baxter -- don't remember that precise thing. I do
16 know that that's a procedure that, that I have worked
17 with in the most recent hearing that I had, namely the
18 Catawba one.

19 But I don't mean to foreclose those questions
20 this afternoon, but just point out that they will crop
21 up and that they'll have to be dealt with.

22 MS. FLYNN: This is Samantha Flynn. Could I
23 just add that without superseding the Board discretion
24 at all that we had thought that that was a very difficult
25 way of doing things.

1 But, indeed, if an intervenor wanted to direct
2 a question to a single member of the panel, he's entirely
3 within bounds to do so. And there would be nothing about
4 the panel of (inaudible) that would foreclose that ability.

5 JUDGE KELLEY: Okay. Again, I say okay. I
6 happen to agree with what you just said, but I wasn't
7 really ready to launch into a discussion of groundrules
8 right now, but rather to try to resolve this question of
9 one lawyer or more than one, either per case or per panel
10 or per witness.

11 MR. RUNKLE: This is John Runkle.

12 JUDGE KELLEY: Right.

13 MR. RUNKLE: My practical problem with having
14 one attorney per panel is maybe a matter of time. The
15 different intervenor counsels do have other commitments.
16 I know that I may have to argue an appeal one of the days
17 during that time and I'd hate to have to start, you
18 know, cross examine the panel and then may have to miss,
19 you know, a couple hours and there while there are other
20 three attorneys, you know, sitting there ready to cross
21 examine.

22 It's that kind of just timing and scheduling
23 for us that seems to be one problem that's going to
24 arise about having just one, you know, one attorney per
25 panel or even one attorney per witness.

1 JUDGE KELLEY: Well, let me just make an
2 observation. I think in the example you cite of having
3 an appeal in court somewhere that came up at this par-
4 ticular time, that kind of thing may be a basis for a
5 good cause showing, that we make some exception to the
6 rule or otherwise following.

7 At the same time, I would want to make clear
8 that we've had this hearing scheduled, you know, for a
9 good long time and we expect to go down there and work
10 working hours and expect all parties to be there at that
11 time.

12 If someone is a participant in this case and
13 if they have to take annual leave from another job, then
14 so be it. They'll have to take annual leave.

15 MR. RUNKLE: All right.

16 JUDGE KELLEY: We can't, we can't structure
17 this hearing on a sort of part-time participation basis
18 is what I'm saying.

19 MR. RUNKLE: Then I would go along, given a
20 showing of good cause, to change it, to go along with
21 one attorney per panel. I think we should be able to
22 go along with that, especially the applicant's witnesses
23 and the panels that they have just presented. I think
24 that should be workable.

25 JUDGE KELLEY: Okay. Are there other...

1 We'd like to decide this this afternoon so people will
2 know what the groundrule is. Are there other comments
3 in... I think what we contemplate is just turning off
4 our sound a little bit here and conferring and then coming
5 back and telling you, giving you a ruling. Are there
6 other comments that people want to make at this point?
7 Mr. Barth?

8 MR. BARTH: I have just one brief one, Your
9 Honor.

10 JUDGE KELLEY: Right.

11 MR. BARTH: Your Honor, for the Staff we would
12 accept Mr. Runkle's view, one examiner per panel as a
13 reasonable compromise in rather a difficult situation.

14 JUDGE KELLEY: Would that be then subject to
15 a good cause showing? I assume it would be. That'd
16 be kind of there whether you wrote it or not. In a given,
17 at a given time during the hearing if you find out the
18 next day that somebody has to go to the hospital or what-
19 ever, someone else can step in in the breach.

20 MR. BARTH: Yes, Your Honor, that would be...
21 Of course, in my view, at your discretion during the
22 circumstances, but you're certainly correct.

23 JUDGE KELLEY: Okay. Miss Flynn, any further
24 thought?

25 MS. FLYNN: Only that in the event that there

1 has to be a substitution that the intervenors are
2 responsible for ensuring that there is no duplicative...
3 People can't just go bouncing in and out and there can't
4 be any duplicative questioning as the result of one not
5 having been there and not having heard the testimony that
6 has been given.

7 JUDGE KELLEY: I think that's a fair observation,
8 yes. Could we... If there's nothing further, maybe we'll
9 just take a minute here and you can... We'll come back
10 on in a minute or two. Thank you.

11 (Off the record.)

12 JUDGE KELLEY: Hello?

13 MS. FLYNN: Yes.

14 JUDGE KELLEY: We didn't push the right button
15 back on this end, I'm sorry. But in any event, after
16 finding the correct button, we deliberated some on this
17 and it did seem to us unfair to all of you.

18 There was pretty much a consensus emerging
19 anyway. The rule that we propose to follow then with
20 regard to counsel or representatives questioning par-
21 ticular panels is that there would be one counsel or
22 one representative per panel, subject to a good cause
23 showing, which would allow the use of a substitute cross
24 examiner during the time that the counsel who otherwise
25 has that panel is unavailable, adding to that also the

1 caveat that the substitute counsel or representative would
2 be obligated to familiarize himself or herself with the
3 record thus far in the case so that we could minimize the
4 possibility of repetitive questioning.

5 So that's the approach that seems to me you
6 really had already pretty much agreed on that we've now
7 formalized. Does that, does that cover the point? Any
8 further comment on that?

9 MR. RUNKLE: This is John Runkle. I would like
10 to find out more about the subpoenaed witnesses and how
11 those will be deployed off of the panel.

12 JUDGE KELLEY: About the what? I'm sorry.

13 MR. RUNKLE: The subpoenaed witnesses.

14 JUDGE KELLEY: I haven't come to that yet.

15 MR. RUNKLE: Okay. That's... I would...

16 JUDGE KELLEY: We were going to come to that
17 as the next point.

18 MR. RUNKLE: Oh, okay. All right.

19 JUDGE KELLEY: All right. Any other comment?
20 Are we all clear on the rule that we've just adopted for
21 number of counsel per panel? Okay, thank you. Now, last
22 week we heard argument from essentially the same group
23 of lawyers on the question of subpoena request from
24 Mr. Runkle for four people from the CP&L and four people
25 from the NRC Staff.

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1 And we have considered that request and, well,
2 we've effectively decided not to decide it this point and
3 we'll tell you why. We're going to defer... Let me speak
4 first to the CP&L witnesses.

5 We've decided for a ruling on these four sub-
6 poena requests. We are concerned about the possibility
7 that there'll be repetitive questioning, the testimony
8 will become cumulative.

9 The difficulty is that at this stage of the
10 game we have the, the statements of counsel about what
11 they expect to come, but we really aren't in a good
12 position to judge whether or not somebody is necessary
13 or desirable or not necessary.

14 We also heard and understand that all of these
15 people would be available on fairly short notice should
16 it be necessary for them to testify and, therefore, it
17 just seems to us to be unnecessary to resolve the issue
18 at this point.

19 In the case of these people that have been
20 subpoenaed by the applicants, we would assume then that
21 at or around the close of the applicant's case if the
22 record as it's then developed shows gaps and if the
23 intervenors can demonstrate that other people could fill
24 the gap, then we may well grant the subpoena.

25 Conversely, if it seems to us that the grounds

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1 have been pretty well gone over and there isn't anything
2 to add from calling one of the subpoenaed witnesses, we
3 would presumably deny the subpoena request.

4 As to the Staff, again, there were four people
5 involved except it was subtracted by the Staff's willing-
6 ness to call Mr. Maxwell, so that left three people under
7 request for subpoena, and we are going to first, as to
8 Mr. Cantrell, from what we know about the history of the
9 case there's some indication that he may be a useful
10 witness but we don't think that we're ready to make a
11 judgement on him.

12 So we think deferral is the appropriate course.
13 We think it's very clear that that's the appropriate thing
14 as to Mr. O'Reilly. He's a high level executive, the
15 head of the region, and we think that the NRC rule
16 requiring exceptional circumstances is made to fit just
17 exactly such a person and, therefore, we think it's pre-
18 mature and that it may well not be appropriate to call him.

19 But we're willing to abide the event, again, see
20 how the case unfolds, see how the Staff's case unfolds,
21 and it may be that there'll be a case that's makeable
22 for calling Mr. O'Reilly later on.

23 The other person was Mr. R. C. Lewis. The
24 purpose of calling Mr. Lewis was to elicit some infor-
25 mation about the so-called SALP report -- that's S-A-L-P,

1 caps, no periods. We were told that Mr. Lewis was more
2 in the nature of a parliamentarian than a substantive
3 contributor to the SALP report and that I believe it was
4 indicated that Mr. Bemis, who will be the Staff witness,
5 might be in a better position to answer questions on that
6 point.

7 So we are going to defer on the Staff request
8 also, including Mr. Lewis, with the indication that we
9 may well deny it as to Lewis because of the seeming
10 unlikelihood of his ability to contribute on SALP, but
11 we don't want to shut that door and we don't see any
12 reason why we should.

13 So the net effect of this is that we're going
14 to defer all these rulings for a subpoena request until
15 a later date. We would just add that having marched all
16 the way up this particular hill, it's always uncomfortable
17 to have to march all the way back down, but we have at
18 least heard you on what your positions are at this point.

19 And there was a possibility of not knowing
20 what your objections would be, that we could get some of
21 these things resolved, such as somebody living in the
22 San Diego and not knowing very much about it, but we
23 didn't hear any of that.

24 It's really repetition, cumulative evidence
25 or lack of knowledge, neither of which we're in a very

1 good position to judge right now. So that is our position
2 on the subpoenas as of this afternoon. We have one more
3 point we wanted to raise and it has to do with...

4 MR. RUNKLE: Excuse me, Judge Kelley.

5 JUDGE KELLEY: Yes?

6 MR. RUNKLE: This is John Runkle. May we comment
7 on your decision on the subpoenas?

8 JUDGE KELLEY: I'm not sure to what effect.
9 Can you give me an indication of what you want to, want
10 to get into?

11 MR. RUNKLE: Yeah. On the applicant's witnesses
12 I think you've rule on the, or you have deferred ruling
13 on the merits of what they're saying, on the evidentiary
14 value.

15 According to the regulations, we just have to
16 show general relevance.

17 JUDGE KELLEY: Well, I don't think that's what
18 we've, what we've done, Mr. Runkle. I have no intention
19 to rule on what evidence these witnesses might give, one
20 way or the other.

21 What we're saying is this afternoon we've heard
22 a defense to the subpoenas that the calling of these
23 people would be cumulative and redundant and unnecessary
24 for that reason.

25 And our answer is that may be right. On the

1 other hand, maybe it isn't right. So we're going to hold
2 off our ruling until later. The argument that you have
3 made for calling these people will still stand as an
4 argument later on and then you'll have an opportunity
5 to add whatever you want to add when we re-raise the
6 issue.

7 MR. RUNKLE: All right.

8 JUDGE KELLEY: Okay?

9 MR. RUNKLE: Yes, sir.

10 JUDGE KELLEY: I had a conversation with
11 Mrs. Flynn earlier today on the question of a place for
12 a hearing for the October 10 and thereafter Safety
13 hearing.

14 And Mrs. Flynn indicated the availability of
15 a, a motel. Ramada Inn was it, Mrs. Flynn?

16 MS. FLYNN: Yes.

17 JUDGE KELLEY: In Apex, and certainly it
18 sounded like a, you know, a feasible place. The one
19 question in our mind... I might add that she could
20 elaborate on this.

21 Apparently it's very hard to find places in
22 the Raleigh area right around that time. A lot of con-
23 ventions and what not. The one place we're a little
24 unclear about was the bankruptcy court which I think we
25 all felt was a good place for a hearing.

1 I did call them back today and they had been
2 unable to give us any, any comfort last month with respect
3 to the upcoming hearing because of some uncertainty growing
4 out of the new bankruptcy statute.

5 They didn't know what they were going to be
6 doing, so we looked elsewhere and Mrs. Flynn found us
7 the Convention Room. But today they seem to be in a
8 somewhat more settled situation and they said that --
9 this is the judge's clerk -- said that they might well
10 be able to help us out in, in October, maybe even for
11 some substantial portions of October.

12 And it just seemed to us, having to focus on it
13 this afternoon, that if we've got a pretty good chance
14 for the bankruptcy court for much of that October hearing,
15 we'd rather take it than go to, than decide to go to
16 Apex now.

17 Now, as I understand it, Mrs. Flynn, we'll be
18 taking a bit of a chance. If we find out in the middle
19 of next week that we can't have the bankruptcy court,
20 it may be that Apex is gone, too. Isn't that right?

21 MS. FLYNN: Right.

22 JUDGE KELLEY: Yeah.

23 MS. FLYNN: But obviously, the bankruptcy court
24 is preferable, I'm sure, to everybody. As I... We had
25 two people on telephones for half a day searching for a

1 place in Raleigh and they had no luck because it's
2 apparently a big month for conventions.

3 JUDGE KELLEY: Well, I appreciate all that work
4 and I know it's tedious and takes a lot of time.

5 MS. FLYNN: My only point is that it was hard
6 and the only reason we tried Apex is because we didn't
7 have any luck in Raleigh.

8 JUDGE KELLEY: Sure. And it's a fairly solid
9 indication that we may be in some trouble if we don't
10 get the bankruptcy court very soon. But I think that
11 we'd like to... Our feeling about it is that, all things
12 considered, we'd rather hold off in the hope that we'll
13 get a bankruptcy court for a fair chunk of the time.

14 And I think we'll know that for sure, we may
15 know it later today. The judge's clerk was going to call
16 me back, but I haven't heard from her. But in any case,
17 we can find out certainly when we come down next week.

18 We ought to know by Wednesday if it's available,
19 and if it is, fine, and if it's not, we can just hope
20 that Apex is still there or something else can be found.

21 UNIDENTIFIED SPEAKER: How about Durham or
22 Chapel Hill?

23 JUDGE KELLEY: Let me ask you, Mrs. Flynn,
24 did you do any inquiring Durham or Chapel Hill area?

25 MS. FLYNN: No, we haven't.

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1 JUDGE KELLEY: Yeah. Well, I guess those might
2 be options, too, that we could keep in mind. But anybody
3 think we're making a mistake by holding out for the
4 bankruptcy court, at least for the next few days?

5 MS. FLYNN: No, sir.

6 JUDGE KELLEY: Okay. Well, I guess we'll do
7 that. I just have one other question I wanted to ask
8 really to the Staff. We had some discussion in the
9 last... The telephone conference before last, I guess
10 it was, about the diesel generator, the subject of diesel
11 generators in this case and the way it was developing in
12 other places.

13 And I just received today, Mr. Barth and
14 Miss Moore, a Board notification number 84-152, dated
15 August 29th, 1984, and the subject is "Safety Evaluation
16 Report on Trans-America Delavile, Inc., Owner's Group
17 Program Plan" and some other subjects.

18 And they usually show service on lots and lots
19 of Boards, among other places. This shows... I got this
20 because of Catawba. There's no reference here to Shearon
21 Harris, although... I really don't know why there wasn't.

22 Now, maybe some separate piece of paper went
23 out to the Shearon Harris service list. Do you know
24 whether this particular Board Notification got distri-
25 buted in the Shearon Harris case?

1 MISS MOORE: Your Honor, I sent a letter
2 personally to all the Board and parties in the Shearon
3 Harris with regard to this particular document. I'm
4 hoping that everybody got it.

5 It makes me a little nervous if you're saying
6 you didn't see it in Shearon Harris. I sent a letter
7 signed I believe it was by me last week.

8 JUDGE KELLEY: (inaudible)

9 MISS MOORE: That sent this particular Safety
10 Evaluation Report out to all the parties.

11 JUDGE KELLEY: Thanks a lot. I appreciate that
12 and maybe I'm the only one that doesn't know about it.
13 So anyway, I raised the point because I didn't see it
14 or, frankly, don't remember it, but I've got it now and
15 now you've given me the answer. Thank you very much.

16 MISS MOORE: I will check on why the Shearon
17 Harris Board is not mentioned on the Board Notifications.
18 They should be by now.

19 JUDGE KELLEY: Okay. Let me... Anything else,
20 you guys? I guess, I guess the Board doesn't have any-
21 thing else. Do the parties, Staff have anything else to
22 raise?

23 MR. RUNKLE: Nothing from us, Your Honor.

24 JUDGE KELLEY: Okay. Applicants?

25 MS. FLYNN: No.

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1 MR. BAXTER: One thing. This is Tom Baxter.
2 I assume that the Board, or I am assuming the Board is
3 still interested in hearing argument on the subpoenas
4 with respect to what (inaudible)?

5 JUDGE KELLEY: Yes. And I told Mr. Eddleman
6 last Friday that we'd bring that subject up probably on
7 day one, next Wednesday. I think he plans to be there.
8 But in view of the lesser urgency on those, we were just
9 going to put that over until then. Okay?

10 MR. BAXTER: Yeah.

11 JUDGE KELLEY: Anything else, Mr. Runkle?

12 MR. RUNKLE: Yes, one other point. It's dis-
13 covery on the emergency planning. I did not get to be
14 able to interview one of the state government workers
15 until yesterday afternoon and there was a midnight
16 deadline on that and I will not have that discovery
17 request done until today.

18 I've been trying to get in touch with the
19 Shaw Pittman attorney that's responsible for that area.
20 I'd like a one-day extension on that, if that's okay.

21 MR. BAXTER: I didn't understand. It was to
22 interview a worker?

23 MR. RUNKLE: Yes, one of the... It's a, it's
24 the head of the Radiation Protection Section, was out of
25 town and sick for about a week and a half.

1 MR. BAXTER: I'm just confused as to what an
2 interview is. Is that a deposition or it's a document
3 production inspection?

4 MR. RUNKLE: Well, he would be the... He would
5 affirm or attest that, you know, that they're all the
6 answers that are true.

7 JUDGE KELLEY: These are answers that you're
8 preparing, Mr. Runkle?

9 MR. RUNKLE: Yes, sir.

10 JUDGE KELLEY: I see. To interrogatories from
11 the applicants?

12 MR. RUNKLE: Yeah.

13 JUDGE KELLEY: Yeah.

14 MR. RUNKLE: But I'll be one day late on it.

15 MR. BAXTER: Because you have a state official
16 attesting to your answers?

17 MR. RUNKLE: Sure.

18 MR. BAXTER: Okay.

19 JUDGE KELLEY: Okay? Did I hear an okay,
20 Mr. Baxter?

21 MR. BAXTER: Yes.

22 JUDGE KELLEY: Okay, fine. Well, if there's
23 nothing else then, we'll look forward to seeing all of
24 you next Wednesday morning at 9 in the Convention Center.
25 Thank you very much.

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MS. FLYNN: Thank you.

(Whereupon, the conference ended at 3:15 p.m.)

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1 CERTIFICATE OF PROCEEDINGS

2
3 This is to certify that the attached proceedings before the
4 NRC

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

8 Date of Proceeding: August 31, 1984

9 Place of Proceeding: Bethesda, Maryland

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

12 Tom Berry
13 Official Reporter - Typed

14
15 Tom Berry/1984
16 Official Reporter - Signature

17 Law Desaran
18 Transcriber